Campos, A S. Infant Political Agency. Redrawing the Epistemic Boundaries of Democratic Inclusion. *European Journal of Political Theory*. Prepublished September, 2019; DOI: 10.1177/1474885119874341.

INFANT POLITICAL AGENCY

REDRAWING THE EPISTEMIC BOUNDARIES OF DEMOCRATIC INCLUSION

ANDRE SANTOS CAMPOS

From its inception, one of liberalism's main concerns with regard to legitimacy and power was to upgrade individuals from subjects of a king to citizens of a state. The change in status had important implications for children. As subjects, there is little distinction between children and adults, for both are equally under the king's authority. Citizens of a state, however, are those who consent to authority as the basis of political power, which makes it paramount to distinguish between those who have the rational capacity to consent and those who do not. Children are often viewed as lacking such capacities. And even if many children prove to rise above the epistemic threshold, infants do not.[1]

Epistemic impairment has been the decisive yardstick when excluding infants from political agency. In general terms, an agent is a being with the capacity to act, and 'agency' denotes the exercise or manifestation of this capacity. Whereas personal agency entails the capacities to form, realise, and revise temporally-extended plans, political agency involves the capacity to act in concert with others by exercising political power. From this viewpoint, infants are utterly incapable of being 'normative

[1] By 'infants' I mean those children, mostly babies and toddlers, who are not-yet-in-language (Duhn 2015), the typical standard for assessing epistemic competence. The reason I focus on infants is that they are excluded from (theoretical and practical) political forms especially devised to include children who are capable of participating in some stage of decision-making (Lister 2007; Lieber 2008; Jans 2004; James 2011), including even deliberation (Nishiyama 2017).

agents' (Griffin 2008, 45) insofar as they lack the autonomy and the freedom to deliberate and to carry out any deliberations. Consequently, they cannot be regarded as political agents.

The epistemic impairment of infants is also invoked, most forcefully by will-theorists of rights, as a reason for claiming that infants do not have rights. Unlike interest-theorists, which view the function of rights as one of protecting significant interests, will-theorists propose to see rights as zones of freedom to be granted only to those able to exercise the powers to waive or to seek enforcement of the relevant claims. As a result, infants do not have rights strictly speaking, even though they still have interests that can be protected through granting rights directly to those able to exercise powers associated with the relevant claims, namely parents or guardians (Kramer 2001, 30). Some authors counter such conclusions simply by endorsing an interest theory of rights (MacCormick 1976, 315; Sumner 1987, 47) or by restricting children's rights to their developing competencies (Cowden 2012); others recognise the soundness of both views and apply them conjointly to children, who change through their different stages of development from being the sort of creatures whose interests are protected by rights to being the sort of creatures whose rights protect their choices (Brennan 2003).

However, even these authors who grant rights to infants on account of their having interests deserving of special protection tend to narrow the scope of such rights to welfare rights, not extending them to political rights. What is deserving of protection is that infants are particularly vulnerable as human persons and that they have the potential to become citizens when they grow up, not the fact that they are citizens already. Political agency is a mere future possibility that is entirely disconnected from their condition as infants. One way to bypass the epistemic requirement of political agency and to encourage the political inclusion of infants is to resort to proxies or

surrogates who share or advocate interests which may be coincidental with their interests, such as parents, guardians and trustees. These forms of political agency would mirror proposals for empowering other kinds of vulnerable and epistemically-impaired subjects, such as shown in the literature on mental disability and on so-called animal citizenship. This solution, however, introduces new problems to democratic theory, for instance by privileging the political agency of parents, guardians and trustees over other citizens.

This article offers an alternative to this conceptual frame of reference by making a case for the political agency of infants. Firstly, it maintains that political agency can be understood in terms of the several facets involved in political representation. Secondly, it claims that the all-affected principle can be reformulated as an 'infant-affected-interests' principle which determines their membership of the class of the represented. Thirdly, it explores the ways through which this political agency can occur without having to resort to alternative conceptions of representation. The conclusion ascertains that infant enfranchisement is highly undesirable and that there are more viable forms to promote infant political agency, such as virtual representation, infant-beneficial principles of political action and ombudspersons for infants.

1. Political agency via representation

Conceptions of political agency typically differ with regard to three aspects: the nature of the action; the context of the action; and the nature of the agent. The traditional liberal view of political agency requires some sort of participation by autonomous individuals in any given stage of the decision-making processes of a body politic. Participation involves a minimum awareness of one's identity and place in the overall

public issues, which is why political agency depends upon qualities that can be distributed unequally. Assuming public office, membership of the franchise, and communicating with representatives are the most visible institutional manifestations of what it means to act in the public realm. Those who do not have the capabilities to participate in these collective decision-making processes are not necessarily excluded on the grounds of discrimination – they simply lack the minimum requirements for inclusion. The political action is then (*i*) a visible and direct expression of the will, (*ii*) within an institutional decision-making process, (*iii*) performed by individuals who are capable of making their own decisions and of meeting their own needs.

The expansion of theoretical approaches to political inclusion, especially in the wake of phenomena associated with civil rights movements, prompted the appearance of alternative conceptions of political agency. Criticism of the liberal view focuses on any of its three aspects. Some authors seem to endorse the thesis that there is no need to have a direct and deliberate action in order to have political agency – habitual and unconscious obedience to the rules established in an institutional context is a sufficient condition of political agency, even if measured by degrees (Nagel 2005, 128-30; Pogge 2005, 78-80; Jubb 2014; Abdel-Nour 2016; Zakaras 2018). Other authors broaden the scope of political agency by refusing to restrict it to actual participation in institutional political processes; rather, they equate it with a variety of individual and collective, official and mundane, rational and affective ways of acting and impacting in different social movements (Barnett 2008; Saward 2010). And other authors simply maintain that the grounds of political agency is a notion of subjectivity that is socially conditioned and open-ended (Colapietro 2006), that is, in which agents do not have to be ontologically independent individuals but rather relational entities inside a network of varying degrees of dependency (Zanotti 2013; Häkli & Kallio 2014).

The purpose underlying these lines of criticism consists in establishing a more comprehensive politics of inclusion, either at the level of shared responsibilities for government actions or at the level of collective decision making. However, there is no need to reject the three aspects of the liberal conception in order to acknowledge that political agency can be ascribed to any member of the polity.

Personal autonomy tends to be a crucial element of the idea that a democratic process is 'a requirement for making binding decisions' (Dahl 1989, 105) and that only people capable of acting autonomously have a right to democratic rule. Within this context, the typical debate on political agency concentrates on actions deriving from membership of a franchise. But attempts at promoting political agency are chiefly attempts at finding the right equilibrium between political subjection and political citizenship. Some authors suggest the need to reshape contemporary electoral systems in order to promote equality of opportunity through representation (Barber 2001; Rehfeld 2005; Amy 2008); others emphasise the role that political parties have in guaranteeing the conditions of political agency (Rosenblum 2008; White & Ypi 2016); others prefer to draw attention to how equal political agency requires proportional participation in which no minority is left behind in multicultural societies (Kymlicka 1995; Phillips 1995; Williams 1998); others claim that representation is capable of being all-inclusive if the object of representation is not people as such but rather discourses expressing presumptions, judgments, contentions, dispositions or capacities (Dryzek & Niemeyer 2008); and others understand agency simply in terms of advocacy of people's interests (Urbinati 2000).

These strategies interpret agency within the traditional framework of political representation encompassing formal elective authorisation and accountability.[2] The emphasis on the franchise can be explained by the fact that the actions of representatives are justified often as responsive only to active political participation. When this occurs, norms and policies are issued toward a group of persons which outnumbers considerably the group of persons to which public officials believe to be responsive and accountable. Consequently, the elected representatives are first and foremost the representatives of the members of the franchise rather than of the people by and large. But in terms of political representation, there is a conceptual and normative distinction between the represented and the franchise. Those who participate in the franchise automatically acquire the status of being represented in the operation of representative government, but that does not mean that representative government only represents members of the franchise.

An effective politics of inclusion is necessarily attentive to the asymmetry between the represented and the franchise. Representative democracy is increasingly inclusive to the extent that the number of people granted a right to participate in the making of collective decisions approximates as much as possible the number of people ruled by those decisions. From the viewpoint of democratic theory, this is the main

[2] Alternative versions of representation often dismiss electoral forms of representative government. This allows them to classify representative democracy as 'post-democracy' (Crouch 2004), 'counter-democracy' (Rosanvallon 2008), 'monitory democracy (Keane 2009), 'politics of resonance' (Tormey 2015), or 'politics of authenticity' (Saward 2010). Authors such as Saward (2009) and Montanaro (2017), for instance, develop compelling accounts of the advantages of having non-elected self-appointed representatives, even if they still rely on a notion of representation encompassing mechanisms of authorisation and accountability. The reason I focus on more traditional frameworks of representation is that intervention outside a persistent system of representative government is mainly a form of counter-power. And, as counter-power, participants in such movements are reduced to the position of trying to influence decision-making processes rather than participating in them. Non-electoral representation reinforces the exclusion from electoral representation rather than simply bypassing it.

justification for promoting universal suffrage. The progressive tendency toward diminishing this asymmetry assumes that being affected by government action is sufficient reason for having a right to participate in that government. Such an *all-affected principle* typically determines membership of the franchise, that is, the right to participate in government action is understood often as a right to vote. But there is no strong reason why it cannot also be understood simply as a right to being represented. In this latter sense, a basic condition for being included in representative processes would be that a person is 'legally affected' by the decisions enacted by the representatives (Dryzek 2002; Katz 1997, 217; Young 2000, 6; Beckman 2009). One acts indirectly, via a third party – a representative. Such a right would imply a duty on the part of the representatives to take the affected interests into consideration in the representative action, regardless of the problem of membership of the franchise. Their decisions and actions as representatives are therefore justified as responsive to those who are to be legally affected by those same decisions and actions.

Responsiveness is not to be understood chronologically. Rather, it is part of a reciprocal constitutive relation between the representatives and the represented. Representation is more than the mere coincidence of claims to representation and actual pre-existent interests in light of some normative criterion; it is also constitutive. A representative action occurs whenever genuine claims to representation are constitutive of the role of the representatives and of the actual represented. Representation does not simply amplify a voice which was not being heard, one that already manifests a minimum epistemic faculty. Rather, it creates it anew in the political arena. It gives a voice to those who were otherwise silent and who acquire a political existence only because they now have a voice. The representative action is constitutive of their voice toward a third party and of their normative status toward the representatives that voice

them. The representative action is the action of the represented, not of the representatives.

The literature on representation referenced hitherto tends to focus on the activity of representatives or on their authorisation for acting. But on the strength of the constitutive nature of political representation, it is important that the focus is on the represented. The problem of identifying agency is somehow connected to the problems of membership of the class of the represented. The right to being represented politically implies a duty on the part of the representatives to take the legally-affected interests into consideration in the representative action, regardless of the problems concerning the franchise or the proper operation of government. In this sense, representation can be constitutive of actions that are not necessarily direct expressions of an individual will, even if they are performed in an institutional decision-making process. The following sections show how this applies to infants.

2. The all-affected principle

If what was maintained in the previous section holds, political agency can be ascertained by establishing the criterion of membership of the class of the represented. This is a minimalist conception of political agency. It does not overrule the importance of epistemic conditions in order to act politically – but it acknowledges that those epistemic conditions can be met via a third party.

This argument is a variant of 'the boundary problem', which tries to establish who should have a right to take part in which decisions in democratic decision making. The classical literature on the boundary problem, though, equates the criteria for determining rights to political participation with the criteria for membership of the

franchise. It does not come as a surprise, then, that the authors who first pioneered discussions of this problem, such as Dahl (1970), Cohen (1971) and Whelan (1983), emphasise the importance of direct individual epistemic conditions for exercising political rights. However, the criteria for determining political agency do not have to be as demanding as the conditions for becoming enfranchised. The scope of membership only needs to be determined with regard to the class of the represented, and not necessarily to the franchise.

Debates about the problem of scope tend to boil down to the 'all-affected principle', an intuitively attractive criterion according to which those who are relevantly affected by a decision ought to have, in some sense and to varying degrees depending on how much they are affected by it, influence over the decision (Dahl 1970, 64; Cohen 1971, 8; Whelan 1983, 16; Shapiro 1996, 232; Goodin 2007, 50; Brighouse and Fleurbaey 2010, 2). But the problems introduced by the principle are myriad. The particular conception of 'affected' that one embraces ultimately leads to different conclusions with regard to who can count as 'affected'. For instance, what kind of interests are relevant; whether 'affected' implies a necessary causal relation or only probabilistic reasoning; whether all stakeholders are equally relevant; etc. In addition, even if the meaning of 'affected' were undisputable, one would still need to ascertain exactly what is implied in the practice of 'influencing' a collective decision. Is it a right to vote? To participate in deliberative experiences of decision making? To intervene in some stage of the exercise of government? Would 'influencing' always imply some sort of minimum epistemic condition?

In light of these difficulties, the representative process is likely to suffer from overinclusion and indeterminacy. In order to bypass such risks, some authors prefer the narrower 'all-subjected principle', according to which those who are legally bound by

the laws should have the right to take part in the making of the laws (Miller 2009; Beckman 2009, 36-50; Tännsjö 1992; Owen 2012; López-Guerra 2005). Such a principle understands the membership of the demos in terms of a 'government by the governed'. But its scope is also quite unclear. A tourist with a provisional visa for visiting country X is arguably legally bound by the laws of country X during the time of her stay. Does that mean that she should have a right to participate in some stage of law-making processes in country X during that time (Arrhenius 2018)? Also, many stakeholders, such as companies and businesses, are legally bound by laws even though their nature excludes them from representative political processes. Should they be granted political rights simply because they are liable to incur in some sort of legal responsibility?

The all-affected principle, even in its narrower form, cannot be formulated in an all-or-nothing fashion in such a way as to provide a definitive solution to the risks of overinclusion and practical indeterminacy. But those dangers can be mitigated if the principle is interpreted as including sets of different kinds of requisites. For instance, with regard to the risk of overinclusion, the all-affected principle can encompass a combination of different criteria, such as being affected in certain legal and non-legal ways, being human, being alive, etc. And with regard to the risk of practical indeterminacy, the principle may determine that 'influence' is to be understood not simply in the sense of a direct action of individual participation, but also in the sense of indirect (e.g. delegated) and passive (e.g. structural or cultural) kinds of influence (Fung 2013, 254-9).

In order to be acceptable and valid, it is important that the criteria included in this version of the all-affected principle do not conflict. In addition, they should be cumulative rather than alternative. This may lead to certain borderline problems. For

instance, the legally-subjected criterion is interpreted often as involving a certain epistemic threshold (Miller 2009; Owen 2012) – the same threshold that is characteristic of 'influence' as active direct participation. One can only be actually bound by public norms and policies if one is capable of grasping their meaning. According to this view, the more one narrows down the all-affected principle by adding criteria of political inclusion, the more those who fail to meet the minimum epistemic conditions of normative agency, such as infants, are likely to be excluded. And if they are excluded because they cannot be legal subjects, it does not matter whether they can influence political action 'indirectly'.

However, the role of epistemic conditions in this version of the all-affected principle does not have to be particularly demanding. In light of the all-subjected criterion, what actually needs to be affected is not persons as such or their genuine wills, but rather the interests that the public norms and policies are aimed to protect. From a legal point of view, it is irrelevant whether people who are addressees of public norms and policies conform to pre-established normative contents because they are bound by them and understand the corresponding ought statements. What matters is an objective correspondence between the actual actions or states of affairs and the contents of public norms and policies. Obviously, anyone who is bound by a law is *ipso facto* affected by it. But it is not the fact that the person is bound by the law that makes her affected by the law; rather, it is the fact that a law's binding someone to act in a certain way actually contributes to achieving what the law is aimed to achieve. A law prohibiting people to commit murder does not affect its addressees simply by establishing them as its addressees~~)~~, but rather by binding them in such a way that is conducive to other people not being murdered. Insofar as public norms and policies protect relevant interests shared or recognised in a political context, the all-affected principle should be read as an

all-affected-*interests* principle. What matters in order to determine the 'legally affected' is not so much whether someone is capable of reasoning her way through an ought-relation, but whether the interests envisioned by a legal norm are indeed protected as a result of someone being able to reason her way through an ought-relation.

The same kind of reasoning applies to the notion of 'influence'. If someone is affected by a specific political decision because her relevant interests are at stake, the influence that must be exerted on the decision is justified in light of the interest that is being affected. It seems perfectly possible for the actual interest rather than the actual interest-holder to justify such influence. This means that influence can be reinterpreted in the sense of admitting non-direct expressions of will by actual interest-holders. Representation is precisely the kind of agency that introduces new interests into the political arena. Being a member of the class of the represented entails having one's interests included in the representative process, even if one is not a member of the franchise for failing to meet epistemic requirements.

3. The infant-affected-interests principle

In order for the all-affected-interests principle to apply to infants, three assumptions must obtain: that infants have interests justifying political action; that these interests can be affected legally and non-legally by political action; and that such interests justify the exertion of 'influence' in political decision making.

With regard to the first assumption, it is important not to confuse 'having interests' with 'having needs' or 'wanting something'. The dismissal of epistemic requirements for the class of the represented calls for an objective conception of interests that are sufficiently relevant to justify representation. Having interests is to be

regarded here as having objective reasons for wanting something. Having an interest in some *x*, for instance, is having a reason, all-things-considered, to want that *x*. Statements about persons having interests in *x* can have truth-value depending not on whether those persons actually want or need *x*, but on whether such statements express justifications that those persons would have endorsed in ideal epistemic circumstances.

Interests coincide with that which is most valuable concerning a person. The values of life, well-being, self-development and self-determination fit exactly into this description. The relevant affected interests are those that significantly impact chances and opportunities related to such values. The principle as a normative claim turns on affectedness negatively by prohibiting what undermines such interests, and positively by imposing the conditions for fulfilling them. Some interests can therefore be imputed to a person that lacks the minimum epistemic conditions for understanding or formulating them, so long as they can be rationally justified. Basic interests such as physical integrity and minimum provision of resources, for instance, are shared by all human persons, regardless of age.

With regard to the second assumption, it seems obvious that government decisions can have a significant impact on infants, for instance when pursuing policies that either promote adequate conditions of welfare or that undermine the quality of life. But, more importantly, there are at least two ways in which infants' interests are legally affected by political action. The first is that infants are addressees of norms and policies in the indirect sense of being subject to institutions that are authorised to exercise coercion over them or over other persons because of them, even if infants are not necessarily bound by legal duties. This argument centres on the scope of political action from the viewpoint of legal institutions, which is typically defined in terms of territoriality. In this case, however, the criterion for measuring the legal scope is strictly

normative rather than territorial. The addressees of such norms and policies directed at institutions whose aims include protecting infants are the officials of those institutions. They are the ones either bound by legal injunctions or authorised by power-conferring norms to exercise discretion in creating further infant-protecting norms. But the efficacy of infant-protecting norms, whether duty-conferring or power-conferring, depends upon infants actually being protected by the implementation of the contents of such norms and policies. They thus become legal subjects indirectly.

The second way is far more decisive. Infants' interests are legally affected because infants are legal persons. And as legal persons, there is no fundamental flaw in granting them citizenship rights. This assertion lacks further clarification. If one accepts that infants have rights on account of having protected interests, as interest-theorists of rights will probably do, then everything that produces an impact on the contents of such rights (mostly, welfare rights) falls under the purview of the all-affected-interests principle. But with regard to civil and political rights, even interest-theorists will agree that epistemic conditions cannot simply be jettisoned – the existence of objective interests does not produce by itself a civil and political right-holder. The action of influencing (and/or participating in) collective decision-making processes is justified by the fact that those processes affect relevant interests. The reason why assessing affected interests is important is that it provides access to the means of influencing (and/or participating in) political action. If one is incapable of expressing one's will, there is no need to assess affected interests and one could hardly talk of civil infant rights. This is a strong argument in favour of will-theorists of rights.

It is possible to sidestep this difficulty, though, by reconciling interest- and will-theories. For certain persons in certain situations of epistemic insufficiencies, one could favour interest over will without necessarily dismissing the importance of will for right-

holding (Brennan 2003). However, the elements of this reconciliation seem overly vague. How is one to assess when to privilege one over the other? And how is one to determine the affected interests when those interests are only relevant whenever there is a capable will, such as seems to occur with regard to civil and political rights? In its general form, the reconciliation does not allow us to identify what is common to interests and wills in relation to rights.

Such vagueness can be overcome by the notion of juridical personality. All children have personal value and certain interests, and many have a minimum capacity for practical deliberation in terms of expressing will. Their normative status is not circumscribed by a legal threshold beyond which they have rights and before which they have no rights. Rather, their right-holding is a multi-model capacity according to which the capacity for rights is different from the capacity for acts. To say that a person has a capacity for rights is merely to say that she is a person and that others have to treat her as a person; the capacity for acts is the power or ability of a person to cause normative consequences directly through her acts and conduct. One person can then have a capacity for right R at moment t_1 and only acquire the capacity to act associated with R at a future moment t_2; between t_1 and t_2 R will have to be exercised via someone else.

In private relations, parents and guardians can fulfil that role. They are, in the majority of cases, the best judges of the interests of their infants. But at the level of the operation of representative government, this presents certain problems. On the one hand, parents would be more politically empowered than non-parent adults. On the other hand, there is no guarantee that parents would not simply interpret their children's interests as mere extensions of their own interests, which would lead to subordinating the interests of infants to those of their parents. As an alternative, elected officials can

fulfil in the public sphere the role that parents have vis-à-vis children in private relations. Infants can then be recognised as civil and political right-holders even if they exercise their rights via elected officials. Any kind of decision that impacts negatively on the recognition of such citizenship rights or on the promotion of their (indirect present or) future exercise can be said to affect infants legally and politically.

As for the third assumption, about whether infants' interests justify influencing political processes, it all seems to boil down to whether or not they can be included in the class of the represented. If infants are indeed subjects of representative government and their interests are affected in every relevant sense of the word, there is no reason why their subjection, personal value, legal personality and citizenship status should not be reflected in the representative process. They are members of the class of the represented even if they are not recognised with membership of the franchise.

The representative action that concerns infants is not mandate-free. Since infants are unable to express their will or even of having a (competent and reasonable) will, the interests that they are recognised as holding must be made present in the political action via the epistemic conditions that they fail to meet. In light of the objective notion of interests in play, the interests that are voiced in the representative action are those that the interest-holders would have endorsed if they did not fail to meet basic epistemic conditions. Overcoming the epistemic insufficiency is the content of the representatives' mandate.

In this latter sense, representation can be constitutive of actions that are (*i*) indirect expressions of what the represented would have willed in optimal epistemic conditions; (*ii*) the outcome of institutional decision-making processes; and (*iii*) performed by individuals who are capable of voicing those who are incapable of

meeting their own needs. It is an indirect case of political agency – but it is political agency nevertheless, one that ultimately 'influences' political decisions.

4. Developing infant political agency

Once it is established that representation conveys the agency of persons with provisional epistemic impairments, infants can be considered political agents. But the means of such agency remain unclear. They cannot equate with the traditional means of democratic representation whereby representatives are elected by epistemically functional constituents. Regardless of what is particularly distinctive of infants, especially when compared to other citizens (for instance, excessive vulnerability, epistemic impairment, potential development, a special relation to the future, etc.), the very nature of the representative action differs from the general terms that guide the action of elected officials. The following pages explore the ways through which infant political agency can occur without having to resort to alternative conceptions of representation such as surrogacy, guardianship, advocacy or authenticity.

4.1. Beyond infant enfranchisement

Debates about political agency regardless of age have centred chiefly on the nature and quality of the franchise. If the main criteria of membership of a franchise are affected interests and epistemic competence, there is no definitive reason to exclude competent children from voting (Archard, 1993, 74; Schrag, 2004). The ways of conceiving of epistemic competence in this context are myriad. For instance, some authors argue that since we have duties to treat others in accordance with a reasonable conception of

justice, we ought only to enfranchise those whom we can reasonably expect to vote according to such a conception (Clayton 2006). Other authors appeal to a less-demanding threshold according to which one must be capable of 'elaborating, reflecting on, and revising ideas about justice' (Christiano 2008, 128). And others focus on political knowledge and on the ability to deliberate in reasonable terms in light of such information (Brennan 2016). Regardless of how one understands epistemic competence, many adolescents and older children seem to be very close to young adults, which provides a strong reason for child enfranchisement in these terms. At the same time, making enfranchisement dependent upon epistemic conditions leads to the exclusion of infants.

Such unique attention to the epistemic criterion leads supporters of child enfranchisement to reject a minimum voting age altogether (Cook 2013) or to endorse thresholds encompassing children of around 12 (Wald 1974; Umbers 2018) or 16 (Hart & Atkins 2011; Grover 2011, 237-50; Peto 2018). Their focus is always on how children can fulfil the criteria of competence in order to become members of the franchise, rather than on characteristics that children may have *qua* children that automatically justify their exclusion from the franchise. Ultimately, the exercise of voting rights cannot dismiss basic epistemic conditions. Infants, regardless of where the minimum threshold is set, will never be able to exercise such rights.

The strategies for overcoming this exclusion are twofold. The first is to attribute voting rights to children of all ages, albeit exercised by their parents or guardians (Ringen 1997; Parijs 1998; Wall 2014). But this is highly problematic, for several reasons. Firstly, infants and parents would have an equal right to vote, but parents would not have a right to vote for their children – only a duty. Parents would have to represent their children in voting, that is, to follow a duty to exercise a right on their

behalf and in their interest. Such a state of affairs produces a double-stage of representation. Infants would have to be represented by their parents in order to be represented by elected officials. Such a needless duplication of representation would most likely weaken rather than strengthen the inclusion of infants in representative government. The rights that infants could claim would apply mostly in the first stage of representation, vis-à-vis their parents, thereby offering political representatives a chance to dismiss consideration of infants' interests in decision-making processes. Elected officials could then maintain that 'An infant's true representative is her parent, not me; I represent the infant when I represent her representative, that is, her parent – those are the interests that I must voice in the representative action'.

Secondly, it is unlikely that parents, when placing a ballot, would consider their own interests as parents differently from their children's interests as infants. The issue is not simply whether parents can be trusted to vote in their children's best interests or whether they would take the opportunity to add further votes in favour of the party of their preference (Hinrichs 2002, 46). Rather, the issue is that parents, when exercising a right to vote, may often rank their preferences not in light of their own self-interest but mostly in light of what they regard as best to their families, especially their infants. And if the interests of infants are already mirrored in the votes cast by their parents, then enfranchising infants would result simply in the duplication of votes by parents. In addition, and thirdly, high fertility rates would translate in more rights exercised by a specific group of persons (e.g. parents of large families). This would most likely lead to an unequal distribution of political power depending on the size of the number of children in the immediate family, thus violating the 'one man, one vote' principle.

A second strategy for overcoming the exclusion of infants is to interpret the franchise in terms of proxies or surrogates (Mansbridge 2003, 522-525; Saward 2009)

who share certain characteristics with children or who advocate (Urbinati 2000) interests which may be coincidental with their interests, but who are not necessarily in close contact with children (as opposed to their parents or guardians). However, surrogate representation at the level of the franchise also presents several problems. On the one hand, voting is typically a personal inalienable right. In practical terms, this is troublesome to proxy-voting. Most infants have two parents, who may not necessarily agree on what the child's best interests are. Is each parent required then to exercise only half of a right to vote? Or should one parent be given the privilege of exercising the infant's right rather than the other? And, if so, based on what criterion? On the other hand, one can hardly call a proxy relation as political representation. The resemblance of characteristics or of interests upheld is closer to what Hannah Pitkin called 'descriptive representation' (Pitkin 1967, 60-91), that is, representativeness rather than representation. The act of mirroring characteristics or interests falls short of being actual inclusion. Additionally, representatives are not supposed to be stakeholders themselves, nor are they expected necessarily to share personal characteristics or interests with those they represent.

Overall, focusing on child enfranchisement with regard to political agency seems to lead to the further inclusion of older children just as much as to a justification of the definitive exclusion of infants.

4.2. The virtual representation of infants

The reason why the epistemic criterion is so important when determining membership of the franchise is that the classical notion of political representation involves, in the formalistic sense, authorisation and accountability with regard to the persons whose

interests are potentially affected by the actions of representatives. This constitutes from the outset an obstacle to including infants. Many of them are able neither to hold political institutions accountable nor to authorise their decisions in time.

The formalistic version of representation, though, is not the sole model for including interests in decision-making. Representation can be regarded also in terms of the coincidence between the interests voiced by representatives and the actual interests of the represented. In this instance, a sympathetic validation by the relevant proto-constituency at some reasonable future time (Rehfeld 2006) or authenticity (Saward 2009) or surrogate accountability (Rubenstein 2007) seem like better criteria for determining representation than actual authorisation.

Still, it is not clear that such alternative accounts can obtain equivalence between the present interests of infants and the actions of their specific representatives, at least not enough to substitute authorisation as a legitimate yardstick of representation. The fact that 'surrogate' often means a person or group whose only qualification it is that she or it actively seeks to represent the views of the underrepresented brings about certain problems. Self-proclaimed representatives are neither automatically the kinds of representatives the represented would choose for themselves nor necessarily do things that are in the interests of the represented. In general, the represented must actively endorse a specific action the representative stands for. The mere aspiration of the representative to achieve this does not suffice. When a legislator of a certain district claims to represent persons from a different district (Mansbridge 2003, 522-5), legitimacy follows from the latter actually endorsing or identifying with her politics. However, infants do not have the possibility of controlling what their representative is doing, whether the representative was elected (even though not by those they are supposed to represent) (Mansbridge 2003, 525) or not (Saward 2009, 2). In such cases,

proposals of alternative accounts of representation claim that it is important that the representative 'receives validation by the relevant proto-constituency at some reasonable future date' (Saward 2009, 18). But this is also problematic with regard to infants insofar as the future date in question can be well beyond what one could regard as 'reasonable'.

The way to circumvent these difficulties is to consider the representatives' mandate as encompassing the interests of all the members of the class of the represented rather than the interests of one specific group of persons (inside or) outside the franchise. Authorisation is automatically attained the moment that representatives are elected by members of the franchise who are inherently members of the class of the represented. Their legitimacy as representatives is stronger the more the electorate coincides with the represented.

But something further is required, namely the inclusion of the interests of those who are members of the class of the represented that are denied access to the franchise on the basis of epistemic impairment. This can be attained by applying Edmund Burke's notion of virtual representation, whereby the representative activity connects those who claim to act for certain people who did not elect them to the very people in whose name they act. Burke's argument is not that a member of parliament represents the whole nation but rather that groups or communities whose members do not belong to an electorate are still represented in parliament via the representation of those who are members of the electorate (Burke 1887, 89). All that is required is a substantive correspondence between the public action and the interests which the public action aims to serve. Burke's virtual representation is different from surrogate representation in the sense that, rather than simply having officials claiming to represent infants, the interests of infants are taken into account in collective decision making because they coincide

with (and are determined by) interests held by members of the franchise, such as young adults, parents, and older children.

Direct authorisation and accountability with regard to infants remain unattainable. But the representation of infants' interests is still possible. The absence of direct substantive legitimacy can be replaced by having representatives seek several forms of eventual validation, including the after-the-fact coincidence between norms and policies enacted and the interests of infants. What is distinctive about virtual representation in this context is that it provides a mechanism for giving a political voice to infants' interests not by bypassing authorisation and accountability, but rather by complying with the authorisation and accountability inherent in similar interests that are to be represented. This includes having elected officials giving voice to infant's specific interests even when they conflict with some adults' interests (especially because that there are always adults who have interests in having their children's interests protected), as well as to infants' special interests in long-term policies. There is no need to disenfranchise the elderly (Parijs 1998) in order to balance different interests in democratic representation. In fact, it is the opposite that must be done – enlarging the franchise and including in the representative action the interests of the members of the class of the represented rather than of the class of the electorate.

Representation of interests held by infants does not necessarily require a high degree of creativity. All that is needed is the proper operation of democratic representation that takes into account the affected interests of all the members of the class of the represented. Still, Burke's notion of virtual representation does not seem to actually include in representative action the interests of infants *qua* members of the class of the represented except insofar as they coincide with interests held by other members of the same class. Infants' interlinked interests are indeed taken into account

in political decision-making processes, but other interests that may be specific to infants *qua* infants seem to be left out. In addition, insofar as representatives continue to regard the exercise of government as responsive chiefly to those members of the class of the represented who actually perform public actions of authorisation, they have a permanent incentive to overlook the most distinctive interests of infants. Something further must be added.

4.3. Infant-beneficial principles and infants' ombudspersons

At the level of institutional design, especially within the framework of virtual representation, there are two ways of promoting the representation of infants. A first way of doing so consists in reforming political institutions in order to force them to regard infants as persons with interests to which those institutions must be responsive. This entails reinterpreting constitutional arrangements in the sense of binding representative institutions to infant-beneficial principles and policies.

A good example of such efforts can be found in the notion of 'child-friendly justice', which refers to actual judicial systems and court proceedings (as well as to all officials dealing with children in relation to judicial proceedings, such as police, social and mental health services, etc.), by aiming to make them age appropriate, adapted to and focused on the particular needs and rights of children (Mahmoudi et al. 2015; Council of Europe 2015). The underlying rationale is to ensure that children's best interests are privileged whenever a child is involved in any judicial proceeding. This involves protecting children on account of their vulnerability *qua* children, regardless of additional duties and responsibilities that are incumbent on parents and guardians. In fact, state institutions are often obliged to provide for adequate legal representation to a

child who aims to file suit against any entity that harms her best interests, including the state itself and child's parents or guardians.

Notwithstanding, child-friendly justice is generally restricted to the judicial branch. But there is no reason why it could not also be included in the legislative and executive branches of state authority. If states are to incorporate child-beneficial principles into their legal systems' rules of adjudication, they must often do so by enacting legislation that favours child-friendly conditions to be upheld during judicial proceedings. The reason for doing so is not outside the representative relation itself. Rather, it is the fact that those best interests are included in the class of the represented that justifies first and foremost a reorganization of state institutions and functions in order to make them child-friendly.

The problem with applying child-beneficial principles to representative action is that representatives are left with too much discretion when determining a child's best interests, as opposed to her objective interests. A child's 'best interests' is a vague expression which is to be specified by the representative institutions themselves. This leaves them unchecked politically and legally because they determine the contents of the principles of which they are the only addressees. It also provides them with an additional incentive to continue to guide their actions toward being responsive solely (and/or primarily) to the interests of those to which they are directly accountable and who directly authorised them.

Such excess of discretion prompts the second institutional way of promoting the representation of infants, which is mostly a way of reinforcing a system of checks and balances with regard to the child-beneficial principles that are to guide representative institutions. In general, infants have interests that are not shared by the remaining

members of the class of the represented. They are special cases of vulnerable persons because their vulnerability is assumed to be provisional. In other words, not only are they particularly vulnerable, but they also have a special relation to the future. Their epistemic impairment, which is somehow connected to their vulnerability, will recede inevitably as time passes – no further action or event, internally or externally caused, is needed. Some authors interpret this relation in terms of children having rights to an open future (Feinberg 1980), despite the facts that an 'open future' can hardly be translated into rights language and that many adults may also have a reasonable claim to an 'open future'. The underlying justification for considering that infants' interests are future-oriented is typically a 'deficit conception of childhood' (Matthews 2008), according to which a child is understood primarily as a configuration of missing capacities that normal adults have. Children are then 'provisional non-adults'. However, the special relation of infants to the future has a different justification. It relies on the fact that for them, within a developmental framework in which abilities to act develop progressively, the gap between holding citizenship rights and being able to exercise them fully is as wide as can be. Their interests include necessarily the conditions for attaining the full exercise of the citizenship rights they already hold. And that entails a special relation to the long-term effects of political action.

If these special interests are represented, they are likely to conflict with many short-term interests held by other members of the class of the represented. Unlike what programs such as 'child-friendly justice' seem to suggest, long-term interests cannot simply be privileged in political representation in detriment of conflicting short-term interests. Privileging the future in terms of producing policies that are responsive chiefly to the interests of persons with a special relation with a distant future cannot imply a disregard for the present interests of other persons. Otherwise, long-termism would

clash with democracy in the sense that the interests of the actual members of the franchise would be brushed aside in the political process. In order to promote inclusion of all interests, representative action needs to strike a balance between relevant affected interests in the short-run and relevant special interests in the long-run. Privileging or prioritizing the interests of infants vis-à-vis other members of the represented would tilt the balance of relevant political interests in disfavour of those who actually participate in collective decision making.

Still, infant political agency must somehow resonate in the public sphere in such a way as to make representatives responsive to infants' distinctive interests. This could be attained by establishing an institution whose sole purpose is to influence political representatives to take the interests of infants into account – an institution that lies outside the representative state branches but that is capable of influencing them in their actions. Most forcefully, an ombudsperson for infants.

The ombudsperson is an institution with far-reaching powers to investigate the actions of public entities, but whose decisions and resolutions are non-binding. Accordingly, it stands outside of the formal structure of the administrative and the judiciary systems. This gives the ombudsperson a certain level of independence. But it also entails that the public entities the ombudsperson surveys will not be compelled to act by its resolutions. Rather, the ombudsperson strives to ensure that public entities conform to norms and policies in force, such as constitutional dispositions, laws, regulations, and relevant international treaties. More importantly, however, it serves often as the representative of the citizens' rights and interests vis-à-vis other public institutions. To carry out these functions, the ombudsperson may undertake several types of proactive action, such as ex officio investigations, information campaigns, reactive enquiries related to the reception of citizens' complaints. But the ombudsperson

can also take the initiative to recommend legislative action whenever required and to introduce new debates in the public sphere. Its tasks are as much legal as they are political.

An ombudsperson for infants would be the ultimate step in infant political agency since it would reinforce the status of infants as represented by officials without necessarily sacrificing the adequate representation of non-infants. It is therefore important that the ombudsperson for infants can have the power to make legislative proposals without ever belonging to the legislative branch. It is not a decision-making body. The specific character of the ombudsperson means that it sets the tone of public debates by providing recommendations which do not imply necessarily a legal or administrative decision. They are nothing more but recommendations, which other entities can comply with or disregard as they see fit.

In order to highlight infant political agency, it is important that such an ombudsperson is a state entity independent of the other state branches. Since its main purpose is to reinforce the political representation of infants, it should be connected more tightly to the legislative power than to the executive, for instance by having its titular named by parliament, and reporting back to this body. The creation of an ombudsperson for infants holds specific advantages in terms of legitimacy because it can be nominated by elected officials without the participation or consent of those whom the ombudsperson is set to represent. It is therefore accountable officially to those who nominate its titular – if appointed by a democratically elected parliament, formal accountability obtains. But as a political institution, the ombudsperson can and should also build popular support and recognition, which can subsequently be turned into political clout. In this sense, the ombudsperson must seek political accountability vis-à-vis those it intends to represent in the first place. Failure to gather popular support

in favour of its claims to representation produces public reasons to dismiss its actions as sufficiently representative. But since such political accountability cannot be met in the specific case of infants *qua* infants due to their epistemic impairment, the ombudsperson is therefore accountable politically vis-à-vis the members of the class of the represented whose interests coincide with the objective interests of infants. The instrument of (informal) accountability is similar to the measure of accountability in virtual representation.

The effectiveness of the ombudsperson depends on its ability to act in a versatile manner. Its functions must then encompass the possibility of undertaking different courses of action vis-à-vis other state agents while also upholding the interests of infants outside of the state, for instance by setting up communications networks and building alliances in order to enlist popular opinion in support of the interests that the ombudsperson is set to defend. Such non-formal tasks might contribute to having more members of the franchise endorse similar interests publicly, thereby reinforcing the virtual representation of infants at the level of government action.

In the end, infant political agency is not guaranteed by the action of the ombudsperson, but rather by the admixture of different levels of representation developing in different state entities. The ombudsperson merely reinforces the virtual representation of infants and the implementation of infant-beneficial principles to representative actions. The integration of all these mechanisms in representative democracies reveals how infants are indeed members of the class of the represented. And consequently, also political agents.

REFERENCES

Abdel-Nour F (2016) Responsible for the State: The Case of Obedient Subjects. *European Journal of Political Theory* 15(3): 259-275.

Amy DJ (2008) *Real Choices/New Voices*. New York: Columbia UP.

Archard D (1993) *Children: Rights and Childhood*. London: Routledge.

Arrhenius G (2018) The Democratic Boundary Problem Reconsidered. *Ethics, Politics & Society* 1: 89-122.

Barber KL (2001) *A Right to Representation*. Columbia: Ohio UP.

Barnett C (2008) Political Affects in Public Space. *Transactions of the Institute of British Geographers* 33: 186–200.

Beckman L (2009) *The Frontiers of Democracy*. Basingstoke: Palgrave Macmillan.

Brennan L (2016) *Against Democracy*. Princeton: Princeton UP.

Brennan S (2003) Children's Choices or Children's Interests: Which Do Their Rights Protect? In: Archard D and Macleod CM (eds.) *The Moral and Political Status of Children*, 53-69. Oxford: Oxford UP.

Brighouse H, Fleurbaey M (2010) Democracy and Proportionality. *Journal of Political Philosophy* 18(2): 137-155.

Burke E (1887) Speech to the Electors of Bristol. In: *The Works of the Right Honorable Edmund Burke*, vol. II. London: John C. Nimmo.

Christiano T (2008) *The Constitution of Equality*. Oxford: Oxford UP.

Clayton M (2006) *Justice and Legitimacy in Upbringing*. New York: Oxford UP.

Cohen C (1971) *Democracy*. Athens: University of Georgia Press.

Colapietro V (2006) Practice, Agency, and Sociality. *International Journal for Dialogical Science* 1: 23–31.

Cook P (2013) Against a Minimum Voting Age. *CRISPP* 16(3): 439-458.

Council of Europe (2011) *Guidelines of the Committee of Ministers of the Council of Europe on Child-friendly Justice*. Council of Europe Publishing.

Cowden M (2012) Capacity, Claims and Children's Rights. *Contemporary Political Theory* 11(4): 362-380.

Crouch C (2004) *Post-Democracy*. Cambridge: Polity.

Dahl R (1970) *After the Revolution*. New Haven: Yale UP.

— (1989) *Democracy and Its Critics*. New Haven: Yale UP.

Dryzek J (2002) A Post-Positivist Policy-Analytic Travelogue. *The Good Society* 11: 32-36.

Dryzek J, Niemeyer S (2008) Discursive Representation. *American Political Science Review* 102(4): 481-493.

Duhn I (2015) Making Agency Matter: Rethinking Infant and Toddler Agency in Educational Discourse. *Discourse* 36(6): 920-931.

Feinberg J (1980) A Child's Right to an Open Future. In: Aiken W and LaFollette H (eds.) *Whose Child?*, 124-153. Totowa: Littlefield, Adams and Co.

Fung A (2013) The Principle of Affected Interests: An Interpretation and Defense. In: Smith RM and Nagel JH (eds) *Representation: Elections and Beyond*, 236-268. Philadelphia: University of Pennsylvania Press.

Goodin RE (2007) Enfranchising All Affected Interests, and its Alternatives. *Philosophy and Public Affairs* 35(1): 40-68.

Griffin J (2008) *On Human Rights*. Oxford: Oxford UP.

Grover SC (2011) *Young People's Human Rights and the Politics of Voting Age*. Dordrecht: Springer.

Häkli J, Kallio KP (2014) Subject, Action and Polis: Theorizing Political Agency. *Progress in Human Geography* 38(2): 181-200.

Hart D, Atkins R (2011) American Sixteen and Seventeen-Year-Olds Are Ready to Vote. *The Annals of the American Academy of Political and Social Science* 633: 201-222.

Hinrichs K (2002) Do the Old Exploit the Young? Is Enfranchising Children a Good Idea? *European Journal of Sociology* 43: 35-58.

James A (2011) To Be(come) or Not to Be(come): Understanding Children's Citizenship. *The ANNALS of the American Academy of Political and Social Science* 633(1): 167-179.

Jans M (2004) Children as Citizens: Towards a Contemporary Notion of Child Participation. *Childhood* 11(27): 27-44.

Jubb R (2014) Participation in and Responsibility for State Injustices. *Social Theory and Practice* 40(1): 51–72.

Katz R (1997) *Democracy and Elections*. New York: Oxford UP.

Keane J (2009) *The Life and Death of Democracy*. London: Simon & Schuster.

Kramer M (2001) *Rights, Wrongs and Responsibilities*. Basingstoke: Palgrave.

Kymlicka W (1995) *Multicultural Citizenship*. Oxford: Clarendon Press.

Liebel M (2008) Citizenship 'from Below': Children's Rights and Social Movements. In: Invernizzi A and Williams J (eds.), *Children and Citizenship*, 32‑43. London: Sage.

Lister R (2007) Why Citizenship. Where, When and How Children? *Theoretical Inquiries in Law* 8(2): 693-718.

López-Guerra C (2005) Should Expatriates Vote? *Journal of Political Philosophy* 13(2): 216–234.

MacCormick N (1976) Children's Rights: A Test-Case for Theories of Right. *Archiv für Rechts- und Sozialphilosophie* 62(3): 305-317.

Mahmoudi S, Leviner P, Kaldal A, Lainpelto K (eds) (2015) *Child-friendly Justice*. Leiden: Brill.

Mansbridge J (2003) Rethinking Representation. *American Political Science Review* 97(4): 515-528.

Matthews GB (2008) Getting Beyond the Deficit Conception of Childhood. In: Hand M and Stanley CW (eds.), *Philosophy in Schools*, 27-40. London: Continuum.

Miller D (2009) Democracy's Domain. *Philosophy & Public Affairs* 37(3): 201–228.

Montanaro L (2017) *Who Elected Oxfam?* Cambridge: Cambridge University Press.

Nagel T (2005) The Problem of Global Justice. *Philosophy and Public Affairs* 33(2): 113–47.

Nishiyama K (2017) Deliberators, not Future Citizens: Children in Democracy. *Journal of Public Deliberation* 13(1): 1-24.

Owen D (2012) Constituting the Polity, Constituting the Demos: On the Place of the All Affected Interests Principle in Democratic Theory and In Resolving the Democratic Boundary Problem. *Ethics & Global Politics* 5(3): 129-152.

Parijs PV (1998) The Disfranchisement of the Elderly, and Other Attempts to Secure Intergenerational Justice. *Philosophy and Public Affairs* 27(4): 292–333.

Peto T (2018) Why the Voting Age Should Be Lowered to 16. *Politics, Philosophy and Economics* 17: 277-297.

Phillips A (1995) *The Politics of Presence*. Oxford: Oxford UP.

Pitkin HF (1967) *The Concept of Representation*. Berkeley: University of California Press.

Pogge T (2005) Reply to Critics: Severe Poverty as a Violation of Negative Duties. *Ethics & International Affairs* 19(1): 55–83.

Rehfeld A (2005) *The Concept of Constituency.* Cambridge: Cambridge UP.

— (2006) Towards a General Theory of Political Representation. *The Journal of Politics* 68(1): 1-21.

Ringen S (1997) *Citizens, Families and Reform*. Oxford: Oxford UP.

Rosanvallon P (2008) *Counter-Democracy*. Cambridge: Cambridge University Press.

Rosenblum NL (2008) *On the Side of Angels*. Princeton: Princeton UP.

Rubenstein J (2007) Accountability in an Unequal World. *The Journal of Politics* 69(3): 616-632.

Saward M (2009) Authorization and Authenticity: Representation and the Unelected. *Journal of Political Philosophy* 17: 1-22.

— (2010) *The Representative Claim*. Oxford: Oxford UP.

Schrag F (2004) Children and Democracy: Theory and Policy. *Politics, Philosophy and Economics* 3: 365-379.

Shapiro I (1996) *Democracy's Place*. Ithaca: Cornell UP.

Sumner LW (1987) *The Moral Foundations of Rights*. Oxford: Oxford UP.

Tännsjö T (1992) *Populist Democracy: A Defence*. New York: Routledge.

Tormey S (2015) *The End of Representative Politics*. Cambridge: Polity Press.

Umbers LM (2018) Enfranchising the Youth. *CRISPP*. DOI: 10.1080/13698230.2018.1511172.

Urbinati N (2000) Representation as Advocacy: A Study of Democratic Deliberation. *Political Theory* 28(6): 458-786.

Wald P (1974) Making Sense Out of the Rights of Youth. *Human Rights* 4(1): 13-29.

Wall J (2014) Why Children and Youth Should Have the Right to Vote: An Argument for Proxy-Claim Suffrage. *Children, Youth and Environments* 24(1): 108-123.

Whelan FG (1983) Democratic Theory and the Boundary Problem. In: Pennock JP and Chapman JW (eds.) *Liberal Democracy*, 13-47. New York: New York UP.

White J, Ypi L (2016) *The Meaning of Partisanship*. Oxford: Oxford UP.

Williams MS (1998) *Voice, Trust, and Memory*. Princeton: Princeton UP.

Young IM (2000) *Democracy and Inclusion*. Oxford: Oxford UP.

Zakaras A (2018) Complicity and Coercion. Toward an Ethics of Political Participation. *Oxford Studies in Political Philosophy* 4: 192-218.

Zanotti L (2013) Governmentality, Ontology, Methodology: Re-thinking Political Agency in the Global World. *Alternatives: Global, Local, Political* 38(4): 288-304.