7

Age, Inequality, and Political Representation

Ganesh Sitaraman

We live in an age of widening inequality.[1] In the mid twentieth century, income and wealth inequality was declining, leading to an era of comparative economic equality and a large middle class. But since the early 1980s, income and wealth inequality has been on the rise. *The 100-Year Life* describes how increasing life expectancy could transform the course of individual lives in detail – but how does this trend intersect with our age of inequality? And what does it mean for law and policymaking more generally?

The dark side of rising life expectancy is that it is unequally shared. In Section 7.1, I briefly discuss how age and inequality are connected – that is, that not everyone shares in rising life expectancy equally and that those who are living longer share many common attributes. Section 7.2 considers the possible impact of the skew in rising life expectancy on representative government. A wide literature in political science shows how inequality skews politics to favor the wealthy; inequality by age will likely do the same, but with some additional twists. The fundamental problem is that power is held unequally in most societies. Addressing this issue has been one of the central questions of political theory, constitutional law, and institutional design – particularly for those interested in representative democracy. Section 7.3, on age and institutional design, outlines some ways in which political structures might be crafted to account for age-related differences.[2]

[1] Thomas Piketty, Capital in the Twenty-First Century (Arthur Goldhammer trans., Belknap Press of Harvard University Press 2014) (2013).

[2] Throughout this chapter, I do not take on the question of *future generations*, only differences in generations and age of those currently alive. The former topic is one that is much discussed in law and philosophy. *See*, e.g., John Rawls, A Theory of Justice 284–293 (1971) (Chapter: "The Problem of Justice between Generations"); Bruce Ackerman, Social Justice in the Liberal State 101–227 (1980) (Chapter: "Justice over Time"); Richard A. Epstein, *Justice across the Generations*, 67 Tex. L. Rev. 1465 (1989). There are also some proposals for how to design political systems to represent the interests of future generations. *See*, e.g., Matthew W. Wolfe, *The Shadows of Future Generations*, 57 Duke L.J. 1897, 1914–1918 (2008) (describing proposals).

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7.1 INEQUALITY AND RISING LIFE EXPECTANCY

Rising life expectancy often comes with optimism and celebrations of progress.[3] But rising life expectancy isn't experienced by everyone equally in society. In fact, the data show a wide range of disparities in life expectancy. Women live longer than men on average, and that disparity is projected to continue into the future.[4] White people live longer than Black people, on average, but Hispanic and Latino Americans live longer than either.[5]

Life expectancy is also tied to a range of social factors like wealth, education, and geography. Perhaps unsurprisingly, the wealthy live longer than the poor.[6] But the difference is striking. The top 1 percent of men in America by income have a life expectancy that is fifteen years longer than the bottom 1 percent.[7] Those with college degrees live longer than those without,[8] and studies show that life expectancy has been *declining* for those without – even as it increases among those with – college degrees.[9] Where Americans live is also tied to life expectancy. People living in metropolitan areas and on the coasts live longer than those in the middle of the country,[10] and people living outside metro areas in the south or in Appalachia have lower life expectancies than much of the rest of the country.[11] Deaths often come

[3] Lynda Gratton & Andrew Scott, The 100-Year Life (2016).

[4] Lauren Medina et al., *Living Longer: Historical and Projected Life Expectancy in the United States, 1960 to 2060* (2020), 1, US Dep't of Com., US Census Bureau, https://www.census.gov/content/dam/Census/library/publications/2020/demo/p25-1145.pdf.

[5] *Id.*, at 7; Elizabeth Arias & Jiaquan Xu, *United States Life Tables, 2017*, 68 Nat'l Vital Stat. Reps. 3 (June 24, 2019), https://www.cdc.gov/nchs/data/nvsr/nvsr68/nvsr68_07-508.pdf.

[6] Cong. Rsch. Serv., R44846, *The Growing Gap in Life Expectancy by Income: Recent Evidence and Implications for the Social Security Retirement Age* (2021), 1, https://fas.org/sgp/crs/misc/R44846.pdf; Sabrina Tavernise, *Disparity in Life Spans of the Rich and the Poor Is Growing*, N.Y. Times (Feb. 12, 2016), https://www.nytimes.com/2016/02/13/health/disparity-in-life-spans-of-the-rich-and-the-poor-is-growing.html.

[7] Raj Chetty et al., *The Association between Income and Life Expectancy in the United States, 2001–2014*, 315 J. Am. Med. Ass'n 1750 (2016), https://jamanetwork.com/journals/jama/article-abstract/2513561; Neil Irwin & Quoctrung Bui, *The Rich Live Longer Everywhere. For the Poor, Geography Matters*, N.Y. Times (Apr. 11, 2016), https://www.nytimes.com/interactive/2016/04/11/upshot/for-the-poor-geography-is-life-and-death.html.

[8] Org. for Econ. Coop. & Dev., *Life Expectancy by Sex and Education Level* (Nov. 10, 2017), https://www.oecd-ilibrary.org/sites/health_glance-2017-7-en/index.html?itemId=/content/component/health_glance-2017-7-en.

[9] Anne Case & Angus Deaton, Deaths of Despair and the Future of Capitalism (2020); Isaac Sasson & Mark D. Hayward, *Association between Educational Attainment and Causes of Death among White and Black US Adults, 2010–2017*, 322 J. Am. Med. Ass'n 756 (2019), https://jamanetwork.com/journals/jama/fullarticle/2748794.

[10] Yana C. Vierboom & Samuel H. Preston, *Life beyond 65: Changing Spatial Patterns of Survival at Older Ages in the United States, 2000–2016*, 75 J. Gerontology: Soc. Sci. 1093 (2020), https://academic.oup.com/psychsocgerontology/article/75/5/1093/5717464.

[11] Yana C. Vierboom et al., *Rising Geographic Inequality in Mortality in the United States*, 9 SSM–Population Health 1 (2019), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6804490/pdf/main.pdf.

from suicide and drug overdoses,[12] and life expectancy is tied to the prevalence of smoking.[13] In some cases, geography matters even more than poverty. The life expectancy of the poorest 5 percent in Detroit, for example, is more than ten years lower than their counterparts in New York.[14]

It is worth noting that economic inequality persists even *within* age cohorts as well.[15] The Black–white wealth gap, for example, is significant within older age cohorts.[16] White Americans in their thirties, on average, have three times as much wealth as Blacks (about $147,000). By their sixties, the gap has expanded to seven times as much (or about $1.1 million).[17] This is partly a function of the cumulative effects of compounding economic inequality over a lifetime.[18]

There may also be significant period effects in inequality by age.[19] That is, the period of time in which one grew up might shape an entire cohort's economic opportunities. The generation that grew up in the comparative equality of the mid to late twentieth century will have different economic outcomes than a generation that grew up in the more recent age of wide inequality. Studies show, for example, that the ratio of wealth for older and younger cohorts has changed over time. A Deloitte analysis notes that in 1992 the ratio of median family net worth for households older than seventy-five compared to those less than thirty-five years was 9.4. That ratio had jumped to 24.1 by 2016.[20] The median family net worth for those under thirty-five actually declined during this period.[21] Pew's research has led to similar data. In 2009, the median net worth of households headed by adults over sixty-five was 42 percent higher than their counterparts in 1984. But households headed by adults under thirty-five saw a 68 percent decrease in their median net worth compared to their

[12] Anne Case & Angus Deaton, *Rising Morbidity and Mortality among White Non-Hispanic Americans in the 21st Century*, 112 PNAS 15078 (2015), https://www.pnas.org/content/112/49/15078.

[13] Vierboom et al., *supra* note 11, at 7; Vierboom & Preston, *supra* note 10.

[14] Irwin & Bui, *supra* note 7.

[15] Angela M. O'Rand & John C. Henretta, Age and Inequality: Diverse Pathways through Later Life 31 (1999).

[16] Kriston McIntosh et al., *Examining the Black–White Wealth Gap*, Brookings Inst. (Feb. 27, 2020), fig. 2, https://www.brookings.edu/blog/up-front/2020/02/27/examining-the-black-white-wealth-gap/.

[17] Urban Inst., *Nine Charts about Wealth Inequality in America*, https://apps.urban.org/features/wealth-inequality-charts (updated Oct. 5, 2017).

[18] Fed. Rsrv., *Distribution of Household Wealth in the U.S. since 1989*, https://www.federalreserve.gov/releases/z1/dataviz/dfa/distribute/chart/#quarter:122;series:Net%20worth;demographic:age;population:all;units:levels (accessed May 23, 2023).

[19] O'Rand & Henretta, *supra* note 15, at 16.

[20] Patricia Buckley & Akrur Barua, *Are We Headed for a Poorer United States? Growing Wealth Inequality by Age Puts Younger Households Behind*, Deloitte Insights (Mar. 12, 2018), https://www2.deloitte.com/us/en/insights/economy/issues-by-the-numbers/march-2018/us-average-wealth-inequality-by-age.html.

[21] *Id.*

counterparts a generation earlier.[22] Over the past few decades, incomes have increased at a greater rate for older people; poverty is declining for those above sixty-five, but rising for those under thirty-five; and younger people suffered more from the Great Recession than older people.[23]

In sum, what the data show is that rising life expectancy is not experienced equally – and will not be experienced equally in the future. Rather, those who live longer – successive cohorts of older Americans – are more likely to be wealthier, white or Hispanic, better educated, and live in metro areas, particularly on the coasts. Within the cohorts of older Americans, inequalities will persist based on race, geography, period effects, and other factors as well.

7.2 GERONTOCRACY AND ITS DISCONTENTS

Systematic, persistent disparities in age are a problem for representative democracies. The American constitutional system, for example, was designed on a theory that interests – what James Madison calls factions – would be so fragmented that no single faction would be able to dominate politics.[24] Instead, the clashes between groups would lead to the election of leaders who would advance the public good, rather than the preferences of any one group.[25] At the same time, the separation of powers was meant to divide *institutions*, not factions, unlike earlier mixed-government regimes that explicitly saw the primary divides in society as rich versus poor and built those divisions into the constitutional structure.[26] In recent years, many constitutional scholars have shown the limitations of Madison's theory. Some have argued that in an ideologically polarized system, political parties and party identity are the central divide in society, and so a system of checks and balances should focus on the "separation of parties, not powers."[27] Others have noted that policy preferences overlap with wealth and class, and that the political system is dominated by the wealthy and interest groups; those cleavages, not institutional separations, are primary drivers in politics.[28] In both cases, the worry is that the Madisonian system will not function as intended because of acute social cleavages.

[22] Pew Rsch. Ctr., *The Rising Age Gap in Economic Well-Being* (Nov. 7, 2011), 1, https://www.pewresearch.org/wp-content/uploads/sites/3/2011/11/WealthReportFINAL.pdf.

[23] *Id.*

[24] The Federalist No. 10, at 77–78 (James Madison) (Clinton Rossiter ed., 1961).

[25] Book Note, *The Relevance and Irrelevance of the Founders*, 120 Harv. L. Rev. 619, 624–625 (2006).

[26] Ganesh Sitaraman, The Crisis of the Middle-Class Constitution 21–111 (2018).

[27] Daryl J. Levinson & Richard H. Pildes, *Separation of Parties, Not Powers*, 119 Harv. L. Rev. 2312 (2006).

[28] Ganesh Sitaraman, *The Puzzling Absence of Economic Power in Constitutional Theory*, 101 Cornell L. Rev. 1445 (2016); Kate Andrias, *Separations of Wealth: Inequality and the Erosion of Checks and Balances*, 18 U. Pa. J. Con. L. 419 (2015).

Age may offer another example of this problem. According to the Interparliamentary Union, only 2.6 percent of legislators around the world are under the age of thirty, despite that age group comprising nearly 50 percent of the world's population.[29] Only about 17.5 percent are under forty, and 30 percent are under forty-five.[30] Outside of elected officeholding, there are age disparities in voter registration, voting, and political acts from writing letters to making campaign donations.[31] Political scientists have also shown that there are clear life-cycle effects in terms of political participation. Activity in politics is low in youth, increases in middle age, and has a short trail-off at extreme age.[32] As life expectancy grows, we should expect life-cycle effects on the older end to stretch – with older people remaining active for longer. The result of this data is that there is a massive imbalance in representation of the young and an imbalance that will likely expand with rising life expectancy. If, as political scientists have argued, representative democracy is not a system that aggregates the views of individual voters or responds to deliberation, but rather a process by which groups wield power, then the young have and will continue to have comparatively less power and influence than their elders.[33]

The overlap of age and economic inequality only magnifies this problem. Older people (and those with rising life expectancies) are wealthier than younger people. Political scientists have demonstrated that the poor and middle class are not well represented in government, either through elected officials who come from a blue-collar background[34] or through participation in contacting representatives, volunteering, donating, voting, or lobbying (personally or through representatives in Washington).[35] It is perhaps no surprise, therefore, that study after study has concluded that policy outcomes reflect the preferences of the wealthy.[36] Indeed, when the vast majority of Americans' views diverge with those of the wealthy, the wealthy's views tend to control policy outcomes.[37]

The data on age and wealth inequality, and on rising life expectancy, raises the prospect of gerontocracy – a regime defined by the rule of the elderly. If the elderly participate more in politics, serve more in government, and are systematically wealthier than younger people, the elderly will have disproportionately more

[29] Interparliamentary Union, *Youth Participation in National Parliaments* (2021), 7, 9.
[30] *Id.*
[31] Kay L. Schlozman et al., The Unheavenly Chorus 216–218 (2012).
[32] *Id.* at 200, 230.
[33] Christopher H. Achen & Larry M. Bartels, Democracy for Realists (2016).
[34] Nicholas Carnes, White-Collar Government: The Hidden Role of Class in Economic Policy Making (2013).
[35] Schlozman et al., *supra* note 31.
[36] *See*, e.g., Larry M. Bartels, Unequal Democracy (2d ed. 2016); Martin Gilens & Benjamin I. Page, *Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens*, 12 Persps. on Pol. 564 (2014).
[37] Gilens & Page, *supra* note 36.

political power and influence than younger people. Moreover, political influence, like wealth, can compound over time. Decades of donating to political leaders can build close relationships; decades in office can build political power – in the form of favors done, former staff spread throughout the system, and skills and relationships. It may be, as we approach the unequal 100-year life, that we will have an increasingly unequal system in which wealthy, older people have more and more political power – a gerontocracy.

The specter of gerontocracy might not matter if the elderly's views are similar to those of younger people. But surveys show that different generations have different attitudes toward policy. According to Pew Research, millennials are the most supportive of same-sex marriage, with older generations – Gen X, Boomers, and Silent – exhibiting descending levels of support (the study omitted Gen Z).[38] Views on whether racial discrimination is the primary barrier for why Black people in America "can't get ahead" also diverge by generation, and over time the gap has widened even as attitudes changed. Indeed, younger people's attitudes have shifted further than other generations on whether racial discrimination is a major problem.[39] This gap in age cohorts persists even if comparing only white millennials to white members of older generations.[40] On other questions too, there are serious divides based on age: Do immigrants strengthen the country? Younger generations say yes.[41] Should the US rely more on diplomacy or the military to ensure peace? Younger generations focus on diplomacy.[42] Should the US government be bigger and offer more services? Younger generations say yes.[43] Is it the government's responsibility to provide healthcare coverage to everyone? Younger generations say yes.[44]

Age differences in policy preferences and political participation create a variety of problems. We might call the first the entrenchment problem. Longer life expectancy may mean that people remain in positions of power longer. Commentators regularly note that Presidents Trump and Biden are older than their predecessors, that some congressional leaders are older than is conventional, and that Supreme Court justices regularly serve into their eighties. If older generations remain entrenched firmly in power for longer, that keeps younger generations from gaining power until they too are far older. The result could be a systematic phase shift in the age of political leadership – and continued lack of representation among those who are younger and less wealthy.

[38] Pew Rsch. Ctr., *The Generation Gap in American Politics* (Mar. 1, 2018), 30, https://www.pewresearch.org/politics/wp-content/uploads/sites/4/2018/03/03-01-18-Generations-release2.pdf.
[39] *Id.* at 26–27.
[40] *Id.*
[41] *Id.* at 28.
[42] *Id.* at 19–20.
[43] *Id.* at 13–14.
[44] *Id.* at 15.

A second problem is what we might think of as the increasing imbalance between the wisdom of the ancients and the wisdom of the young. One of the primary arguments for a political system that operates slowly, with many veto-gates, checks, and balances, is that it recognizes the wisdom of past generations. Those who came before were not fools, and their considered decisions should be given great weight before they are displaced by new ideas and new policies. Similarly, societies revere the elderly for their accumulated wisdom and knowledge. A lifetime of successes, failures, and lessons learned may lead to a just and wise gerontocracy. But the problem is that an equal and opposite principle is at play too: the wisdom of the young. As technologies, innovations, and society change, the elderly may not update their technical knowledge or social views as swiftly as they should, particularly in comparison to younger generations who grow up natively familiar with a new context. The wisdom of youth welcomes the future, is more willing to experiment, and charts new frontiers. The young may also think with a longer time horizon, because they must live with policy decisions for many decades to come.[45] As life expectancy rises and if older people remain in positions of power longer, we should expect a political system that is already designed to move slowly to move even more slowly, to adapt less well to social and technological changes, and to be less innovative. The balance between the conservativism of age and the experimentalism of youth will likely lean further toward the former.

A third problem is in the design of public policies. Political scientist Paul Peterson has observed that federal government policies that help children are systematically different from those helping the elderly across a range of dimensions. Programs for children tend to have state-determined eligibility requirements, rather than federal; they tend to have intergovernmental administration, rather than national; they tend to be complex, rather than simple; and they tend to offer substitutable benefits, rather than supplemental benefits.[46] Peterson argues that the dynamics of program design are a function of the political power that the elderly have, compared to the young. Their power enables them to push for programs that bring more benefits, with greater consistency and simplicity.[47]

These three problems may lead to a fourth – an increasing gap between the rulers and the radicalized. If policies systematically lag behind changing trends, if programs are better for those who are older and richer than the overall population, and if political leadership is increasingly entrenched in power, we might expect increasing frustration with politics and increasing radicalization among younger cohorts. Younger cohorts may see themselves shut out of direct political representation and

[45] Juliana Bidadanure, *Six Reasons Why the UK Parliament Should Have Youth Quotas*, openDemocracy (June 15, 2015), https://www.opendemocracy.net/en/opendemocracyuk/six-reasons-why-uk-parliament-should-have-youth-quotas/.

[46] Paul E. Peterson, *An Immodest Proposal*, 121 Daedalus 151, 161–165 (Fall 1992).

[47] *Id.*

their policy preferences advancing far more slowly than they would like. Overlap with economic inequality means that these dynamics could become acute for many with respect to their basic livelihoods.

Looking globally, some commentators have suggested that a "youth bulge" in a country – a large population of young people without sufficient economic opportunities – can contribute to political radicalization and even destabilize governments.[48] It is possible that rising life expectancy, and the political dynamics it unleashes, might be similar. While some young people may choose to remain in the political system and wait their turn, many others may not. Rising hopelessness and distrust in government's ability to address their concerns might push them to exit the political process and exercise their voice through protest.[49] It is possible that such frustrations could lead, over time, to a greater radicalization of politics, particularly among younger cohorts. In a gerontocracy, the slow pace of reform may lead to calls for revolution.[50]

7.3 AGE AND POLITICAL REPRESENTATION

What can be done about the possibility of gerontocracy? The first option is simply to do nothing. Many social and identity cleavages are not specifically accounted for in political representation – tall people, blondes, fans of crime novels, runners. None of those groups get representation in politics, and few would think they need representation. That intuition likely stems from the view that nothing about their group identity is essential to public affairs or linked to systematic differences in policy preferences. But as noted earlier, this is not true of age. There are significant divergences in policy preferences by age – even among copartisans. Younger conservatives have significantly different views than their elderly counterparts on a variety of policy issues.

Another possibility is that the young are represented, virtually, through their elders. While there is a long tradition of political thinkers who believed representatives should "be in miniature an exact portrait of the people at large,"[51] there is also a long tradition of those who believed representatives would carry the views of their constituents to politics, even if they did not "mirror" the population precisely.[52] For

[48] Lionel Beehner, *The Effects of "Youth Bulge" on Civil Conflicts*, Council on Foreign Rels. (Apr. 13, 2007), https://www.cfr.org/backgrounder/effects-youth-bulge-civil-conflicts.

[49] *See* Albert O. Hirschman, Exit, Voice, and Loyalty (1972).

[50] *Cf.* Sitaraman, *supra* note 26, at 21–55 (describing fears that inequality could lead to revolution); *see also* Daniel Ziblatt, Conservative Parties and the Birth of Democracy (2017) (arguing that conservatives enabled reform in part due to fears of revolution).

[51] John Adams, *Thoughts on Government (1776)*, Nat'l Const. Ctr., https://constitutioncenter.org/the-constitution/historic-document-library/detail/john-adams-thoughts-on-government-1776 (accessed May 25, 2023).

[52] For a discussion of this and other theories of representation, *see generally* Hanna Pitkin, The Concept of Representation (1967).

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example, older members of legislatures have children and grandchildren and may consider those younger generations' interests when making political decisions. They may also listen to their constituents and represent those views faithfully, for fear of losing an election. Still, political scientists have shown that actual representation matters. Women in office act differently than men; people of color act differently than whites, and people from blue-collar backgrounds act differently than those from white-collar backgrounds.[53]

A second option, which accounts for policy or other changes, is for the political system to informally consider age as a factor in representation. To some extent, this is currently what happens. Some candidates for office run explicitly on generational change, promising fresh ideas and a new approach compared to the tired politics of the past. Their opponents emphasize their experience and entrenched power after decades in office. For appointed roles, leaders may choose to pick people from different age brackets, in part to ensure age diversity. It is not as obvious that leaders take age diversity into account, especially when compared to gender and racial diversity, but they certainly could. Still, with rising life expectancy in the political class, it is possible that the "younger generation" in politics may not actually be so young.

A third option is to grant specific representation by age. This should not be as outlandish as it might first seem. It is worth noting that constitutional theorists have long considered *some* groups worthy of specific representation. The mixed-government tradition that persisted from ancient times until the American Revolution divided society into classes, giving specific representation to the wealthy and the ordinary people. In comparative politics, the field of consociationalism outlines strategies to give representation to divided societies – decentralization and regional control; power-sharing agreements; and quotas for ethnic group representation at the cabinet or senior level. In societies deeply divided by religion, language, and ethnicity, many have thought to build representation for each faction directly into the political system.

The question, of course, is whether age fits into the same category. People may come to different conclusions on this point, but as noted earlier, there are not only direct correlations between age and wealth but also systematically different policy preferences by age cohort. As life expectancy increases, it is likely that generational divides will increase as well because older generations will be represented for longer. If age is likely to be a more and more significant cleavage over time, it may be worth considering as a factor in institutional design. Let us, therefore,

[53] Clair C. Miller, *Women Actually Do Govern Differently*, N.Y. Times (Nov. 10, 2016), https://www.nytimes.com/2016/11/10/upshot/women-actually-do-govern-differently.html; Robert R. Preuhs & Rodney E. Hero, *A Different Kind of Representation: Black and Latino Descriptive Representation and the Role of Ideological Cuing*, Pol. Rsch. Q. 157 (2011); Carnes, *supra* note 34.

consider a few thought experiments in how age might be incorporated into institutional design.[54]

7.3.1 *Age Minimums – and Maximums*

The US Constitution considers age in representation, through provisions that set age *minimums* for federal elected office. Members of the House of Representatives must be twenty-five years of age. Members of the Senate, thirty years of age. And the president must be at least thirty-five years old. Age minimums are a proxy for maturity and experience, and each office was designed with that in mind.

But if age minimums are conventional and uncontroversial, why not also age maximums? Age maximums for service in office would ensure that different generations are represented in the political process. They would proxy new ideas, energy, and changing social norms. They would also prevent entrenchment in office by long-serving political leaders and preemptively ensure the retirement of leaders whose mental acuity may have begun to decline.

How could age maximums be designed? At the legislative level, one could imagine building overlapping age categories, with minimums and maximums, into the qualifications for officeholding. Service in the House of Representatives, for example, could require a person to be between the ages of twenty-five and fifty-five, and in the Senate might require an age between thirty and seventy. It is possible that all members of both branches would still be on the older side of those ranges, but the House would likely always be younger, given the dramatically younger age maximum.

Alternatively, one could imagine designing a legislature without overlap between the two houses – a House with members age twenty-five to forty, and a Senate with members age forty to seventy. Guaranteeing stark differences in age as a qualification for service would ensure generational representation, akin to classical mixed-government strategies that reserved one House for the wealthy and another for commoners.

One challenge, of course, is what happens to the young who are aged out of their position. The answer is that many will likely seek another role – a spot as governor – or might challenge an incumbent in their older-age body. A legislature designed along these lines could therefore potentially increase electoral competition among credible candidates. It might, however, also lead young members to become

[54] I exclude technocratic policy options, such as setting the discount rate within cost–benefit analysis, to value the interests of future generations more highly. This topic not only has been discussed extensively in the literature but also has a more limited scope than the structural questions of political representation I consider here. For a discussion, *see* David A. Weisbach & Cass R. Sunstein, *Introduction to Symposium on Intergenerational Equity and Discounting*, 74 U. Chi. L. Rev. 1 (2007); Cass R. Sunstein & Arden Rowell, *On Discounting Regulatory Benefits: Risk, Money, and Intergenerational Equity*, 74 U. Chi. L. Rev. 171 (2007).

interest-group lobbyists, drawing on their experience to pressure their former members (and perhaps even mentees) to serve private interests instead of the public good. Post-employment restrictions would therefore probably be necessary for such a system to work.

One could also imagine prescribing an age range on the presidency. A presidential age range would functionally preclude any person from running for that office who would be unable to serve a full four-year term prior to hitting the age maximum and, because party members might want someone who will not be a lame duck from day one, might even prevent most people from winning a nomination to that office if they cannot serve a full two terms. Such a rule would serve as a proxy that presidents have the energy and stamina to handle perhaps the most stressful and consequential job in the world – just as the age minimum proxies a level of life experience needed for the position.

It is also worth noting that there may be value to reducing the age minimums for service in elected office, even without maximums. In response to the disparities in policy designs for children versus the elderly, Paul Peterson has proposed, mostly in jest, allowing children to vote.[55] Whatever one thinks of his provocation, age qualifications for legislative roles could be reduced from current levels. Some countries have dropped age qualifications to eighteen, and at least one study finds this is an effective tactic for increasing youth representation.[56]

7.3.2 *Term Limits*

Another possibility is term limits. Term limits do not directly ensure age-based representation, but they may indirectly help. Legal rules for lifetime service (as with federal judges) and incumbency advantages (even without lifetime service rules) mean that officials can often serve in their same position for decades – perhaps even for life. Term limits would mandate departure from office, ending formal or informal incumbency entrenchment. But it is worth noting that this is an indirect way to get at age: There is no reason why newly elected or selected persons, after a term expires, will not be from the same age cohort – or even an older one – than the previous occupant of the office.

But it is also worth recognizing the severe downsides of term limits. First, for legislative positions, term limits bring a risk of heightened interest-group capture. The reason is that most newly elected members of Congress know very little about the subject areas of law and policy they are legislating or overseeing.[57] Over time, they develop expertise as they see more issues, focus on particular topics, and go into

[55] Peterson, *supra* note 46, at 170.

[56] Daniel Stockemer & Aksel Sundstrom, *Age Representation in Parliaments: Can Institutions Pave the Way for the Young?* 10 Eur. Pol. Sci. Rev. 467, 486 (2018).

[57] *See*, e.g., Nelson W. Polsby, *Some Arguments against Congressional Term Limitations*, 16 Harv. J. L. & Pub. Pol'y 101, 105 (1993) (observing that experience leads to policy knowledge and that

greater depth through committee assignments. In contrast, lobbyists and interest groups have considerable information and expertise – albeit conflicted, and usually deployed to serve their parochial interests. This mismatch in expertise means that overworked, busy members who are constantly running for reelection and do not have much expertise will be more likely to rely on interest-group experts than those who have over many years developed some expertise of their own.[58]

Second, passing significant legislation is often a multi-year and sometimes multi-decade effort. Members sometimes spend years pushing for a particular bill or policy, or at least amassing general expertise on a topic. When the opportunity arises or when a crisis occurs and major legislation is demanded, they have amassed significant expertise to navigate the complex process of passing legislation.[59] If term limits are too short – say, along the lines of eight years – they may simply ensure that *no* members of Congress have sufficient expertise and longevity to pass major legislation. Longer term limits, such as twenty years, might not have this downside.

A third problem is that term limits might lead to greater capture in the form of the revolving door. Members of Congress, for example, may depart their positions and make many times more in salary by decamping to lobbying firms. There they can use their contacts and relationships with former colleagues to push forward the interests of whatever group for whom they lobby. Shorter term limits would exacerbate this problem, creating more and more former members and likely, therefore, more well-connected lobbyists.

All of these problems are less of an issue when considering term limits for leadership offices, such as committee chairs or House and Senate leadership. For these positions, term limits will increase turnover among persons in those positions, without significantly decreasing the experience and expertise of the body itself. Members can still spend years pushing causes and will bring expertise to a crisis. But leaders will rotate, preventing the accumulation of power, and possibly ensuring that younger members have an opportunity to exercise their leadership and pursue their agenda – at least for a time.

7.3.3 *Intergenerational Judiciary*

In recent years, there has been increased interest in reforming the Supreme Court. Proposals have included expanding the size of the Court, rotating judges from lower courts onto the Court, creating partisan balance requirements for the Court, and also establishing term limits for justices. Some who support term limits for Supreme

term limits would reduce knowledge of members of Congress, thereby indirectly empowering lobbyists and others in the political system with more knowledge).

[58] *Id.*

[59] *See*, e.g., Robert G. Kaiser, Act of Congress (2014) (describing the expertise of Barney Frank after decades in Congress, passing the Dodd-Frank Act after the 2008 financial crisis).

Court justices have done so explicitly as a way to prevent gerontocracy.[60] They worry that a Court of seventy- and eighty-year-olds is ill-equipped to address many of the innovative issues of the time. Others support the proposal because they worry about too many *young* people being appointed to the federal courts.[61] In recent years, Republicans have nominated and confirmed many judges in their thirties for lifetime appointments, seemingly in order to retain their hold on those judgeships for the extra decade before middle age. Term limits might reduce the pressure to do so.

From the perspective of age-based representation, the judiciary is an interesting case. Both parties appoint federal judges between the ages of forty and sixty-five with great frequency, but Republicans tend to appoint more judges than Democrats at the lower end of the age spectrum (including some in their thirties) and Democrats more than Republicans at the highest end of the age spectrum.[62] One consequence is that there is *some* intergenerational diversity on the courts – judges in their forties, fifties, sixties, and seventies, and a smaller number in their thirties and eighties. While the balance skews conservative at the younger end, there is *some* age cohort representation even into the thirties. But over time, the thirty-something and forty-something judges will get older. And when others retire or pass away, creating new openings on the bench, there is no guarantee they will be replaced by new judges in their thirties or forties. Indeed, if Democrats continue their pattern of largely nominating comparatively older judges, it is likely that there will be a systematic skew over time – youth representation will exist during Republican presidencies from newly minted conservative judges, but not during Democratic presidencies.

With respect to the courts, term limits could create revolving-door problems, with judges departing to become lobbyists, appellate lawyers, or even using the bench as a springboard for a run for office. This dynamic is troubling as it might corrupt their decision-making process as judges. Some might also think that judges should have considerable experience in law and life prior to becoming a judge, as both expertise in the law and the exercise of judgment take time to develop. This might suggest a substantive reason for age representation to skew older for judges than for legislators.

[60] Stephen Calebresi & James Lindgren, *Term Limits for the Supreme Court: Life Tenure Reconsidered*, 29 Harv. J.L. & Pub. Pol'y 769 (2006); Stephen Calebresi & James Lindgren, *Supreme Gerontocracy*, Wall St. J. (Apr. 8, 2005), https://www.wsj.com/articles/SB111292087188301557.

[61] Kermit Roosevelt III & Ruth-Helen Vassilas, *Coming to Terms with Term Limits: Fixing the Downward Spiral of Supreme Court Appointments*, Am. Const. Soc'y (June 2017), https://www.acslaw.org/wp-content/uploads/2017/06/Coming_to_Terms.pdf; Rosalind Dixon, *Why the Supreme Court Needs (Short) Term Limits*, N.Y. Times (Dec. 31, 2021), https://www.nytimes.com/2021/12/31/opinion/supreme-court-term-limits.html.

[62] Moiz Syed, *Charting the Long-Term Impact of Trump's Judicial Appointments*, ProPublica (Oct. 30, 2020), https://projects.propublica.org/trump-young-judges/.

Age minimums could potentially be useful to address that issue, though they would not enhance intergenerational representation.

7.3.4 *Parliamentary Systems, Party Lists, Proportional Representation, and Age Quotas*

Some countries' electoral systems ensure age diversity in legislative representation through quotas for young people. After the Arab Spring protests, Egypt, Morocco, and Tunisia adopted youth quotas for parliamentary service, and after years of domestic conflict, Uganda, Kenya, and Rwanda did as well.[63] These reforms appear to have been a response to a large, disaffected population of young people.[64] Bringing young people into politics might give them a voice, rather than leaving them outside the process to protest.

Research on the efficacy of youth quotas is limited, but one study suggests that proportional representation and dropping age qualifications for officeholding to eighteen may be superior tactics.[65] Youth quotas have thus far tended to be "too low and too selectively applied."[66] In addition, proportional representation systems require party elites to develop a slate of candidates, creating an incentive to appeal to different groups of people, and this may push them to have youth representation.[67] When one party acts in a proportional representation system, there may be a contagion effect pushing others to follow.[68] The advantages of incumbency are also less significant in proportional representation systems than in first-past-the-post systems.[69] In parliamentary systems, and particularly for those with proportional representation, adopting slates with young people may therefore be a promising tactic.

7.4 CONCLUSION

In representative democracies, public policy depends on who has political power and who uses it. Political power turns not simply on the institutional structures of government but on background social conditions such as wealth, ideology, geography, and race. With rising life expectancy pointing toward a 100-year life, age may become an increasingly important feature in determining political power. Older political leaders may become entrenched in office, and older people tend to be

[63] Jana Belschner, *The Adoption of Youth Quotas after the Arab Uprisings*, 9 Pol., Grps., & Identities 151, 153 (2018).
[64] *Id.*
[65] Stockemer & Sundstrom, *supra* note 56.
[66] *Id.* at 468.
[67] *Id.* at 473.
[68] *Id.*
[69] *Id.* at 473–474.

wealthier – another important aspect of political power. The consequence of gerontocracy could over time be radicalization of the young who feel poorly represented. Addressing this problem will be important to ensuring representative government, and there are a number of formal strategies governments can take, from age qualifications for office to term limits to youth quotas, in addition to informal strategies like candidate recruitment. But whatever the approach, as people live longer – and do so unequally – the policy consequences will be significant.

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