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**VOTER TURNOUT IN NEW ZEALAND:  
TO WHAT EXTENT IS IT IN DECLINE AND  
WHAT CAN WE DO ABOUT IT?**

**LAWS 522: Public Law – State, Power and Accountability**

**Submitted for the LLB (Honours) Degree**

**Faculty of Law**

**Victoria University of Wellington**

**2017**

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## *I Introduction*

Election year is upon us, and with it comes the familiar flurry of political posturing and frenzied media attention. Reverberating in every politician's mind is one thing, and one thing only: to win the votes of enough New Zealanders to enter Parliament and form a government. Garish though this may be, it is democracy in action. Every vote casted goes to sustaining the system of "government of the people, by the people, for the people."<sup>1</sup> There is something amiss however. Less and less people are turning out to vote in national elections compared to previous generations.<sup>2</sup> This is not unique to New Zealand, as many Western democracies around the world are also seeing declining turnout rates. A great deal of research and discussion on this issue has taken place overseas, but not so much in New Zealand.

What's all the fuss about? To what extent is our voter turnout in decline? Should New Zealanders be worried? I take these questions to be the starting point of my research paper. After examining the long-term trends of turnout in New Zealand, I argue that it is in a serious state of decline with grave consequences for the proper performance of democratic government. This view is based on three key functions of voting that will be severely impaired by declining turnout, namely, the legitimising function, the representative function, and the control function.

Of utmost interest then is what we can do to boost turnout rates. To identify potential solutions, I first investigate the factors contributing to declining turnout in New Zealand. Available data shows that non-voting is due to a combination of political apathy, cynicism and delayed maturity. On that basis, I evaluate two different solutions that appear to address the contributing factors: lowering the voting age to 16 and making voting compulsory. I find that both solutions have significant weaknesses from at least one of consequentialist, principled and institutional viewpoints. I then propose a hybrid option that incorporates the strengths of both solutions while overcoming their individual weaknesses. In this way, I hope to encourage further research and discussion about declining turnout in New Zealand and what we can do about it.

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<sup>1</sup> Abraham Lincoln, President of the United States "The Gettysburg Address" (Soldiers' National Cemetery, Gettysburg, Pennsylvania, 19 November 1863).

<sup>2</sup> The turnout of 79.8 per cent for the 2017 General Election is the highest since the 2005 General Election (80.5 per cent), but is nevertheless over 10 per cent lower than pre-1990 levels. See Statistics New Zealand "Voter turnout" (October 2014) <[www.stats.govt.nz](http://www.stats.govt.nz)>.

## *II The problem of declining turnout*

As a country, New Zealand consistently achieves high international rankings on various social, economic and political criteria. New Zealand's electoral turnout is no exception with a ranking of nine out of 34 OECD countries based on the 2014 General Election where 77 per cent of registered voters turned out to vote.<sup>3</sup> This turnout rate is higher than the OECD median of 66 per cent as well as the turnout rates for comparable countries such as the United Kingdom (69 per cent in 2017),<sup>4</sup> the United States (55 per cent in 2016),<sup>5</sup> and Canada (68 per cent in 2015).<sup>6</sup> However, the decline in New Zealand's electoral turnout over time is concerning.

Out of 22 established democracies that have held elections continuously from 1945 to 1999, New Zealand has the seventh steepest decline over that period, outranking the United Kingdom, the United States and Canada.<sup>7</sup> This is a clear example of an international ranking that we should not be proud to have achieved. Furthermore, it is a warning against being complacent with our current turnout rates. Worried about the country's falling turnout rates, the Electoral Commission has opened up a national conversation to consider the implications of declining voter participation.<sup>8</sup>

A major factor contributing to New Zealand's steep decline in turnout is the rise in habitual non-voting. Studies show that "both voting and not voting are habit forming activities such that declining turnout amongst new voters will have long term consequences."<sup>9</sup> Evidence of this phenomenon occurring in New Zealand is found in pooled electoral research showing that the age cohort born after 1974 is around 22 per cent less likely to vote

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<sup>3</sup> Ministry of Social Development *The Social Report 2016* (June 2016) at 155.

<sup>4</sup> UK Parliament "General Election 2017: full results and analysis" (13 July 2017) <researchbriefings.parliament.uk>.

<sup>5</sup> Federal Election Commission "Official 2016 Presidential General Election Results" (30 January 2017) <transition.fec.gov>.

<sup>6</sup> Elections Canada "Voter Turnout at Federal Elections and Referendums" (9 January 2017) <www.elections.ca>.

<sup>7</sup> Mark N Franklin and others *Voter Turnout and the Dynamics of Electoral Competition in Established Democracies since 1945* (Cambridge University Press, New York, 2004) at 11.

<sup>8</sup> Electoral Commission "Participation - 2014 and Beyond" (28 March 2015) <www.elections.org.nz>.

<sup>9</sup> Helena Catt "Children and young people as citizens: Participation, provision and protection" (paper delivered in the symposium 'Citizenship: learning by doing', University of Otago, July 2005). See also Elias Dinas "The Formation of Voting Habits" (2012) 22(4) *Journal of Elections, Public Opinion & Parties* 431.

throughout their entire life cycle compared with the cohort born before 1934.<sup>10</sup> It follows then that the habit of non-voting will become more prevalent in the population “as people in earlier generations die and are replaced by people in more recent generations less likely to vote.”<sup>11</sup>

These worries are compounded when we look at recent statistics on youth turnout which were first made available for the 2014 General election. Official data shows that voters aged 18-24 had the lowest turnout of all age groups with just over 62 per cent of total enrolled voters casting a vote (15 per cent lower than the overall turnout).<sup>12</sup> Since this figure does not account for the proportion of eligible voters that did not register to vote, the actual turnout from age eligible voters in the 18-24 age group is certain to be much lower than 62 per cent. Further insight can be gained from post-electoral survey data which reveal the strong tendency of young people to abstain from voting.<sup>13</sup> Crucially, the percentage of non-voters in the 18-24 age group was over three times that in the 45-64 age group and eight times that in the 65-and-above age group for the 2011 General Election.<sup>14</sup>

The downward trend in youth turnout only looks to continue as the much anticipated ‘youthquake’ for the 2017 General Election surfaced not as a quake but a quiver.<sup>15</sup> While turnout among 18-24 year olds for the 2017 General Election is higher than 2014 General Election, enrolment figures are actually lower compared to the previous election cycle.<sup>16</sup> The necessary implication is that the country’s overall electoral turnout will continue to follow a steep decline as habitual non-voting becomes more prevalent in New Zealand society. And unless something is done to reverse this trend, the Electoral Commission’s

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<sup>10</sup> Jack Vowles "Civic engagement in New Zealand: Decline or demise" (Inaugural professorial address delivered at the Conference Centre, University of Auckland, 13 October 2004).

<sup>11</sup> Vowles, above n 10.

<sup>12</sup> Electoral Commission "2014 General Election Voter Turnout Statistics" (December 2014) <[www.elections.org.nz](http://www.elections.org.nz)>.

<sup>13</sup> Statistics New Zealand *Non-voters in 2008 and 2011 general elections: Findings from New Zealand General Social Survey* (January 2014).

<sup>14</sup> At 8.

<sup>15</sup> See New Zealand Herald “Mike Hosking: There is no ‘youth quake’” (22 September 2017) <[www.nzherald.co.nz](http://www.nzherald.co.nz)> and David Slack “Winston in box seat as ‘youthquake’ fails to fire” Radio New Zealand (24 September 2017) <[www.radionz.co.nz](http://www.radionz.co.nz)>.

<sup>16</sup> A total of 338,269 people in the 18-24 age group (74 per cent of estimated population of 18-24 year olds) were enrolled to vote for the 2014 General Election. This figure dropped to 333,164 (72 per cent) for the 2017 General Election. See Electoral Commission, above n 12 and Electoral Commission "Enrolment Statistics by Electorate" (23 September 2017) <[www.elections.org.nz](http://www.elections.org.nz)>.

prediction that New Zealand will see turnout rates of around 50 per cent within the next three decades is inevitable.<sup>17</sup>

Having established that turnout in New Zealand is in a serious state of decline, my inquiry now turns to whether New Zealanders should be concerned about this state of affairs. At the heart of any discussion about political participation is a theory of what it means to live in a democratic society. In this regard, I take as the overarching theory of my paper the classic dictum by Abraham Lincoln: “that government of the people, by the people, for the people, shall not perish from the earth”.<sup>18</sup> Although modern New Zealand society operates on a system of representative democracy rather than Athenian direct democracy, it does not change the fundamental principle that government exists to serve the people. In turn, political participation is the vital link between the people and the governing body to ensure good governance and that public power is exercised in the best interests of the people. This principle is promoted via three specific functions of voting, itself the most salient and most instrumental form of political participation.

First, an essential function of voting in a representative democracy like New Zealand is to elect particular individuals to form a Parliament and government to exercise public decision-making power on behalf of all New Zealanders.<sup>19</sup> In this way, voting is said to confer a democratic mandate or legitimacy upon successful candidates to govern our country. In addition to this legitimising function, there are two practical functions of voting that can be understood as operating in what I label the forward-looking and backward-looking dimensions.<sup>20</sup>

Forward-looking voting relates to the representative function of voting. This involves voters choosing the political candidates and policies that best align with their views and preferences. Forward-looking voting is vital in ensuring that the courses of action taken by Parliament and government meet the needs of all New Zealanders, thus is instrumental for achieving substantive equality and social justice.<sup>21</sup> On the other hand, backward-looking voting refers to the control function of voting. This is where voters pass judgement on the

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<sup>17</sup> Electoral Commission *Voter Participation Strategy* (July 2013) at 1.

<sup>18</sup> Lincoln, above n 1.

<sup>19</sup> Andrew Geddis *Electoral Law in New Zealand: Practice and Policy* (2nd ed, LexisNexis, Wellington, 2014) at 11.

<sup>20</sup> I derive forward-looking and backward-looking voting from proximity and accountability voting explained in Ruth Dassonneville, Marc Hooghe and Peter Miller "The impact of compulsory voting on inequality and the quality of the vote" (2017) 40(3) *West European Politics* 621.

<sup>21</sup> Geddis, above n 19, at 10.

past performance of elected representatives to determine whether they should continue exercising public decision-making power. Backward-looking voting essentially acts as a control and accountability mechanism to curb corruption and abuse of power by Parliament and the government.<sup>22</sup>

Prima facie, if voting behaviour changes, so too would the efficacy of the three aforementioned functions of voting. In regard to the legitimising function of voting, declining turnout risks the erosion of the democratic mandate that forms the basis of government power, the loss of which may render government unstable and ineffectual. While there is no bright-line test for determining when this mandate is lost, I consider that turnout rates nearing 50 per cent (such as those predicted by the Electoral Commission for New Zealand) would certainly threaten the legitimacy and stability of government. That is not to say that New Zealand's current turnout rates are without risk however. When approximately one in five voters do not vote, as in the 2017 General Election, can we say with confidence that our leaders have the mandate to govern on behalf of all New Zealanders?

Declining turnout is also problematic for the forward-looking function of voting because it invariably means "unequal and socio-economically biased turnout".<sup>23</sup> In New Zealand, this manifests in the tendency of low-income earners, young people, the unemployed and recent migrants to abstain from voting.<sup>24</sup> If the voting population is not representative of the entire population, it follows that the views communicated at the ballot box would not be representative of the entire population. Consequently, electoral outcomes such as the composition of Parliament and government policies would not accurately reflect the totality of the needs and interests of our country. Furthermore, the distortion of electoral outcomes perpetuates inequality in society. Perceiving that their interests are being marginalised by politicians, the people who tend not to vote will be further discouraged from voting. And since there is no political incentive for politicians to act otherwise, government policies will continue to disregard the interests of people who abstain from voting.<sup>25</sup>

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<sup>22</sup> Geddis, above n 19, at 12.

<sup>23</sup> Arend Lijphart "Unequal Participation: Democracy's Unresolved Dilemma" (1997) 91(1) *American Political Science Review* 1 at 2.

<sup>24</sup> Statistics New Zealand, above n 13, at 8-9.

<sup>25</sup> Sarah Birch *Full Participation: A comparative study of compulsory voting* (United Nations University Press, New York, 2009), at 53-54.

Turning to backward-looking voting, the impact of declining turnout on this function is less obvious but significant nonetheless. In order to effectively curb the abuse of public power by elected representatives, the full voting population is needed to evaluate their performance and pass judgement accordingly. Support for this proposition can be drawn from the application of the Condorcet Jury Theorem.<sup>26</sup> Crucially, the theorem assumes that there is a ‘correct’ outcome to an election. In the context of backward-looking voting, the correct outcome is choosing the political candidate or party that has not been corrupt or abused their power, and thereby removing corrupt politicians from office. The theorem holds that, as long as additional voters choose the correct outcome with an average probability greater than 50 per cent, “their participation in the election will improve the expected outcome”.<sup>27</sup> With declining turnout, the voting population is falling in numbers. Applying the Condorcet Jury Theorem, the reduction in numbers decreases the probability of removing corrupt politicians from office. Consequently, the checks and balances provided by the backward-looking function of voting are weakened.

Evidently, New Zealanders should be concerned about declining turnout because it undermines the efficacy of three crucial functions of voting. As the health and future of our democracy hinges on the trajectory of our turnout rates, the question then becomes: what can we do to boost voter turnout? In order to identify potential solutions, I first seek to understand the factors that contribute to declining turnout in New Zealand.

In the wider literature on political participation, three prototypical models – apathy, cynicism and delayed maturity – have been devised to help explain declining participation.<sup>28</sup> Naturally, these models do not take into account circumstances that are unique to New Zealand society, hence are inadequate by themselves to fully explain our pattern of declining turnout. Nevertheless, they provide a starting point from which to analyse the New Zealand context. In particular, the models assist in determining whether

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<sup>26</sup> See Marquis de Condorcet “Essay on the Application of Mathematics to the Theory of Decision-Making” in Keith Michael Baker (ed) *Condorcet: Selected Writings* (Bobbs-Merrill, Indianapolis, 1976).

<sup>27</sup> “The Case for Compulsory Voting in the United States” (2007) 121(2) *Harvard Law Review* 591 at 608.

<sup>28</sup> See Bart Cammaerts and others *Youth Participation in Democratic Life: Stories of Hope and Disillusion* (Palgrave Macmillan, UK, 2016), at 10-12. Cammaerts and others discuss the three models in the specific context of youth political participation, but the models are equally applicable to political participation in general. See also Giuseppe Di Palma *Apathy and Participation: Mass Politics in Western Societies* (Free Press, New York, 1970) and Peter Mair *Ruling the Void: The Hollowing of Western Democracy* (Verso, London, 2013).



declining turnout is due to a problem on the demand-side or the offer-side of electoral participation.<sup>29</sup> The three models are briefly summarised here.

The apathy model hypothesises that declining turnout is due to people having little or no interest in politics and government affairs. Since these people lack sufficient participatory intent, declining turnout can be seen as a result of a defect on the demand-side of political participation. Furthermore, proponents of the apathy model consider that the only realistic solution to the problem is to make voting compulsory. On the other hand, the cynicism model presumes that people do have interest in and desire to engage with political systems. Yet, the available channels of participation are seen as inadequate for addressing people's core interests and concerns. Under this model, declining turnout can be explained by a problem on the offer-side of political participation. It is therefore necessary to change fundamental political structures and discourses in order to reinvigorate electoral participation.

A third model, the maturity model, relates specifically to declining youth participation. This model hypothesises that low youth turnout can be attributed to the issue of timing, rather than any defects on the demand-side or offer-side of political participation. Those who subscribe to this model do not perceive any 'problem' that needs to be addressed. Instead, low youth turnout is likely to sort itself out as young people mature, which would occur over a longer time period compared to previous generations. Reasons for slower maturation of youth today include "the extension of studying time, the lengthening time young people spend living with their parent(s) and the extension of life expectancy".<sup>30</sup>

To test the applicability of these models in the New Zealand context, I examine the available research on the reasons why New Zealanders may abstain from voting. Starting with the apathy model, support for the model can be found in survey data from three recent general elections. In the Report into the 2014 General Election, post-election surveys were conducted of voters and non-voters, totaling 1,310 respondents.<sup>31</sup> When non-voters were asked the reason why they did not vote, over a third of respondents cited "self-stated barriers to voting". These included personal or commitment barriers such as religion or work, and practical access barriers such as being away from home or lack of transport to polling booths.<sup>32</sup> Another common reason given for not voting is a lack of interest in voting,

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<sup>29</sup> Cammaerts and others, above n 28, at 52.

<sup>30</sup> Cammaerts and others, above n 28, at 12.

<sup>31</sup> TNS New Zealand *Report into the 2014 General Election* (Electoral Commission, December 2014) at 5.

<sup>32</sup> At 13.

which applied to 27 per cent of non-voters. Respondents under this category explained that they “can't be bothered with politics or politicians”, “can't be bothered voting”, and that it “makes no difference who the government is”.<sup>33</sup> Other notable categories of reasons for not voting are “not knowing who to vote for” and “not knowing how, when or where to vote”, which together accounted for 14 per cent of respondents.<sup>34</sup>

A similar picture is presented by the New Zealand General Social Survey focusing on the 2011 and 2008 General Elections.<sup>35</sup> For both elections, the most common explanation given for not voting is disengagement from politics, which influenced around 40 per cent of survey respondents to abstain from voting. Specific reasons under this category included “not getting round to” voting, forgetting about voting or a lack of interest in voting, as well as thinking that it was not worth voting because “it makes no difference which party is in government”.<sup>36</sup> Close behind political disengagement is the ‘perceived barriers’ category for explaining why people failed to vote. The main factors here are being overseas or away, lack of knowledge about the issues or people standing for election, and inability to get to a polling booth.<sup>37</sup>

In sum, the survey results from the last three general elections provide ample evidence for the apathy model of non-participation. Clearly, many New Zealanders do not vote simply because they do not care for political systems, their processes and the parties that vie for a place in Parliament. In other words, it is likely that there is a defect on the demand-side of electoral participation in New Zealand. Furthermore, it can be argued that yielding to physical access barriers such as being overseas or a lack of transport to a polling booth actually denotes a lack of interest in voting to start with. After all, our electoral system provides various mechanisms to assist voters in overcoming such barriers, including postal voting and early voting. Voters who still fail to vote because of these barriers invite the natural inference is that they lack sufficient interest to vote in the first place.

Turning to the cynicism model, there also are hints of this model in the survey results from the 2014, 2011 and 2008 general elections. In each election, a significant minority of non-voters did not vote because they believed that their vote would not have made a

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<sup>33</sup> At 13.

<sup>34</sup> At 13.

<sup>35</sup> Statistics New Zealand, above n 13.

<sup>36</sup> At 7.

<sup>37</sup> At 7.

difference,<sup>38</sup> or that it was not worth voting “because politicians only care about being in power”.<sup>39</sup> This suggests that some people perceive voting to be an inadequate channel for political participation and do not believe in the efficacy of having the vote to influence political decision-making.

Another important indicator of political efficacy is the level of trust placed in government by citizens. Accordingly, supporting evidence for the cynicism model can be drawn from a study commissioned by the Institute for Governance and Policy Studies looking at levels of public trust in New Zealand.<sup>40</sup> The study involved collecting data from 1,000 New Zealanders aged 18 or above, and data was weighted to be representative of New Zealand by age, gender, ethnicity, and location. Findings show that Members of Parliament and government are among the least trusted groups in our society, with over half of respondents saying they have little or no trust at all in them.<sup>41</sup> When asked how they feel about the way that the government treats their interests, only 39 per cent of respondents express having “at least a reasonable amount of trust that the government considers all citizens’ interests fairly and equally”.<sup>42</sup> These findings reveal a widespread dissatisfaction with government and political institutions in general. And while voting is not specifically mentioned in the study, the public’s distrust of politicians and government implies dissatisfaction with the modes of citizen input into public-decision making, which includes voting. Therefore, it seems that there may be defects on the offer-side of electoral participation.

As for the maturity model, research shows that voting is commonly linked to certain socioeconomic factors which are in turn associated with older age groups in modern society. In 2016, Auckland Council commissioned a study into voting propensity in the Auckland region and found that home ownership was a principle determinant of turnout at local government elections: “those who own their own home were more likely to vote than those who do not own their own home”.<sup>43</sup> This can be explained by the idea that homeowners are “more likely to be invested in their own suburb or city”, hence are more likely to experience the impacts of local government decisions on their lives and property.<sup>44</sup> While this piece of research relates to local authority elections, it is likely to apply to

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<sup>38</sup> Statistics New Zealand, above n 13, at 7.

<sup>39</sup> TNS New Zealand, above 31, at 72.

<sup>40</sup> Colmar Brunton *Who Do We Trust?* (Institute for Governance and Policy Studies, March 2016).

<sup>41</sup> At 5.

<sup>42</sup> At 7.

<sup>43</sup> Buzz Channel *Demographic patterns of behaviour in Auckland local government elections* (Auckland Council, April 2016) at 5.

<sup>44</sup> At 9.

national elections as well, the results of which have equal, if not more, impact on homeowners. With the incidence of homeownership falling among young people due to housing unaffordability,<sup>45</sup> it can be argued that declining youth turnout is simply a function of the delay in the onset of ‘adult’ responsibilities such as paying off a mortgage and paying higher taxes. Still, there does not appear to be any other supporting evidence for this model so its applicability to the New Zealand context is likely to be limited.

The foregoing examination presents a mixed picture of why New Zealanders may abstain from voting. Both the apathy and cynicism models clearly manifest in the available data and research, and, to a lesser extent, the maturity model, indicating that declining turnout can be attributed to problems on both the demand-side and offer-side of political participation, as well as the delayed maturity of youth. From here, I move on to discussing potential solutions to address declining turnout.

Specifically, I analyse institutional solutions directed at modifying electoral rules and structures, rather than substantive solutions that focus on adapting the content and communication of political messages. My observations of electoral campaigns in New Zealand and overseas suggest that substantive solutions are frequently ineffective in boosting voter turnout. Something more drastic is needed, such as institutional solutions that target the very foundations of voting. As emphasised by political scientists studying this area, “radical problems often require radical solutions.”<sup>46</sup>

### *III Institutional solutions for boosting turnout*

In recent years, a lot of interest has been expressed by policy-makers and political commentators about certain institutional solutions for boosting voter turnout. In the wake of abysmal turnout for the 2013 and 2016 local authority elections, both Local Government New Zealand and the Labour Party considered looking into compulsory voting as a solution to reverse low turnout rates.<sup>47</sup> As peculiar as this idea may sound to some people,

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<sup>45</sup> Statistics New Zealand “2013 Census QuickStats about housing” (18 March 2014) <[www.stats.govt.nz](http://www.stats.govt.nz)>.

<sup>46</sup> Sarah Birch and Guy Lodge “Voter Engagement, Electoral Inequality and First-Time Compulsory Voting” (2015) 83(3) *The Political Quarterly* 385 at 390.

<sup>47</sup> Newshub “Talk of compulsory voting after low turnout” (13 October 2013) <[www.newshub.co.nz](http://www.newshub.co.nz)>; Sam Sachdeva “Labour says online voting, compulsory voting among options for low voter turnout” (11 October 2016) <[www.stuff.co.nz](http://www.stuff.co.nz)>. National voter turnout in the 2013 and 2016 local authority elections was 41.3 per cent and 42 per cent, respectively. See Local Government New Zealand “Final Voter Turnout 2016” (26 October 2016) <[www.lgnz.co.nz](http://www.lgnz.co.nz)>.

compulsory voting has been around for a long time and instituted in many countries, particularly in Europe.<sup>48</sup> Presently, there are 26 countries worldwide that have compulsory voting laws, spanning across Central and South America, Europe, Africa, the Middle East, Eastern Asia, as well as Australia.<sup>49</sup> Public interest in the topic has increased further this year when, during a series of interviews with Radio New Zealand, three former Prime Ministers expressed support for New Zealand to follow Australia's lead and introduce compulsory voting.<sup>50</sup>

Another much-debated institutional solution is to lower the voting age to 16. Because of the overwhelming evidence of voting as a habit-forming activity, it would make sense to concentrate policy efforts on boosting youth turnout to improve long-term electoral participation. In 2007 and 2011, former Green Party MP, Sue Bradford proposed a private member's bill to extend voting rights to 16 and 17-year-olds (coupled with civics education in schools), but it was dropped in both instances due to lack of support from the party caucus.<sup>51</sup>

Public interest and discussion around the proposal has not subsided however, with the arrival of election year bringing it back to the fore.<sup>52</sup> For instance, earlier this year the Children's Commissioner pushed for a national conversation about the merits and weaknesses of lowering the voting age.<sup>53</sup> Similar calls have been made overseas that have generated intense debate and real change in some cases. In 2007, Austria became the first out of the 28 member states in the European Union to lower the voting age from 18 to 16. This has spurred other European states to consider the question of the appropriate voting

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<sup>48</sup> Anthoula Malkopoulou *The History of Compulsory Voting in Europe: Democracy's Duty?* (Routledge, New York, 2015).

<sup>49</sup> International IDEA "Compulsory Voting" (26 February 2016) <[www.idea.int](http://www.idea.int)>.

<sup>50</sup> Craig McCulloch "Former PMs support compulsory voting in NZ" (7 April 2017) <[www.radionz.co.nz](http://www.radionz.co.nz)>.

<sup>51</sup> Green Party of Aotearoa New Zealand "Bradford launches Bill to lower voting age to 16" (21 Jun 2007) <[home.greens.org.nz](http://home.greens.org.nz)>; Danya Levy "Lower voting age: Mana" (9 October 2011) <[www.stuff.co.nz](http://www.stuff.co.nz)>; Radio New Zealand "Judge Becroft calls for discussion on lowering voting age" (6 March 2017) <[www.radionz.co.nz](http://www.radionz.co.nz)>.

<sup>52</sup> Laura Keown "Lowering the voting age to 16 could help democracy in NZ" (23 February 2017) <[www.thewireless.co.nz](http://www.thewireless.co.nz)>; Tom McRae "Should New Zealand's voting age be dropped to 16?" (6 March 2017) <[www.newshub.co.nz](http://www.newshub.co.nz)>; Bronwyn Wood "What's there to fear from lowering the voting age?" (31 July 2017) <[www.newsroom.co.nz](http://www.newsroom.co.nz)>.

<sup>53</sup> New Zealand Herald "Children's Commissioner wants to lower voting age to 16 in New Zealand" (6 March 2017) <[www.nzherald.co.nz](http://www.nzherald.co.nz)>; Jimmy Ellingham "Lowering the voting age to 16 must happen soon" (10 March 2017) <[www.stuff.co.nz](http://www.stuff.co.nz)>.

age, such as Denmark, Norway and the United Kingdom.<sup>54</sup> Countries outside of Europe with a voting age of 16 are Argentina, Brazil, Cuba, Ecuador, and Nicaragua.<sup>55</sup>

Given the clear interest in compulsory voting and lowering the voting age, it is surprising to find a lack of New Zealand literature and scholarship on the proposed solutions. To help fill the gap and encourage further discussion on the solutions, I evaluate the case for and against adopting each solution to combat declining voter turnout in New Zealand today. In my evaluation, I distinguish between consequentialist arguments referring to the effects of the solutions on voter turnout, principled arguments looking at how the solutions interact with key values, concepts and beliefs, and institutional arguments calling attention to the legal and political viability of the solutions.<sup>56</sup> Undoubtedly, these arguments are deeply interconnected and should be considered in a holistic manner. But, for the purposes of my analysis I will keep the arguments separate so far as possible before synthesising them in my conclusion.

#### *A Should we lower the voting age to 16?*

As part of the country's colonial legacy, the earliest elections in New Zealand were in many ways "small-scale replicas of those in Britain."<sup>57</sup> However, New Zealand soon evolved independently from Britain to become a world leader in the democratisation of government.<sup>58</sup> This is most apparent in New Zealand's relatively quick journey towards universal suffrage. By the end of the 19th century, we had one of the most progressive electoral regimes among Western democracies at the time, with voting rights enjoyed by all adult men as well as women (Maori and non-Maori).<sup>59</sup> In regards to the voting age, it was lowered in two stages in 1969 and 1974, from 21 to 20-years-old, then from 20 to 18-

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<sup>54</sup> Eva Zeglovits "Voting at 16? Youth suffrage is up for debate" (2013) 12 *European View* 249 at 249.

<sup>55</sup> Ceinwen Curtis "Children's day highlights push for younger voting age" (5 March 2017) *Radio New Zealand* <[www.radionz.co.nz](http://www.radionz.co.nz)>.

<sup>56</sup> The approach of distinguishing between consequentialist and principled arguments is derived from Bart Engelen "Why Compulsory Voting Can Enhance Democracy" (2007) 42 *Acta Politica* 23. I chose to incorporate institutional arguments to this approach to give a more comprehensive analysis of the proposed solutions.

<sup>57</sup> Electoral Commission "On the Hustings" (15 February 2015) <[www.elections.org.nz](http://www.elections.org.nz)>.

<sup>58</sup> Neill Atkinson *Adventures in Democracy: A History of the Vote in New Zealand* (University Otago Press, Dunedin, 2003) at 235.

<sup>59</sup> All Maori males over 21 were given the right to vote in 1867 while all non-Maori males over 21 were given the right to vote in 1879. All Maori and non-Maori women over 21 were given the right to vote in 1893. See Atkinson, above n 58, at 241-242.

years-old, respectively. These reforms were chiefly driven by the dramatic growth of secondary and university education in the second half of the 20th century, together with the “alarming radicalisation” of youth spurred by the Vietnam War.<sup>60</sup> This demonstrates a precedent for lowering the voting age in response to changing socio-political conditions that bring with them new challenges and opportunities.

The argument under consideration here is that the current minimum voting age of 18 should be reconsidered in light of the present social, economic and political conditions, which are invariably different to those that existed over half a century ago. As a country, we are currently faced with the pressing problem of declining turnout, and lowering the voting age to 16 is a potential solution to reverse the downward trend.

On the face of it, lowering the voting age would target the root causes of declining turnout under all three of the models discussed earlier. Allowing 16 and 17 year olds the opportunity to vote would cultivate their interest in politics in a relatively stable living and learning environment, hence combating apathy towards voting and other political institutions. At the same time, the addition of over 120,000 extra voters to the youth voting block would presumably influence politicians and political parties to take a more proactive approach to the needs and concerns of young people.<sup>61</sup> This would then alter youth perceptions about the inadequacy of the political offer under the cynicism model. In addition, instilling the habit of voting at an earlier age would help our youth develop political maturity faster than they are currently doing. Since youth are the lynchpin in determining future turnout rates, any change in youth voting behaviour is presumed to have long-term impacts on voting behaviour in general. With this premise in mind, I proceed to evaluate the solution from consequentialist, principled and institutional perspectives.

Supporters of lowering the voting age place great emphasis on its positive effects on turnout rates and political participation in general.<sup>62</sup> The premise is that allowing 16 and 17 year olds to vote would result in increased turnout rates and political participation since the

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<sup>60</sup> Atkinson, above n 58, at 181.

<sup>61</sup> The approximation of 120,000 is based on information obtained through Statistics New Zealand’s Infoshare database, which allows the user to search for specific data on annual and quarterly national population estimates by single-year of age. I did separate searches for the estimated national population of 16 and 17 years olds for the year ended 2017 and came to a total figure of 126,820. See Statistics New Zealand “Estimated Resident Population by Age and Sex (1991+) (Qrtly-Mar/Jun/Sep/Dec)” (14 August 2017) <[www.stats.govt.nz/infoshare](http://www.stats.govt.nz/infoshare)>.

<sup>62</sup> Jörg Tremmel, Antony Mason, Petter Haakenstad Godli and Igor Dimitrijoski (eds) *Youth Quotas and other Efficient Forms of Youth Participation in Ageing Societies* (Springer, Cham, 2015), at 157.

relative stability of this age group makes voting easier from a practical viewpoint. Compared to 16 and 17 year olds, 18-24 year olds are more occupied with various pressures associated with the transitional nature of that period in a life cycle.<sup>63</sup> For example, while most 16-17 year olds live in the family home, the 18-24 cohort are possibly the most mobile and likely to move between many short-term addresses. The frequent changes in address may mean many young people from 18-24 find themselves unregistered at their election time address, making it more difficult to vote.<sup>64</sup>

Of course, empirical evidence is needed to substantiate these arguments. It is unfortunate that only a handful of countries have lowered the voting age to 16, so relevant research is scarce and it is difficult to extrapolate universal themes. Nevertheless, the experiences of countries that have instituted or experimented with voting age reforms provide some insight into their effects. Austria is a key source of information, given that it is the only member of the European Union that has lowered the voting age from 18 to 16 in 2007. Research from Norway is also helpful as the country trialed a voting age of 16 for municipal elections in 2011. Accordingly, evidence from both countries will be canvassed in turn.

Despite being in a prime position to investigate the real impacts of lowering the voting age, Austria's restrictive data policies meant that researchers could not access accurate information on the country's electoral participation, and even its official registers of voters, until only recently. Using the newly available data, a pioneering study was carried out on turnout rates of 16- and 17-year-olds for two regional elections: the 2010 election in Vienna, the capital of Austria, and the 2012 election in Krems, a small sized town in Lower Austria.<sup>65</sup>

Findings from the study show that 16 and 17 year old Austrian voters do not conform to the common trend where youth have markedly lower turnout compared to the rest of the voting population. Indeed, turnout among 16 and 17 year olds in Vienna "was not significantly lower than the overall turnout", while turnout among 16 and 17 year olds in

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<sup>63</sup> Catt, above n 9.

<sup>64</sup> Alex Folkes "The Case for Votes at 16" (2004) 41(1) Representation 52 at 54.

<sup>65</sup> Eva Zeglovits and Julian Aichholzer "Are People More Inclined to Vote at 16 than at 18? Evidence for the First-Time Voting Boost Among 16- to 25-Year-Olds in Austria" (2014) 24(3) Journal of Elections, Public Opinion and Parties 351. At 354-355 the authors explain that studying these particular elections can better reveal patterns in electoral participation because the "novelty" effects of lowering the voting age in 2007 would have subsided (each election was the second regional election after voting age was lowered to 16). Also, regional elections typically have lower participation rates and interest so any differences in turnout would be more apparent compared to national elections.



Krems “was only somewhat lower than the average”.<sup>66</sup> Interestingly, results from both towns also show that turnout decreased with age for voters aged 18 to 21.<sup>67</sup>

These findings have been interpreted on two levels. First, they reinforce the first-time voting boost phenomenon, referring to the pattern where first-time voters (usually 18 to 19 year olds) exhibit higher turnout rates compared to 20 to 21 year olds. Second, it appears that the first-time voting boost is more prominent among 16 and 17 year olds compared to older first-time voters.<sup>68</sup> But, the study is limited in that it does not reveal whether increased turnout among 16 and 17 year olds has in fact instilled a life-long habit of voting that will have long term effects on overall turnout. Future research based on more comprehensive data is needed to investigate these hypotheses.

Turning to the evidence from Norway, due regard must be given to the specific events and context around the time of the voting trials.<sup>69</sup> On 22 July 2011, Norway saw two sequential terrorist attacks that were described by the Prime Minister as the “deadliest attack in Norway since World War II”.<sup>70</sup> This had a large impact on youth that may have subsequently affected their behaviour in the voting trials. Indeed, results from the 2011 general elections showed that the youngest voters (18 to 21 year olds) had higher participation rates compared to recent elections.<sup>71</sup>

Focusing on youth turnout in the municipalities that participated in the voting age trials, turnout among 16 and 17 year olds was significantly higher than the turnout rates in both the 18-21 and the 22-29 age groups. This pattern is mirrored when comparing turnout among 16 and 17 year olds in the trial-municipalities with older voters across the country, and corroborates the strong first-time voting boost among 16 and 17 year old voters.<sup>72</sup> However, like the evidence from Austria, these results are silent on the long-term effects of lowering the voting age on overall turnout and other electoral outcomes.

My analysis thus far indicates that 16 and 17 year olds, if given the right to vote, are likely to exercise their right to a significant extent, much more so compared to older first-time

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<sup>66</sup> At 359.

<sup>67</sup> At 359.

<sup>68</sup> At 359.

<sup>69</sup> Tremmel and others, above 62, at 162.

<sup>70</sup> Stavanger Aftenblad "Tre timer som forandret Norge" (28 December 2011) <[www.aftenbladet.no](http://www.aftenbladet.no)> (translation: "Three hours that changed Norway").

<sup>71</sup> Tremmel and others, above 62, at 162-163.

<sup>72</sup> Tremmel and others, above 62, at 163.

voters. Yet, the lack of evidence as to the solution's long-term effects on voter behaviour and other political institutions means that consequentialist arguments currently offer weak support for its adoption. Furthermore, concerns have been expressed about potential negative effects of lowering the voting age on overall turnout rates. While evidence from Austria and Norway show that turnout rates among 16 and 17 year olds are higher compared 18 to 21 year olds, they are nevertheless lower than the national average. It follows that lowering the voting age may lead to a decrease, at least the short-term, in overall turnout rates.

This argument should be approached with caution. Rather than focusing on micro changes to overall turnout, priority should be given to the impact of lowering the voting age on youth turnout. As emphasised earlier, the steep decline in New Zealand's turnout rates is mainly driven by the rise in habitual non-voting. Since lowering the voting age has been shown to buck the trend of declining youth turnout, our attention should be focused on how this impacts the long-term trends in voter turnout.

And it is important to remember that, even if newly enfranchised 16 and 17 year olds exhibit turnout levels that are lower than the national average, in no way does it diminish the electoral participation of the existing voting population.<sup>73</sup> What 16 and 17 year olds can do is introduce a new generation of voters into the voting population, that will steadily replace existing voters and bring about macro changes to the long-term pattern of turnout in New Zealand. In my view, this outweighs any concerns about short-term changes to overall turnout.

Opponents of lowering the voting age often raise arguments based on the concept of political maturity, questioning whether 16 and 17 year olds are politically mature enough to vote. While there is currently no consensus in the wider literature about the precise meaning of political maturity, it is commonly linked to concepts such as political interest, political knowledge, political efficacy, consistency in political attitudes, and consistency between attitudes and voting.<sup>74</sup>

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<sup>73</sup> See Tak Wing Chan and Matthew Clayton "Should the Voting Age be Lowered to Sixteen? Normative and Empirical Considerations" (2006) 54 *Political Studies* 533. At 536-537, Chan and Clayton cite the writings of Derek Parfit "Overpopulation and the Quality of Life" in P Singer (ed) *Applied Ethics* (Oxford University Press, Oxford, 1986) 145 to argue that a concern for average electoral turnout should not be the deciding factor when considering voting age reforms.

<sup>74</sup> Johannes Bergh "Does voting rights affect the political maturity of 16- and 17-year-olds? Findings from the Norwegian 2011 voting-age trial" (2013) 32(1) *Electoral Studies* 90 at 93. See also Tremmel and others, above 62, at 159-160.

If the reality is that political maturity among 16 and 17-year-olds is significantly less compared to their older counterparts, the perceived danger is that they would not be able to exercise the vote effectively, thus undermining the representative function of voting and detrimentally affecting election results and outcomes.<sup>75</sup> To evaluate the strength of the arguments around political maturity, I examine research from Austria and Norway to gain insight into the political maturity of 16 and 17 year olds who have been given genuine opportunities to vote.<sup>76</sup>

Before canvassing this research however, it is important to take note of the relevance of findings from Austria and Norway to the New Zealand context. Not only are Austria and Norway among the few countries that have instituted a voting age of 16, but research has also shown that the levels of civic knowledge among young Austrians and Norwegians are comparable to those of young New Zealanders.<sup>77</sup> Furthermore, there are no factors that indicate that 16 and 17 year olds from Austria and Norway are outliers in terms of their political interest and engagement. Thus, I consider the evidence from these two countries to be particularly useful here.

Starting with the evidence from Austria, a general survey was carried out prior to 2009 European Parliament Elections that involved a disproportionately large number of respondents between the ages of 16-25, making it suitable for investigating levels of political maturity among young voters.<sup>78</sup> The survey focused on four indicators of political maturity: political knowledge, political interest, willingness to participate in electoral and non-electoral forms of political participation, and congruence between ideological position and vote choice (representing vote quality).

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<sup>75</sup> Tremmel and others, above 62, at 159.

<sup>76</sup> An alternative approach to look at research on the political maturity of 16 and 17-year-olds in countries that have not extended voting rights to this age group. This approach is unsatisfactory because does not take into account those unique circumstances that would be present in circumstances where 16 and 17-year-olds have genuine opportunities to vote. See Markus Wagner, David Johann and Sylvia Kritzinger "Voting at 16: Turnout and the quality of vote choice" (2012) 31 Electoral Studies 372 at 375.

<sup>77</sup> Kate Lang *What do New Zealand students understand about civic knowledge and citizenship?* (Ministry of Education, September 2010). At 3: "In this context, civic knowledge includes a wide range of topics from political institutions and concepts, such as human rights, through to topics covering social and community cohesion, diversity, the environment, communications and global society".

<sup>78</sup> Wagner, Johann and Kritzinger, above n 76, at 373.

Levels of political knowledge were measured by assessing whether parties correctly place Austrian political parties on a left-right scale. Survey results showed that 16 and 17 year olds have “somewhat lower” levels of political knowledge compared to older voters.<sup>79</sup> But, this finding should be interpreted cautiously considering only one question was asked of respondents to measure their political knowledge.

Political interest and willingness to participate in politics were evaluated by taking an average of the respondents’ answers to relevant questions. On the question of intention to vote in the election, survey results showed a familiar pattern where intention was lowest among the youngest age group, but steadily increased with age.<sup>80</sup> However, 16 and 17 year olds exhibited high levels of political interest and motivation to engage with politics that are comparable to older respondents. In particular, 16 and 17 year olds are very willing to participate in non-electoral forms of political participation such as demonstrations and collecting signatures for petitions.<sup>81</sup>

Lastly, vote congruence was measured on the left–right scale as the distance between the voter’s position and that of the party they voted for. In this regard, survey results do not support the argument that 16 and 17 year olds were more likely to make less congruent votes than their older counterparts. In fact, the differences presented in the survey data (albeit not statistically significant) showed that, in some cases, vote congruence was the highest among 16 and 17 year old voters.<sup>82</sup>

Moving on to the evidence from Norway, a survey was conducted among Norwegian high school students aged 16-18, both in the trial-municipalities and non-trial municipalities. These groups were specifically selected to test whether any differences in political maturity between the 16-17 age group and 18 year olds are reduced when the voting age is lowered to 16.<sup>83</sup> The survey focused on four different indicators of political maturity: political interest, political efficacy, attitudinal constraint (the extent to which attitude formation is

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<sup>79</sup> At 376.

<sup>80</sup> At 377.

<sup>81</sup> At 376.

<sup>82</sup> At 380.

<sup>83</sup> Bergh, above n 74.

constrained by social norms),<sup>84</sup> and consistency between attitude and vote choice.<sup>85</sup> Analyses of the survey results unequivocally support the argument that 16 and 17 year olds have significantly lower levels of political maturity compared to older voters.

Political interest and political efficacy were measured by simply asking survey respondents to describe their levels of political interest, their own capacity to engage with politics (internal efficacy) and the capacity of people in general to take part in politics (external efficacy). Compared to 18 year olds, 16 and 17 year olds were less interest in politics and expressed lower levels of both internal and external political efficacy. These differences were observed across both trial municipalities and non-trial municipalities, indicating that lowering the voting age did not mitigate any differences in political interest and political efficacy.<sup>86</sup>

Attitudinal constraint and consistency between attitude and vote choice were measured using statistical models based on the respondents' answers to issues-based questions. Results show that 16 and 17 year olds had smaller constraints in their attitude formation, indicating less consistent sets of attitudes, in comparison to 18 year olds. As for consistency between attitude and vote choice, statistical models do not show a strong trend but 16 and 17 year olds generally exhibit lower levels of consistency between attitudes and vote choice than 18 year olds. Again, these differences were apparent in both trial municipalities and non-trial municipalities, demonstrating that political maturity among 16 and 17 year olds was unaffected by the voting age trials.<sup>87</sup>

Evidently, the research canvassed above point to different conclusions on the political maturity of 16 and 17 year olds who have given genuine opportunities to vote. While the

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<sup>84</sup> If an individual is more receptive of social norms, they are likely to be more constrained in their attitude formation. In this way, the measure of attitudinal constraint equates higher levels of political maturity with higher levels of constraint. See Philip Converse "The nature of belief systems in mass publics" in David Apter (ed) *Ideology and Discontent* (Free Press, New York, 1964) 206.

<sup>85</sup> At 93: Political knowledge was not tested for because "the standard measures of political knowledge deal with national politics and tap knowledge that is not very useful for a voter in a local election".

<sup>86</sup> At 95-96

<sup>87</sup> At 96-98. It is noteworthy however that there were no significant differences between the actual voting results of 16-17 year olds and 18 year olds. This indicates that, even though 16-17 year olds may less politically mature than older voters, they do not vote substantially differently and their inclusion in the electorate would not impact the overall election results to any great extent. See Tremmel and others, above n 62, at 169 citing Johannes Bergh and others "Stemmerett for 16-åringer. Evaluering av forsøket med senket stemmerettsalder ved lokalvalget i 2011" (2014) Oslo: Institute for Social Research.

evidence from Austria suggest that political interest and vote congruence among 16 and 17 year olds are comparable to those of older voters, the evidence from Norway indicates that 16 and 17 year olds are significantly less politically mature according to a number of indicators. It can be argued that less weight should perhaps be given to the evidence from Norway, as it was based on trials rather than a permanent change to the voting age, as is the case in Austria. Without the perception that voting rights are to be permanently extended to them, 16 and 17 year olds may be less motivated to develop their political maturity to vote. In these circumstances, any research on the political maturity of 16 and 17 years olds should be cautiously interpreted. Still, there may be a way to reconcile the findings from Austria and Norway. I consider that the findings may be interpreted as indicating that 16-17 year olds in New Zealand have the potential to develop the requisite political maturity to vote, which may or may not be realised. And let us not forget the critical role that education plays in helping develop political maturity among young people.

It is no coincidence that during both attempts in New Zealand to introduce the voting age reform in a private member's bill, a complementary proposal to enhance civics education was included. A key opportunity is presented here to create a symbiotic relationship where the combination of civics education and voting is beneficial to both institutions. Targeted civics education, with the primary goal of promoting active and responsible political participation, would play an integral role in developing young people's political maturity and guiding them to make effective use of their first vote. At the same, the potential for civics education to make an impact on young people's voting behaviour would be maximised if learning accompanies the actual practice of voting. However, considerable work remains to be done in this area as the New Zealand Curriculum does not currently offer any formal direction as to the teaching of civics education in schools.<sup>88</sup>

The last set of arguments that I will examine relate to the legal and political viability of lowering the voting age. An important consideration under the legal viability of the reform is the notion of consistency in the law in its treatment of voting and other civil rights. Could lowering the voting age to 16 align it with the other rights and responsibilities conferred at 16, as argued by supporters of the reform, or would it actually conflict with the existing legal landscape, as claimed by opponents of the reform?<sup>89</sup> To determine which side has the stronger argument, I look to both the national and international legal contexts for a systematic approach, if any, in the allocation of civil rights and responsibilities. I will then

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<sup>88</sup> Ministry of Education *The New Zealand Curriculum* (2007).

<sup>89</sup> Tremmel and others, above 62, at 155-156.

examine the degree to which lowering the voting age is consistent or conflicts with the approaches identified.

In the national legal context, civil rights and responsibilities do not converge on a specific age. Instead, New Zealanders acquire various rights and responsibilities at different ages from birth until the age of majority (20 years old).<sup>90</sup> Unsurprisingly, a wide range of legal entitlements are acquired when a person reaches the ages of 16 and 18. At age 16, a person can, *inter alia*, get a learner driver licence, get a firearms licence, give legal consent to sex, get married, or enter a civil union or *de facto* relationship with parental consent, and leave home if they have a place to live and can support themselves financially. At age 18, a person can, *inter alia*, vote and stand as a candidate in parliamentary or local authority elections, buy alcohol, cigarettes, tobacco and fireworks, get married, or enter a civil union or *de facto* relationship without parental consent, and serve on a jury. This variegated approach to allocating rights and responsibilities has been described as a way of “recognising the changing mental, emotional, and physical capacity of people over time and also provide safeguards where the vulnerability of children and young people is recognised”.<sup>91</sup>

On its surface, changing the voting age from 18 to 16 would not conflict with the national legal landscape as there was little convergence to begin with. Delving deeper, lowering the voting age would in fact be consistent with the variegated approach where rights and responsibilities are allocated in accordance with “the changing mental, emotional, and physical capacity of people over time”. The fact that 16 and 17-year-olds already have extensive rights and responsibilities indicates that, in the eyes of the law, they are deemed capable of making responsible and rational decisions, such as those involved in voting.<sup>92</sup> Furthermore, lowering the voting age to 16 would help to resolve the current tension in the law where it appears to require more maturity from citizens to vote as opposed to activities such as driving a car, using a firearm, and having and raising children.<sup>93</sup> Thus, the national legal context seems to be supportive of the reform.

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<sup>90</sup> For instance, a person at the age of five can be enrolled at a state school and must attend school between six and 16. A person from the age of 10 can be charged with murder or manslaughter, and from 14 can be charged with any criminal offence. At age 20, a person can, *inter alia*, adopt a child if they are a relative, place bets in a casino, get a licence to drive a taxi, bus or ambulance, and be a party to civil proceedings in the High Court or a District Court without a litigation guardian. See Community Law Manual Online “Legal ages: when you can do what” Community Law <[www.communitylaw.org.nz](http://www.communitylaw.org.nz)>.

<sup>91</sup> Community Law Manual Online, above n 90.

<sup>92</sup> Folkes, above n 64, at 53.

<sup>93</sup> Folkes, above n 64, at 53.

Turning to the international legal context, New Zealand is a party to many international treaties, but those of direct relevance are the International Covenant on Civil and Political Rights (ICCPR),<sup>94</sup> and the UN Convention on the Rights of the Child (UNCRC).<sup>95</sup> Both regulate political and civil rights but the latter specifically refers to the legal rights of youth and children. Of interest here is whether these conventions provide any guidance on how domestic law should allocate voting rights.

An examination of the ICCPR and UNCROC reveals a neutral stance on the question of lowering the voting age. The conventions neither prohibit nor call for its signatories to confer voting rights at the age of 16. However, it is notable that the UNCRC designates 18 as the age that separates children with limited legal capacity (granting parents the right to limit their children's self-determination) from adults who enjoy full civic rights.<sup>96</sup> It can be argued that New Zealand, in order to be an exemplary international citizen, should maintain a voting age of 18 to align more with the approach in the UNCRC. But, this is a weak argument as the experiences of countries that have lowered their voting age to 16 do not reveal any traces of international backlash in response to the change, signaling that voting age reforms are largely questions of domestic law and politics. Therefore, it seems that the international legal context does not present any obstacles to lowering the voting age in New Zealand.

While my analysis of the national and international legal contexts has confirmed the legal viability of lowering the voting age to 16, it is necessary still to examine the political viability of the reform. No matter how strong the consequentialist or principled arguments for the change, they would ring hollow if is no public support generating political will to institute the reform.

Regarding the level of public support for lowering the voting age, a poll conducted in 2014 involving nearly 3,000 New Zealanders found that only seven per cent supported the reform.<sup>97</sup> However, a more recent poll conducted this year of 303 people showed a very

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<sup>94</sup> International Covenant on Civil and Political Rights 999 UNTS 171 (opened for signature 16 December 1966, entered into force 23 March 1976).

<sup>95</sup> Convention on the Rights of the Child 1577 UNTS 3 (opened for signature 20 November 1989, entered into force 2 September 1990).

<sup>96</sup> Articles 1 and 14.

<sup>97</sup> Jack Vowles "The 2014 New Zealand Election Study (NZES): Frequencies: Section E" <[www.jackvowles.com](http://www.jackvowles.com)>.



different picture with over half of respondents in favour of lowering the voting.<sup>98</sup> When asked the reasons for their view, opponents of the reform emphasise the lack of political maturity among young people, specifically the lack of political knowledge and susceptibility to the influence of others.

Opponents also believe that voting rights are fundamentally different from those rights that are currently acquired at 16, such that lowering the voting age to 16 would introduce conflict in the legal landscape. Supporters of the reform disagreed on this point and considered that voting rights are complementary to the responsibility for paying tax already conferred on young people. Additionally, supporters cited the positive effects of lowering the voting age on turnout and social justice as reasons for backing the reform.

The explanations given by supporters and opponents of lowering the voting age reinforce the centrality of consequentialist arguments based on the effects of the reform, principled arguments based on political maturity of young people, and institutional arguments based on consistency in the law. Crucially, respondents on both sides of the debate were of the view that enhanced civics education should accompany the reform if it were to be introduced. This confirms the importance of examining political maturity arguments against the background of enhanced civics education.

My analysis of the proposal to lower the voting age to 16 in New Zealand from consequentialist, principled and institutional perspectives reveals a complex and multi-faceted debate. Research from countries with a voting age of 16 vote shows that this age group has a higher turnout compared to 18 to 21 year olds, but goes no further than that. Specifically, there is no concrete evidence to support the argument that enfranchising 16 and 17 year olds leads to positive, long-term impacts on overall voter behaviour that would enhance the legitimising, representative and control functions of voting. Perhaps future research can provide more insight into these long-term effects, but, for the time being, consequential arguments alone are insufficient to justify lowering the voting age.

On the critical question of political maturity, there is seemingly conflicting research from overseas on whether 16 and 17 year olds possess sufficient political interest, political knowledge and consistency between attitudes and vote choice to exercise their voting rights effectively. But, these findings can be reconciled in that they show that 16 and 17 year olds have the potential to develop the requisite political maturity to vote. Furthermore, the

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<sup>98</sup> Wood, above n 52.

combination of enhanced civics education together with a lower voting age would likely assist young New Zealanders in developing sufficient political maturity. Therefore, the proposal to lower the voting age should not be rejected on the sole basis of lack of political maturity among young people.

Lastly, in relation to institutional arguments, the national and international legal contexts do not present any significant legal obstacles to lowering the voting age. However, the political viability of the reform is questionable as deep-seated doubts about the political maturity of youth and disagreement on whether voting rights are consistent with other rights conferred at 16 mean that public opinion is at best ambiguous, if not downright opposed to the reform. Without public support to generate political action to lower the voting age, the outlook for lowering the voting age appears bleak indeed. Could the same hold true in the case of compulsory voting? It is this question to which I devote the remainder of this chapter to answer.

### *B Should we make voting compulsory?*

The concept of compulsory voting has its roots in Classical Athens, where political and philosophical thought attached utmost importance to civic virtue and political participation.<sup>99</sup> And while such participation was technically voluntary in this society, there were instances of legal enforcement that can be seen as ancient precursors to compulsory voting. Examples include the imposition of a fine for individuals who fail to attend assembly meetings, closing off streets that did not lead to the meeting place and suspending trade in the market place to ensure attendance at assembly meetings.<sup>100</sup> A more extraordinary example of legal enforcement was Solon's law on stasis, which held that "whoever does not take a stand in a city dispute shall lose their citizenship rights".<sup>101</sup> There are conflicting interpretations of Solon's law but many scholars agree that it was intended to protect citizens from insurgent leaders and ultimately safeguard the Athenian Constitution.<sup>102</sup>

Despite the fall of Athenian democracy, the vestiges of legally enforced political participation can be found in historic and contemporary contexts. Compulsory voting in

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<sup>99</sup> Athenians believed that one could only achieve "individual fulfilment through civic life". See Malkopoulou, above n 48, at 49-50.

<sup>100</sup> Malkopoulou, above n 48, at 53.

<sup>101</sup> Malkopoulou, above n 48, at 50.

<sup>102</sup> Malkopoulou, above n 48, at 52.

particular has been adopted in various countries as a result of colonial ties or tradition.<sup>103</sup> The practice has also been adopted as a means to stop vote buying, enhance party competition, prevent the dominance of a particular voter demographic, or reduce the cost of voter mobilisation campaigns.<sup>104</sup> New Zealand appears not to have been subjected to the same historical and sociopolitical factors that have led other countries to adopt compulsory voting. But, an argument can be advanced here that the present state of and outlook for voter turnout in New Zealand warrants a closer look at compulsory voting.

By legally requiring people to vote, compulsory voting appears to neutralise, or even fundamentally alter, the factors that contribute to non-participation. First, as people are made to engage more with political parties and their policies to inform their vote choice, levels of political interest may in fact increase under compulsory voting. Hence, the tide of political apathy may ebb away. Second, since it is virtually guaranteed that people will vote, politicians may be incentivised to respond to the needs and concerns of all voters, including disillusioned ones. Thus, the efficacy of voting may improve and cynicism towards political institutions may lessen under compulsory voting. Finally, requiring all voters to engage with elections and related political institutions may also hasten the political maturity of voters.

The hypotheses relating to compulsory voting show a lot of promise. And it is fortunate that there is an abundance of empirical research and evidence, albeit from overseas, about the effects of compulsory voting. These effects can be categorised into primary and secondary effects, where the former refers to the direct impact on turnout rates and the latter relates to any flow-on effects from increased turnout. On the other hand, there are fundamental concerns about compulsory voting from a rights-based perspective, as well as critical questions about how to design, implement and enforce compulsory voting laws in New Zealand. Accordingly, I will first analyse compulsory voting from a consequentialist perspective before moving on to principled arguments against adopting the solution, and finally institutional arguments about the legal and political viability of the reform.

Before delving into the analysis, it is important to note at the outset that ‘compulsory voting’ is a misnomer. Due to the secret ballot system, modern compulsory voting laws

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<sup>103</sup> See Shane Singh "Beyond Turnout: The Consequences of Compulsory Voting" (2014) September Political Insight 22, at 23-24: "For example, countries with Spanish heritage are relatively likely to make voting mandatory. In Switzerland, many of the cantons that adopted compulsory voting had existing traditions of forced political participation, including laws requiring members to wear swords to cantonal assemblies."

<sup>104</sup> Singh, above n 103, at 23-24.

effectively requires people to attend the polls only rather than requiring them to vote. Therefore, it would be more accurate to refer to 'compulsory attendance' or 'compulsory turnout' instead. But, 'compulsory voting' is the most commonly used term in the wider literature on the subject, hence will be employed in this paper.

Starting with the primary effects of compulsory voting on turnout, there is overwhelming evidence to show that the practice effectively increases turnout rates, particularly when it is accompanied by sanctions.<sup>105</sup> An examination of turnout levels across many different countries that have introduced or abolished compulsory voting laws is most telling.

Historical data from New Zealand's neighbour, Australia, provides strong evidence of the positive effect of compulsory voting on electoral participation. Prior to the introduction of compulsory voting in 1924, only 58 per cent of eligible voters cast a vote in the Federal elections. This figure then rose dramatically to 91.3 per cent in the election following the reform, representing an increase of 33.4 per cent.<sup>106</sup> Since then, voter turnout for Australian elections has never fallen below 90 per cent.<sup>107</sup> Although less pronounced, the same positive effect is observed in the Netherlands and Belgium when compulsory voting was introduced in 1917 and 1893, respectively.<sup>108</sup>

Aside from countries that have introduced compulsory voting, countries that have abolished it also provide persuasive evidence of the association between compulsory voting and turnout rates. A prime example is the Netherlands, which abolished the law in 1970, ending a voting system that lasted for 53 years. During the time that compulsory voting was instituted, turnout was consistently above 90 per cent. In the election immediately following the change, turnout fell by 15.8 per cent compared to the previous election. For the next decade, turnout rates remained at an average of 13.6 per cent below that of the election before the abolition of compulsory voting.<sup>109</sup>

The strong connection between compulsory voting and turnout rates can be explained using cost-benefit analysis or rational choice theory under compulsory and voluntary voting

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<sup>105</sup> Birch, above n 25, at 80.

<sup>106</sup> Tim Evans *Compulsory Voting in Australia* (Australian Electoral Commission, January 2006) at 7.

<sup>107</sup> Evans, above n 106, at 7.

<sup>108</sup> Birch, above n 25, at 80-81.

<sup>109</sup> Peter Miller and Ruth Dassonneville "High turnout in the Low Countries: Partisan effects of the abolition of compulsory voting in the Netherlands" (2016) 44 *Electoral Studies* 132 at 135.

systems.<sup>110</sup> This framework assumes that an individual is more likely to vote “if its perceived benefits outweigh its perceived costs.”<sup>111</sup> Evidently, New Zealand’s declining turnout rates indicate that the cost-benefit analysis for many people leads to the conclusion that the costs outweigh the benefits and it is not worthwhile to vote. Compulsory voting serves to reverse this conclusion by adding to the cost-benefit analysis the possibility of incurring a legal sanction for failing to vote. In this new decision framework, a rational person would likely consider that the benefits of voting (which now includes the avoidance of a legal sanction) outweigh the costs of voting.<sup>112</sup> Therefore, it is expected that turnout rates in New Zealand would increase with the introduction of compulsory voting, just like it has done for many other countries. As for the size of the increase, research suggests that the use of sanctions as part of compulsory voting laws would increase turnout by over 17 per cent, boosting New Zealand’s turnout to around 90 per cent (using 2014 as base level).<sup>113</sup>

In addition to increasing turnout rates, compulsory voting has been shown to change the composition of voting populations. As mentioned earlier, low turnout invariably means socially uneven turnout.<sup>114</sup> This phenomenon can also be explained by the cost-benefit analysis in that perceived costs and benefits change with different demographics. For instance, an older person is more likely to be interested in and knowledgeable about politics, hence perceives lower cognitive costs in formulating a vote decision. The same person is also more likely to be motivated by a sense of civic duty and be partial to a particular party, thus deriving more benefits from voting.<sup>115</sup> Conversely, a younger person is more likely to be disengaged from politics (perceiving higher cognitive costs), while being non-partisan and less driven to fulfil their civic duty (perceiving little or no benefits). Thus, abstention tends to be more prevalent among younger people compared with older people.

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<sup>110</sup> Shane Singh "Compulsory Voting and the Turnout Decision Calculus" (2015) 63 *Political Studies* 548.

<sup>111</sup> Shane Singh, above n 103, at 23.

<sup>112</sup> Singh, above n 110, at 549-550.

<sup>113</sup> See Birch, above n 25, at 85. Birch analysed the change in turnout levels for eight countries that adopted compulsory voting after World War II: Singapore (1958), Guatemala (1965), Dominion Republic (1966), Paraguay (1967), Turkey (1982), Laos (1989), Fiji (1990), and Thailand (1997). A cross-national analysis of these countries showed that “the average pre-post difference in the four states with sanctions is 17.6 per cent”. I have applied this finding to the New Zealand context by increasing the turnout for 2014 General Election (77 per cent) by 17.6 per cent to arrive at an estimated average turnout of 94.6 per cent.

<sup>114</sup> Statistics New Zealand, above n 13, at 8-9.

<sup>115</sup> Singh, above n 110, at 549-550.

The introduction of compulsory voting would adjust the cost-benefit analysis for all people regardless of their demographic and socioeconomic background, resulting in a more socially even and representative voting population. This theory is supported by extensive research showing that factors commonly correlated with turnout – age, political knowledge, income, perception of voting efficacy and party identification – have less influence on the composition of voter populations in compulsory voting systems compared to voluntary voting systems.<sup>116</sup>

There is little doubt that compulsory voting has a primary effect of producing high and socially even turnout. Beyond that, there is a myriad of secondary effects on voter behaviour and political outcomes. For the purposes of my analysis, three specific effects will be canvassed. The first relates to the quantity and diversity of political parties in parliament. Since compulsory voting produces socially even turnout, a greater range of political preferences would be communicated at the ballot box, thus shaping the composition of parliament and government.<sup>117</sup> This theory is supported by research on government characteristics in 43 countries which reveals that compulsory voting does in fact increase the number and ideological range of parties in government.<sup>118</sup>

Another secondary effect of high and socially even turnout pertains to government policy, specifically income redistribution by the state via taxes and transfers.<sup>119</sup> The presumption is that the virtually guaranteed turnout from voters from poorer socioeconomic backgrounds would prompt political parties to alter their policy agenda to reflect the needs of the new voters.<sup>120</sup> This is corroborated by research on government redistribution in 13 developed countries which showed a positive relationship between turnout rate and the extent of government redistribution.<sup>121</sup>

Lastly, it has been posited that compulsory voting may act as a check on corruption and abuse of public power by politicians.<sup>122</sup> This is grounded on the idea that disillusioned

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<sup>116</sup> Singh, above n 110.

<sup>117</sup> Lijphart above n 23; Malcolm Mackerras and Ian McAllister “Compulsory voting, party stability and electoral advantage in Australia” (1999) 18 *Electoral Studies* 217.

<sup>118</sup> See Christian B Jensen, Jae-Jae Spoon “Compelled without direction: Compulsory voting and party system spreading” (2011) 30 *Electoral Studies* 700 at 704.

<sup>119</sup> Vincent A Mahler “Electoral turnout and income redistribution by the state: A cross-national analysis of the developed democracies” (2008) 47 *European Journal of Political Research* 161.

<sup>120</sup> At 161-162.

<sup>121</sup> At 165.

<sup>122</sup> Birch, above n 25, at 131.

voters who, but for compulsory voting rules, would not otherwise participate in elections, may be more inclined to vote for options they believe to be most likely to curb corruption and abuse of power.<sup>123</sup> A comparison of corruption levels across 149 countries using the Transparency International Corruption Perceptions Index (the most widely used cross-national indicator of corruption) reveals that countries with strictly enforced compulsory voting laws have significantly lower levels of corruption compared to countries without such laws.<sup>124</sup>

So far, the consequentialist arguments appear to provide strong support for adopting compulsory voting. The legitimising function of voting is patently enhanced with the significant increase in turnout. Equally, the representative function of voting is strengthened with the addition of new and diverse voters to the electorate that impact on the quantity and diversity of political parties, as well as government policy. There is also some evidence to show that the control function is reinforced by compulsory voting.

Still, there remain key questions and concerns about the solution from a principled perspective. A major concern is directed at the obligatory inclusion of less politically informed and less motivated people into the electorate.<sup>125</sup> If these people are compelled to vote, they may very well vote in a way that is inconsistent or incongruous with their actual views and preferences.<sup>126</sup> This means that the representative function of voting may not be enhanced at all, despite having a more socially even voting population.<sup>127</sup> Accordingly, it is vital to address the question about the impact of compulsory voting on vote congruence.

Australian-based research has investigated exactly that by comparing voters' ideological positions with those of the parties they voted for.<sup>128</sup> Results showed that less politically

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<sup>123</sup> At 131-132.

<sup>124</sup> At 133.

<sup>125</sup> This would certainly be the case for New Zealand, where the majority of non-voters are disengaged from politics. See Statistics New Zealand, above n 13, at 8.

<sup>126</sup> See Jensen and Spoon, above 118, at 702. The authors point to the phenomenon of donkey voting "whereby voters complete their ballots quickly and without thought as to what, or whom, has received their vote." Evidence of donkey voting has been found in Australian Senate elections, where voters marked their ballots "sequentially in the order the candidates are listed, thus favouring those candidates higher up on the ballot."

<sup>127</sup> Marc Hooghe and Dieter Stiers "Do reluctant voters vote less accurately? The effect of compulsory voting on party-voter congruence in Australia and Belgium" (2017) 52(1) *Australian Journal of Political Science* 75 at 89.

<sup>128</sup> Hooghe and Stiers, above n 127, at 79.

informed and less motivated voters demonstrated lower vote congruence.<sup>129</sup> However, even though these voters cast less congruent votes compared with other voters, their preferences are nevertheless communicated on the aggregate level.<sup>130</sup> This suggests that inclusion of less politically informed and less motivated people into the voting population may not undermine the representative function of elections after all. Still, more research and evidence is needed to fully analyse the question of vote congruence.

Another source of apprehension is that compulsory voting might violate individual autonomy or the ability of a person to lead the life they want, free from external controls and influences. This can be swiftly addressed with reference to the basic notion that governments should not compel people to do something which they are unwilling to do, unless there are legitimate reasons for it. In New Zealand and around the world, people are already required by law to pay taxes, follow road rules and serve on juries, on top of a host of other compulsory laws, even though they may be unwilling to do so. The collective benefits gained from general compliance with these laws justify the use of legal compulsion. The same can be said about voting, given its legitimising, representative and control functions that are essential to the proper functioning of a democratic society like New Zealand.

Furthermore, it can be argued that genuine autonomy in relation to electoral participation does not presently exist for some New Zealanders. As highlighted earlier, turnout is systematically lower among people from poorer socioeconomic backgrounds, suggesting that voting is often inhibited by factors such as age, level of income and migrant status. In this context, a voluntary voting system merely establishes formal equality under which people have equal opportunity to vote whereas a compulsory voting system secures substantive equality by ensuring people realise their opportunity to vote and express their views and preferences at the ballot box. In this way, compulsory voting can be seen to promote individual autonomy by removing the structural barriers to electoral participation for some groups in society.

Aside from individual autonomy, there are also concerns that compulsory voting might infringe on basic human rights. These concerns gave rise to the case of *X v Austria*, where

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<sup>129</sup> At 89.

<sup>130</sup> At 89. The authors suggest that this finding can be explained by “hostile and reluctant voters – being less informed about politics – us[ing] a partisan heuristic to make up their vote choice and in doing so they apparently manage to arrive to the same vote choice as they would have if they would have been better informed.”



a barrister challenged the validity of compulsory voting for presidential elections in Austria.<sup>131</sup> The barrister argued before the European Commission on Human Rights that compulsory voting laws breached arts 9 and 10 of the European Convention on Human Rights which enshrine the freedom of thought, conscience and religion, and the freedom of expression, respectively. The Commission rejected the application, and held that, provided there was no compulsion to mark the ballot formally, compulsory voting does not violate arts 9 or 10 of the Convention. This was because “the duty of which the Applicant complains refers only to voting, in other words the fact of going to the polls” and the applicant could freely choose to vote for neither candidate by submitting a blank ballot.<sup>132</sup>

I completely agree with the view of the Commission and consider that compulsory voting would not breach the equivalent rights expressed in the New Zealand Bill of Rights Act.<sup>133</sup> Moreover, there are difficulties with using abstention from the polls as a form of political expression. As we have seen, there are various factors that contribute to non-voting, such as political apathy, cynicism, delayed maturity, and possibly even contentment with the current system. This creates ambiguity in the messages conveyed by people choosing to abstain from voting. A more effective form of political expression that sends a clear signal to government and politicians is actively casting a protest vote under a compulsory voting system.<sup>134</sup> Thus, it can be argued that compulsory voting can facilitate the freedom of expression by clarifying the political messages conveyed at the ballot box.

Finally, alarm has been raised about the possibility of compulsory voting breaching the right *not* to vote. Two aspects of this supposed right warrant scrutiny. First, though it may seem logical that the right to vote imports an inverse right not to vote, the legal status of the latter is uncertain. No court of law has ever confirmed the existence of such a right. In fact, the right not to vote has been indirectly tested many times before the courts in the United States, but to no avail.<sup>135</sup>

Second, it is doubtful whether such a right should even be recognised at law. It is often the case that an individual right to do something serves both public and private interests, and

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<sup>131</sup> *X v Austria* (1972) 15 Yearbook 468 (EComHR).

<sup>132</sup> At [472].

<sup>133</sup> New Zealand Bill of Rights Act 1990, ss 13 and 14.

<sup>134</sup> Engelen, above n 56, at 31.

<sup>135</sup> Jeffrey A Blomberg "Protecting the Right Not to Vote from Voter Purge Statutes" (1995) 64 Fordham Law Review 1017, n 18. See also *Hoffman v Maryland*, 928 F 2d 646, 648-9 (4th Cir, 1991), where the plaintiffs unsuccessfully argued that the right not to vote should be recognised because it is integral to the freedom of expression.

to create an inverse right not to do that thing would forsake the public interest that the right serves.<sup>136</sup> This is clearly illustrated in the context of the right to a public hearing, where courts have been reluctant to recognise what is essentially an inverse right to a private hearing. While this inverse right may serve the individual interest to privacy, it undermines the strong public interest in having justice done and seen to be done. Therefore, on balance, the strong public interest in conducting public hearings prevents the creation of an inverse right to a private hearing.

The concept of competing public and private interests also applies to the right to vote. It is one thing to allow people in voluntary voting systems to abstain from voting, but to formally recognise a legal right not to vote is entirely different matter. Not only does voting serve the individual interest in shaping government and its policies, but it also protects the paramount public interest of sustaining democratic government.<sup>137</sup> To formally recognise a right not to vote would be inimical to this paramount interest, hence the right should not, as a matter of principle, be given any legal status. Accordingly, any concerns that compulsory voting might breach the right not to vote are indefensible.

My analysis up to this point has yielded strong support for compulsory voting from both consequentialist and principled viewpoints. However, the legal and political viability of the solution cannot be ignored. Starting with legal viability, it is crucial to assess whether New Zealand satisfies certain conditions for compulsory voting laws “to be both effective, in terms of assuring high turnout, and appropriate, insofar as it is not used as a mechanism to forge consent or tyrannise political adversaries”.<sup>138</sup> These conditions are universal suffrage, free and competitive elections, and voter friendly electoral procedures. The last-mentioned condition is particularly important for mitigating the transaction and opportunity costs of voting, hence helping to ward off animosity towards compulsory voting.<sup>139</sup>

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<sup>136</sup> See Seth F Kreimer "Allocational Sanctions: The Problem of Negative Rights in a Positive State" (1984) 132 U PA L Rev 1293 at 1387.

<sup>137</sup> See Lisa Hill "Does compulsory voting violate a right not to vote?" (2015) 50(1) Australian Journal of Political Science 61 at 68. Hill emphasises that “the right to vote is fundamental: it is not only central to the perpetuation of representative democracy; it is partly constitutive of it and therefore too precious to be alienable, to be turned on and off like a tap as individuals please ... The right not to vote cannot be admitted because it cannot be universalised; doing so would endanger – and possibly destroy – the system for which it exists: representative democracy.”

<sup>138</sup> Lisa Hill “Democratic Assistance: A Compulsory Voting Template” (Refereed paper presented to the jubilee conference of the Australasian Political Studies Association, 2002) at 3.

<sup>139</sup> Lisa Hill "Public Acceptance of Compulsory Voting: Explaining the Australian Case" (2010) 46(4) Representation 425.

A survey of New Zealand's electoral laws shows that all three conditions are convincingly satisfied. The country has had universal suffrage since 1893, where voters can freely elect their representatives (facilitated by the secret ballot voting system) and political parties and candidates have equal opportunity to take part in elections. As for voter-friendly electoral procedures, efforts of the New Zealand Electoral Commission to promote and facilitate voter enrolments, publicise information about elections in many different languages, provide advance voting, postal voting and dictation voting for visually impaired voters, ensure that elections take place on a Saturday and that voting stations are largely accessible, all demonstrate the ease of voting in New Zealand. Having established that New Zealand has the necessary foundations to effectively institute compulsory voting, I will move on to consider issues of design, implementation and enforcement.

Starting with the design of a compulsory voting regime for New Zealand, an essential question revolves around the type of sanction imposed for failing to vote. The most common sanction used by compulsory voting countries is a monetary fine,<sup>140</sup> which attests to the proportionality of the punishment to the offence. New Zealand already imposes a fine of up to \$100 (\$200 for subsequent offending) on people who "knowingly or wilfully" fail to enrol to vote.<sup>141</sup> If compulsory voting were to be introduced, a logical development would be to extend the fine for non-enrolment to non-voting, as well as to use the current electoral register to implement the new regime. But, the effectiveness of the regime would be largely dependent on the extent to which people are prosecuted for failing vote.

Under the cost-benefit analysis of voting, there would be little incentive for people to comply with compulsory voting laws if law enforcement officials are slow to bring legal proceedings against non-voters. This is clearly illustrated in the case of compulsory enrolment. According to multiple Official Information Act releases, police have not prosecuted anyone for failing to enrol for the past three election cycles.<sup>142</sup> This has

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<sup>140</sup> Another type of sanction is the publicising of the names of non-voters. See Richard L Hasen "Voting without Law" (1996) 144(5) University of Pennsylvania Law Review at 2135 at 2136.

<sup>141</sup> Electoral Act 1993, s 82(7).

<sup>142</sup> Email from Kristina Temel (Electoral Commission) to Liam Stoneley regarding voter enrolments and prosecution statistics for the 2011 General Election (6 November 2014) pursuant to an Official Information Act 1982 Request to the Electoral Commission; Email from Gavin Knight (Statistics Manager at Police National Headquarters) to Liam Stoneley regarding prosecution statistics for the 2011 General Election (21 October 2014) pursuant to an Official Information Act 1982 Request to the Electoral Commission; Email from Kristina Temel (Electoral Commission) to Liam Stoneley regarding voter enrolments and prosecution

undoubtedly contributed to the present situation where around 400,000 age eligible voters are not yet enrolled to vote.<sup>143</sup> Of course, there are practical difficulties associated with enforcing compulsory enrolment as explained by the Chief Electoral Officer:<sup>144</sup>

Once a person applies for registration, they can't be prosecuted for an earlier failure to do so, so an expensive prosecution might be undertaken and then not proceed once they fill out an enrolment form and the application is lodged.

These difficulties are unlikely to impede the enforcement of compulsory voting laws. A person only has one chance to vote in a given election, and there would be no opportunity to remedy a breach of compulsory voting laws in the way that a person can subsequently enrol to vote after a charge has been laid. Therefore, at least in this respect, there are no practical obstacles to enforcing compulsory voting.

There is a further question of how law enforcement officials decide to prosecute a person for failing to vote. In Australia and many other compulsory voting countries, it is not every instance of non-voting that is met with a charge. The standard practice is to demand an explanation first. Only when the explanation is deemed unsatisfactory will a prosecution be commenced.<sup>145</sup> This goes some way to avoiding heavy administrative expenses by filtering out cases with legitimate excuses for non-voting, such as a medically certified illness, serious injury or other exceptional circumstances.

Ultimately, it is for our lawmakers to decide the substance and form of compulsory voting laws if they are to be introduced in New Zealand. But, in my brief sketch of the possible design, implementation and enforcement of compulsory voting laws, it appears that the regime is a legally viable solution that can be instituted with minimal practical difficulties.

Finally, to examine the political viability of compulsory voting, I will focus on the level of public support for the solution. Regrettably, there is no New Zealand-based research on public attitudes toward compulsory voting. However, relevant research from the United

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statistics for the 2008 and 2014 General Elections (3 February 2015) pursuant to an Official Information Act 1982 Request to the Electoral Commission.

<sup>143</sup> Katarina Williams "The election fines cops aren't handing out" Stuff News (5 September 2017) <[www.stuff.co.nz](http://www.stuff.co.nz)>.

<sup>144</sup> Williams, above n 143.

<sup>145</sup> Anne Twomey "Compulsory Voting in a Representative Democracy: Choice, Compulsion and the Maximisation of Participation in Australian Elections" (2013) 13(2) Oxford University Commonwealth Law Journal 283.

Kingdom, from which New Zealand has derived its much of its political and constitutional culture, can provide an indication of the attitudes toward compulsory voting among New Zealanders.

Results from recent public opinion polls suggest that between three and four of every ten Britons support compulsory voting, even though no major political party has spoken out in favour of the reform.<sup>146</sup> However, the moderate levels of support evidenced by public opinion polls must be qualified by the general distaste toward compulsory voting among political elites.<sup>147</sup> Members of this minority group may accept the idea of voting as a civic duty from a philosophical perspective, but consider that “to institutionalise this duty in law would be going too far, as the right to vote implies the right not to vote.”<sup>148</sup> While New Zealand-based research is certainly needed to determine whether New Zealanders share these views, the evidence from the United Kingdom is testimony to the predominance of the view of “democratic liberty as freedom from coercion”,<sup>149</sup> and indicates that rights-based arguments are likely to have a negative impact on public attitudes to compulsory voting in New Zealand as well.

My examination of compulsory voting from consequentialist, principled and institutional viewpoints finds a relatively strong case for adopting the solution. Unlike the proposal to lower the voting age, the primary and secondary effects of compulsory voting have been extensively researched. There is little doubt that compelling people to vote produces high and socially even turnout, with various secondary effects on political outcomes and institutions that go a long way in promoting the legitimising, representative and control functions of voting. Thus, consequential arguments provide strong support for adopting compulsory voting in New Zealand.

In respect of principled arguments against compulsory voting, I consider the concerns around vote congruence to be overstated in light of evidence which shows that the preferences of less politically informed and less motivated people are still communicated on the aggregate level. In addition, I explored three distinct rights-based objections to compulsory voting, namely that such laws breach individual autonomy and liberty, statutory human rights, as well as the notional right not to vote. Drawing on the unique nature of voting rights and a decision of the European Commission of Human Rights, I

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<sup>146</sup> Birch and Lodge, above n 46, at 387.

<sup>147</sup> At 387-388.

<sup>148</sup> At 386.

<sup>149</sup> At 386.

argue that these objections are largely groundless and indefensible. Therefore, principled arguments do not present huge obstacles to adopting compulsory voting laws.

The same cannot be said, however, for institutional arguments. Granted, New Zealand is well placed to introduce compulsory voting and the regime can be effectively enforced without incurring heavy expenses. Nevertheless, public support remains pivotal as to the political feasibility of compulsory voting. Unfortunately, there is no available evidence on this issue in the New Zealand context, but research from the United Kingdom suggests that a significant proportion of New Zealanders will be opposed to the reform. Still, institutional arguments aside, the case for compulsory voting appears to be more convincing than the proposal to lower the voting age to 16.

### *C A hybrid solution*

In light of the uncertainties around the political viability of compulsory voting and lowering voting age of 16 (which arise from uncertainties pervading consequentialist and principled arguments), it may be worthwhile to consider a third solution to address New Zealand's declining turnout rates: to make voting compulsory, but only for the first election for which an individual is eligible to vote, together with the lowering of the voting age to 16. I argue that this hybrid solution overcomes many of the obstacles identified in my separate analyses of compulsory voting and lowering the voting age to 16 while retaining the key strengths of both solutions.

As discussed earlier, the major obstacle to instituting compulsory voting in New Zealand appears to be the political viability of the reform. While I have come to the view that compulsory voting does not unjustifiably encroach on individual autonomy and human rights, a significant portion of New Zealanders may disagree. After all, full-blown compulsory voting requires all eligible voters to vote in each and every election that takes place in their lifetime. Under the hybrid solution, eligible voters are only required to vote once and only once in their lifetime. Compared to full-blown compulsory voting, this solution represents a significantly smaller (perceived) encroachment on individual autonomy and human rights, hence may be less objectionable in the public's view. But, the corollary of modifying compulsory voting so that it only applies to first-time voters is the reduction in its potential to generate high and socially even turnout. This may be an acceptable tradeoff however if its combination with lowering the voting age to 16 means that habitual voting is significantly increased among current and future voters.

Nevertheless, first-time compulsory voting may itself be open to criticism for unjustifiably discriminating against young people as it would impact exclusively on 16-18 year olds. It should be recalled that young New Zealanders are already subject to a multitude of age-related restrictions and responsibilities, an obvious example being compulsory attendance at school from the ages of 6 to 16. These laws are a set of the special measures that recognise the changing mental, emotional and physical capacity of youth, and necessary to safeguard their interests and needs. Requiring young people to vote in the first election for which they are eligible would logically form part of these special measures to protect the interests of young people in the political sphere. Additionally, the use of compulsion in this instance lasts no more than the time it takes to fill out a ballot paper – a relatively minor form of compulsion that is wholly proportionate to the critical goal of enhancing youth participation. It follows that criticisms of first-time compulsory voting on the basis that it would unjustifiably discriminate against youth should be rejected.

In my evaluation of lowering the voting age to 16, I concluded that the consequentialist arguments for the solution are weak as there is no concrete evidence of its long-term effects on voter turnout and other political institutions. Under the hybrid solution, the long-term effects can be identified with more confidence based on existing research of voting as a habit-forming activity. Merely extending the vote to 16 and 17 year olds may not instill the habit of voting, but requiring them to exercise that right in the first available instance would significantly increase the likelihood of the habit forming to feed into long-term trends of electoral participation. At the same time, the knowledge that first-time voters are virtually guaranteed to turn out and vote would likely prompt politicians to respond more readily to the interests and concerns of youth, thereby promoting social justice. In this way, the hybrid solution moderates the uncertainties pervading consequentialist arguments around lowering the voting age as a stand-alone reform.

The other major obstacle to lowering the voting age revolves around the political maturity of youth. Overseas research shows that 16 and 17 year olds are capable of developing sufficient political maturity to vote, but it is nevertheless uncertain how applicable this research is to the New Zealand context. Assurance may be gained from enhancing civics education in our schools to ensure that our young people learn to exercise the vote effectively, but doubts linger as to whether this goes far enough. If voting were compulsory while young people were still attending school, as envisioned by the hybrid solution, there would be an even greater impetus for teachers to provide information and guidance on political participation. Therefore, any doubts about the lack of political maturity among youth or the effectiveness of civics education in developing political maturity may be

alleviated to a greater extent under the hybrid solution compared to lowering the voting age by itself.

Furthermore, first-time compulsory voting with the voting age lowered to 16 is easier to implement than full compulsory voting as it only applies to a small proportion of the voting population. Again, the process of demanding an explanation first before deciding whether to prosecute can be used to limit the costs of enforcing the regime. Following that, there should be little in the way of practical obstacles to introducing this hybrid solution.

#### *IV Conclusion*

Election year has been and gone, taking with it the spotlight on voting and the electoral process. But, as illustrated in this paper, voter turnout and its role in sustaining democratic government are topics worthy of discussion whether or not election year is upon us.

While turnout rates in New Zealand are not as dire as those of comparable countries, the rise in habitual non-voting means that we will continue to see a steep decline in turnout, such that turnout has been predicted to drop to 50 per cent by 2050. The dangers of this trajectory are manifest, as voting serves essential functions of legitimising government, representing the voices of New Zealanders, and controlling the exercise of public power.

An examination of the available research suggests that apathy, cynicism and delayed maturity all contribute to non-voting among New Zealanders. Accordingly, I evaluate the solutions of lowering the voting age to 16 and compulsory voting and find that neither solution is suitable for adoption in New Zealand today. In regards to lowering the voting age, the paucity of research on its long-term effects means that consequentialist arguments for the solution are weak, while the principled arguments hinge on the success of civics education in developing political maturity among youth. Furthermore, the uncertainties around public opinions of the reform present institutional difficulties to lowering the voting age.

As for compulsory voting, consequentialist arguments for the reform are strong as extensive research attests to the effectiveness of the solution in producing high and socially even turnout, with various secondary effects on political institutions. Furthermore, the special nature of voting rights means that principled arguments against the solution cannot be sustained. Yet, a significant portion of the public is likely to be opposed to the reform, thus creating institutional obstacles to its adoption. Against this background, I propose a



hybrid solution of making voting compulsory for the first election for which an individual is eligible to vote, together with lowering the voting age to 16. I argue that this hybrid solution overcomes many of the obstacles that were identified with the separate solutions while retaining their key strengths at the same time.

It should be emphasised that discussions around these proposed solutions are not static, and instead adapt and evolve along with the emergence of new research and evidence. It is my hope that this paper can provide a platform on which further discussions and research can take place about issues that are undoubtedly of critical importance to current and future generations of New Zealanders.

*Word count: 13,381 words (excluding title page, contents and footnotes).*

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