

MADELEINE JUDD

**WHY STICK TO THE STATUS QUO? AN ARGUMENT
FOR REMOVING THE MINIMUM VOTING AGE**

Faculty of Law

Victoria University of Wellington

2020

CONTENTS

I	INTRODUCTION.....	4
II	THE VOTING AGE DEBATE: FRAMING THE DISCUSSION	5
A	History of lowering the voting age.....	5
B	The debate over lowering the voting age to 16	6
C	Framing the debate	7
III	A RIGHT TO VOTE FOR CHILDREN	8
A	The right to vote in New Zealand law.....	8
B	The right to vote in international law.....	9
IV	THE CHILDREN’S RIGHTS FRAMEWORK.....	11
A	The relevance of children’s rights to justify the minimum voting age.....	11
B	The CRC and the children’s rights discourse.....	12
C	The relevant rights under the CRC.....	13
1	Article 3	13
2	Article 5	15
3	Article 12	18
V	IS THE MINIMUM VOTING AGE AN UNREASONABLE RESTRICTION ON THE RIGHT TO VOTE UNDER THE CHILDREN’S RIGHTS FRAMEWORK?.....	23
A	Competence	23
1	Is competence to vote a reasonable restriction on the right to vote?	24
2	Does the minimum voting age reflect the age that people have the competence to vote?	29
B	Independence.....	30
1	Is a lack of independence a reasonable restriction on the right to vote?.....	30
2	Does the minimum voting age reflect the age that people have the independence to vote?	31
C	Protection.....	34
1	Is a child’s need for protection a reasonable restriction on the right to vote?	34
D	Youth Parliaments and Councils.....	41
VI	ALTERNATIVES TO A MINIMUM VOTING AGE	45
VII	CONCLUSION.....	48
VIII	POSTSCRIPT	50
	Word count 53	
	BIBLIOGRAPHY.....	54

Abstract

This paper seeks to consider whether we could change the status quo by removing the minimum voting age completely as a bar to the right to vote. This paper considers this question in light of New Zealand's international obligations, in particular the children's rights framework of the Convention on the Rights of the Child and the broader children's rights discourse. This paper will first consider whether children can have the right to vote under domestic law or New Zealand's international obligations. It will then assess whether the three primary justifications for the minimum voting age, competence, independence and protection, are a reasonable restriction on the right to vote considering the children's rights framework. The minimum voting age will be a reasonable restriction on the right to vote if these justifications are a reasonable restriction on the right to vote, and the minimum voting age effectively reflects these justifications. Suppose these justifications are not a reasonable restriction on the right to vote. In that case, the minimum voting age may still be a reasonable restriction on the right to vote if a child's exercise of their participation rights through youth parliaments and councils can uphold children's rights just as, or more, effectively than the vote. Finally, this paper will consider any alternatives to the vote that could amount to a reasonable restriction on the right to vote, again considering the children's rights framework.

Subjects, Topics

Children's rights; the right to vote; children's suffrage; minimum voting age; participation rights; proxy vote.

I Introduction

People often believe the status quo to be the natural order until one day it is not. In the 18th century, when representative democracy began to gain traction throughout the western world, the status quo was that only white, male citizens over 21 years old, who owned land, could vote.¹ Over time, the status quo shifted as people began to question this narrow definition of the *demos*, being influenced by ideas of equality and anti-discrimination. With much lobbying and political pressure, States granted suffrage to the poor, non-white citizens, women and, in many countries, the voting age was reduced to 18 or lower.

In August 2020, the Make It 16 campaign set to challenge the status quo yet again. The group of under 18-year-olds applied for the Wellington High Court to make a declaration that the minimum voting age of 18 is a form of unjustified age discrimination that is inconsistent with s 19 of the New Zealand Bill of Rights Act 1990 (NZBORA).² To succeed, Make It 16 must convince Justice Doogue that section 12 of the NZBORA that limits the right to vote to those over 18 is an unjustified limitation on section 19 of the same Act.³ They hope that a declaration of inconsistency will put political pressure on parliament to lower the voting age to 16.⁴ What the Make It 16 campaign does not seek to address is whether the minimum voting age, at any age, is inconsistent with s 19. The judgment for this case was released on the 8 October and is addressed in a postscript.

This paper seeks to consider whether we could change the status quo radically way by removing the minimum voting age completely as a bar to the right to vote, rather than merely lowering the voting age yet again. This paper takes a unique approach by considering this question in light of international obligations, in particular the children's rights framework of the Convention on the Rights of the Child (CRC) and the broader children's rights discourse.

¹ Robert A. Dahl "Democracy" (20 July 1998) Britannica <www.britannica.com>.

² New Zealand Bill of Rights Act 1990, s 19; Andrew Geddis "The campaign to lower the voting age arrives today at the High Court. Here's what is at stake" (online ed, New Zealand, 24 August 2010).

³ New Zealand Bill of Rights Act, ss 12 and 19; Geddis, above n 2.

⁴ Geddis, above n 2.

Firstly, this paper will consider whether children can have the right to vote under domestic law or New Zealand's international obligations under the International Covenant on Civil and Political Rights (ICCPR). It will then assess whether competence, independence and protection, being three justifications for the minimum voting age, are a reasonable restriction on the right to vote considering the children's rights framework and whether this means the minimum voting age is a reasonable restriction on the right to vote. Suppose these justifications are not reasonable restrictions on the right to vote. In that case, the minimum voting age might still be a reasonable restriction on the right to vote if a child's exercise of their participation rights through youth parliament's and councils can uphold children's rights just as, or more, effectively than the vote. Finally, this paper will consider any alternatives to the vote could amount to a reasonable restriction on the right to vote considering the children's rights framework. Three key findings are made:

- (1) Under New Zealand's international obligations, children have the right to vote unless limiting their right is a reasonable restriction.
- (2) Competence and independence are reasonable restrictions on the right to vote, but protection is not considering the children's rights framework. However, the minimum voting age does not reflect the age that people have the competence or independence to vote; therefore, the minimum voting age is not a reasonable restriction on the right to vote. Further, a child's exercise of their participation rights through youth parliaments and councils do not uphold children's rights better than the vote, so they will not suffice as an alternative to giving children the vote.
- (3) Giving parents a proxy vote for their child until the child has the minimum competence to vote for themselves is a reasonable restriction on the right to vote. It should be adopted as an alternative to the minimum voting age.

II The voting age debate: framing the discussion

A History of lowering the voting age

Globally, the voting age of different States range from 16 – 25, but the vast majority (at least 205 States) have a minimum voting age of 18.⁵ While the minimum voting age of 18 has become the status quo, the minimum voting age of 18 is a relatively new phenomenon. New Zealand’s voting age was lowered from 21 to 20 in 1969 and then to 18 in 1974.⁶ Between 1970-1973, the UK, Canada, Germany, the U.S., Australia and others all passed legislation lowering the voting age to 18.

In the past 15 years, there has been another movement to reduce the voting age to 16. Argentina, Austria, Brazil, Cuba, Ecuador, Malta, Nicaragua and Scotland are all States that have lowered their minimum voting age to 16 in their general elections.⁷ Wales will join this list in 2021.⁸ East Timor, Ethiopia, Greece, Indonesia, South Korea, South Sudan, and Sudan have also lowered their minimum voting age to 17.⁹ Canada, Australia, the U.K., the U.S., and New Zealand have also contemplated lowering the voting age.¹⁰

B The debate over lowering the voting age to 16

Supporters of the movement argue that 16 and 17-year-olds deserve the vote because they would be competent voters, they already have adult responsibilities and they are likely to participate because they are involved in politics in other ways.¹¹ They argue that lowering the voting age will ensure children’s interests are better represented by politicians to balance out the effect of an ageing population and create a habit of voting that will increase voter turnout long term.¹²

⁵ BatchGeo “Voting Age Around the World” BatchGeo <<https://batchgeo.com/>>.

⁶ Megan Whelan “A brief history of voting in New Zealand” *Radio New Zealand* (online ed, 27 June 2014).

⁷ Raffaele Piccolo and Matthew Stubbs “Lowering the Voting Age: A Human Rights Perspective” *The Bulletin* (Law Society of S.A, South Australia, December 2018) at 23; BatchGeo, above n 5. .

⁸ Senedd Cymru Welsh Parliament “Votes at 16 for Senedd Elections” Senedd Cymru Welsh Parliament <<https://senedd.wales/en/Pages/Home.aspx>>.

⁹ BatchGeo, above n 5.

¹⁰ National Youth Rights Association “Top Ten Reasons to Lower the Voting Age” National Youth Rights Association <<https://www.youthrights.org/>>.

¹¹ National Youth Rights Association, above n 10; Piccolo and Stubbs, above n 7, at 23.

¹² National Youth Rights Association, above n 10; John Wall “Democratising democracy: the road from women’s to children’s suffrage” (2014) 18 *IJHR* 646 at 654.

There is significant opposition to this movement. Opponents argue that children do not have the political competence to be able to vote.¹³ Further, they argue that children will not vote independently but will vote according to their parents, not their own, best interests.¹⁴ This lack of independence will affect how representative democratic institutions are and may make children vulnerable to exploitation.¹⁵ Giving children the vote would also risk giving children adult responsibilities and make it harder to protect children.¹⁶

C Framing the debate

The underlying presumption of this voting age debate is that the minimum voting age is a non-discriminatory standard qualification for the vote.¹⁷ In contrast, this paper considers whether children have the right to vote inherently, and this right has been taken away. If children have the right to vote inherently, the burden shifts from children to prove that they should be given the vote, to the State to prove that there are legitimate reasons for taking a child's right to vote away.¹⁸ Accordingly, to assess whether we can remove the minimum voting age as a bar to the right to vote and children should have suffrage, we must first consider whether children have the right to vote and this right has been taken away, or children do not have the right to vote, and the State must extend this right to enfranchise them.

¹³ Tak Wing Chan and Matthew Clayton "Should the voting age be lowered to sixteen? Normative and empirical considerations" (2006) 54 *Polit. Stud.* 533.

¹⁴ Andrew Rehfeld "The Child as Democratic Citizen" (2011) 633 *ANNALS* 141 at 146; Markus Wagner, David Johann and Sylvia Kritzinger "Voting at 16: Turnout and the quality of vote choice" (2012) 31 *Elect. Stud.* 372 at 372.

¹⁵ Wall, above n 12, at 648; Sonja C. Grover *Young People's Human Rights and The Politics of Voting Age* (Springer Dordrecht Heidelberg, London, 2011) at 211.

¹⁶ Piccolo and Stubbs, above n 7, at 24; Wall, above n 13, at 648.

¹⁷ Grover, above n 15, at 37.

¹⁸ Maura Priest "Why Children Should Be Allowed to Vote" (2016) 30 *Public Aff. Q.* 215 at 225.

III A right to vote for children

A The right to vote in New Zealand law

Section 12(a) of the NZBORA protects the right to vote. It states that “[e]very New Zealand citizen who is of or over the age of 18 years... has the right to vote”.¹⁹ This is affirmed in s 74(1) of the Electoral Act 1993 which states “every *adult* person is qualified to be registered as an elector of an electoral district [emphasis added]” where adult “means a person of or over the age of 18 years”.²⁰

Section 5 states that any rights in the NZBORA can “be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society”.²¹ This section reflects that while a liberal State protects against discrimination, some discrimination in the application of rights may be necessary and justifiable, as long as it is not arbitrary.²² *Hansen v R* outlined that to assess whether a limit to a right is justifiable requires a two-step test: whether the provision serves an important and significant objective, and whether there is a rational and proportionate connection between the provision and the objective.²³

Legislators have expressly built the minimum voting age into the right to vote, meaning Section 5 cannot be used to challenge the minimum voting age as a limitation on the right to vote.²⁴ Therefore, the right to vote does not exist for persons under 18 years of age in

¹⁹ New Zealand Bill of Rights Act, s 12(a).

²⁰ Electoral Act 1993, ss 74(1) and 3(1)(a).

²¹ New Zealand Bill of Rights Act, s 5.

²² Priest, above n 18, at 217.

²³ *Hansen v R* [2007] NZSC 7; Attorney-General Hon Christopher Finlayson *Report of the Attorney-General under the New Zealand Bill of Rights Act 1990 on the Electoral (Disqualification of Convicted Prisoners) Amendment Bill* (Order of the House of Representatives, 2010) at 10.

²⁴ New Zealand Bill of Rights Act, s 5; Stephan Kessen “The Legitimacy of Disenfranchising Children” (LLM Research Paper, Victoria University of Wellington, 2010) at 11; Paul Rishworth and others *The New Zealand Bill of Rights* (Oxford University Press, Melbourne, 2003) at 266.

New Zealand legislation, and if children were to gain the right to vote under New Zealand's law, the State must extend this right to enfranchise them.

We might circumvent the built-in limitation on the right to vote by arguing that s 12(a) and s 74(1) is an unjustified limitation on the right to freedom from discrimination protected under s 19 of the NZBORA. This argument suggests that, but for the age discrimination inherent in these provisions, children have the right to vote.²⁵ Section 19 upholds that “[e]veryone has the right to freedom from discrimination on the grounds of discrimination in the Human Rights Act 1993”.²⁶ Section 21(1)(i) of the Human Rights Act (HRA) provides that everyone has the right to freedom from discrimination on the grounds of age.²⁷ Age is defined as “any age commencing with the age of 16 years”.²⁸

Under this approach, the minimum voting age at any age below 16 is still a justified limitation on the right to freedom from discrimination protected under s 19. Further, Kessen doubts that this argument could prove 16 and 17-year-olds have the right to vote. We must assume that the New Zealand legislature regards all provisions of the NZBORA to be of equal value.²⁹ Therefore, we cannot measure s 12(a), or s 74(1) that flows directly from s 12(a), against s 19 of the NZBORA. Accordingly, we come to the same conclusion that if children were to gain the right to vote under New Zealand's law, the State must extend this right to enfranchise them.

B The right to vote in international law

New Zealand has signed and ratified the ICCPR, which states that “[e]very citizen shall have the right...without unreasonable restrictions...[t]o vote” under article 25(b).³⁰ Article

²⁵ New Zealand Bill of Rights Act, s 19.

²⁶ New Zealand Bill of Rights Act, s 19.

²⁷ Human Rights Act 1993, s 21(1)(i).

²⁸ Human Rights Act, s 21(1)(i)(iii).

²⁹ Kessen, above n 24, at 20.

³⁰ International Covenant on Civil and Political Rights, 999 UNTS 171 (adopted and opened for signature 16 December 1966, entered into force 23 March 1976, ratified by New Zealand on 28 December 1978), art

18 of the Vienna Convention requires that a State “refrain from acts which would defeat the object and purpose of a treaty when” they have “signed the treaty...subject to ratification, acceptance or approval”.³¹ New Zealand has a dualist system meaning a treaty is only binding in law when it is specifically incorporated into New Zealand law. However, New Zealand should still aim to refrain from acts that would defeat its obligations under the ICCPR regarding the right to vote. The long title of the NZBORA confirms this obligation by stating that it is an Act that affirms New Zealand’s commitment to the International Covenant on Civil and Political Rights (ICCPR).³²

The ICCPR does not define “citizen” to have an age limit, suggesting children have the right to vote under the ICCPR. Given New Zealand’s obligations under the ICCPR, it is possible to argue that the right to vote *prima facie* does exist for persons under 18 years old in New Zealand but is limited in domestic legislation through the minimum age requirement of 18 years under s 12(a) and s 74(1). Thus, we can use international law as a basis for arguing that the State has the burden to prove that there are legitimate reasons for taking a child’s right to vote away.

Article 25(b) provides a standard that the State must prove to justify denying children’s suffrage. It states that every citizen shall have the right to vote “without unreasonable restrictions” under article 25(b).³³ The Human Rights Committee clarified that “without unreasonable restrictions” means that any restriction on the right to vote must be objective, reasonable and proportionate.³⁴ The Office of the United Nations High Commissioner for

25(b); The Ministry of Justice “Constitutional Issues & Human Rights” (19 August 2020) The Ministry of Justice <www.justice.govt.nz>.

³¹ Vienna Convention on the Law of Treaties 115 UNTS 331 (opened for signature 23 May 1969, entered into force 27 January 1980), art 18.

³² New Zealand Bill of Rights Act 1990, Long Title; The Ministry of Justice, above n 30.

³³ International Covenant on Civil and Political Rights, art 25(b).

³⁴ Human Rights Committee *General Comment No. 25: The Right to Participate in Public Affairs (Voting Rights and the Right of Equal Access to Public Service)* CCPR/C/21/Rev 1/Add 7 (1996); Piccolo and Stubbs, above n 7, at 22; Human Rights Law Resource Centre (Melbourne) “The Human Right to Vote and Participate in Public Affairs: Submission to the Senate Finance and Public Administration Legislation Committee Inquiry into the Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005” at [2.1].

Human Rights (OUNHCHR) adds that any restrictions on the right to vote must be necessary in a democratic society for a public goal.³⁵ In determining if a restriction is objective, reasonable, proportionate and necessary, we must take into account that the right to vote is essential to citizens who are marginalised or disadvantaged. Giving these groups the opportunity to participate in decision-making processes contributes to social inclusion, societal engagement and civic responsibility.³⁶

If the minimum voting age is an unreasonable restriction on the right to vote, we must remove the minimum voting age as a bar to the right to vote to ensure New Zealand is upholding its obligations under the ICCPR.³⁷ Although the Human Rights Committee stated that setting a minimum age limit for the right to vote *may* be a reasonable restriction, and the OUNHCHR stated that setting a minimum age limit is an example of a restriction on the right to vote that would be reasonable and the right to vote should be available to every adult citizen, this is not a decisive finding, and it is worth assessing in-depth whether the minimum voting age is a reasonable restriction.³⁸

The burden is on the State to prove that a restriction on the right to vote is reasonable. If this cannot be proved, the minimum voting age should be removed as a bar to the right to vote and children should have suffrage.

IV The children's rights framework

A The relevance of children's rights to justify the minimum voting age

³⁵ Office of the United Nations High Commissioner for Human Rights *Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies* (2002) at [48].

³⁶ Human Rights Law Resource Centre, above n 34, at [2.1].

³⁷ Kessen, above n 24, at 12.

³⁸ Kessen, above n 24, at 13; Office of the United Nations High Commissioner for Human Rights *CCPR General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote)* CCPR/C/21/Rev.1/Add.7 (1996) at [4] and [10].

To assess whether the minimum voting age is an objective, reasonable, proportionate and necessary restriction on the right to vote is a extensive and discretionary test. Article 31 of the Vienna Convention states that a treaty shall be interpreted “in good faith in accordance with the ordinary meaning to be given to the terms of the treaty...” together with “any relevant rules of international law applicable in the relations between the parties”.³⁹ This rule suggests we can look to other international treaties that a State has ratified to interpret the reasonable restriction rule under s 25(b).

New Zealand has ratified the CRC. Therefore, New Zealand should aim to refrain from acts that would defeat its purpose and uphold the obligations created under it, although there is no legislative duty to give effect to the CRC.⁴⁰ The minimum voting age will be considered reasonable or proportionate if the minimum voting age upholds CRC rights and obligations. Thus, we can use the children’s rights framework to help assess whether the minimum voting age is a reasonable restriction on a child’s right to vote.

B The CRC and the children’s rights discourse

The right to non-discrimination (article 2), the best interests of the child (article 3), the right to life and development (article 6) and the right to express one’s opinion and be heard (article 12) are the four basic tenets of the CRC that underly and influence the interpretation of all other CRC rights.⁴¹ Hammarberg classifies the rights enshrined in the CRC as the “3 P’s” which include (1) protection rights that protect the child from harmful activities; (2) provision rights that provide children access to certain goods and services they need to

³⁹ Vienna Convention on the Law of Treaties, art 31(1) and 31(3)(c).

⁴⁰ Vienna Convention on the Law of Treaties, art 18; Louise Gwenneth Phillips, Jenny Ritchie and Francisco Perales “Surveying support for child and youth political participation in Australia and New Zealand” (2019) 23 *Citizsh. Stud.* 460 at 461.

⁴¹ Convention on the Rights of the Child, 1577 UNTS 3 (opened for signature 20 November 1989, entered into force 2 September 1990), arts 2, 3, 6 and 12; Ann Quennerstedt “Balancing the Rights of the Child and the Rights of Parents in the Convention on the Rights of the Child” (2009) 8 *J. Hum. Rights* 162 at 164.

promote their wellbeing; and (3) participation rights that give children the right to act in certain circumstances and the right to be involved in decision-making.⁴²

The inclusion of participation rights in the CRC demonstrates that the CRC does not adopt a paternalistic approach that only prioritises protection rights because children's capacities are still evolving.⁴³ However, by still upholding protection and provision rights for children, the CRC's does not take the radical children liberationist approach adopted by Verhellen, Farson and Holt. These theorists argue that children should have all the rights that adults have, based on the principle that there should be equality of all people, regardless of age.⁴⁴ Instead, the CRC takes what Freeman calls a more neutral "liberal paternalism" approach that children should have the right to autonomy because overprotection can be damaging to a child.⁴⁵ However, they should not have all the same rights as adults because this might damage children in the long-term given children's unique needs and vulnerabilities. This approach requires finding the necessary balance between a child's need for protection and a child's right to autonomy. Thus, when using the children's rights framework to assess whether the minimum voting age is a reasonable restriction on a child's right to vote, we must evaluate how the articles strike a balance between protection and autonomy, and whether the minimum voting age reflects this.

C The relevant rights under the CRC

The most relevant articles under the CRC to assess if the arguments for the minimum voting age justify it as a reasonable restriction on the right to vote are articles 3, 5 and 12.

1 Article 3

⁴² Rudi Roose and Maria Bouverne-De Bie "Do Children Have Rights or Do Their Rights Have to be Realised? The United Nations Convention on the Rights of the Child as a Frame of Reference for Pedagogical Action" (2007) 41 J. Philos. Educ. 431 at 431.

⁴³ Bronagh Byrne "Do Children still need to Escape Childhood? A Reassessment of John Holt and his Vision for Children's Rights" (2016) 24 Int'l J. Child. Rts. 113 at 122.

⁴⁴ Roose and Bouverne-De Bie, above n 42, at 432.

⁴⁵ Roose and Bouverne-De Bie, above n 42, at 433 and 434; Byrne, above n 43, at 122.

Article 3(1) states that:⁴⁶

“[i]n all actions concerning children, whether undertaken...administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

This article is a protection right. Alston has argued that article 3(1) plays three roles. First, it can “support, justify or clarify a particular approach to issues arising under the Convention”, suggesting we must take article 3(1) into account when implementing other rights under the CRC.⁴⁷ Second, it can be a “mediating principle” to resolve conflicts between different rights within the CRC.⁴⁸ Third, as suggested by Stephen Parker, it is a basis for evaluating laws and practices that are “not governed by positive rights in the Convention”.⁴⁹

The CRC does not define what best interests means. Eekelaar defines best interests as “basic interests...to enter adulthood as far as possible without disadvantage [and] autonomy interests”.⁵⁰ Alston suggests it will not be in a child’s best interest if the action affects the child’s enjoyment of any human right.⁵¹ It probably involves a careful consideration of the physical, emotional and educational needs of the child, as well as negotiation of the contested values surrounding childhood of the culture and society the child lives in.⁵²

The child’s best interests is “a” primary consideration, not “the” primary consideration, which reflects that there may be competing interests of justice and society that may be of

⁴⁶ Convention on the Rights of the Child, art 3(1).

⁴⁷ Philip Alston “The Best Interests Principle: Towards a Reconciliation of Culture and Human Rights” (1994) 8 Int’l J.L. & Fam. 1 at 15-16.

⁴⁸ At 16.

⁴⁹ At 16.

⁵⁰ Michael Freeman “Article 3. The Best Interests of the Child” in A. Alen, J Vande Lanotte, E. Verhellen, F. And, E. Berghmans and M. Verheyde (eds.) *A Commentary on the United Nations Convention on the Rights of the Child* (Martinus Nijhoff Publishers, Leiden, 2007) 1 at 27.

⁵¹ Alston, above n 47, at 16.

⁵² Freeman, above n 50, at 31; Hilde Lidén and Hilde Rusten “Asylum, Participation and the Best Interests of the Child: New Lessons from Norway” (2007) 21 Child. Soc. 273 at 278.

equal or greater importance than the interests of the child.⁵³ For example, the Vienna Programme of Action outlined that non-discrimination is on par with best interests as a primary consideration.⁵⁴ The best interests of the child are also not the “paramount” consideration which would make best interests determinative on the course of action to take.⁵⁵ Thus, this wording ensures some flexibility for decision-makers in how they consider a child’s best interests.⁵⁶

“[C]oncerning children” at its broadest interpretation, would include any law or policy that affects children’s interests. The use of the plural “children” rather than “child” supports that we can consider broadly any action that concerns children as a group.⁵⁷ We must be careful not to take such a broad approach that includes everything.⁵⁸

In the context of the right to vote, article 3(1) requires that the minimum voting age, which is an action by a legislative body that concerns children as it limits their rights, must be made with the primary consideration of whether the minimum voting age is in the best interests of the child.

2 *Article 5*

Article 5 states that:⁵⁹

“State Parties shall respect the responsibilities, rights and duties of parents...to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.”

⁵³ Freeman, above n 50, at 45 and 61.

⁵⁴ Alston, above n 47, at 16.

⁵⁵ Freeman, above n 50, at 45 and 60.

⁵⁶ Alston, above n 47, at 13.

⁵⁷ At 14.

⁵⁸ At 4.

⁵⁹ Convention on the Rights of the Child, art 5.

Article 5 is both a protection and participation right. The article's function is to regulate the relationship between the child, the parents and the State. Sutherland calls this a triangular relationship: at the apex of the triangle, the child has a right to exercise the other rights under the CRC; at one corner of the base, parents have the right to provide appropriate direction and guidance to the child in a manner consistent with the child's evolving capacities; and at the other corner base, the State has an obligation to respect the parents right to provide that direction and guidance, although the Committee on the Rights of the Child (the Committee) clarifies that States still have obligations to guarantee protection of children.⁶⁰

Parents must provide "appropriate direction or guidance" to the child in exercising their rights. Direction and guidance represent a continuum where direction involves peremptory instruction of a child, that might be needed when a child has lower levels of capacity, and guidance involves the parents assisting or advising the child in making decisions.⁶¹ Direction and guidance will be "appropriate" if it is exercised in a manner consistent with CRC rights.⁶² This interpretation means the State can monitor and evaluate whether a parent's direction or guidance conflicts with other CRC rights as long as it is still upholding the responsibility to respect the parent's duty and rights.⁶³ Consequently, while no international convention can impose, directly, any duties upon anyone other than its State parties, that State can monitor how parents give direction and guidance places a duty on parents to give appropriate guidance and direction to children.⁶⁴

⁶⁰ Elaine E. Sutherland "The Enigma of Article 5 of the United Nations Convention on the Rights of The Child: Central or Peripheral?" 28 Int'l J. Child. Rts. (2020) 447 at 454 and 459; Committee on the Rights of the Child *General Comment No. 20: The Implementation of the Rights of the Child during Adolescence* CRC/C/GC/20 (2016) at [16].

⁶¹ Sutherland, above n 60, at 463.

⁶² Sutherland, above n 60, at 464; Ursula Kilkelly "'Evolving Capacities' and 'Parental Guidance' in the context of Youth Justice: Testing the Application of Article 5 of the Convention on the Rights of the Child" (2020) 28 Int'l J. Child. Rts. 500 at 504.

⁶³ Sutherland, above n 60, at 463 and 465; Sharon Detrick *A Commentary on the United Nations Convention on the Rights of the Child* (Kluwer Law International, The Netherlands, 1999) at 120.

⁶⁴ Mark Henaghan "New Zealand Case Studies to Test the Meaning and Use of Article 5 of the 1989 United Nations Convention on the Rights of the Child" (2020) 28 Int'l J. Child. Rts. 588 at 593; Detrick, above n 63, at 119.

The crucial phrase of this article is that parents and other responsible adults are to guide children in the exercise of their rights “in a manner consistent with the evolving capacities of the child”.⁶⁵ According to the Committee, “evolving capacities” refers to the process of maturation and learning where children develop the competencies to understand their rights and how they can be realised.⁶⁶ Henaghan argues “evolving capacities” acknowledges that for children to develop their own identity successfully they must be able to exercise their rights where they are capable of doing so.⁶⁷ However, it equally acknowledges that capacities develop over time. Therefore, a parent’s role in guiding the child to exercise their rights will involve a gradual transfer of responsibility as a child acquires competence and willingness to take on this responsibility.⁶⁸

The Committee highlights that article 5 operates under the presumption that children may have the capacity to exercise their rights and should be given the freedom to exercise these rights where possible.⁶⁹ Further, it limits a parent’s role to duty-bearers to their child in the child’s exercise of their rights, rather than owners or sole protectors of children.⁷⁰ As a result, article 5 captures within it a need to balance between a child’s autonomy and protection rights according to their capacities.⁷¹

⁶⁵ Aoife Daly “Assessing Children’s Capacity Reconceptualising our Understanding through the UN Convention on the Rights of the Child” (2020) 28 Int’l J. Child. Rts. 471 at 472.

⁶⁶ Committee on the Rights of the Child *General Comment No. 7: Implementing Child Rights in Early Childhood* UN/CRC/GC/7 (2005) at [17]; Sutherland, above n 60, at 465.

⁶⁷ Henaghan, above n 64, at 594.

⁶⁸ Henaghan, above n 64, at 594; Committee on the Rights of the Child *General Comment No. 12: The Right to be Heard* CRC/C/GC/12 (2009) at [84]; Sutherland, above n 60, at 466; Gerison Lansdown “The realisation of children’s participation rights: critical reflections” in Barry Percy-Smith and Nigel Thomas (eds.) *A Handbook of Children’s and Young People’s Participation: Perspectives from Theory and Practice* (Routledge, Oxon, 2010) 11 at 13.

⁶⁹ Daly, above n 65, at 480; Gerison Lansdown “The Evolving Capacities of the Child” (2005) 11 *Innocenti Insights* 3 at 15; Committee on the Rights of the Child, above n 68, at [84].

⁷⁰ Daly, above n 65, at 479-480; Lansdown, above n 69, at 15.

⁷¹ Daly, above n 65, at 480; Lansdown, above n 69.

Although Article 5 is not classified as one of the four general tenets underpinning the CRC, as outlined above, Hanson and Lundy consider that the concept of the child's evolving capacities results in article 5 being a "cross-cutting standard" that applies with other CRC rights, in particular articles 2, 3 and 12.⁷² Consequently, Lansdown calls article 5 a principle for the realisation of all child's rights in the Convention.⁷³

In the context of the right to vote, article (5) requires that the minimum voting age allows parents to still guide their children in the exercise of their rights, especially article 12, in a manner consistent with their evolving capacities. This paper discusses article 5's relevance to article 12 below.

3 *Article 12*

(1) Interpretation

Article 12(1) states that:⁷⁴

"State Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child."

Article 12 is a participation right that is defined as a civil and political right that widens the view of the child as a citizen.⁷⁵ The article's function is to ensure that decision-makers take account of children's views when making decisions which affect them to reflect the individual dignity and personhood of children and to facilitate better decision-making.⁷⁶ However, this article does not make children's views automatically determinative of the outcome.⁷⁷

⁷² Henaghan, above n 64, at 589-590; Sutherland, above n 60, at 449.

⁷³ Henaghan, above n 64, at 594; Lansdown, above n 69; Kilkelly, above n 62, at 504.

⁷⁴ Convention on the Rights of the Child, art 12(1).

⁷⁵ Quennerstedt, above n 41, at 166.

⁷⁶ Mark Henaghan "Article 12 of the UN Convention on the Rights of Children: Where Have We Come from, Where Are We Now and Where to from Here?" (2017) 25 Int'l J. Child. Rts. 537 at 541.

⁷⁷ At 541.

The essential participation right protected under this article is that States must assure the child can express their own views freely in all matters affecting the child and give due weight to those views. States must “assure” children their right to express their views by providing necessary mechanisms to ascertain and give due weight to children’s views, regardless of the resources at their disposal.⁷⁸ To ensure children can express their views “freely”, they must be provided with information about the matter in a manner a child can understand, have access to time and support to articulate their views and be able to express those views without manipulation or pressure.⁷⁹ That the child must be able to express its views in “all matters affecting the child” is intentionally vague to ensure that the article would not unduly limit the duty to consider the views of the child where possible.⁸⁰ Accordingly, “all matters” could include a broad range of issues, including broader political matters that will have a direct and long-term effect on children.⁸¹ However, the Committee qualified that “all matters affecting the child” does not extend a general political mandate to children, in particular, that there is no guarantee of the right to vote.⁸² A child’s views will be “given due weight” if those views are not only heard but seriously considered and the State gives children information and feedback on the position of their views in the outcome of decisions.⁸³ This requires adults to understand the world from a child’s perspective.⁸⁴

The above reasons demonstrate that fundamentally article 12 aims to promote the autonomy of children. However, this right is subject to two limitations. Thus, this participation right is also partly a protection right as it is limited to the extent that children can safely exercise their agency rights.

⁷⁸ Elaine E. Sutherland “Listening to the Voice of the Child: The Evolution of Participation Rights” (2013) 2013 N.Z. L. Rev. 335 at 341.

⁷⁹ Henaghan, above n 76, at 542; Lansdown, above n 68, at 12; Sutherland, above n 78, at 343.

⁸⁰ Quennerstedt, above n 41, at 166.

⁸¹ Lansdown, above n 68, at 12; Henaghan, above n 76, at 540 and 547.

⁸² Sutherland, above n 78, at 344; Committee on the Rights of the Child, above n 68, at [27].

⁸³ Committee on the Rights of the Child, above n 68, at [28] and [45]; Daly, above n 65, at 483.

⁸⁴ Henaghan, above n 76, at 542.

The child's capability in forming views is the threshold for involving a child in a matter affecting them. This threshold makes a children's exercise of their right under article 12 dependent on the cooperation of adults to assess a child's capabilities properly.⁸⁵ This dependency on adults has the potential to undermine that a child may not express their views in the same way an adult would, but they are no less capable of forming views.⁸⁶ The Committee has spoken to this issue, saying that adults must show "patience and creativity by adapting their expectations to a young child's interests, level of understanding and preferred ways of communicating".⁸⁷ Further, the Committee stressed that there is no age limit on when a child may express their views.⁸⁸ Daly emphasises that whether a child is capable of forming their own views has a different threshold for different kinds of decisions.⁸⁹

The second limitation is that the child who is capable of expressing their views will only be given due weight if to do so is "in accordance with the age and maturity of the child". Under this limitation, age on its own cannot limit giving weight to a child's views.⁹⁰ There must be a more holistic assessment considering the development of the child's capacities in light of their experience, social and cultural expectations, ability to understand information and levels of support.⁹¹ Lansdown suggests decision-makers should use the principle of proportionality with a sliding scale of capacity to reflect the seriousness of the decision to determine how much weight should be afforded to the child's views.⁹² Where a child understands the implications of the choice and the risk it poses to their best interests, a child's wishes must be upheld.⁹³ The focus on the child also implies that this limitation is an individualised assessment of the child's age and maturity and anticipates children

⁸⁵ Laura Lundy "Voice Is Not Enough: Conceptualising Article 12 of the United Nations Convention on the Rights of the Child" (2007) 33 Br Educ Res J. 927 at 929.

⁸⁶ Henaghan, above n 76, at 541.

⁸⁷ Committee on the Rights of the Child *General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child* CRC/GC/2003/5 (2003) at [11]; Daly, above n 65, at 483.

⁸⁸ Sutherland, above n 78, at 342.

⁸⁹ Daly, above n 65, at 492.

⁹⁰ Lansdown, above n 68, at 12.

⁹¹ At 12.

⁹² Daly, above n 65, at 472; Lansdown, above n 69.

⁹³ Daly, above n 65, at 472; Lansdown, above n 69.

expressing views in an individual capacity only. However, the Committee clarified that in circumstances where policies or decisions are made that affect groups of children or children as a whole, States would exert all efforts to give weight to the views of children “speaking collectively”.⁹⁴

(1) Article 12 and the right to vote

Taking an ordinary interpretation of article 12, it is arguable that a child must be able to vote to be able to express their views in all political matters that will affect a child’s present and future interests and have those views be given due weight. We can make this argument because a State will not seriously consider the views of children speaking collectively on political matters unless children can vote. After all, there is no guarantee that MPs will give weight to children’s views if they are not directly accountable to children through their vote. However, if article 12 protects a child’s right to vote, it is equally restricted by the two limitations under article 12. This interpretation is at odds with the Committee’s statement that article 12 does not extend a general political mandate to children such as a guarantee of the right to vote and, therefore, does not capture children’s citizenship rights to participate in the political arena.⁹⁵

Arce argues that it is possible to interpret the CRC to capture children’s citizenship rights by building and borrowing from articles 13, 14 and 15 to conceptualise children’s citizenship, rather than merely focusing on the more restrictive article 12.⁹⁶ Article 13 protects a child right to freedom of expression, article 14 respects a child’s right to freedom of thought, conscience and religion and article 15 protects a child right to freedom of association and peaceful assembly.⁹⁷ These rights viewed with a child’s right to be free and equal with the rest of humanity, infer that children have a right to define their rights and resist rights conceived to minimise them.⁹⁸ This interpretation means that children can

⁹⁴ Sutherland, above n 78, at 342; Committee on the Rights of the Child, above n 68, at [10].

⁹⁵ Michael Freeman “The Future of Children’s Rights” (2000) 14 *Child. Soc.* 277 at 282 and 287.

⁹⁶ Matias Cordero Arce “Maturing Children’s Rights Theory” (2015) 23 *Int’l J. Child. Rts.* 283 at 295.

⁹⁷ Convention of the Rights of the Child, arts 13, 14 and 15.

⁹⁸ Arce, above n 96, at 301-303; Universal Declaration of Human Rights GA Res 217A (1948), art 1.

redefine their participation rights under the CRC to include citizenship rights to participate in the political arena, such as the right to vote.

Even if we cannot ascertain children's citizenship rights through a child's right to define their rights, we could ascertain these citizenship rights through a child's participation rights. Lansdown articulates that article 12 implies all children who are capable of forming a view are entitled to the first three levels of involvement: to be informed, to express an informed view, and to have that view taken into account.⁹⁹ Yet, it does not extend children's participation rights to the fourth level: to be a main or joint decision-maker.¹⁰⁰ This limit on the extension of children's participation rights embodies that adults should retain responsibility for the actual decision while being informed and influenced by the views of the child.¹⁰¹ However, by viewing article 12 in conjunction with article 5, Lansdown argues that children have broader participation rights to be the main or joint decision-maker.¹⁰² We can argue this because article 5 presumes that children have the capacity to exercise their rights themselves and the level of adult support needed to enable the child to exercise their rights must take account of the evolving capabilities of the individual child.¹⁰³ Accordingly, article 5, with articles 12, 13, 14 and 15, constitutes children's right to participation that recognizes children as citizens who are entitled to contribute towards decisions that affect them as individuals and as a collective, depending on their level of capacity.¹⁰⁴ Therefore, there is scope for children to have citizenship rights in the political arena, such as the right to vote, through a child's right to participation.

We can show that there is scope for children to have citizenship rights in the political arena, such as the right to vote, either through their right to define their rights or through a child's broader participation right. Therefore, it is arguable that we can use the ordinary interpretation of article 12 to demonstrate the obligations the State has in assuring a child's

⁹⁹ Lansdown, above n 68, at 13.

¹⁰⁰ At 13.

¹⁰¹ At 13.

¹⁰² At 13.

¹⁰³ At 13.

¹⁰⁴ At 13.

right to vote and what qualifications exist on the right to vote, to help assess whether the minimum voting age is a reasonable restriction on the right to vote.

V Is the minimum voting age an unreasonable restriction on the right to vote under the children's rights framework?

The various arguments made in opposition to lowering the voting age, as discussed under *The debate over lowering the voting age to 16*, can also be conceptualised as justifications for the minimum voting age. One justification is that the minimum voting age is justified because voters must be competent, and people below the age of 18 are not competent because of their developing capacities and political immaturity. As children have unique vulnerabilities and reliance on adults, children may be coerced or compelled to vote in a way that reflects others rather than their interests. Thus, the minimum voting age is justified to ensure that all votes are cast independently. The last justification is that the minimum voting age protects children from being exploited or given adult responsibilities that would harm them through having the vote.

Using deductive reasoning, if each justification is a reasonable restriction on the right to vote considering the children's rights framework, and the minimum voting age effectively reflects this justification, then the minimum voting age will be a reasonable restriction on the right to vote.

If it is found that competence, independence or protection are not a reasonable restriction on the right to vote or that the minimum voting age does not effectively reflect these justifications, it may still be possible to argue the minimum voting age is a reasonable restriction on the right to vote. It is possible if it is shown that youth parliaments and councils uphold children's rights just as, if not more, effectively than the vote.

A Competence

Whether children's lack of competence justifies the minimum voting age as a reasonable restriction on the right to vote requires each premise to be true in the following deductive reasoning:

- (1) The competence to vote is a reasonable restriction on the right to vote.
- (2) The minimum voting age reflects the age that people have the competence to vote.
- (3) Therefore, the minimum voting age is a reasonable restriction on the right to vote.

1 Is competence to vote a reasonable restriction on the right to vote?

A limitation on a child's participation rights protected under article 5 and 12 demonstrate that if a child is incapable of forming their own view on whom to vote for or the child's age and maturity suggests we would not want a child's vote to be counted we can limit a child's right to vote. These qualifications do not allow the State to indiscriminately find that children cannot form their own views, or do not have the age and maturity to have those views given due weight, because children's participation rights start from the presumption that children have the competence to participate and exercise their rights.¹⁰⁵ This presumption places on the State an obligation to allow children to exercise their participation rights where possible by informing children of their participation rights, having mechanisms that enable and support children to participate where possible, and assigning increasing weight in accordance with the child's evolving capacities.¹⁰⁶ Thus, the State must allow children to vote where possible. If this right is to be limited, the onus is on the State to demonstrate that the child cannot vote because they are not capable of forming their own views or they do not have the requisite age and maturity.

Although the CRC contemplates a lack of competence as preventing a child from exercising participation rights, there is considerable debate about whether competence is a

¹⁰⁵ Amy McEwan-Strand and Marit Skivenes "Children's Capacities and Role in Matters of Great Significance for Them: An Analysis of the Norwegian County Boards' Decision-making in Cases about Adoption from Care" (2020) 28 Int'l J. Child. Rts. 632 at 633;

¹⁰⁶ At 634 and 636; Daly, above n 65, at 482-483; Lansdown, above n 69.

reasonable restriction on the right to vote. Goodin and Gibson argue a person's claim to rights entails the ability to choose to exercise their rights, therefore, children who cannot articulate a "choice" in a meaningful sense should not have such rights.¹⁰⁷ Schrag argues that participation rights follow a person's ability to approximate ideal considerations, such as their political preferences or interests.¹⁰⁸ Estlund's epistemic justification of democracy suggests that democracy is effective because decision-making by the people will give us the right answers, meaning the people making these decisions must have more than a random chance of choosing correctly.¹⁰⁹ Christiano's equality-based justification of democracy suggests each citizen's interest is owed equal interest, but this necessitates that a citizen understands what their political interest is.¹¹⁰ Finally, Hart and Atkins argue that citizenship requires participation in the life of a society and certain responsibilities of citizenship, such as civic knowledge, political efficacy, and political action are important for motivating this participation.¹¹¹ Citizenship should not be granted to those that are unable to fulfil these responsibilities of citizenship.¹¹² While they do not deny that children may have some of these capabilities in varying forms, they must be able to participate effectively as voters to have the right to vote.¹¹³

However, other theorists argue that the fundamental principles of democracy do not require voters to be competent. Kessen argues that democratic government cannot be based on political maturity only because then it would be an epistocracy.¹¹⁴ Further, democracy requires that sovereign power resides in people as a whole so the right to vote should not

¹⁰⁷ Rehfeld, above n 14, at 146; Robert Goodin and Diane Gibson "Rights, young and old" (1997) 17 *Oxf. J. Leg. Stud.* 185.

¹⁰⁸ Rehfeld, above n 14, at 147; Francis Schrag "The child's status in the democratic state" (1975) 3 *Polit Theory* 441.

¹⁰⁹ Rehfeld, above n 14, at 147; David Estlund *Democratic authority: A philosophical framework* (Princeton University Press, Princeton, 2007).

¹¹⁰ Rehfeld, above n 14, at 147; Thomas Christiano *The ride of the many: Fundamental issues in democratic theory* (Westview, Boulder CO, 1996).

¹¹¹ Daniel Hart and Robert Atkins "American Sixteen- and Seventeen-Year-Olds Are Ready to Vote" (2011) 633 *ANNALS* 201 at 203-205.

¹¹² Hart and Atkins, above n 111, at 205.

¹¹³ Hart and Atkins, above n 111, at 206.

¹¹⁴ Kessen, above n 24, at 14.

be limited based on the political maturity of the holder, it should be enough to be a citizen of New Zealand to have the right to vote.¹¹⁵ Schrag points out that the exclusion based on political immaturity is inconsistent with other arguments used in favour of democracy, such as equitable treatment or protection of interests.¹¹⁶ Freeman reiterates this point by questioning how relevant competence is as a tool to assess a child's access to rights when we do not require that same standard for any other civil and political rights that adults possess.¹¹⁷ To deny them the vote based on competency is to ignore that children are members of society as well, with a legitimate and valuable perspective to contribute.¹¹⁸ Further, Federle argues we should reconceptualise rights to be premised on power and powerlessness, rather than capacity.¹¹⁹ Having rights means the power to command respect, to make claims and to have them heard.¹²⁰ To make the holding of rights contingent on capacity is exclusive and exclusionary and means claims made by only a particular group will be recognised.¹²¹

This debate requires us to consider how to define competence. Freeman acknowledges that some level of competence is still important in distinguishing very young children from older children, and demonstrating that many older children can make informed decisions and participate in matters that affect them.¹²² Is a higher level of political competence required, is a basic level of educational competence required, or is a low-level competence that at the bare minimum allows a child to be able to do and understand the physical act of voting enough?

¹¹⁵ At 15 and 18.

¹¹⁶ Rehfeld, above n 14, at 148.

¹¹⁷ Michael Freeman "The Best Interests of the Child: Is the Best Interests of the Child in the Best Interests of Children" (1997) 11 Int'l J.L. Pol'y & Fam. 360 at 369.

¹¹⁸ Michael Freeman "The Human Rights of Children" (2010) 63 CLP 1 at 42.

¹¹⁹ Michael Freeman "Why It Remains Important to Take Children's Rights Seriously" (2007) 15 Int'l J. Child. Rts. 5 at 13.

¹²⁰ At 13.

¹²¹ At 13.

¹²² Freeman, above n 117, at 369.

Wall emphasises that voting competence is difficult to define for all but the youngest children.¹²³ Therefore, we must interpret the wording of children's participation rights under the CRC to ascertain what level of competence is required. The wording of article 12 suggests that only a low-level competence is required because children can be capable of forming their views, even if they cannot articulate them in the same way as adults. These views do not need to be educated or show political intelligence, but they must be a view on what party the child wants to vote for that is their own view and not their parents or other adults. That the views have to be given weight in accordance with the child's age and maturity might be seen to make the level of competence higher to include a certain level of political knowledge or life experience. Indeed, under Lansdown's sliding scale of capacity, the seriousness of voting suggests a child needs a higher level of competence to engage in the fourth level of involvement and vote for themselves. However, a child might still understand the implication of their choice and the risk it poses to their best interests, even if they do not have a higher level of political competence.

Whether a child's views should be given due weight in accordance with their age and maturity is a holistic assessment that not only looks at the child's capacities in light of their experiences and knowledge but also their levels of support from adults. In reality, the level of support and assistance a child receives will be more determinative of their capacities than their decision-making abilities.¹²⁴ Cashmore describes child's capacities as an "interactive and relational process of dialogue, determined as much by the 'hearing' and 'scaffolding' capacities of adults they engage with as their own expressive capacities".¹²⁵ Thus, the level of assistance and support which children receive will likely be far more critical than their decision-making abilities per se.¹²⁶ As children can receive support, a lower level of competence is sufficient as long as children have support from family. Even if children do not have the life experience that might make them mature to understanding the political effects on diverse lives, children can at the very least contribute their own

¹²³ John Wall "Why Children and Youth Should Have the Right to Vote: An argument for Proxy-Claim Suffrage" (2014) 24 *CYE* 108 at 110.

¹²⁴ Daly, above n 65, at 489.

¹²⁵ Daly, above n 65, at 489.

¹²⁶ Daly, above n 65, at 489.

perspectives and experiences so there can be better conversations amongst diverse groups concerning differences of experience.¹²⁷

This interpretation of children's participation rights under the CRC demonstrate that children only need a low-level of competence to vote that is enough that the child can understand the implication of their choice and the risk it poses to their best interests. A child's participation rights do not require children to meet a high level of educational or political competence. This interpretation is supported by Wall, who suggests only the necessary capacities for understanding political options and making political choices should be required to exercise the right to vote.¹²⁸ Therefore, the choice to vote in itself is enough to indicate voting competence.¹²⁹

Does this interpretation strike the necessary balance between children's autonomy, without exposing them to responsibilities prematurely?¹³⁰ Freeman would argue it does because we should not conflate knowledge and making a wise choice that is in one's best interest.¹³¹ Many young children can make a wise choice within their own knowledge in their own interest, even if they do not have certain levels of political knowledge.¹³² Potential risks for children when voting that we might need to protect them from is discussed under *Protection*.

Overall, the premise that competence to vote is a reasonable restriction on the right to vote is true but only to the extent that children have less than a low-level competence. If children are able to understand the implications of their choice and the risk it poses to their best interests, based on their experiences, knowledge and support from adults around them, they should be able to vote.

¹²⁷ Wall, above n 123, at 112.

¹²⁸ Wall, above n 123, at 111.

¹²⁹ At 111.

¹³⁰ McEwan-Strand and Skivenes, above n 105, at 636.

¹³¹ Freeman, above 119, at 13.

¹³² Freeman, above 119, at 13.

2 *Does the minimum voting age reflect the age that people have the competence to vote?*

It must be shown that all children under the age of 18 do not have the competence to vote to prove that the minimum voting age is an accurate marker to reflect a child's competence to vote.¹³³ Chan and Clayton argue that under 18-year-olds are not politically mature enough to take part in the electoral process.¹³⁴ By political maturity, Chan and Clayton refer to a person's ability and motivation to participate in politics.¹³⁵ However, there is much research to suggest that children under the age of 18 can meet the low-level competence required to vote.

The context of a child's decision making can be decisive to whether a child's competence is less than adults. When decision-making in the spur of the moment, using "hot cognition", children are less likely to reason as well as adults because the prefrontal cortex, which prevents humans from acting on impulse, is not yet fully developed.¹³⁶ However, when children can consult others and information, measure all their options and can practice exercising this problem-solving skill, using "cold cognition", a child's ability to make a decision can be just as competent as adults.¹³⁷ Many children will have the low-level competence to vote because they can decide who to vote for over a long time, with support and access to information from parents, teachers and the media. Grover argues the reality is we are excluding children because they are minors and adults fear the presumed adverse consequences to society if children could vote.¹³⁸ At a minimum, this research indicates that setting the minimum voting age at 18 does not reflect the age that people are competent to vote.

Lansdown argues that the presumption that children have capacity, as exemplified under children's participation rights, suggests it is imperative we move away from age as a

¹³³ Steven Lecce "Should Democracy Grow up? Children and Voting Rights" (2009) 9 IGJR 133 at 135.

¹³⁴ Chan and Clayton, above n 13.

¹³⁵ Chan and Clayton, above n 13.

¹³⁶ Daly, above n 65, at 492.

¹³⁷ Daly, above n 65, at 492.

¹³⁸ Grover, above n 15, at 54 and 111.

determinant for the exercise of rights and instead focus on capacity and, second, that all children have the same rights but their needs and capacities vary.¹³⁹ Lansdown's point implies that using age as a determinant effectively presumes children do not have capacity to exercise the right to vote, so directly contradicts the presumption for capacity. This argument is affirmed by the Committee, who stated age is not a useful marker generally to determine whether children are capable of forming their own views because some children demonstrate greater competency in certain situations than others.¹⁴⁰ However, in some areas it makes sense to have an age limit. These arguments suggest that using a minimum voting age at any age is inappropriate for assessing whether a child has the competence to vote under children's participation rights unless it is necessary.

Overall, the premise that the minimum voting age reflects the age at which people have the competence to vote is not true because the minimum voting age does not reflect the low-level threshold competence required to vote. As the second premise is not true, it cannot be deduced that the minimum voting age is a reasonable restriction on the right to vote.

B Independence

Whether children's lack of independence justifies the minimum voting age as a reasonable restriction on the right to vote requires each premise to be true in the following deductive reasoning:

- (1) Lack of independence is a reasonable restriction on the right to vote.
- (2) The minimum voting age reflects the age that people have the independence to vote.
- (3) Therefore, the minimum voting age is a reasonable restriction on the right to vote.

1 Is a lack of independence a reasonable restriction on the right to vote?

Article 12 requires that children are capable of expressing their "own" views. This requires that a child must be able to express their views independently to exercise their right to vote.

¹³⁹ Lansdown, above n 69; McEwan-Strand and Skivenes, above n 105, at 636.

¹⁴⁰ Committee on the Rights of the Child, above n 66, at [17]; Lecce, above n 133, at 134.

The fundamental flaw in arguing that independence is required to vote is that political independence is not what characterizes most voters.¹⁴¹ No voters truly vote independently of their relationships with community leaders, other family members or peers, therefore, it is unfair to expect children to prove they can decide whom to vote isolated from their relationships with parents and other significant adults in their life.¹⁴² There is, however, a distinction between different types of coercion that would affect whether we viewed a person as acting independently when exercising their right to vote. The State must expect that all voters are subject to some level of coercion, that reflects the interdependency of humans and that a person's choice to align one's interests with the interests of those close to them can still be their choice. On the other hand, there is a higher level of coercion and compulsion that results in a person merely parroting the views of another, rather than forming their own views.¹⁴³ It is this higher level of coercion that States must prevent to ensure that votes cast are independent and is a reasonable restriction on the right to vote.

2 Does the minimum voting age reflect the age that people have the independence to vote?

A child is more vulnerable to experiencing higher levels of compulsion and coercion due to their dependency on adults. This suggests that the minimum voting age reflects the age that people have the independence to vote.

Arguably, minimum voting age does not reflect the age that people have the independence to vote because the practical duty created under article 5 suggests parents would have a duty to not coerce or compel their child to vote, in order to provide appropriate direction and guidance to their children in a manner consistent with the evolving capacities of the child. Not only would they have this duty, but this duty could be monitored and evaluated by the State. Any monitoring or evaluation of a parent's duty has to be within reason. The State could not merely refuse to respect a parent's direction or guidance of their child because they disagree with it if the parental decision falls within the reasonable range of

¹⁴¹ Wall, above n 123, at 113.

¹⁴² At 113; Jane Rutherford "One Child, One Vote: Proxies for Parents" (1997) 82 Minn L Rev 1463 at 1475.

¹⁴³ Wall, above n 123, at 113; Daly, above n 65, at 491.

views on the matter at hand.¹⁴⁴ However, some parental guidance or direction might be so unreasonable that the State has to intervene. Direction or guidance by a parent will be deemed “appropriate” if it is consistent with CRC rights, such as according primacy to the child’s best interests under article 3.¹⁴⁵ If a parent directed a child to vote by coercing them to vote for a party that represents the parent’s interests rather than the child’s interests, they would be forcing children to vote against their best interests and would fail to accord primacy to the child’s best interests. Further, any parental direction that compelled a child to vote when they are not ready to or coerced a child to vote when they have the agency to make their own choices, is not consistent with the requirement to give direction and guidance according to the evolving capacities of the child. This obligation suggests votes cast by children will still be made independently because the State will ensure that a child will not be subject to the high-level coercion or compulsion that is a reasonable restriction on the right to vote. Thus, the minimum voting age does not reflect the age that people have a lack of independence to vote.

There may still be an issue with adults other than parents, such as teachers or community leaders, coercing or compelling children to vote. The CRC does not outline any duties on these adults concerning a child’s exercise of their rights. However, article 12 places a positive obligation on the State to put mechanisms in place that ensure adults do not compel or coerce children to vote, because they must assure children’s views can be expressed freely. Accordingly, the State can both enforce parents’ duties and ensure adults do not compel or coerce children to vote further reaffirming that if children cast votes they would be independent and, therefore, the minimum voting age does not reflect the age that people have the independence to vote.

An issue with this argument is that States may not be able to ensure parents uphold their duties effectively, and other adults do not compel or coerce children in practice. This means that children will never vote independently, and the minimum voting age is the only and best solution to ensure all votes are independent. Indeed, parents may frequently breach

¹⁴⁴ Elaine E. Sutherland, above n 60, at 465.

¹⁴⁵ At 464.

their duties because they have the most interest, personal or institutional, in ensuring that the child does not exercise his or her rights.¹⁴⁶ Further, it might be impossible for a State to monitor all the interactions children might have with adults who could compel or coerce them.

However, limiting the compulsion and coercion that the State has to monitor to the high-level coercion that is a reasonable restriction on the right to vote is more realistic. The State could create mechanisms that ensure that children enrol to vote and cast their vote of their own volition. This only requires procedural safeguards and privacy for children at the polling booths. Children cannot be compelled to vote when they do not have the capacity to because they will not be able to enrol themselves or fill out the voting sheet by themselves. Further, it will be harder to coerce children to vote for a specific party because children have to fill out the form alone. Another example is that, just like with adults, it is through the exercise of the right to vote over time, coupled with the information given to children in a way that they can understand and proper support from adults or institutions, that children will learn to have their own political views, thus reducing the likelihood of children being coerced. It will be easier to give children access to this information and support than adults because all children under the age of 16 must attend some form of school that could include a curriculum to educate children on civics, politics and how they should exercise their vote independently. These mechanisms demonstrate that the State is able to ensure children are voting independently from this high-level coercion. Therefore, the minimum voting age does not reflect the age that people have the independence to vote.

Overall, the premise that the minimum voting age reflects the age at which people have the independence to vote is not true because the duty on parents, and the State's ability to monitor and evaluate this duty and the actions of other adults under articles 5 and 12, should ensure that children are not subject to the high-level coercion and compulsion that would make the child's vote lack the independence required to vote. As the second premise is not

¹⁴⁶ Detrick, above n 63, at 120.

true, it cannot be deduced that the minimum voting age is a reasonable restriction on the right to vote.

C Protection

Whether children's need for protection justifies the minimum voting age as a reasonable restriction on the right to vote requires each premise to be true in the following deductive reasoning:

- (1) A child's need for protection is a reasonable restriction on the right to vote.
- (2) The minimum voting age reflects the age at which children no longer need this protection.
- (3) Therefore, the minimum voting age is a reasonable restriction on the right to vote.

1 Is a child's need for protection a reasonable restriction on the right to vote?

The idea that the minimum voting age is required to protect children goes to the heart of the debate around whether there is a tension between protection of children and upholding children's autonomy. The tension between protection and autonomy exists not only between articles in the CRC, such as article 12 and article 3 but also within articles 5 and 12 themselves. Protection will be a reasonable restriction on the right to vote if the tension between ensuring children's protection and giving children autonomy through the vote cannot be reconciled, considering the CRC articles and broader children's rights discourse. However, suppose it can be shown that children could be given autonomy through the vote, while still ensuring children's protection. In that case, protection will not be a reasonable restriction on the right to vote.

Article 3 requires us to consider the child's best interests as "a primary consideration". It could be argued that protecting a child by denying children the vote, rather than giving children autonomy through the vote, is in the child's best interests for four reasons. First, it stops children from voting in a way that would harm themselves.¹⁴⁷ Children would vote

¹⁴⁷ Wall, above n 123, at 114.

for their wants, such as no more school, instead of in their own interests. Second, it prevents children from succumbing to exploitative political pleas that again would not be in their own interests and protects children from coercion by adults into voting for particular parties.¹⁴⁸ Third, it ensures that societies will treat children like children, not adults.¹⁴⁹ Children have special needs and interests given their developing capacities, and if children could vote then this would lead to children gaining more responsibilities and rights that are not beneficial to them.¹⁵⁰ Fourth, giving children the autonomy to vote would benefit a small portion of affluent children who have the support and access to vote, so children who are poor or part of minority groups would be further disadvantaged. Conversely, giving children autonomy through the vote complies with children's participation rights because it prevents children from expressing their views freely when they are capable of forming their own views on whom they want to vote for and have these views be given due weight in accordance with their age and maturity, as discussed above.

Prima facie, there is a substantial and real tension between needing to give children more autonomy than the minimum voting age allows and needing to protect children from the dangers of voting. However, it may be possible to reconcile this tension in several ways.

(a) Dynamic Self-determinism

We might argue that giving children autonomy through the vote is in the best interests of children using Eekelaar's concept of "dynamic self-determinism".¹⁵¹ Eekelaar's thesis argues article 3 is not a threat to article 12 but is a mode to enhance article 12 because it is impossible for decision-makers to make an accurate assessment of what the child's best interests are without taking a child's view into account.¹⁵² The process is dynamic because it appreciates that the best course for a child cannot always be ascertained and may shift as

¹⁴⁸ At 114

¹⁴⁹ At 115.

¹⁵⁰ At 115.

¹⁵¹ John Eekelaar "The Interests of the Child and the Child's Wishes: The Role of Dynamic Self-Determination" (1994) 8 Int'l J.L & Fam 42 at 48.

¹⁵² At 48 and 58; Lidén and Rusten, above n 52, at 278.

the child develops their capacities and it involves self-determinism because the child is given scope to influence the outcomes.¹⁵³ This argument demonstrates liberal ideas that there is no necessarily best or even better choice between specific life goals, so each individual must determine their life plan.¹⁵⁴ It also reflects that historically adults have repeatedly acted towards children in ways which have been harmful in the name of the child's best interests because best interest is evaluated in an ambiguous and unstable way and we cannot allow article 3 to be used by adults to trump other CRC articles, like article 12, and wield unfettered power over children.¹⁵⁵ Finally, it requires us to rethink how we view adult-child relations and accept that to fully empower the best interests of children adults must share power with children, although the context in which we are determining a child's best interests, such as in accordance with age and maturity under article 12, will still shape how much weight we give children's views and whether they will be determinative.¹⁵⁶

Giving children autonomy through the vote can be considered making the child's best interests a primary consideration as it allows children's views to be taken into account and it ensures children are directly represented in political issues that affect them.¹⁵⁷ Accordingly, that giving children autonomy through the vote allows children to have their views heard and given due weight by representatives demonstrates it can give full primacy to a child's best interest, as required under article 3.

(b) Balance of Harms

¹⁵³ Eekelaar, above n 152, at 48.

¹⁵⁴ At 50.

¹⁵⁵ John Eekelaar "The Importance of Thinking That Children Have Rights" (1992) 6 Int'l J.L. & Fam 221 at 233; Eekelaar, above n 152, at 46; Lansdown, above n 68, at 19.

¹⁵⁶ Cath Larkins "Enacting children's citizenship: Developing understandings of how children enact themselves as citizens through actions and Acts of citizenship" (2014) 24 *Childhood* 7 at 34; Eekelaar, above n 152, at 54.

¹⁵⁷ Wall, above n 123, at 115.

Even if dynamic self-determinism is not persuasive in demonstrating that giving children autonomy through the vote is in the child's best interests, it is arguable that on a balance of harms analysis it is in the child's best interests to give children autonomy through the vote. To balance the harms, we must assess how giving children autonomy through the vote will harm a child's best interest and then consider how these harms weigh up against the harms to a child's best interest that protecting a child by denying children the vote will create. This paper considers the harms of giving children autonomy through the vote based on the four arguments for protecting a child by denying children the vote described above.

While there is a possibility that children will not vote in their best interest, this will not necessarily harm children. Adults routinely vote against their best interests.¹⁵⁸ Furthermore, many children that would choose to vote are likely to have the capacity to vote in their own interests. Research demonstrates that children as young as nine have developed the political language of adult life and children from 5-17 around the world have demonstrated they are capable of debating and voting on major political issues in youth parliaments and councils.¹⁵⁹ Thus, it seems like a gross generalisation that children would not be able to vote in their own interests. Aside from children's capacity to vote in their own interests, it is hard to define whether a child would vote against their own best interests because nobody can rightly claim a monopoly on what is best for groups in society.¹⁶⁰ Wall argues that to presume adults know what is better for children than children themselves is an unjustified extension of private rights of the parent to raise their child into a public right for every adult to make political choices for children.¹⁶¹ These arguments raise significant doubts that children would be harmed by being given autonomy through the vote because they would not vote in their best interests.

The second harm is more credible as children could be subject to some exploitative political pleas and coercion by the nature of their dependency on adults. Although, as discussed

¹⁵⁸ Wall, above n 123, at 114.

¹⁵⁹ At 111; Michael Freeman, above n 118, at 43.

¹⁶⁰ Wall, above n 123, at 114.

¹⁶¹ At 114.

above, this could be mitigated against through procedural mechanisms and education, so the harm to children would be limited.

Children would only have to take on all the responsibilities of adults by gaining the right to vote and forfeit special protections that reflect their needs and interests as children if we assume that the right to vote is synonymous with being an adult. Historically, granting the vote to younger people meant redefining the group as adults, which meant granting autonomy rights also carried corresponding duties that many children are not equipped to fulfil.¹⁶² However, giving children the autonomy to vote does not necessitate treating all children as adults, it is asserting that it is important to treat children as unique, with special needs and interests, and that the right to vote is something that children, as well as adults, should have because children are social actors and have much to contribute.¹⁶³ It recognises that the concept of childhood is constructed and tends to underestimate children's capacity and ability to exercise agency in their own lives but does not undermine children's need for protection.¹⁶⁴ All other civil and political rights are not limited by age, such as those protected under articles 13-15. This is because we do not treat civil and political rights in the same way as we treat the right to drink, drive, marry or have sex. All the latter activities violate what is distinctive in childhood because they have the potential to cause serious harm to children if someone under a particular age is engaging in those activities.¹⁶⁵ Comparatively, civil and political rights, such as the right to vote, respond to what is distinctive in childhood because they recognise that all people should be able to shape the political realm which they belong to and they cause minimal harm to children's welfare.¹⁶⁶ Further, there is minimal harm in exercising the right to vote because no child will ever have direct power to make social policy, only the power to elect educated representatives to act in a way they think is best for the community given the communities interests and

¹⁶² Jane Rutherford, above n 143, at 1492.

¹⁶³ John Wall and Anandini Dar "Children's Political Representation: The Right to Make a Difference" (2011) 19 *Int'l J. Child. Rts.* 595 at 610; Marc Jans "Children as Citizens: Towards a contemporary notion of child participation" (2004) 11 *Childhood* 27 at 38; Larkins, above n 157, at 487.

¹⁶⁴ Daly, above n 65, at 484.

¹⁶⁵ Wall and Dar, above n 164, at 610.

¹⁶⁶ At 610.

needs.¹⁶⁷ We might agree on an age limit for adulthood and also say that there can never be one consistent age for the right to exercise civil and political rights, including the right to vote. Thus, children would not be harmed by having to take on the responsibilities of adults if they were given autonomy through the vote.

There is a genuine risk that giving children autonomy through the vote would harm children from poorer or minority communities more than other children because it would give more votes to children who reflect the interests of affluent parts of society and might discourage representatives from actively seeking to represent disadvantaged children's interests on the assumption that they now have a say, when they may not have the support or access to vote. The concern that poor or minority communities will not vote and not be represented in government is already an issue in the adult population. Although this might be more prevalent for children given difficulties for children to protect their own welfare, needing to give special consideration to minority groups is something representatives have dealt with before.¹⁶⁸ So, while these are very real harms, removing the minimum voting age would not necessarily increase the harm from the level already experienced by disadvantaged groups.¹⁶⁹

Although there will be some harm to children by giving children autonomy through the vote, as demonstrated under the second and fourth harm, this harm is vastly outweighed by the harms children suffer from protecting children by denying them the vote considering justifications for democracy.¹⁷⁰ The utilitarian democratic justification suggests denying a group of citizens with distinctive preferences the vote risks weighing their preferences and welfare below others, which violates equality, and hinders the quality of democratic decisions because it reduces the cognitive diversity of the polis.¹⁷¹ If politicians do not

¹⁶⁷ Wall, above n 123, at 115.

¹⁶⁸ Robert H. Pantell and Maureen T. Shannon "Improving Public Policy for Children: A Vote for Each Child" (2009) 9 IGJR 139 at 141.

¹⁶⁹ At 141.

¹⁷⁰ Tommy Peto "Why the voting age should be lowered to 16" (2018) 17 Politics, Philosophy and Economics 277 at 287.

¹⁷¹ At 288.

have to represent children's views, political decisions will be made that negatively affect children's quality of living now and in their future. Democracy implied by fundamental values of respect or fairness suggests denying children that do have the capacity to vote violates their equal standing as a citizen and fails to respect them as an autonomous decision-maker.¹⁷² Accordingly, it is arguable that giving children the autonomy to vote is in the child's best interests because it ensures that children are represented, and issues that affect children are on the political agenda, in addition to upholding article 12.

Does this mean that giving children the autonomy to vote can reconcile the tension between article 12 and 3, and therefore, protection is an unreasonable restriction on the right to vote? This must be determined by considering the capacities of the child, the levels of risk involved, the degree of support available, the child's level of understanding of the nature of the risks and the child's own views.¹⁷³ This paper has found that barring children from the vote through the minimum voting age does not reflect the age that children have the low-level competence that the child understands the implications of their choice to vote and the risk it poses to their best interests. It has also found that there is a reasonably low risk involved when children vote as established by the arguments above and that article 5 places a positive duty on parents to support their children is exercising their right to vote which is enforceable by the State. This means giving children autonomy to vote will be able to reconcile the tension between article 12 and 3.

This argument is persuasive when we consider that article 3 requires the best interests to be a primary consideration, not the paramount consideration. This phrasing suggests it does not matter if it is not overwhelmingly in the best interests of the child to give children the autonomy to vote. Other considerations like wanting to uphold the principles of representative democracy by having a fully representative parliament or wanting to ensure our representatives can reflect as many interests in society as possible to make the best decisions for the whole community can also be factored alongside best interests to suggest it is better to give children autonomy through the vote.

¹⁷² At 289.

¹⁷³ Lansdown, above n 68, at 19; John Eekelaar, above n 152, at 51-52.

Overall, the premise that children's need for protection is a reasonable restriction on the right to vote is not true because giving children autonomy through the vote is demonstrated to better uphold both articles 12 and 3 than protecting children through denying the vote, and it effectively reconciles the tension between autonomy and protection under the CRC. As the first premise is not true, we do not need to consider whether the minimum voting age reflects the age that children no longer need this protection and it cannot be deduced that the minimum voting age is a reasonable restriction on the right to vote.

D Youth Parliaments and Councils

The above sections demonstrate that the minimum voting age is not a reasonable restriction on the right to vote because the minimum voting age does not effectively reflect when people have the competence or the independence to vote, and a need to protect children is not a reasonable restriction on the right to vote. However, the minimum voting age may still be a reasonable restriction on the right to vote it is can be shown that children's CRC rights are upheld just as, if not more, effectively by a child's exercise of their participation rights through youth parliaments and councils than a child's exercise of their participation rights through the vote.¹⁷⁴

Children's CRC rights will be upheld just as effectively by a child's exercise of their participation rights through youth parliaments if it can be shown that a child's exercise of their participation rights through youth parliament not only gives agency to children but can be used as an advocacy tool to secure recognition of children's other rights.¹⁷⁵ Rights are of little value if there is no remedy to a breach of those rights.¹⁷⁶ If children could exercise their right to participate through the vote, their participation right could be used to secure recognition of children's other CRC rights because MPs would be accountable to

¹⁷⁴ Sutherland, above n 78, at 352.

¹⁷⁵ Freeman, above n 119, at 8.

¹⁷⁶ At 8.

children to uphold these rights. It is unclear if the same can be said when children exercise their right to participate through youth parliaments.

In recent years, many governments have made efforts to create more systematic structures for hearing the views of the child, something theorists like Cockburn call deliberative mechanisms of citizenship.¹⁷⁷ South Africa has attempted to include children in some parliamentary hearings and public debates, the Israeli Knesset regularly invites children to participate in its child-related committees, and the Kazakstan government organized a political consultative process with youth between 10 and 24.¹⁷⁸ However, the most widely used deliberative mechanism of citizenship for children is the youth parliament or council, which has been adopted in over 30 countries, including New Zealand.¹⁷⁹

Deliberative mechanisms that are used for consultation of children do not give children any political power to exercise on their own behalf, but often it does not give children the opportunity to have their views heard by those who can exercise political power on their behalf.¹⁸⁰ In New Zealand, youth parliaments tend to focus on educating children rather than creating an opportunity for children to exercise their democratic rights.¹⁸¹ This can result in youth parliaments being one-off events that have no real impact.¹⁸² Further, research into Scottish youth councils showed that while youth councils did give rise to some outcomes for young people, it tended to concern 'safe' issues which do not significantly challenge the power of adults, including redefining structures for children's participation.¹⁸³ This led to children feeling little validation was attached to their position

¹⁷⁷ John Wall "Can democracy represent children? Toward a politics of difference" (2011) 19 *Childhood* 86 at 86; Wall and Dar, above n 164, at 595; Tom Cockburn "Children and deliberative democracy in England" in Barry Percy-Smith and Nigel Thomas (eds.) *A Handbook of Children's and Young People's Participation: Perspectives from Theory and Practice* (Routledge, Oxon, 2010) 306 at 308 and 312.

¹⁷⁸ Wall, above n 178, at 88.

¹⁷⁹ At 88.

¹⁸⁰ At 88.

¹⁸¹ At 88.

¹⁸² Sutherland, above n 78, at 352.

¹⁸³ Brian McGinley and Ann Grieve "Maintaining the status quo? Appraising the effectiveness of youth councils in Scotland" in Barry Percy-Smith and Nigel Thomas (eds.) *A Handbook of Children's and Young People's Participation: Perspectives from Theory and Practice* (Routledge, Oxon, 2010) 254 at 258.

on the council.¹⁸⁴ If a youth parliament operates in this way, a child will not be able to use their participation rights as an advocacy tool to secure recognition of their other rights.

Sometimes youth parliaments can give some form of direct political power as children can participate in the parliaments depending on how the parliament operates. In Rajasthan, India, the youth parliament enables children between 6 and fourteen to elect child representatives who have made genuine differences for their communities such as dismiss inefficient teachers and shape education policy in schools.¹⁸⁵ In Bolivia, the children's parliament can make recommendations about laws and policies to the adult's assembly, and in the city of Barra Mansa in Brazil, the youth parliament has extensive powers over children's issues and can control parts of the government budget.¹⁸⁶ These examples demonstrate that while children's parliaments function separately from adults, it can create opportunities for children to influence political decision-making that affects them, which may give children the opportunity to use their participation rights as an advocacy tool to secure recognition of their other rights.¹⁸⁷

To measure whether youth parliaments that give children more direct power will allow children to use their participation rights as an advocacy tool to secure recognition of their other rights, we can use Wall's conception of political representation as the right of all to have their differences of experience make an actual difference to the political whole.¹⁸⁸ He suggests that genuine representation can only exist if the particular experiences of different groups are able to transform the use of political power by societies.¹⁸⁹ Thus, youth parliaments might be able to ensure children can use their participation rights as an advocacy tool to secure recognition of their other rights if they are set up to give children the opportunity for their differences to make a difference to the political whole.¹⁹⁰

¹⁸⁴ At 256 and 258.

¹⁸⁵ Wall and Dar, above n 164, at 597.

¹⁸⁶ At 597-598.

¹⁸⁷ At 598.

¹⁸⁸ At 606.

¹⁸⁹ At 606.

¹⁹⁰ At 607.

Children's difference will only make a difference to the political whole if youth parliaments ensured children's different views actually impact the reconstruction of government policies and political structures.¹⁹¹ When children participate in youth parliaments that operate separately from the general parliament, a distance is created between electoral processes and the actual exercise of power, making these parliaments essentially tokenistic, even if children have a more significant role as seen in India or Brazil.¹⁹² Furthermore, Cockburn emphasizes that deliberative mechanisms like youth parliaments tend to focus on a short-term 'consumerist' idea of participation that presents participation as a 'choice' of services.¹⁹³ This consumerist idea results in children engaging in forms of participation that are 'safe' political issues or apolitical ones and encourages children to view participation as a partnership with adults rather than a contestation and expression of difference.¹⁹⁴ As children's exercise of their participation rights through youth parliaments does not impact the construction of political policies and structures, children cannot use their difference to make a difference to the political whole and, as a result, youth parliaments cannot ensure children's participation rights secure recognition of their other rights.

Removing the minimum voting age and giving children the right to vote is the most effective way of giving children the opportunity for their differences to make a difference to the political whole, and therefore allows children to exercise their participation rights to secure recognition for their other rights because it ensures children are represented in general parliament. Just like women, minorities or the poor, children's real power to have their different experiences make a difference in politics must come from their inclusion in the same parliamentary structures as adults.¹⁹⁵ This does not mean there must be children

¹⁹¹ At 607.

¹⁹² At 607.

¹⁹³ Cockburn, above n 178, at 312.

¹⁹⁴ At 312.

¹⁹⁵ Wall and Dar, above n 164, at 607.

representatives, but there must be representatives in the general parliament that reflect children's difference when influencing policy and making new laws.¹⁹⁶

Another concern is that youth parliaments and councils often favour children who are older, middle-upper class, highly educated and articulate, have a significant interest in politics or attend a participating school.¹⁹⁷ Research into Scottish youth councils demonstrated that the vast majority of children in Scotland do not participate in children's participatory structures.¹⁹⁸ The Committee noted that youth parliaments and councils should only be a small part of the process because a relatively small number of children could participate.¹⁹⁹

The limited access for many children to participate in youth parliaments and councils demonstrates that youth parliaments do not allow children to uphold their right to freedom from discrimination, protected under article 2 of the CRC, because they discriminate against children based on wealth, access, race and gender.²⁰⁰ Participation is a right that must be accessible to every child, not just those that are articulate or literate.²⁰¹ Comparatively, removing the minimum voting age and giving children the right to vote would be completely neutral as it would give every child, regardless of age, gender, wealth or race, the ability to participate in political decision-making. Of course, some children will be excluded if they are unable to vote for themselves, for example, infants, but this restriction will exclude significantly fewer children than youth parliaments and councils.

VI Alternatives to a minimum voting age

There is a final argument that practically it is unfeasible to consider the competence of every child to vote, therefore, while the minimum voting age is not ideal it is the only

¹⁹⁶ At 607.

¹⁹⁷ At 597; Sara L. Austin "Children's participation in citizenship and governance" in Barry Percy-Smith and Nigel Thomas (eds.) *A Handbook of Children's and Young People's Participation: Perspectives from Theory and Practice* (Routledge, Oxon, 2010) 245 at 256.

¹⁹⁸ McGinley and Grieve, above n 184, at 257.

¹⁹⁹ Sutherland, above n 78, at 352.

²⁰⁰ Convention on the Rights of the Child, art 2(1); Sutherland, above n 78, at 258.

²⁰¹ Austin, above n 198, at 256.

possible mechanism to ensure incompetent children do not vote. The OUNHCHR stated that any restrictions on the right to vote must be necessary for a democratic society for a public goal, so it may be argued that the minimum voting age is necessary for the public goal of States being able to have elections without huge procedural requirements impeding it.²⁰² Thus, the vote may be on the circumstances that the Committee acknowledged might require an age threshold to reflect children's competence.²⁰³ This argument assumes that without a minimum voting age, the State would be forced to assess the competence of every child individually. However, there are many possible alternatives to the minimum voting age, such as universal suffrage, the fractional vote, a proxy vote or some amalgamation of these.

This paper argues that the best alternative approach to the minimum voting age is the amalgamation of universal suffrage and the proxy vote suggested by Wall.²⁰⁴ This is a mechanism where every child has a vote from birth, but a parent exercises a proxy vote on behalf of that child until the child decides they want to vote for themselves.²⁰⁵ The State would not have to assess the child's competence other than the practical procedural element of the child registering to say that they will begin voting on their own behalf. If a child is able to go through such procedures on their own, then this will be enough of an assessment to ensure that children meet the low-level competence threshold.

This paper argues Wall's universal-proxy approach is best because it would better reflect the age at which people have competence and independence considering the children's rights framework.

This approach would reflect the age at which people have competence because this approach gives children, rather than parents or the State, the ability to decide when they are ready to vote for themselves by registering to vote. If a child can register to vote, they

²⁰² Office of the United Nations High Commissioner for Human Rights, above n 35, at [48].

²⁰³ Committee on the Rights of the Child, above n 66, at [17].

²⁰⁴ Wall, above n 123, at 119.

²⁰⁵ Wall, above n 123, at 119.

will have the competence to vote because a child would have to understand what an election is, why they would want to exercise the vote themselves and have the independence to register themselves.²⁰⁶ This allows the State to assure that children are expressing their views when they are capable of forming their own views as required under article 12. Further, it ensures parents are upholding their duty to help their child exercise their rights in manner consistent with the child's evolving capacities, as required under article 5, because the proxy allows them to give children more hands-on direction at first, which can transition to guidance and eventually shifting full responsibility to children to exercise their rights when the child decides they are ready for it.

There may be a concern that this approach would not reflect the age at which people have the independence to vote because parents keeping the proxy when the child is capable of expressing their views or manipulating the child into believing the parent still has control over the vote, so that the parent can use the vote for their own interests. One rebuttal to these concerns is that we already assume that parents will act on behalf of their children's best interests when they are too young to do so themselves, such as in medical or educational decision-making, so although parents might be able to use the proxy vote to vote in their own interests, rather than the child's, the proxy vote would be another extension of this.²⁰⁷ A more robust rebuttal is this approach fulfils the aims of the suggested mechanisms to avoid high-level coercion discussed under *Protection* because it requires children to register independently and vote independently. Further, it gives children practice at thinking about or engaging with this right. Therefore, coupled with education, children will learn to avoid coercion. Thus, while independence is the biggest issue for this approach, it can be overcome.

Furthermore, although we found that a child's need for protection was not a reasonable restriction on the right to vote, this approach would still protect rights, like a child's best interests. Although some children would vote for frivolous reasons, for reasons not in their best interests, or possibly vote for a party they are told to vote for, the harm of children

²⁰⁶ Wall, above n 123, at 119.

²⁰⁷ Jane Rutherford, above n 143, at 1506.

voting in this way is still smaller than the harm of many competent children being unable to vote.²⁰⁸ Further, article 12(2) contemplates the possibility of a child to be heard in a judicial proceeding through “a representative or an appropriate body”.²⁰⁹ This suggests a child’s vote be expressed through a representative of a parent acting as a proxy in a way that upholds their best interests if the representative communicates the child’s views in an effective and accessible way.²¹⁰ While parents may not be able to ascertain their children’s views fully, they are the best adults to be able to understand their child’s best interests.

There are of course obstacles with this proxy vote model such as: which parent would exercise the proxy vote if parents disagreed or were divorced? Would this further disadvantage poor or minority families? Would people choose to have more children to abuse the proxy vote system? How involved should schools be in helping children exercise their right to vote? What if the child is in State care?²¹¹ While the exact mechanics of this policy would need to be fleshed out, this approach would be an improvement on the minimum age in actually reflecting children’s rights.

VII Conclusion

This paper has sought to tackle the issue of whether we should have the minimum voting age in New Zealand from a children’s rights perspective. Although children do not have a right to vote through New Zealand law, we can ascertain a right to vote for children through New Zealand’s international obligations under the ICCPR as a starting point and the onus is on the State to demonstrate that the minimum voting age is a reasonable restriction on the right to vote. As the guidance on what amounts to a reasonable restriction provides a very broad and discretionary test, this paper chose to narrow its focus on whether the minimum voting age can be considered a reasonable restriction in light of the children’s rights framework, including children’s rights under the CRC and the wider children’s rights discourse. Using this approach, this paper argued the minimum voting age would be a

²⁰⁸ Wall, above n 123, at 119; Rutherford, above n 143, at 1509.

²⁰⁹ Convention on the Rights of the Child, art 12(2).

²¹⁰ Sutherland, above n 78, at 345.

²¹¹ At 1521-1522; Wall, above n 123, at 119.

reasonable restriction on the right to vote if it is found that three justifications for the minimum voting age, that children are not competent or independent and need protection, are reasonable restrictions on the right to vote under the children's rights framework, and the minimum voting age reflects the restrictions. As an alternative, it also considered whether the minimum voting age is a reasonable restriction on the right to vote because a child's exercise of its participation rights through youth parliaments and councils uphold children's rights just as well or better than participation through the vote.

Implementing articles 3, 5 and 12, with mention to articles 2, 13, 14 and 15, this paper has found that while competence and independence are reasonable restrictions on the right to vote, the minimum voting age does not reflect the age at which people have the competence or independence to vote. This is because the minimum voting age denies many children who meet the low-level competence threshold the vote and other mechanisms could be used to avoid high-level coercion that affects a person's independence to vote than the minimum voting age. Further, this paper found that because giving children autonomy through the vote can reconcile the tension between protection and autonomy under the CRC, by upholding children's right to express their views under article 12 and protecting a child's best interest under article 3, a child's need for protection is not a reasonable restriction on the right to vote. Finally, this paper found that a child cannot exercise its right to participation through youth parliaments and councils as well as they could through the vote because youth parliaments do not give children enough power to use their difference to make a difference to the political whole and, consequently, children are unable to use their participation rights through youth parliaments to secure recognition of their other rights.

In response to these findings, this paper recommends that we should change the status quo of the minimum voting age by implement Wall's universal-proxy approach. Wall's approach is a better alternative to reflecting competence and independence than the minimum voting age, and still protects children's best interests. New Zealand should adopt this approach if the Government wishes to uphold New Zealand's international obligations under the ICCPR and the CRC.

VIII Postscript

On 8 October, the High Court released its judgment on the *Make It 16* case which sought a declaration from the Court that the minimum voting age of 18 is inconsistent with the right to be free from discrimination on the basis of age, as protected under section 19 of the NZBORA.²¹² Doogue J held that while the Court has jurisdiction to hear the application for a declaration of inconsistency, a declaration of inconsistency cannot be granted in this case.²¹³ This application was declined because the Judge found that restricting eligibility to vote to those age 18 and under is a justified limit on the right in s 19 to be free from discrimination on the basis of age using the *Hansen* test.²¹⁴ The Judge found that the minimum age of 18 is rationally connected with its purpose because it implements the basic democratic principle that all qualified adults (as opposed to children) should be able to vote.²¹⁵ The Judge also found that the minimum voting age of 18, that defines an adult, impaired s 19 no more than is reasonably necessary to achieve its purpose because the age of 18 years is within a range of reasonable alternatives available to Parliament, within a proper margin of appreciation.²¹⁶ This is demonstrated by reference to other statutes in New Zealand, international law, and other countries in the world having a minimum voting age of 18, as well as Parliament's clear intention under s 12 of the NZBORA to grant only those over 18 the right to vote.²¹⁷ Finally, the Judge found the minimum age of 18 is in due proportion to the importance of the objective because maintaining the minimum age at 18 is reasonable and proportionate to the important objective of granting adults the right to vote.²¹⁸

²¹² *Make It 16 v Attorney-General* [2020] NZHC 2630

²¹³ At [44]-[49] and [118].

²¹⁴ At [113].

²¹⁵ At [93]-[96].

²¹⁶ At [93]-[96] and [117].

²¹⁷ At [105]-[109].

²¹⁸ At [110]-[112].

There are some inconsistencies with this paper and the judgment. The Judge approaches the interpretation of inconsistency between s 19 and s 12 differently to this paper, and the Judge finds that New Zealand's voting age provisions are consistent with international law which appears to undermine this paper's finding that it is open to find a minimum voting age as an unreasonable restriction on the right to vote protected under article 25 of the ICCPR. However, these inconsistencies do not materially affect this paper's thesis.

Ultimately, the judgment supports this paper's argument that children under the age of 18 do not have a right to vote under New Zealand law, although the Judge reaches the same result in a different way. While this paper found that s 12 is consistent with s 19 because we must regard all rights under the NZBORA to be of equal value, meaning one right cannot be inconsistent with another, the Judge found that s 12 is apparently inconsistent with s 19 using the *Atkinson* test.²¹⁹ However, the Judge found that s 12 is a justified limitation on s 19 under s 5 of the NZBORA using the *Hansen* test for the reasons discussed above. Therefore, this judgment still supports an argument that children do not have a right to vote under New Zealand law, and if children were to gain the right to vote it would require Parliament to extend the franchise to children.

The Judge finds that New Zealand's minimum voting age is consistent with New Zealand's international obligations under the ICCPR and the CRC because the OUNHCHR stated that setting a minimum age limit is an example of a reasonable restriction on the right to vote, every adult citizen has the right to vote, and a child is defined as people below 18 years in the CRC.²²⁰ Thus, it is reasonable to grant rights to adults and not to children.²²¹ This paper's thesis conflicts with this finding because this paper emphasizes that an argument for removing the minimum voting age should not be based on saying that children under 18 are adults, or that they should have all the rights and responsibilities of adults, but that the minimum voting age is an unreasonable restriction on the right to vote despite children having different needs, capacities and dependencies than adults.

²¹⁹ At [43].

²²⁰ At [108].

²²¹ At [109].

However, the Judge's finding does not preclude this paper from making this argument because the Judge based this finding on the OUNHCHR statement and the definition of children under the CRC. This paper addressed the OUNHCHR statement under the '*The right to vote in international law*' section and argued that while this statement is persuasive, it should not preclude taking an in-depth assessment on whether the minimum voting age is a reasonable restriction, particularly in light of specific considerations like the children's rights discourse that has developed significantly since this statement was made in 1996. Further, that the CRC defines children as under 18 years of age does not undermine this paper's argument because this paper does not question that people under the age of 18 are not children, but questions whether it is reasonable to restrict a child's right to vote. Thus, neither of these sources resolutely support a finding that it is reasonable to grant voting rights to adults and not children. Thus, there is scope for argument that the minimum age could be removed, and children should have suffrage as has been undertaken in this paper.

Word count

The text of this paper (excluding table of contents, abstract, footnotes, and bibliography) comprises approximately **14,841** words.

Bibliography

A Cases

Hansen v R [2007] NZSC 7

Make It 16 v Attorney-General [2020] NZHC 2630

B Legislation

Electoral Act 1993

Human Rights Act 1993

New Zealand Bill of Rights Act 1990

C Government Publications

Attorney-General Hon Christopher Finlayson *Report of the Attorney-General under the New Zealand Bill of Rights Act 1990 on the Electoral (Disqualification of Convicted Prisoners) Amendment Bill* (Order of the House of Representatives, 2010).

D Texts

David Estlund *Democratic authority: A philosophical framework* (Princeton University Press, Princeton, 2007).

Paul Rishworth and others *The New Zealand Bill of Rights* (Oxford University Press, Melbourne, 2003).

Raffaele Piccolo and Matthew Stubbs “Lowering the Voting Age: A Human Rights Perspective” *The Bulletin* (Law Society of S.A, South Australia, December 2018).

Sharon Detrick *A Commentary on the United Nations Convention on the Rights of the Child* (Kluwer Law International, The Netherlands, 1999) at 120.

Sonja C. Grover *Young People’s Human Rights and The Politics of Voting Age* (Springer Dordrecht Heidelberg, London, 2011).

Thomas Christiano *The ride of the many: Fundamental issues in democratic theory* (Westview, Boulder CO, 1996).

E Essays and Chapters in Edited Books

Brian McGinley and Ann Grieve “Maintaining the status quo? Appraising the effectiveness of youth councils in Scotland” in Barry Percy-Smith and Nigel Thomas (eds.) *A Handbook of Children’s and Young People’s Participation: Perspectives from Theory and Practice* (Routledge, Oxon, 2010) 254 at 258.

Gerison Lansdown “The realisation of children’s participation rights: critical reflections” in Barry Percy-Smith and Nigel Thomas (eds.) *A Handbook of Children’s and Young*

People's Participation: Perspectives from Theory and Practice (Routledge, Oxon, 2010) 11.

Michael Freeman "Article 3. The Best Interests of the Child" in A. Alen, J Vande Lanotte, E. Verhellen, F. And, E. Berghmans and M. Verheyde (eds.) *A Commentary on the United Nations Convention on the Rights of the Child* (Martinus Nijhoff Publishers, Leiden, 2007) 1.

Sara L. Austin "Children's participation in citizenship and governance" in Barry Percy-Smith and Nigel Thomas (eds.) *A Handbook of Children's and Young People's Participation: Perspectives from Theory and Practice* (Routledge, Oxon, 2010) 245 at 256.

Tom Cockburn "Children and deliberative democracy in England" in Barry Percy-Smith and Nigel Thomas (eds.) *A Handbook of Children's and Young People's Participation: Perspectives from Theory and Practice* (Routledge, Oxon, 2010) 306 at 308 and 312.

F Journal Articles

Amy McEwan-Strand and Marit Skivenes "Children's Capacities and Role in Matters of Great Significance for Them: An Analysis of the Norwegian County Boards' Decision-making in Cases about Adoption from Care" (2020) 28 Int'l J. Child. Rts. 632.

Andrew Rehfeld "The Child as Democratic Citizen" (2011) 633 ANNALS 141.

Ann Quennerstedt "Balancing the Rights of the Child and the Rights of Parents in the Convention on the Rights of the Child" (2009) 8 J. Hum. Rights 162.

Aoife Daly "Assessing Children's Capacity Reconceptualising our Understanding through the UN Convention on the Rights of the Child" (2020) 28 Int'l J. Child. Rts. 471.

Bronagh Byrne "Do Children still need to Escape Childhood? A Reassessment of John Holt and his Vision for Children's Rights" (2016) 24 Int'l J. Child. Rts. 113.

Cath Larkins "Enacting children's citizenship: Developing understandings of how children enact themselves as citizens through actions and Acts of citizenship" (2014) 24 *Childhood* 7

Daniel Hart and Robert Atkins "American Sixteen- and Seventeen-Year-Olds Are Ready to Vote" (2011) 633 ANNALS 201 at 203-205.

Elaine E. Sutherland "Listening to the Voice of the Child: The Evolution of Participation Rights" (2013) 2013 N.Z. L. Rev. 335.

Elaine E. Sutherland "The Enigma of Article 5 of the United Nations Convention on the Rights of The Child: Central or Peripheral?" 28 Int'l J. Child. Rts. (2020) 447.

Francis Schrag "The child's status in the democratic state" (1975) 3 *Polit Theory* 441.

Gerison Lansdown “The Evolving Capacities of the Child” (2005) 11 *Innocenti Insights* 3 at 15.

Hilde Lidén and Hilde Rusten “Asylum, Participation and the Best Interests of the Child: New Lessons from Norway” (2007) 21 *Child. Soc.* 273 at 278.

Jane Rutherford “One Child, One Vote: Proxies for Parents” (1997) 82 *Minn L Rev* 1463.
John Eekelaar “The Importance of Thinking That Children Have Rights” (1992) 6 *Int’l J.L & Fam* 221.

John Eekelaar “The Interests of the Child and the Child's Wishes: The Role of Dynamic Self-Determination” (1994) 8 *Int’l J.L & Fam* 42.

John Wall “Can democracy represent children? Toward a politics of difference” (2011) 19 *Childhood* 86 at 86.

John Wall “Democratising democracy: the road from women’s to children’s suffrage” (2014) 18 *IJHR* 646.

John Wall “Why Children and Youth Should Have the Right to Vote: An argument for Proxy-Claim Suffrage” (2014) 24 *CYE* 108 at 110.

John Wall and Anandini Dar “Children's Political Representation: The Right to Make a Difference” (2011) 19 *Int'l J. Child. Rts.* 595 at 610; Cath Larkins “Enacting children’s citizenship: Developing understandings of how children enact themselves as citizens through actions and Acts of citizenship” (2014) 24 *Childhood* 7.

Laura Lundy “Voice Is Not Enough: Conceptualising Article 12 of the United Nations Convention on the Rights of the Child” (2007) 33 *Br Educ Res J.* 927.

Louise Gwenneth Phillips, Jenny Ritchie and Francisco Perales “Surveying support for child and youth political participation in Australia and New Zealand” (2019) 23 *Citizen. Stud.* 460.

Marc Jans “Children as Citizens: Towards a contemporary notion of child participation” (2004) 11 *Childhood* 27.

Mark Henaghan “Article 12 of the UN Convention on the Rights of Children: Where Have We Come from, Where Are We Now and Where to from Here?” (2017) 25 *Int'l J. Child. Rts.* 537.

Mark Henaghan “New Zealand Case Studies to Test the Meaning and Use of Article 5 of the 1989 United Nations Convention on the Rights of the Child” (2020) 28 *Int'l J. Child. Rts.* 588.

Markus Wagner, David Johann and Sylvia Kritzinger “Voting at 16: Turnout and the quality of vote choice” (2012) 31 *Elect. Stud.* 372.

Matias Cordero Arce “Maturing Children's Rights Theory” (2015) 23 Int'l J. Child. Rts. 283.

Maura Priest “Why Children Should Be Allowed to Vote” (2016) 30 Public Aff. Q. 215.

Michael Freeman “The Best Interests of the Child: Is the Best Interests of the Child in the Best Interests of Children” (1997) 11 Int'l J.L. Pol'y & Fam. 360.

Michael Freeman “The Future of Children’s Rights” (2000) 14 Child. Soc. 277.

Michael Freeman “The Human Rights of Children” (2010) 63 CLP 1.

Michael Freeman “Why It Remains Important to Take Children’s Rights Seriously” (2007) 15 Int'l J. Child. Rts. 5 at 13.

Philip Alston “The Best Interests Principle: Towards a Reconciliation of Culture and Human Rights” (1994) 8 Int'l J.L. & Fam. 1.

Robert Goodin and Diane Gibson “Rights, young and old” (1997) 17 Oxf. J. Leg. Stud. 185.

Robert H. Pantell and Maureen T. Shannon “Improving Public Policy for Children: A Vote for Each Child” (2009) 9 IGJR 139.

Rudi Roose and Maria Bouverne-De Bie “Do Children Have Rights or Do Their Rights Have to be Realised? The United Nations Convention on the Rights of the Child as a Frame of Reference for Pedagogical Action” (2007) 41 J. Philos. Educ. 431.

Steven Lecce “Should Democracy Grow up? Children and Voting Rights” (2009) 9 IGJR 133 at 135.

Tak Wing Chan and Matthew Clayton “Should the voting age be lowered to sixteen? Normative and empirical considerations” (2006) 54 Polit. Stud. 533.

Tommy Peto “Why the voting age should be lowered to 16” (2018) 17 Politics, Philosophy and Economics 277 at 287.

Ursula Kilkelly “‘Evolving Capacities’ and ‘Parental Guidance’ in the context of Youth Justice: Testing the Application of Article 5 of the Convention on the Rights of the Child” (2020) 28 Int'l J. Child. Rts. 500.

G Unpublished Papers

Stephan Kessen “The Legitimacy of Disenfranchising Children” (LLM Research Paper, Victoria University of Wellington, 2010)

H Internet Materials

“Constitutional Issues & Human Rights” (19 August 2020) The Ministry of Justice <www.justice.govt.nz>

BatchGeo “Voting Age Around the World” BatchGeo <<https://batchgeo.com/>>.

National Youth Rights Associations “Top Ten Reasons to Lower the Voting Age” National Youth Rights Associations <<https://www.youthrights.org/>>.

Robert A. Dahl “Democracy” (20 July 1998) Britannica <www.britannica.com>.

Senedd Cymru Welsh Parliament “Votes at 16 for Senedd Elections” Senedd Cymru Welsh Parliament <<https://senedd.wales/en/Pages/Home.aspx>>.

I Newspaper and Magazine Articles

Andrew Geddis “The campaign to lower the voting age arrives today at the High Court. Here’s what is at stake” (online ed, New Zealand, 24 August 2010).

Megan Whelan “A brief history of voting in New Zealand” *Radio New Zealand* (online ed, 27 June 2014).

J Government material from Australia

Human Rights Law Resource Centre (Melbourne) “The Human Right to Vote and Participate in Public Affairs: Submission to the Senate Finance and Public Administration Legislation Committee Inquiry into the Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005”.

K International Treaties

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

International Covenant on Civil and Political Rights, 999 UNTS 171 (adopted and opened for signature 16 December 1966, entered into force 23 March 1976, ratified by New Zealand on 28 December 1978).

Vienna Convention on the Law of Treaties 115 UNTS 331 (opened for signature 23 May 1969, entered into force 27 January 1980).

L United Nations Materials

1 United Nations Resolutions

Universal Declaration of Human Rights GA Res 217A (1948).

2 *General Comments*

Committee on the Rights of the Child *General Comment No. 12: The Right to be Heard* CRC/C/GC/12 (2009).

Committee on the Rights of the Child *General Comment No. 20: The Implementation of the Rights of the Child during Adolescence* CRC/C/GC/20 (2016).

Committee on the Rights of the Child *General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child* CRC/GC/2003/5 (2003).

Committee on the Rights of the Child *General Comment No. 7: Implementing Child Rights in Early Childhood* UN/CRC/GC/7 (2005).

Human Rights Committee *General Comment No. 25: The Right to Participate in Public Affairs (Voting Rights and the Right of Equal Access to Public Service)* CCPR/C/21/Rev.1/Add.7 (1996).

Office of the United Nations High Commissioner for Human Rights *CCPR General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote)* CCPR/C/21/Rev.1/Add.7 (1996).

3 *Draft Guidelines*

Office of the United Nations High Commissioner for Human Rights *Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies* (2002).