

## Chapter 2

# Examples of Contextual Factors in the Youth Struggle for the Vote

### 2.1 Historical Examples of Voting Rights for Persons Below the Usual Age of Majority for Political Citizenship in their Particular Societies

The contemporary international movement to lower the eligible voting age to below 18 years and grant the vote to youth (for example, persons aged 16 and 17 or perhaps even to persons as young as 14) is often perceived to be a novel struggle for a human right. However, history teaches that this presumption is incorrect. Cultice, in his historical work on the struggle for youth suffrage in America, points out that the issue of ‘youth’ voting rights was a matter given important consideration in the earliest societies which enjoyed any form of representative government [38]. The specific age at which one was still considered a youth; that is, below the age of majority as far as voting was concerned, and generally also in most other domains, has varied over historical epochs. For example Cultice points out that:

Under Roman law, the basis of civil law in Europe, a person came of age or reached majority and acquired full civil and legal rights at age 25, *but under certain circumstances was afforded military citizenship status at age 19*. Under English common law men and women came of age at 21, which was regarded as the average age at which a person reached full maturity and discretion. English common law divided the twenty-one years from birth to adulthood into three seven year periods: infancy, childhood and adolescence (emphasis added) [39].

Note the link in early societies between male citizenship rights such as voting and military age (age at which one could join the armed forces voluntarily or be conscripted). Hence, early societies made room for those males who were *below* the age of (legal) majority in most every domain to yet access the vote where certain conditions were met (i.e. the male youth in question had membership in the armed forces). Cultice states that it is believed that ‘setting the age of 21 years for voting in the Western world stemmed from the English heritage in requiring that age for knighthood’ [40]. Currently, age of voluntary enlistment in the British forces is 16 and one-half with parental consent. Interestingly, there has been a

strong youth movement directed toward lowering the eligible voting age to 16 in England and in the United Kingdom generally; but attempts at such legislative reforms have to date failed. Happold informs us that for many Germanic tribes of yesteryear, age of majority with all its attendant civil rights such as were available, was the age at which male persons bore arms and that was generally age 15 [41].

There is then no perfect correlation in every case (contemporary or historical) between being eligible for service in the armed forces and having the right to vote, but there is such a trend. Not surprisingly then, the impetus in the United States pre-1971 to lower the eligible voting age from 21 to 18 years was also linked to issues concerning age of service in the armed forces. Hence, it was during the Vietnam War, given that recruiting age for the armed forces was 18, that the voting age was lowered from 21 to 18 years. Cultice reminds us of the epigram of that era, intended no doubt to encapsulate some moral legitimacy for the youth suffrage movement of the time, namely: ‘old enough to fight, old enough to vote’ [42]. The thinking of the supporters of youth suffrage in the U.S. during the Vietnam War era (where youth, in this instance, is defined as persons 18 and over but under age 21) seemed to be that since youth below the age of majority (specifically males aged 18, 19 and 20) were, in so many cases, making the ultimate sacrifice (risking their lives in the Vietnam War in their country’s service), they were *morally* entitled to the vote at age 18 years. Of course, women aged 18 to 20 years would also have to be enfranchised under the proposed electoral reform given the constitutional prohibition against discrimination in the vote based on gender. All that was left was to codify that right in law and, hence, the eligible voting age in the United States of America was lowered from 21 to age 18 years (though this was ultimately accomplished via the 26th Amendment to the U.S. Constitution rather than through non-constitutional statutory law).

## 2.2 Youth in the ‘Developing World’: Adult Responsibilities but Still No Right to Vote

Ironically, contemporary times are often regarded (erroneously in so many ways) as a banner epoch in most respects for children’s human rights worldwide [43] given, for instance, such developments as the *International Convention on the Rights of the Child* (CRC) [44]. The CRC sets out: (a) State duties owed to persons under age 18—except where age of majority is younger for a particular domain according to the domestic law in a particular State—as well as (b) an express articulation of children’s fundamental universal and inherent human rights and freedoms (where the definition of ‘child’, once more, is dependent on domestic law stipulations regarding age of majority in various domains in that particular nation State). Hence,

children's protection and participation rights under the *Convention on the Rights of the Child* (where the term 'child' is understood to refer ideally, as per Article 1 of the CRC, to a person under age 18) can be defined away under domestic law by the adjustment of the age majority to one younger than 18 [45, 46]. Hence, for example, child brides, below the age of 18 years, *but of age of majority for marriage under domestic law in a particular State*, no matter how young, and no matter the age discrepancy between the spouses, are *not* protected by the *Convention on the Rights of the Child* [47]. In *some* of these instances, the child may even have been sold into sexual bondage by destitute parents who have arranged a 'forced marriage' for a girl child under age 18 years in exchange for payment to the parents. The CRC provides no protection in such instances despite the CRC's inclusion of articles prohibiting sex trafficking (Article 35) and sexual exploitation (Article 34) of children (where 'children' is normally understood, as defined in Article 1 of the CRC, as persons under age 18 years unless age of majority is younger in domestic law regarding the matter at hand) [48].

Note that voting rights are *excluded* from the list of fundamental human rights of children articulated in the *Convention on the Rights of the Child*. This is the case notwithstanding Article 12 of the Convention which deals with children's participation rights, and Article 13 concerning children's right to freedom of expression [49]. Hence, there is little possibility for children to change the domestic laws that adversely affect them given the denial of the vote. This is not to deny the fact, however, that human rights activism instigated by and involving children, at times at great personal sacrifice to the children involved, have, at certain pivotal moments, been instrumental in altering the societal power status quo in various ways (i.e. children contributed in important ways to the anti-apartheid movement in South Africa) [50].

Tragically this is an era in which there is a resurgence of the use of child soldiers in the hundreds of thousands, some as young as nine or ten, in diverse conflicts worldwide [51–53]. This, though the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict bars the compulsory recruitment of children under 18 into the armed forces as well as the use of children under 18 for 'direct' participation in hostilities. So-called 'voluntary' recruitment of children under 18, but over 15, by State forces is still permissible under this CRC Optional Protocol. However, all recruitment and use of children of any age by groups distinct from official State armed forces is barred under this Optional Protocol [54]. Yet, for instance, child soldiers were routinely used in various African State conflicts as in Sierra Leone and the Democratic Republic of the Congo during their contemporary internal and trans-border conflicts. In fact, several high ranking perpetrators of the international crime of recruiting and/or using child soldiers are now being tried before the permanent International Criminal Court in The Hague in regards to

the war crimes of recruitment and deployment of child soldiers for active combat [55]. While there is a movement to lower the minimum voting age to 16 in various African States (i.e. South Africa), to date these voices have not been heard by the power elite. Likewise, child soldiers have been used in the contemporary European conflicts. For instance, during the recent conflict in the Territory of the Former Republic of Yugoslavia, child soldiers were used by paramilitaries and armed opposition groups as well as government forces. Yet, in contemporary times these child soldiers have not been accorded suffrage. Noteworthy then is the fact that in many contexts the link between children (defined in the Convention on the Rights of the Child as persons under 18) sharing one of the heaviest burdens of society (i.e. military service) and having the right to vote, as occurred in previous historical periods, has been severed (no doubt, in part, as their involvement is, in the first instance, a violation of codified international law as well as of the customary rules of war). The child's involvement as warrior in very brutal and protracted conflicts globally [56] is not then the common 'coming of age' marker for the grant of the vote as it typically was in earlier times. Although there are increased rights guarantees for children in international law such as the Convention on the Rights of the Child (i.e. in respect of the right to State protection against various types of abuse and exploitation and State obligations to recognize and affirm varied positive children's provision rights such as the right to adequate health care etc.), suffrage is not considered in most States (Western or non-Western) to be amongst the young person's inherent entitlements.

In this contemporary era of international human rights institutions such as the United Nations, international human rights NGOs and the prevalence of 'rights talk', it is not surprising that Western democratic governments that have used child soldiers in combat are loathe to acknowledge that such has occurred. Generally, democratic States do *not* condone the practice as official State practice. Military dictatorships, of course, are not particularly interested in human rights issues and enlargement of the franchise in any case. The latter States are often in a perpetual state of civil war and martial law with any normal electoral process suspended such that voting rights are, for all practical purposes, non-existent for citizens at any age. Thus young people of aged 16 and 17 years who participate in armed conflict on the side of a sitting government or a rebel group that has taken power are typically not rewarded with the vote.

This is also the epoch of significantly increasing numbers of child-headed households in some parts of the world, but yet these minors, too, are denied suffrage. Minors are more frequently than ever before those who are caring for parents suffering from HIV/AIDS, and for their siblings (such trends are occurring in South Africa for instance). These young people are also frequently already orphaned as a result of the AIDS pandemic and the sole support of the family. In many instances, these young people are being denied the support that would be offered to them were they adults suffering

under the same type of enormous burdens [57]. In addition, in contemporary times, vast numbers of children worldwide contribute millions of dollars to State economies through their labour; often hard and highly hazardous labour, and not uncommonly, do so as forced or bonded labourers [58]. Yet, this 'child labour', so valuable and lucrative for the State, is *not* rewarded with access to voting; though clearly these persons under age 18 years are major participants in the State's economy.

Contributing in significant ways to the society and being granted the vote then are quite imperfectly correlated, to say the least, whenever the rights of persons under age 18 years are involved. Children and youth in extremely dire situations then, though making highly valuable societal contributions, most often have no voice through the vote to advocate for amelioration of their socio-economic status or other living conditions to any degree whatsoever.