

Chapter 4

Austria and the Vote at 16

4.1 ‘Are We There Yet?’: The 2007 Lowering of the Minimum Voting Age to 16 in Austria Cast as a Political Policy Choice and Not an Affirmation of an Inherent Fundamental Human Right

Austria is the first European country to constitutionally permit voting at age sixteen years for all elections:

...any person with Austrian citizenship who has reached the age of 16 has the right to take part in nation-wide elections, in particular in elections to the European and the Austrian Parliament as well as in Presidential elections, and in national referenda ... *As to provincial and local elections, the federal law refers in principle to the responsibility of the provincial parliaments, however, it is stated in the Federal Constitution that the provincial regulations must not be more restrictive than the federal ones, and the local ones not more restrictive than the provincial ones* (emphasis added) [101].

Note that the 2007 constitutional change in Austria regarding the minimum voting age potentially allows for voting below age 16 years at the provincial and local level depending on the policy choice of the provinces. The Austrian provincial governments have the power to regulate electoral law within their provincial jurisdictions as long as the regulations are consistent with constitutional requirements, while the federal government regulates the electoral rules for the Federal Parliamentary and European Parliamentary elections:

... according to [Austrian] federal constitutional law provinces may determine the age of the vote *below* but not above 16 years, while local authorities may determine the age of the vote *below* but not above the age determined for provincial elections. *This means that with a view to the local and provincial levels, the present electoral law is in principle open to extending the right to vote to persons who are even younger than 16* (emphasis added) [102].

Wintersberger reports that as of January 2007: (a) five out of nine provinces in Austria had lowered the minimum voting age to 16 years, and (b) overall participation rates for youth aged 16–18 was 61% in the

initial local and provincial elections that were held after institution of the new electoral law [103]. What is striking is the profound lack of reaction to this momentous human rights development from the rest of Europe and from the democracies of North America. The deafening silence to this democratic development is most likely due to the fact that this change to electoral law in Austria is conceptualized by other States as nothing more than an internal political policy choice with no lessons for the international community. Indeed, in what follows it will become apparent that this is the formulation that was also assigned to the lowering of the minimum voting age in Austria itself. The point here is that as long as the issue of eligible voting age is cast as a discretionary social policy matter of concern only to the sovereign State involved (as opposed to a fundamental human rights matter), there will be little impetus to lower the minimum voting age to 16 years globally as a matter of principle. This inevitably slows progress toward achievement of a new international voting age status quo of 16 years which would at least affirm that suffrage need not be correlated with age of majority in all other domains (i.e. eligible age for election). A voting age of 16 years internationally would, hence, constitute something of a psychological breakthrough and implicitly raise anew the thorny question of universal suffrage. On this point it is important to understand, as previously discussed, that Austrian municipalities and provinces are free constitutionally, in fact, to set minimum voting age even below 16 years consistent with the notion of universal suffrage.

It is relevant to note that Austrian youth were, by all accounts, instrumental in the achievement of this Austrian electoral reform. That is 'the Austrian Federal Youth Representative Council . . . , an umbrella structure comprising some 40 Austrian youth organizations, the political parties' youth organizations included' made major contributions to the campaign to lower the minimum voting age as did the European initiative 'the Young Rights Action Plan' [104].

Wintersberger maintains that the Austrian move in 2007 to lower the minimum voting age from 18 to 16 years in local, provincial and federal elections:

... is not to be interpreted as a generous gift to young persons between 16 and 18 years, but as a first response of adult society to an existing and disturbing democracy problem caused by the exclusion of minors from political articulation and by the consequent imbalance of generational distribution of political power [105].

The proposal to lower the voting age to 16 in Austria (with the possibility of even lower voting ages at the provincial and local level elections) came as part of a coalition agreement between the two major Austrian parties: the Social Democrats and the Conservatives and was presented in January 2007. These two parties had been asked by Austria's Federal President to form a coalition after the 2006 election left the country with no victor holding the majority of seats. Only a coalition between the two major parties could resolve the dilemma:

The [Austrian] national elections of October 2006 resulted in a stalemate situation. With 68 seats for the Social Democrats, 66 for the Conservatives, 21 for the Greens, 21 for the right Freedom Party and 7 for the right Future Alliance Austria . . . during the electoral campaign the expectations of both sides were dominated by the vision of either a ‘right’ or a ‘left’ majority. In the end, both options turned out to be unfeasible, because the right Freedom Party had expressed a preference for staying in [the] opposition [in Parliament], while the Greens had excluded to join any coalition together with one of the right parties. Therefore, mathematically any feasible solution had to comprise the two bigger parties (emphasis added) [106].

Hence, the stalemate outcome of the 2006 federal election in Austria may have been the stimulus for constitutional change regarding the minimum voting age in that country. Reducing the voting age to 16 years would allow, after all, for an additional large pool of voters in future years. With the increase in the pool of eligible voters, there would presumably be a significant reduction in the likelihood of stalemate as the outcome of any future federal election (or of any future local or provincial election for that matter). Thus, the parties could once again vie for a clear majority rather than resorting to a coalition between certain parties to form that majority and all the political policy compromises that are ultimately required to form the coalition and to make it work effectively (especially where the coalition members are highly divergent in their respective political positions on the issues of the day). It would appear then that the inclusion of the youth vote at age 16 years in Austria through lowering the voting age to 16, may have had less to do with respect for universal suffrage as a fundamental human right, and more to do with political necessity in a democratic State (given the population demographics and problems around building preferred party coalitions as well as the desire of each political party for a clear majority in their own right).

Consistent with this interpretation (of why the two major party coalition that comprised the government after the 2006 federal election lowered the eligible voting age to 16) is what appears to have been a likely trade-off between the two parties in terms of which new voters ought to be included, and the likely party affiliations of these new voters. Note that the coalition along with proposing a constitutional change to lower the minimum voting age to 16 years, also introduced the possibility of a postal vote which would assist those who were out of the jurisdiction when the vote was being held within some locale in Austria. Wintersberger hypothesizes that:

Recent electoral reform [in Austria; namely lowering the voting age to 16] was based on a simple deal between the two competing [major political] parties by which both of them could get a comparative advantage simultaneously leaving an advantage also to the political competitor; . . . a bargain over [the] vote 16+ versus [the] postal vote between the Social Democrats expecting stronger support from young voters [the 16+ vote], and the Conservatives expecting stronger support from geographically mobile voters [the postal vote] (emphasis added). [107]

Indeed, the 2007 leader of the Conservative party appears to have conceded that the party's agreement to the vote 16+ initiative was motivated by the need for change given the party's loss in the 2006 election (thus revealing primarily, or perhaps even exclusively political rather than human rights considerations in his party's support for the lowering of the minimum voting age to 16 years) [108].

Wintersberger suggests that it is of no consequence that political dealing; a trade-off between the two major parties, appears to have been the stimulus for the lowering of the minimum voting age to 16 in Austria for federal elections; with even lower voting minimums possible at the provincial and local levels (i.e. the Social Democrats hoping to gain the majority of votes from the 16 and 17 year olds, and the Conservatives the majority of the postal vote):

The assessment of the reform depends primarily on the changes it brought about. If we agree that both parts, vote 16+ and the postal vote are positive steps in the development of the democratic system, *it does not matter so much which were the motives of the actors in the decision making process* (emphasis added). [109]

The current author respectfully disagrees with Wintersberger's contention that the reasons for lowering the vote to 16 + in Austria (or in any jurisdiction) are largely irrelevant. When the lowering of the minimum voting age is perceived both within the State and outside the State as a simple maneuver for political advantage (i.e. to facilitate support for a certain political party), the move is *not* perceived by the general public as a human rights victory. Such a change then when not perceived as based on moral principle (i.e. respect for the inherent fundamental human right to suffrage) does not further the international human rights struggle for the youth vote at 16 years. This is precisely what occurred in the wake of Austria's 2007 lowering of the voting age to 16 in federal elections (with the potential for even lower voting ages at the provincial and local levels). What happened in the rest of Europe and in North America following the lowering of the minimum voting age to 16 in Austria? For the most part nothing much flowed from these changes in Austria to other democratic jurisdictions; not even more intense consideration of a lowering of the minimum voting age for all elections in those other States. That is, there was no lowering of the minimum voting age to 16 for *all* public elections for the entire country (as opposed to in particular provinces or regions or in crown dependencies) in any other Europe state, or elsewhere in the democratic world that was stimulated by the Austrian 2007 example. (The Swiss Canton of Glarus had lowered the voting age to 16 in 2007 for cantonal and local elections, the self-governing British crown dependencies all had reduced the minimum voting age to 16 years prior to 2008: the Isle of Mann in July 2006; Jersey in July, 2007 and Guernsey in December 2007. Bosnia, Serbia and Montenegro permit voting at 16 years if the voter is employed and there is voting at 16 in select German States known as Lander for both State and

municipal elections). This state of affairs then is consistent with the Clifford Bob model regarding the importance of transforming the public perception of the complaint (exclusion of minors from the vote) *from grievance to human rights claim* if there is to be success in the human rights struggle on a particular issue (i.e. success being, at a minimum, lowering of the eligible voting age to 16 for all elections across Europe and North America for a start).

Success depends on the claimant group gaining the support of powerful allies (i.e. often national and international human rights NGOs, advocates etc.) regarding the urgent need to ameliorate the group's disadvantaged state (the disadvantage arising from discrimination and exclusion) which in turn depends on whether the issue is effectively characterized as a fundamental human rights concern. It should be noted in this regard that even where the minimum voting age is lowered, as in Austria, it is adults who ultimately have the greater impact in shaping the public perception about whether or not the electoral reform is grounded on fundamental human rights principles or instead on purely political considerations (i.e. regarding the attempt to ameliorate poor voting turnout by increasing the pool of likely eligible voters).

When the vote was lowered in the U.S. from 21 years to 18 years during the Vietnam era, the change was more closely based on moral principle though *not* on the need to respect the fundamental right to universal suffrage. That is, the lowering of the U.S. minimum voting age in 1971 from 21 to 18 years was based on the notion that young people who could die defending their country in battle (i.e. in the Vietnam War, are entitled, on moral grounds, to voting rights). Accordingly, other democratic countries followed suit and also lowered their minimum voting age to 18 years. However, as the matter of youth voting rights in the U.S. was not actually framed by the political power elite on the whole as a basic human rights issue; the struggle in recent years to lower the U.S. minimum voting age from 18 years to 16 years has floundered. So, too, the 16+ vote subsequent to the Austrian 2007 electoral reform, not having been, for the most part, categorized/perceived by the politicians or the public as a step toward recognition of a fundamental inherent universal human right (as opposed to simply a discretionary political choice), has not stimulated tangible progress in the youth voting rights struggle in other Western democratic States.