

Chapter 5

The U.K. Example of Resistance to the Vote at 16: The U.K. Electoral Commission and Select U.K. Social Scientists

5.1 The U.K. Electoral Commission's Under-Cutting of the Youth Voting Rights Issue as a Fundamental Human Rights Matter

There has been a concerted effort in the United Kingdom in recent years by youth advocates, youth themselves and select politicians to lower the minimum voting age from 18 years to 16 years for all elections. This effort came close to success under the Labor Party's rule with Tony Blair as Prime Minister. At that time, a cross-party group of MPs, in response to the 'Vote at 16 Campaign', tabled the motion below in Chambers:

... this House welcomes the formation of the 'Vote at 16 Campaigns,' a coalition of charities, political experts, young people and organizations representing them, who have come together in the belief that *lowering the voting age would improve the quality of politics in the United Kingdom through involving more citizens in the debate* ... helping to reconnect many young people, who otherwise would not vote, with the politicians who seek to represent them and further believes that it [a minimum voting age of 16 years] would be logical in view of the introduction of citizenship education into the national curriculum up to the age of 16 ... and calls upon the government to legislate to lower the voting age for all public elections (emphasis added) [110].

What is striking in the context of this discussion about the aforementioned motion (tabled by the U.K. politicians regarding lowering the U.K. minimum voting age to 16) is the rationale proffered for the motion. That rationale was articulated as the anticipated benefit in terms of 'improving the quality of politics in the United Kingdom through involving more citizens' [111]. That is, there was an expectation that there would be greater involvement of the citizenry and higher turnout at the polls with the addition of new voters. The justification for the proposed electoral reform was *not* framed in terms of a move toward the affirmation of the inherent right to universal suffrage. The bill proposing the right to vote at age 16 years in the U.K. did not pass the House.

It is noteworthy that the 2003 U.K. Electoral Commission (an independent body set up by the U.K. Parliament) advised the U.K. government of the time to postpone for several years the lowering of the voting age from 18 to 16 years, while at the same time endorsing the position that the eligible age for elected office be lowered from 21 to 18 years. It appears that both the party in power in the U.K. at the time, and the 2003 U.K. Electoral Commission, viewed the young voter aged 16 and over but under 18 years as something of a ‘wild card’. That is, as an unpredictable entity that ought not to hold the potential power to sway an election, for instance, where the results were close. While anyone 18–21 years running for elected office could be defeated through the vote, granting the vote to 16-year-olds meant that a new group of voters, 16 and 17 year olds, could potentially have considerable political power in an election depending on the unique circumstances of the election.

Certainly it has been the case that the youth vote is not always as predictable as some might assume. For instance, in the 2008 Austrian election in which voters aged 16 and 17 participated for the first time in a federal election, they appeared to vote in a direction that was largely unanticipated. According to GfK exit polling of 600 first time voters aged 16–19 years, 44% voted for the right wing party –the FPÖ which took a very anti-foreigner stance in the campaign [112]. Both of the major parties had lost considerable support, and neither alone could hold a majority forcing another coalition government. Voter turnout in the 2008 election, with the addition for the first time of voters aged 16 and 17 years, was “77.2% (based on valid votes) . . . a marginal increase compared to 2006 when it reached . . . 77.1% [in 2006 minimum eligible voting age was still 18 years] [113]”.

In the U.K., it appears that the ruling party under then Prime Minister Tony Blair, and the government’s advisory 2003 Electoral Commission, in actuality, were not willing to provide youth the potential political power-given the right electoral circumstances—to bring the government down.

The 2003 U.K. Electoral Commission deflected completely from the fundamental human rights issue involved in the voting rights question as it pertained to youth. Instead, the Electoral Commission actually suggested that other vehicles for public participation were preferable as far as youth (minors) were concerned; even older youth aged 16 and 17 years, and stated:

Elections are not a very precise way of finding out public opinion on specific issues, so giving young people [aged 16 and 17 years] the right to vote and stand in them may not be the answer to making sure young people’s voices are heard. When decisions are being taken on particular policies it is becoming more common to involve young people as part of the consultation process . . . for example, [the] central government produces [a] ‘youth version’ of some consultation papers (emphasis added) [114].

One cannot imagine it being an acceptable proposition for the public that U.K. citizens aged 18 years and over be denied the vote on the rationale provided by the 2003 U.K. Electoral Commission for the denial of the vote to 16- and 17-year-olds. That is, one would be hard pressed to anticipate that anyone would find acceptable the notion that 'consultation' is a more robust form of public participation than the vote, and that the former is an adequate substitute for the latter for all citizens (even adults). Such a strategy as adopted by the 2003 U.K. Electoral Commission in justifying its advice not to lower the eligible voting age in the United Kingdom to 16 years, infantilizes older youth aged 16 and 17 years. Also importantly, this tact attempts to justify denial of a fundamental human right on an alleged 'best interest' basis. Young people have in democratic Western societies also had other basic human rights violated by adults on the *alleged* best interest contention i.e. their security of the person compromised due to legally sanctioned assault by the parent or a parental delegate or school teacher who allegedly carried out the administration of force (corporal punishment) within constitutional limits and in the child's best interest for 'corrective purposes' [115, 116]. There is a global movement striving to end the use of corporal punishment against minors and rejecting the best interest rationale in that context [117]. So, too, this author would maintain does the best interest rationale for denial of the vote at 16 years need to be abandoned. The denial of fundamental human rights is, by definition, and, in practice, *not* in the best interest of the affected group as a group, nor in the best interest of the individual members of the group. The denial of the vote to 16- and 17-year-olds in the U.K. persisting to the date of writing, moreover, is a denial in the face of overwhelming demand for such an electoral reform from young people themselves as noted by the U.K. Electoral Reform Society (which founded the Vote 16 Coalition):

In 2006, the ... Children and Young People's Assembly of Wales found that 80% of young people in Wales favored a voting age of 16. The Electoral Commission's original public consultation on the voting age in 2004 found that 72% of respondents favoured a voting age of 16—the consultation attracted huge participation, including nearly 8,000 young people [118].

The U.K. Electoral Reform Society is one of the advocacy groups that on first impression may seem to formulate the vote 16 issue as a human rights issue:

Despite this clear and consistent majority demand for a lower voting age, *it must be remembered that voting is a right of the citizen*. No other age group or other demographic (e.g. gender, ethnicity, class etc.) is required to demonstrate majority support among their peers in order to have the right to vote. *The case for lowering the voting age is made on the basis that 16 and 17 year olds are capable of voting, and it is on this basis that change should be made* (emphasis added) [119].

In fact, however, the U.K. Electoral Reform Society's formulation of the voting rights issue as related to eligible voting age is not strictly in terms of

basic human rights. The U.K. Electoral Reform Society contends that the vote at 16 should be granted based on the fact that 16- and 17-year-olds are capable of voting (i.e. they receive citizenship education at school and are involved in civics engagement projects). All the while, however, the U.K. Electoral Reform Society negates, or at least disregards the possibility than any particular citizen under age 16 years might also be capable of voting. This amounts to denial of the inherent right to universal suffrage—the fundamental human right of all citizens to participate in their society (the issue also has risen as to whether citizenship itself as a qualification for the vote ought to be dropped for those who reside in the State and therefore participate in the life of the community [120]). However, that topic is beyond the scope of this monograph). Further, the U.K. Electoral Reform Society’s focus on the capability of 16- and 17-year-olds to vote inadvertently shifts the 16+ voting issue *from* human rights issue *to* political policy issue (i.e. competency is not a prerequisite for enjoyment of human rights entitlements). Hence, the ‘cognitive maturity’ of the potential 16- and 17-year-old voters, their interest in voting and such erroneously becomes the focus of the debate on minimum voting age; none of which go to the central issue of suffrage as an inherent universal human right.

The Electoral Reform Society, though it states that: ‘Voting is a citizen’s right and a civic action’ [121], undermines this human rights perspective in other ways as well. This it does by, at the same time, holding that the legitimacy of the right to vote ought to be assessed by comparing the age expectations for comparable civic rights and responsibilities:

The purchase of alcohol or cigarettes, for example, cannot seriously be held to be a civic act. *Being taxed, joining the armed forces, receiving benefits, starting a family and leaving home are within the realm of the citizen. It is against these civic rights and responsibilities that the voting age must be measured and the most appropriate age chosen. These rights, responsibilities and decisions fall more heavily now on 16, not 18* (emphasis added) [122].

To speak of choosing the ‘most appropriate age’ for eligibility for the vote based on consideration of the age at which minors participate in other acts of citizenship is to disengage, unwittingly (as in the case of the U.K. Electoral Reform Society; a youth voting rights advocacy group) from the notion of suffrage as the fundamental human right of every citizen. Fundamental human rights are inherent and universal, and not a function of the grant of various legal rights in other domains, neither are they age restricted. However, the reliance by the U.K. Electoral Reform Society on a rationale for the vote at 16 linked to what other acts of citizenship are permissible at 16 years in the U.K., undercuts this human rights principle. Note that the enumerated acts of citizenship that the U.K. Electoral Reform Society lists in the above quote includes both natural rights (i.e. the right to family) and socially constructed rights and duties (i.e. paying taxes; joining the armed forces etc.). The perspective adopted by the U.K. Electoral Reform Society on the voting age question is thus closer

to viewing voting rights as arbitrary political conceptions determined by majority consensus rather than as natural rights based on one's humanity. Hence, the Society's position does not take account of the human rights infringement involved in any absolute age-based bar to the vote (i.e. under 16s legislatively excluded from the vote by a blanket impenetrable legislated bar). Such a political conception of a basic human right (such as the right of suffrage) in actual fact reduces that right to nothing more than a political policy preference (i.e. the legal right to vote at a certain age deemed the 'appropriate age' by legislators acting as representatives of the public).

It is of interest that certain of the examples of other acts of citizenship permissible in the U.K. at 16 that are cited by the U.K. Electoral Reform Society in its report [123] to justify voting age rights at 16, have also been the focus of human rights struggles. However, the Electoral Reform Society is referring to these examples only as instances where government has chosen the eligible age at 16 years as a political policy choice and the Society is suggesting that allegedly the same discretionary choice can legitimately be made in regards to minimum voting age (i.e. a set minimum voting age at 16 years and a statutory bar on voting by anyone under 16 years regardless of his or her political/voting competency level or any other circumstance). For instance, one of the 'commensurate' examples cited was the age of voluntary recruitment into the U.K. armed forces which is 16 years. However, age of recruitment into the armed forces, and age of armed service personnel participating in hostilities, has been formally transformed through international treaty from a matter of concern only to the individual sovereign State to a human rights concern in which the international community has a vital interest (as evidenced, for instance, by the adoption by the United Nations of the *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict* (CRC OPAC) [124]. However, the United Kingdom has steadfastly kept the issue of minors recruited into the armed forces, in certain select but critical ways, a political matter rather than one strictly involving inherent fundamental human rights. Thus, the U.K., while having ratified the CRC OPAC 24 June, 2003, nonetheless stopped well short of offering to U.K. 16 and 17 year olds all the protections that the Optional Protocol on children's involvement in armed conflict is supposed to provide. More specifically, the United Kingdom as UNICEF reports "accompanied its ratification [of the CRC OPAC] with a declaration reserving the UK's right to deploy under-18s where there is a 'genuine military need' and where 'by reason of the nature and urgency of the situation it is not practicable to withdraw such persons before deployment'" [125]. UNICEF has expressed its concern that due to the Declaration, the United Kingdom may continue to recruit and use under 18s in direct hostilities [126]. The UK has the lowest voluntary recruitment age of all the States in the European Union and it is estimated that there are 6000–8000 under 18's currently serving in the UK armed forces

in 2009 [127]. The issue is an ongoing one, and the U.K. is still recalcitrant as of 2009 insofar as its refusal to withdraw its interpretive declaration regarding Article 1 of the CRC OPAC which Article protects under 18s from direct involvement in hostilities as participants in the State's armed forces. This is evident from the 2009 excerpt below involving questioning of the government in the Commons:

Exchange From the Commons Hansard on Children (under 18s) Serving in the U.K. Armed Forces as of 2009:

Mrs. Riordan: To ask the Secretary of State for Defence what plans he has to review the operation of the interpretative declaration on article 1 of the Optional Protocol to the UN Convention on the Rights of the Child on the Involvement of Children in Armed Conflict for the purposes of (a) taking steps to ensure that children are not exposed to the risk of taking direct part in hostilities and (b) monitoring Government compliance with the spirit of the Optional Protocol.

Bill Rammell: There are no plans to review the operation of the interpretative declaration on article 1 of the Optional Protocol to the UN Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. Government policy is that Service Personnel under the age of 18 are not *routinely* deployed on operations outside the UK. The exception to this is where the operation does not involve personnel becoming engaged in or exposed to hostilities, such as disaster relief.

The MOD: [Ministry of Defense] believes that its policies on under 18s are robust and compliant with national and international law. We remain fully committed to meeting our obligations under the United Nations Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (emphasis added) [128].

The above example illustrates the hazards in making an argument for a minimum voting age of 16 years based on the State's selection of age 16 for other rights and responsibilities. Many of those other examples of age of majority at 16 are *not* fully consistent with fundamental human rights considerations as opposed to the State's interest and political concerns (as is the case with the United Kingdom on the issue of under 18s serving in its armed forces).

The U.K. Electoral Reform Society (ERS) (which founded the Vote 16+ campaign in the United Kingdom) also unwittingly undercuts the youth voting rights movement as a human rights struggle due the 'spin' it gives to the right of suffrage. That 'spin' or interpretation has embedded in it various qualifiers which are in fact quite antithetical to the notion of suffrage as an inherent fundamental universal human right. For instance, the U.K. Electoral Reform Society states on the topic of suffrage:

The principle of *universal suffrage* is that anyone who is *capable of exercising a vote* and *haven't transgressed the rules of society* should be able to do so. 16 and 17 year olds are capable of voting (emphasis added) [129].

In fact, however, the principle of universal suffrage does *not* encompass the notion of 'capabilities' or that of having been a 'good citizen' (i.e. never having 'transgressed the rules of society'). The right to vote conceived as

a basic human right is instead grounded on the notion of an inherent universal right of suffrage. Once again, the UK Electoral Reform Society has relied on a political conception of voting rights (despite its rights rhetoric at other points in the report) which is inconsistent with the concept of suffrage as a fundamental human right, and therefore not workable. This author is, however, very much in agreement with the UK Electoral Reform Society's rejection of the notion, promulgated by the 2003 U.K. Electoral Commission, that while waiting for electoral reform, other forms of civic engagement can substitute for voting in the age 16- and 17-year-old group:

Voting is the fundamental right and act of a citizen, and not a substitute but a basis for all other forms of influence and participation. To continue to deny them the vote would be to refute the principle of universal suffrage (emphasis added) [130].

Like the current author, the UK Electoral Reform Society finds that democracy education (civics education) for 16- and 17-year-olds, and opportunities at times to play a consultative role in public policy making, are not sufficient to fulfill society's human rights obligations to this population of citizens in regards to their political rights:

Denying them the defining right of a citizen while simultaneously telling them they are a citizen and are expected to act like one sends a confusing and negative message. *It signals to young people and to the rest of society that young people's views are not valid and that they are not 'real citizens' (emphasis added) [131].*

We will consider in a later section school democracy/civic education programs including school students participating in mock federal election voting during actual voting periods for persons of age of majority. It is an open question as to whether such 'simulated' societal engagement via school civic programs in fact fosters disengagement from the political process rather than the reverse (as students aged 16 and 17 may feel demoralized by being treated as if they were considered unworthy of the 'real' vote). If that were the case, this then would contribute further to the traditionally low voter turnout in western democratic States among 18–24 year olds. Note that by arguing that lowering the voting age to 16 may enhance voter turnout; not just for 16- and 17-year-olds, but for the 18–24 year age bracket overall (this group potentially having learned early to make voting a life habit), the U.K. Electoral Reform Society once again diverts attention away from the issue of the inherent right to suffrage (independent of political considerations such as likely voter turnout). Since how the lowering of the minimum voting age 16 years would in actuality affect voter turnout for 18–24 year olds is largely a matter of speculation, the U.K. Electoral Reform Society found itself having to answer the issue of a possible *decrease* of voter turnout due to the inclusion of 16- and 17-year-old voters:

... our research shows that there would be no negative consequences to lowering the voting age. If 16-18 year olds were enfranchised but none of them voted, overall

turnout would fall by less than 2%. If they were to turnout at the same rate as 18-24 year olds, overall turnout would drop by less than one percentage point, which may well disappear in rounding to the nearest whole number and is much smaller than variations between

elections that occur for other reasons . . . At worse, then, lowering the voting age can only have a neutral effect on overall turnout, but is likely to have a positive effect [132].

Note that the U.K Electoral Commission had claimed in a 2004 report that: (a) lowering the voting age to 16 years in the United Kingdom would cause a lowering of voter turnout, in the short-term at least, as youth were expected to vote at a lower rate than older voters based on available data, and (b) there was no clear evidence that enfranchising 16-year-olds would lead to their increasing their voting participation over time [133]. Chan and Clayton maintain that: (a) the issue of voter turnout should be addressed via changing the behaviour of politicians and their relationship to the electorate and not by changes to the electorate and, (b) as long as young people vote ‘competently’ it matters not if their turn out is low [134].

The current author would also argue that voter turnout projections based on various set minimum eligible voting ages is *not* the appropriate rationale for the selection of a particular minimum age for the right to vote. This since the right to vote is grounded on the principle of universal suffrage which is entirely unrelated to issues of actual or predicted voter turnout. Universal suffrage is an imperative regardless of what actual voter turnout is predicted or materializes for various age groups.

5.2 Opposition from U.K. Social Scientists to Lowering the Voting Age to 16 in the United Kingdom

Social scientists can have an enormous impact on governmental policy choices by providing allegedly neutral ‘scientific’ rationales for those choices. This then makes the governmental choices appear rational and somewhat apolitical; allegedly based solely, or for the most part at least, on societal best interest considerations. The paper by Chan and Clayton ‘Should the voting age be lowered to 16? Normative and empirical considerations’ [135] is an example of social science research that can be used to attempt to rationalize governmental policy choices; sometimes these choices being the government’s preferred option in the first instance independent of the research. Let us examine this influential work then to gain some insight into how social scientists shape the public debate on the voting rights issue as it pertains to youth (we will consider other examples as well shortly). The Chan and Clayton paper raises, in an especially clear and systematic way, some of the key points of contention in the voting age debate and it is therefore useful to consider the paper in some detail.

The first few lines of the Chan and Clayton paper, whether intentionally or not, serve to frame the minimum voting age question as something other than a fundamental human rights issue:

The questions of whether there should be a minimum voting age and, if so, at what age it should be set are significant *political issues*, because having the vote is widely recognized as one of the most important *legal rights* within a democracy (emphasis added) [136].

The voting age issue is, hence, characterized in the Chan and Clayton paper from the outset as a purely political concern related to statutorily based laws. There is no mention in the paper of *universal* suffrage as an *inherent* fundamental human right (as opposed to a statutorily defined legal right), though there is a reference to the *potential* that the exclusion of a certain group from the vote may be a form of political discrimination:

In the absence of some compelling argument, the exclusion of a particular section of the population from the franchise is standardly taken to be a serious violation of *political equality* (emphasis added) [137].

The Chan and Clayton paper argues *against* lowering of the minimum voting age in the U.K. to 16 years based on considerations relating to what the authors term ‘political maturity for democracy,’ and its alleged relationship to chronological age [138]. We will get to the latter point in a moment, but first it is necessary to point out how the authors of the paper in question have set up the argument to make it appear that their conclusion is purely scientific and value neutral. This is accomplished via Chan and Clayton: (a) making reference to a survey commissioned by the U.K. Electoral Commission in 2004 which found that a majority of Britons prefer keeping the minimum voting age in the U.K. at 18 years, and (b) these researchers holding that the minimum voting age question should *not* be determined *ipso facto* based on the majority preference of the population as a whole without further justification, and simply because the choice represents the majority preference:

Even if the overwhelming majority are appalled by the prospect of sixteen-year-olds having the vote, *this cannot in itself* be even a *pro tanto* reason against lowering the voting age. The democratic conception is one in which every member of the political community is viewed as having equal status and in which political institutions and practices embody that principle . . . Significantly, electoral matters concerning the size and shape of the franchise are among the most important conditions of the legitimation of majoritarian procedures, and so cannot legitimately be determined by the will of the majority. It follows that the appeal to majoritarian choice must be rejected [139].

Yet, the Chan and Clayton empirical study is heavily entangled with majoritarian preferences regarding the ‘appropriate’ minimum voting age. This is the case in that the authors set themselves the task of discovering an alleged empirical basis for what they hold is the majoritarian preference—a

minimum voting age of eighteen years. They do so, as mentioned, by considering the issue of ‘political maturity’ as it relates to chronological age holding, as does the U.K. Electoral Commission, that ‘political maturity’ is at the heart of the question of what should be the minimum voting age: ‘The [UK] Electoral Commission *rightly* regards *maturity* as the fundamental issue in determining the appropriate age of electoral majority (emphasis added) [140]. However, majoritarian preferences—empirically supported or not—cannot be the legitimate deciding factor in setting a minimum voting age if universal suffrage is conceptualized as an inherent basic human right.

Further, if it were argued that: (a) there must be, or there is an empirically based rationale for determining voting age eligibility, and (b) this rationale derives from the alleged correlation between chronological age and ‘political maturity’ (however the latter is defined), then this strategy for determining voter eligibility, to be fair, would have to apply also at the upper end of the age continuum. That is, we would need to assess whether the very elderly, for instance, retain their ‘political maturity’ given that the incidence of brain pathology increases significantly in very advanced age, and voter participation during that stage of life also shows a significant decline. One might argue that here we are deciding who should acquire the vote, not who should retain it. However, if chronological age is to be used as a proxy for ‘political maturity’, and suffrage is considered an inherent fundamental human right, then, in fact, we are deciding in principle who will retain the right to vote as a natural right in *both* instances (for the young under age 18 years and, for instance, the very old where there is a higher risk of ‘political immaturity’). It is remarkable that there have in fact been instances where the right to vote has been granted to a certain age group only later to be retracted *strictly based on age*. The latter is precisely what occurred in Iran when the voting age, which had been 15 years, was raised to 18 years in 2006 with subsequent attempts by the ruling party to lower the voting age once again to 15 years failing [141].

It is interesting that Chan and Clayton use the term ‘political maturity’ as opposed to ‘political competence’ as doing so plays unconsciously on our assumption that adults are more ‘mature’ (given their developmental status) and, hence, likely to be also more ‘politically mature’ at any age relative to younger persons. This diverts attention away from the fact that both young age and old age, at some point, are likely inversely correlated with ‘political competence’, or in Chan and Clayton’s alternate terminology ‘political maturity’. Chronological age is, in the electoral context, *in practice*, considered as an alleged proxy for ‘political competence’, or ‘political maturity’ if you will, *only* for the very young (i.e. under 18s), and not for the very old (i.e. the over 70s or over 80s). Thus, we cannot claim, contrary to the contention of the U.K. Electoral Commission, that the exclusion of

youth from the vote is genuinely based on concern for the political maturity/competence of the electorate [142]. Yet, this is precisely what Chan and Clayton maintain:

Some argue that if the enjoyment of voting rights ought to vary with political maturity, then society should exclude individuals from the franchise on the basis of competence rather than [chronological] age . . . *An age-based franchise, it is said, arbitrarily discriminates against young people who possess the capacities, motivation and understanding that are relevant to the act of voting to a higher degree than some older people do. We should reject this argument. It is a mistake to assume that the discrimination we make in law or policy should always be guided by what is fundamentally important.* Suppose that age is not a fundamental consideration in judging qualifying conditions for the vote. Nevertheless, age might be a valuable *proxy* for what is fundamental. The distribution of capacities that we decide are fundamental might be correlated with age, albeit imperfectly. Consequently, age-based discrimination might be an effective way of tracking those capacities that are fundamentally important (emphasis added) [143].

It is difficult to rationalize, however, contrary to Chan and Clayton's contention, the idea that society should rely on an alleged proxy for political maturity/competence (that proxy being chronological age), rather than testing 'the real thing' directly (testing political competence). One reason for the reliance on an alleged proxy for political maturity/competence (chronological age); might be to avoid generalizing the issue of political competence to those already eligible to vote (those who have reached the age of majority for the vote). That is, reliance on chronological age itself (the proxy) allows for the arbitrary setting of specific age parameters (a minimum voting age of 18 years), thus *automatically* relieving those over age 18 years from scrutiny as to *their* level of political maturity/competence (and automatically excluding those under age 18 years from the vote based on a non-rebuttable presumption of lack of 'political maturity'). However, such a reason for relying on an alleged proxy for political maturity/competence, as opposed to testing for the same directly, is fundamentally unfair. There is, after all, no more justification for automatically excluding 16- and 17-year-olds from the vote based on their alleged political immaturity/incompetence than there is in withdrawing, on the same basis, the right to vote from all of the very elderly in the population (i.e. instituting an age bar to the right to vote for the very elderly). The current author would not argue in support of an age-based rationale for group exclusion from the vote in either case. The only difference is one of what we have come to regard as socially acceptable (i.e. exclusion of under 18s from the vote is considered socially acceptable based on alleged competency issues, but not so exclusion of the very elderly based on the same concerns).

Chan and Clayton give no explanation or justification for why 'age-based discrimination' is allegedly 'an effective way of tracking those capacities that are fundamentally important' to the vote when it comes to the under 18s, but not for those in any other age group where there is reason to believe

that there may be significant competency issues (i.e. in the very elderly age group). This would suggest that the discrimination directed at 16- and 17-year-olds in regard to the right to vote is *not* based on the presumed societal interest in ensuring that voters have the requisite fundamental qualities for competent and socially responsible voting.

Chan and Clayton also raise an argument intended to counteract the allegation that excluding 16- and 17-year-olds from the vote simply based on their age is unjust. These authors thus reject what they term the ‘anti-ageist principle’ which holds it to be morally unsound to exclude a 16- or 17-year-old from the vote on account of age when an older person may have no more political competence. They articulate their position on this point as follows:

... our concern is to exclude incompetents ... *we have good reasons of justice to prevent the incompetent from voting*, since their votes might impact negatively, not merely on themselves, but on the legal rights and duties that apply to others. *Following the anti-ageist principle might inhibit our pursuit of justice, all things considered* (emphasis added) [144].

The issue is, however, in the context of this discussion, not one of whether there is any justification for excluding incompetents from the vote. Rather, the issue is why the efforts in that regard are directed exclusively toward only one age group. If there are ‘good reasons of justice to prevent incompetents from voting’ as Chan and Clayton suggest, would this not be the case in respect of voters across various age brackets, and not just for those under 18 years? Further, if ‘political maturity’ is the issue, but the right of every citizen to the vote in principle remains intact, then why have Chan and Clayton not addressed the possibility of a competent adult voting as a proxy for the allegedly politically immature citizen below the age of majority for the vote? Remarkably, Chan and Clayton have managed to verbally finesse exclusion from the vote for 16- and 17-year-olds *from* fundamental human rights violation (i.e. given the right to universal suffrage recognized in international human rights law) *to alleged* element in the ‘pursuit of justice.’ This would *not* be the first time, however, that the denial of fundamental human rights to children and youth has been framed as consistent with justice (i.e. the legitimization of corporal punishment in Western domestic statutory law). Interestingly (and consistent with the hypothesis above as to why there is a preference for using an alleged proxy for political competence rather than measuring political competence directly), Chan and Clayton maintain that political competency tests administered on a case-by-case basis, *even if these tests could be adequately designed*, would be *inadvisable*. Their rationale again somewhat astounding given the context:

Those who are denied the franchise on grounds of incompetence might suffer a loss of self-esteem that would impact detrimentally on various aspects of their lives. *Such problems are avoided by an age-based rule rather than competence-based rule*. Ideally then we should adopt an age-based rule that sets the voting

age at a point at which a sufficient proportion of citizens above that age are politically competent. So, *age-based voting entitlements can be both efficient and just* (emphasis added) [145].

Recall that Chan and Clayton argue that age is a valid proxy for political maturity or competence. It is unclear why (as Chan and Clayton appear to hold in the quote above) having young people aged 16 and 17 years old suffer a loss of self-esteem based on society's *non-rebuttable presumption* of their political incompetence (i.e. especially in those cases where in fact they are politically competent) is any less objectionable than such a result due to a 'competence-based rule' for acquiring and exercising the vote (i.e. a political competency test). Respectfully, it seems to the current author that Chan and Clayton have not at all made out the case that an age-based rule for the voting entitlement is just; though no doubt it is quite efficient. Again, it would instead appear that the 'age-based rule' is preferred to the 'competency-based rule' for deciding the right to vote as that is the status quo, and this approach removes the threat of disenfranchisement based on lack of political competency/maturity for those at or over the current age of majority for the vote.

Another contentious issue regarding voting age considered by Chan and Clayton might be labelled the 'slippery slope' hypothesis which the latter authors seem to endorse:

Suppose we grant the normative premise that eighteen-year-olds should have the vote. Suppose we grant, in addition, that there is only an insignificant difference in competence between sixteen and eighteen-year-olds. Still, we might resist the conclusion that sixteen-year-olds ought to be enfranchised. The argument is weak, because, for all we know, we could use the same argument repeatedly until we have enfranchised six-year-olds which would be absurd. . . . *we ought to identify a suitable stopping point so that we can achieve the benefits of enfranchising those who would enhance our democracy, without jeopardizing that good by continuing incrementally to extend the franchise* (emphasis added) [146].

There is no doubt that an 'age-based rule' for the voting entitlement is arbitrary; especially if one endorses the notion of universal suffrage as an inherent human right. Chan and Clayton's failure to discuss proxy voting by an adult on behalf of the younger child citizen as a potential option for affirming universal suffrage may have impacted the complexion of their argument. That is, had Chan and Clayton considered proxy voting by adults for so-called politically incompetent young citizens *under 16 years*, might this have made a minimum voting age at 16 years more palatable in their view? One could argue in response to Chan and Clayton's 'slippery slope' objection to the lowering of the voting age to 16 years that the exact same argument works also in reverse. That is, if 16 years is not as acceptable an age for the vote as is age 18 (since being 18 years is allegedly correlated with a somewhat higher level of political maturity or competence); then why not 20 or 21 years as the appropriate voting age (i.e. when political maturity would presumably be incrementally even a bit higher than at age

18 years). This incremental elevation could then continue repeatedly on this basis until, for instance, the minimum voting age was set at 66 'which would be absurd.' Hence, the Chan and Clayton admonition that 'we ought to identify a suitable stopping point so that we can achieve the benefits of enfranchising those who would enhance our democracy, without jeopardizing that good ...' [147] provides no guidance whatsoever as to whether the age of voting entitlement should stay at 18 years, be raised or be lowered.

Chan and Clayton respond in opposition also to a number of other arguments in favour of lowering the voting age to 16 years in the U.K. For instance, they argue that because youth is a temporary characteristic, violating the right to suffrage for that period of someone's life is not as wrongful as if the violation was permanent. No rationale is provided as to why treating citizens who are 16 and 17 years old as less worthy than citizens 18 and over by denying them the vote is not in itself unacceptably harmful regardless of the time frame in which that harm is inflicted [148]. (We will return below to the topic of whether the fact that youth is not an immutable human characteristic such as is ethnic origin or colour should make any difference in considering whether to grant the vote). Chan and Clayton also hold that there is not necessarily a need to have consistency in the age at which various legal rights are affirmed (i.e. the right to have sex is set at age 16 years in the U.K. but the franchise denied at 16). They maintain that the former may have more to do with the lack of the State's ability to restrain the activity among 16-year-olds while the franchise can be successfully restricted from 16-year-olds [149]. The latter seems a very weak counter-argument indeed against lowering of the voting age to 16; amounting essentially to the position that we should bar voting at age 16 because we as adults can do so effectively.

The rest of the Chan and Clayton paper attempts to provide empirical support for the notion that 16- and 17-year-olds are less politically mature than are older persons. Their study is open to methodological critiques such as the fact that the study data, even if credible, reflects the current state of political maturity of a group (16- ad 17-year-olds) that is excluded from the vote and politically marginalized in most every way. One might expect that the grant of the vote may enhance civic engagement, as well as political interest and knowledge among 16- and 17-year-olds. Chan and Clayton counter that their results (if we, for the sake of argument accept them as valid) are due to the fact '... that the teenager's brain is still under development' [150]. These researchers quote Dawkins and Cornwell who stated that 'the brain just isn't ready to vote at 16' [151]. It is entirely unclear *on the Chan and Clayton model* why voting by the neurologically impaired adult (i.e. the brain injured individual, the elder who has suffered mini-strokes and is cognitively impaired to an extent as a result but may not be diagnosed etc.) is acceptable, but voting by 16- and 17-year-olds with allegedly immature brains is not. It is relevant to note in this context that

voting at age 16 years is now the norm in Austria, and has been at certain levels of election in other jurisdictions in Europe as well as previously discussed, all without any doomsday scenario developing for democracy in those regions. That is, there is no evidence that voting by 16- and 17-year-olds in these latter jurisdictions has led to an undermining of the electoral system.

It is noteworthy that Chan and Clayton report that, according to their review of the literature, ‘... while older people [in the U.K.] generally lost interest in politics during the 1990’s, teenagers actually became more interested in politics and more partisan over the same period’ [152]. Yet, such factors do not detract from these academics’ resistance to the vote at 16 in the U.K. To what do we attribute the loss in interest in politics amongst older people in the 1990s and the increase in interest among 16- and 17-year-olds? *Following the Chan and Clayton logic*, are we to assume that older people regressed neurologically during that period, and hence became less politically mature and less civically engaged? Such unfounded hypotheses point up the fact that so, too, recourse to overgeneralizations about brain function in 16- and 17-year-olds without consideration of learning opportunities and social/environmental context would appear to be quite speculative and irrelevant to the issue of universal suffrage. Further, Chan and Clayton provide no convincing justification for why we ought not raise the voting age to some point above age 18 years given that these researchers interpret the data to suggest ‘a competence gap [in political maturity] between young people in their early to mid 20s and older groups, and not just between 16- and 17-year-olds and older citizens’ [153]. They rely on: (a) ‘the need to stop somewhere’ argument previously discussed which, as has been shown, neither supports nor negates the validity of a voting age of 16, or 18 years for that matter, and (b) the loss of self-respect that would ensue if someone were stripped of their legal right to vote due to assessed political immaturity [154]. There is little if any consideration in the Chan and Clayton paper of the adverse larger societal consequences of denying the vote to 16- and 17-year-olds who may have pro-social justice and democratic ideals that are quashed by their statutorily imposed exclusion from political life.

Notwithstanding any of the foregoing, however, suffrage as the fundamental human right of every citizen is not conditional on political maturity in any case. That is, every citizen has the right of full participation regardless of his or her political maturity as previously discussed. Thus, the current author holds, contrary to the claims of Chan and Clayton, that even if the *absolute* level of political competence of 16- and 17-year-olds as a group could be determined; this would be irrelevant to the question of the proper voting age. This is not to say, however, that the State should not make efforts to enhance the level of political engagement and knowledge in the general population as a vehicle for strengthening representative democracy. Thus, this author contends for the reasons discussed, that we

can confidently reject Chan and Clayton's propositions that their normative considerations and empirical data provide a *prima facie* case against lowering the voting age to 16, or that more refined data on so-called absolute levels of political maturity in that age group might provide a definitive case against the vote at 16.

Let us turn now to a consideration of the pre-1971 struggle to reduce the minimum voting age from 21 to 18 years in the United States in the hopes of learning valuable lessons along the way also regarding the current vote at 16 movement; its nature and chances for success. U.S. Congressional debate on the issue of lowering the voting age from 21 to 18 serves as a case example of what type of rhetoric was used by the rights claimants and their supporters, and why the opponents of 18 years as the minimum voting age failed in resisting this electoral reform. As we shall see, the congressional opponents to lowering the minimum eligible voting age to 18 years did *not* fail because fundamental human rights considerations won the day, but rather due to entirely different reasons.