

Professor Mahoney described what she had to say as inspiring and motivational. It is to be hoped that her visit and knowledge of the Canadian experience will indeed inspire and motivate further analysis and reform of the judicial system in Australia.

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DEMOCRACY

Give children the vote!

BRIAN SIMPSON argues the case for lowering the voting age.

One of the most important rights that should be available to the young is the right to vote. This right does not need to and should not depend on a young person having or exercising other rights. In other words, a young person living in every other respect as a child, as a dependant, should have the same right as everyone else to vote, just as many adults living as dependants have it.

John Holt *Escape to Childhood*

When John Holt wrote the above words in 1974 it was easy to pass them off as another example of the trendy idealism which emanated from liberationist perspectives. But the children's liberation movement of the 1970s has evolved to become part of a worldwide struggle for children's rights which governments have embraced and now enshrined in international law.

Children's right to vote

Article 25 of the International Covenant on Civil and Political Rights states that '[e]very citizen shall have the right and the opportunity . . . to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage . . .'. There is nothing in this Article which would suggest that children are precluded from its terms. Indeed it seems impossible to deny children the vote under this Article unless they are to be considered as non-citizens. But it does not seem to have been seriously considered that the article does extend to children. It is time to question whether the assumption that children cannot and should not participate in the election of governments has applicability today.

We live in an age that is beginning to recognise the increasing capacity of children to decide matters for themselves. Some of this recognition stems from the acknowledgment that children are now better educated and informed than in previous times. There is also a concern that the paternalism which often characterises decision making by adults on behalf of children does not always produce results which are in the interests of the child.

One of the most significant documents in recent history to recognise the importance of the child's capacity for independent thought is the United Nations Convention on the Rights of the Child, to which Australia is a party. Article 12(1) of the Convention provides that:

States 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(2) states that to give effect to this right 'the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law'.

This article of the Convention might appear to only give children the right to have their views heard in matters such as custody disputes and juvenile court proceedings. But it is clear that Article 12(1) expresses a general principle that children's views should be expressed and that Article 12(2) deals with some specific, but by no means all, situations where this right might be exercised. Article 12(1) might therefore support an argument that children should be given the vote on the basis that this would be the only effective way in which they could express their view on who should govern.

One objection to giving children the vote will be that they are not mature enough to decide such lofty matters as who should form the government. Of course, Article 12(1) of the Convention recognises that the right to express a view is subject to the qualification that those views should only be given the weight which the age and maturity of the child suggest. Thus it may be that very young children should not be given the vote as it is unlikely that they would have sufficient understanding of the political process. The test would thus be based on competence.

Competence and the right to vote

A difficulty with making competence, rather than age, the determining factor in granting the vote is that it is extremely difficult to measure. The House of Lords in *Gillick v West Norfolk and Wisbech Area Health Authority* [1986] AC 112 abandoned the notion that a child's capacity to consent to medical treatment should depend on age. Instead they opted for a test which looked to the maturity and level of understanding of the child. This decision has since been accepted as stating the law in Australia by the High Court in *Secretary, Department of Health and Community Services v JWB* (1992) 106 ALR 385. The *Gillick* principle is also regarded as having application beyond medical treatment and into many areas involving the capacity of children to decide matters for themselves.

The problem with the *Gillick* test of competence is that it still requires a judgment to be made by an adult as to the capacity of a child to understand the matter the child wishes to decide. For example, in the case of medical treatment, a medical practitioner would have to form the view that the child was mature enough to consent on their own behalf before treatment could be provided. To extend this principle to voting would pose some interesting problems when individuals appeared at the polling booth. One could see potential voters demonstrating their understanding of the political

process to the satisfaction of bemused electoral clerks. But on the other hand we also know that children are more competent to decide matters for themselves than they are often given credit for. The acknowledgment of this underpins the decision in *Gillick*.

But perhaps the question of competence to vote is an unnecessary distraction. It definitely did not worry John Holt. His response was simple:

Most people assume that if young people voted they would vote foolishly, ignorantly, for trivial reasons. I don't think their reasons for voting would be any worse than those of many people who now vote, and often might be better . . . There is much evidence that enormous numbers of people who now vote do so out of deep ignorance and for the most frivolous and foolish reasons . . . No amount of ignorance, misinformation, or outright delusion will bar an adult from voting . . . There are . . . people who believe all manner of absurd, fantastic, and even dangerous things. None of them are barred from voting. Why should young people be?¹

It is accepted that for practical reasons a voting age must be specified. What the above discussion suggests is that the current voting age is too high. Many children do have the competence to vote and there seems little justification for excluding them from the electoral process.

Victims of tyranny

Holt thought that if young people were involved in the political process then they would learn about the responsibilities which such inclusion implies. In other words enfranchising young people is about including them in the decisions which affect them. Giving children the vote would make them participants in political decisions, not the objects.

To be in any way subject to the laws of a society without having any right of way to say what those laws should be is the most serious injustice.²

One wonders if the recent reforms to the juvenile justice laws in Western Australia and South Australia would have taken the same shape if the subjects of those laws had the vote. The stark reality is that no matter how many representations child and youth advocates made to Parliamentary Committees or politicians on these new laws not one of them could say, 'look, these laws are draconian and will hurt young people. Now there are at least six marginal seats where the 16 and 17-year-old vote will be crucial to the outcome and unless you want to see a targeted campaign we think you should reconsider the legislation'. These are the tactics often employed by special interest groups when confronted by unpalatable legislation and often to great effect.

There are other recent examples of legislative and administrative changes which have adversely affected the interests of young people. Changes in income support provision, school discipline regulations and child protection laws might have taken on a different hue if those subject to the laws were enfranchised.

Current moves for reform

The New Zealand Youth Law project reports that in 1986 the Royal Commission on the Electoral System recommended that the voting age should be reviewed and that there was a strong argument in favour of lowering the voting age to 16 years. The Youth Law Project is at present lobbying for an amendment to the electoral law in New Zealand to enfran-

chise over 16-year-olds. They also report that in the United Kingdom the Liberal Democrats have a policy of lowering the voting age to 16.³

There has been little said in Australia about lowering the voting age. Although children can make many important decisions in their lives before they turn 18 (such as leave school, undertake employment, consent to certain sexual relationships, consent to medical procedures in certain circumstances) it has not been considered inconsistent to deny children the vote.

But perhaps the strongest argument in favour of lowering the voting age is that it would reverse the trend in recent years to scapegoat young people for various social problems. It would redress a power imbalance which makes young people easy targets for politicians who want to make a name for themselves. And in giving young people some power they would have to be included in society's decisions and perhaps better decisions would result. It might just help reduce some of the alienation which the political exclusion of young people currently causes.

There are cynics who will say that voting changes nothing and lowering the voting age will achieve little. Of course, the right to vote is not an end in itself. But those who express a cynical view of voting often have the vote and would be shocked to have it taken away. At the moment young people have nothing to lose.

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References

1. Holt, J., *Escape from Childhood*, Penguin, 1975, pp.126-8.
2. Holt, J., above, p.118.
3. (1993) *Youth Law Review*, April/May, Youth Law Project Newsletter, Auckland New Zealand.

Redefining the public interest

SIMON RICE attended a forum at which several fresh perspectives on what constitutes 'the public interest' were offered.

As the director of the Public Interest Advocacy Centre (PIAC), Michael Hogan, pointed out, PIAC's tenth anniversary really celebrates the passing of its tenth year. A surprisingly formal and stilted dinner on a Friday night in June, at which funders and patrons were seated at one end and workers and ratbags at the other, was followed on the Saturday by a self-styled 'summit': *Redefining the Public Interest*.

The summit, on 12 June 1993 in Sydney, was perhaps so-called because it brought together senior representatives of major consumer and public interest groups, as well as a number of respected commentators. As a forum for comment, ideas and fresh perspectives it was a considerable success.