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The United Nations Convention on the Rights of the Child in Wales

Jane Williams (ed.), 2013

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The political, social and cultural implications of realising the United Nations Convention on the Rights of the Child (UNCRC) cannot be overstated; viewing the child as an active citizen challenges both normative understandings and legal and political frameworks. The Rights of Children and Young Persons (Wales) Measure 2011 (the Measure) is the first legislative measure in response to the UNCRC within the UK. Because of this, it is emblematic of Welsh devolution – and policy divergence from Westminster – and elicits pride within many policy circles. The Measure is emblematic, not only in terms of Wales's external relationships, but also within its internal political structures; as a constitutional enactment, it frames governmental action and, as Jane Williams (editor's introduction) highlights, represents a maturation in the relationship between the government's executive and legislature. However, while the rhetoric of rights (especially children's rights) is alluring, as both Hoffman and Williams (chapter 12) and Fitzpatrick (chapter 4) argue, without implementation this is merely symbolic and *only* emblematic. One of the virtues of this book is that it does not simply celebrate the Measure as evidence of 'Welsh enlightenment' (though Butler and Drakeford make political capital by claiming the Measure for Welsh radicalism and Welsh Labour progressivism [p. 18]); instead, it offers an insightful and engaging piece of policy analysis which, initially, traces the conflicts, contests, and compromises as the Measure moves from political commitment to legal realisation and, latterly, considers the implications for the application and non-application of this groundbreaking Measure.

In his foreword, former First Minister Rhodri Morgan claims that he had both an airline pilot's and a worm's eye view of the process whereby the UNCRC was embedded into Welsh law. The initial chapters of this book give the reader similar perspectives: from Jane Williams's insightful 'flyover' of the fundamental change within normative thinking in relation to children encapsulated in the UNCRC; to the general political landscape outlined by Ian Butler and Mark Drakeford; or Michael Sullivan and Helen Mary Jones's elucidation of the dark and sometimes dirty political machinations which resulted in the passing of the Measure. Morgan draws on the classic social policy text of Hall, Land, Parker and Webb (1975) to describe the process of moving from political commitment, through legal enactment, to practical application and implementation, as 'change, choice and conflict'; this model not only informs much of the analysis within each chapter, but also lends a coherence to the book as a whole.

Sullivan and Jones's chapter 2 is an engaging piece of policy sociology, illustrating the conflict element within the policy enactment paradigm. This conflict and resistance was especially strong from the inherently conservative civil servants (categorised as 'Yes Minister without the funny bits', p. 26) who, undoubtedly, recognised the implications and ramifications of the Measure, both in terms of reconfiguring adult–children relationships but also in everyday governmental administration. This chapter traces the challenges and compromises that the proposed Measure faced by not only civil servants but, latterly, by some Ministers within DCELLS who sought to impose a 'non-pervasive' variation of the Measure. Both Sullivan and Jones, and Aspinwall and Croke in the subsequent chapter, attribute the passing of a relatively uncompromised pervasive measure to a coalition of interests which included backbench AMs, scrutiny committees (after some alterations) and lawyers, but in particular the work of NGOs working within the Wales UNCRC Monitoring Group.

The resistance of civil servants might be understood with reference to Jane Williams's account in chapter 4 of the legal status of the Measure within 'the fused jurisdictions' of England and Wales, which illustrates the legal complexities in applying the Measure within a politically devolved system but remains one legal jurisdiction. An illustration of this is provided in chapter 10, which focuses on UNCRC Article 22 outlining the rights of refugee children and how they are interpreted within British law. The chapter discusses some of the tensions highlighted by Williams: while immigration policy is not devolved, the services that young refugee children access have responsibility either directly or indirectly to Welsh

Government. Maegusuku-Hewett and Tucker highlight the dichotomy and disjuncture between UK immigration policy and respecting the rights of the child under Article 22 of UNCRC, and argue that the Measure will force Welsh Ministers to advocate for the best interests of asylum seeking children with the UK government.

Section two of the book moves from the passing of the Measure to its application: Fitzpatrick (chapter 5) uses the verb 'interpretation' to recognise post-legislation tension and contests. This provocative chapter raises philosophical questions about the nature of rights and, particularly, their (non) application, as he argues 'equality of esteem is nothing without action' (p. 78). Some of the difficulties in the application of a child's rights approach to understanding and tackling child poverty are raised by Croke and Crowley, who identify a retrenchment in WG's commitment to its (slightly quixotic) child poverty strategy based on UNCRC principles, and highlight how the bureaucratic logic and institutional structures of government militate against a holistic, rights-based approach to tackling child poverty. Chapter 7 considers the impact of the Measure on housing policy for older children. While acknowledging the positive impact the Measure has had on issues relating to the housing of older children, Bibbings, Hoffman and Mackie's analysis reiterates Croke and Crowley's assessment of the challenges posed by adopting a holistic rights-based policy: this requires an integrated policy response which challenges both ingrained assumptions and the kinds of discrete and uncoordinated policy interventions which have traditionally been a feature of government.

The realisation of rights (particularly the right to voice) within education is discussed by Peter Hosking in chapter 8, where some of the tensions between normative assumptions with regards to the adult/child or teacher/child relationship precipitated by adoption of the Measure are highlighted. Hosking argues that children, rather than parents, should be regarded as 'service users', empowering them to hold teachers and schools to account. He claims that while the Measure has influenced how children's right to voice is realised within schools (a criterion within Estyn inspections), this is often tokenistic, leading him to question how often children actually realise their right to voice of their own volition. Hosking traces this non-recognition of the right to voice to the caveat in UNCRC which argues for the 'views of the child being given due weight in accordance with the age and maturity of the child'. He suggests (citing UN Committee GC 2009) that age and maturity should not be uncoupled and that an interpretation of rights based solely on age without consideration of a

child's maturity runs counter to the UNCRC: he claims that this is the case in relation to the right to appeal against exclusion from school that is only available to secondary age pupils. Similarly, the issue of how capacity is interpreted informs debates over children's rights to appeal to the Special Educational Needs Tribunal for Wales; Hosking's detailed account of the evolution and trajectory of the Right of a Child to Make a Disability Discrimination Claim (Schools) (Wales) Order 2011 (NAW 2011) is illustrative of the impact that the Measure has on how we understand children and some of the tensions that this raises with regards to the rights of parents (and those, such as teachers, acting in loco parentis) and children. Hosking's claim that the implementation of the Measure is 'two steps forward, one step back' is reinforced by Tyrie's account of children's gender-based rights which she describes as a 'slow march forward'. While Tyrie's account of the uneven gender-based access to rights is worrying, the data she presents was gathered before the introduction of the measure and it would be interesting to revisit this study since its passing.

Section three of the book considers challenges to and changes in the political structures within Wales aimed at ensuring that there are 'remedies' to accompany rights (p. 167). Hoffman and Williams begin chapter 12 by asking a series of rhetorical questions in relation to who will hold Welsh Ministers to account; what can be done if they fail; and will children partake in this process? The chapter then explains the various structures through which those charged with the discharge of children's rights can be held accountable. A key lever in ensuring accountability is within the office of the Children's Commissioner for Wales; its function and role in relation to the Measure are outlined by Osian Rees in chapter 13, who argues for an expansion in the remit of the Commissioner's office to ensure the full implementation of the Measure. Chapter 14 draws on a project administered by Funky Dragon (the Children and Young People's Assembly for Wales) to illustrate how the recognition of children's capacity and voice can challenge conventional social research paradigms. Anne Crowley's final chapter outlines what she believes is needed to ensure children's participation in decision-making in Wales which involves both the promotion and protection of children's rights to be heard. Quoting Tobin (2011), she highlights the fundamental political, social, institutional and cultural changes that a full recognition of children's participatory rights requires.

Unlike many multi-authored texts, this book has a strong narrative throughout with each chapter highlighting the social, political and cultural

ramifications of the passing and enactment of this seminal piece of legislation. While the focus of the book is on Wales, its tenor is far from parochial; instead, this book would be a valuable resource to anyone with a specific interest in the political challenges and practical consequences of attempting to implement the UNCRC or, more generally, as a case study in policy enactment within the context of devolved governance.

References

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Parents, Personalities and Power: Welsh-medium Schools in South-east Wales
Huw S. Thomas and Colin H. Williams (eds), 2013
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This substantial book addresses an important area, which has not received individual attention in the literature: the development of Welsh-medium education in south-east Wales. It contains original and unique accounts of how this has evolved, discussed from an insider perspective of policy-makers, researchers and practitioners; people who were there and lived through the times they are discussing. The book is dedicated to the memory of Gwilym E. Humphreys, who died a year before the book was published, for his contribution to Welsh-medium education and to revitalising the Welsh language in Wales. This dedication is fitting in a book