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Sex, Drugs and the Electoral Roll

As the Senedd and Elections (Wales) Bill passes through the legislative process, **Catrin Fflûr Huws** analyses its proposal to lower the minimum voting age of National Assembly elections to sixteen, and reflects on the bafflingly contradictory ways in which the law sets the age of adult responsibility.

Let us imagine that there is this thing called ‘responsibility’. It is always there and somebody has to carry it. The law is one of society’s mechanisms for deciding one whose shoulders that responsibility will lie, and, significantly, who is absolved of bearing responsibility. Childhood may be defined as a period where there is an absence of responsibility – the child is not capable of making a choice, and the purported decision made by the child is invalidated because the child lacks capacity, as in the case of consent to sexual activity. As she or he becomes older, the child becomes less irresponsible, eventually transitioning into an adult who does have the capacity to bear the responsibility for his or her own decision-making.

However, simply because a child does not carry the responsibility, this does not mean that the responsibility does not exist. Therefore, childhood is also a period when the burden of responsibility is carried by some other person – usually, but not always, a parent or guardian. Therefore, it is the parent or guardian who has the responsibility for giving their consent to the medical treatment of a child, for deciding whether a child is permitted to marry below the age of eighteen, and for determining how the child should be educated. Similarly, it is the person who sells or supplies cigarettes or alcohol to a person under the age of eighteen who commits a criminal offence, not the child. The responsibility is there, and it is the seller who shoulders it.

Curiously however, the law, and various political parties set the age of responsibility at different points in time, and therefore deciding to be a

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Above: Girls drinking and smoking in a Mountain Ash pub © Homer Sykes

smoker, drinker, married person, voter, participant in sex, testator, landowner, soldier, person not in education, vehicle driver, adopter, recipient of the full minimum wage, are all examples of responsibilities that are ascribed at different points. Furthermore, the last 150 years have seen the age at which one may participate in sex (sixteen), indulge in smoking (eighteen) and leave formal education (eighteen) increase; while consent to medical treatment (the age at which one is deemed to be capable of understanding the implications of consent, most commonly sixteen for consenting to medical treatment, or eighteen for declining medical treatment), the right to inheritance (eighteen) and to vote (eighteen) are matters where the age at which one is deemed to be competent has been decreased. The complex, uneven nature of how we see maturity in Wales is of course exacerbated by the partial nature of the devolution settlement. Some dimensions of responsibility are the responsibility of the Welsh Government, and others of Westminster.

The malleability of the concepts of adulthood and adult responsibility creates the curious anomaly that a person under the age of sixteen is incapable of consenting to sexual activity, and thus it is the person who engages in sexual activity with a person under the age of sixteen who is liable for a series of possible offences as defined in the Sexual Offences Act 2003. However, the age of criminal responsibility is set at ten years old by virtue of Section 34 of the Crime and Disorder Act 1998. The law regards the child therefore as being absolved of the responsibility for the decision to engage in

Above: Stop the Army Recruiting in Schools Petition Presentation, 14 November 2012, Senedd © National Assembly for Wales (CC-BY-2.0) <https://bit.ly/2lwZmYJ>

(consensual) sexual activity, but the responsibility rests with him or her when that sexual act constitutes a criminal offence. Likewise, while it is the responsibility of the seller not to supply those under eighteen with the legal intoxicant alcohol, it is the legal responsibility of children not to consume illegal intoxicants.

Therefore, in the question of responsibility, there are some contexts where a comparatively young person is told that in the matter of criminality, the responsibility lies with them. In other contexts, the child is told that the responsibility lies with their parent or guardian. 'You', the child is told, 'cannot be expected make decisions regarding your health or your education and I will make that decision on your behalf'. In yet other contexts, the child is told, 'you are likely to make decisions, concerning your participation in sex and smoking and drinking, but you are not responsible for those decisions – someone else must take the responsibility for a crime of which you the victim'. That said however, a sixteen-year-old in the United Kingdom, unlike any other nation in Europe, is permitted to be recruited into the Armed Forces – killing and dying are permitted, but the consumption of beer and wine is not.

What, then, of enfranchisement? Often enfranchisement is couched in terms of a person having the right to vote, the right to choose one's representatives in Parliament, leading to the right to choose which hue of Government will govern the country, and leading to the right to choose what changes in law and policy will be prioritised. Legislation on enfranchisement

is therefore characterised as the deprivation of a right to vote, and therefore those who were not landowners, those who were under thirty, twenty-one, nineteen, eighteen, sixteen, and women, and prisoners among others have, at different periods in history been deprived of the right to vote. But what happens when enfranchisement is couched not as a right, but rather, as a responsibility? This has a new significance in Wales because the Senedd and Elections (Wales) Bill proposes to reduce the age at which a person is entitled to vote in elections to the Senedd (as the National Assembly for Wales will be renamed if the Bill is passed) from eighteen to sixteen. The question of responsibility therefore acquires a new resonance in Wales.

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What then are the reasons behind the argument for widening enfranchisement, whether at Assembly level or beyond? Is it borne from a public-spirited desire to increase participation by younger people on the basis that younger people are people too, people with rights and opinions? Those who are under the age of sixteen are also people, people with rights, and people with opinions, but no-one talks of widening the right of enfranchisement to a person who is below the age of sixteen. Is it borne from a desire to increase equality through greater enfranchisement? Again, this may be doubted on the grounds that increasing enfranchisement to some but not others does not create a more equal society, merely one whose barometer of who is included and who is excluded is recalibrated.

Is it perhaps to include a greater diversity of opinions and attitudes? Perhaps it is because younger people have more tolerant attitudes, and new ideas. Or perhaps that is merely a perception. Perhaps younger people have just as great a propensity to tolerance and intolerance, to adopting new ideas and old ideas as older people, or men, or women, or people who are prisoners, or people who are not prisoners. The rationale for these calls to widen enfranchisement, if not for the reasons above, is then the apportionment of responsibility, to include those who are sixteen and

Above: An early morning voter arrives at the Polling Station in the village hall in Presteigne, 5 May 2016 for the Welsh Assembly and Police and Crime Commissioner elections © Steven May / Alamy Stock Photo. Opposite: Young person drinking, Merthyr Tydfil © Jeff Morgan 11 / Alamy Stock Photo.

seventeen years old within the circumference of deciding the political future. It is a sharing of the burdens of responsibility. If this is the case, it is an indication that the young person is not absolved from deciding what happens in the future, what happens from hereon in. You are part of that decision, whether that decision proves to be good, bad, or indifferent. Perhaps this is an indication of trust – we trust younger people to share the future, and to carry the responsibility. Perhaps this is an indication that adults do not wish to have the monopoly over decisions about the future. Perhaps this is an act of cohesion – this is no longer a situation where *they* voted for *our* future, but one where *we all* voted for *all our futures*. But perhaps it is an abdication of responsibility. The parent is not responsible for the criminal acts of his or her child. The Government is not responsible for the decisions of the voting electorate. The burden of decisions concerning the future is no longer to be borne by the adults. We are all responsible now. If you smoke, kids, if you drink, your health is our responsibility – but the democratic process is yours.

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Notes

1: You can follow the progress of the Senedd and Elections (Wales) Bill here:
<http://senedd.assembly.wales/mgIssueHistoryHome.aspx?IId=23754>