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Children and Young People's Participation: A critical consideration of Article 12

Children and young people's participation[1] did not begin with the United Nations Convention on the Right of the Child (UNCRC). Children and young people's involvement in decision-making, within their families and communities, can be traced historically: from children and young people's involvement within their household subsistence, to children's school strikes in the early 20th century[2], to a child's right to refuse or consent to being adopted in Scotland[3]. But the UNCRC galvanised adults to recognise children and young people's *rights* to participate, as part of a broader human rights agenda. This has encouraged changes in law, policy and practice to ensure children's rights to be heard; advocacy has developed across different contexts, from education to child labour to juvenile justice; numerous projects have been initiated, to encourage children and young people 'to have a say' in their services, their communities and in policy-making.

A range of UNCRC articles are grouped together as participation rights (one of the

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[1] This article generally uses the phrase "children and young people", following young people's typical preference to be referred to as the latter in the UK. Broadly, "children and young people" refers to children up to the age of 18, following the definition within the United Nations Convention on the Rights of the Child.
[2] For example, in 1911, children went on strike demanding shorter school hours and the end of corporal punishment in schools (see http://libcom.org/history/childrens-strikes-1911 (27 May 2014)).
[3] From the age of 12, under the Adoption (Scotland) Act 1978.

3Ps, recognizing the criticisms raised in chapter 1**). These include Article 13 (freedom of expression), Article 14 (freedom of thought, conscience and religion), Article 15 (freedom of association and peaceful assembly) and Article 17 (access to information). Considered a key overarching principle of the UNCRC (UN Committee on the Rights of the Child, 2003), Article 12 states:

> 1. 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.

> 2. For this purpose, 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 chapter particularly focuses on Article 12.

Article 12, and children and young people's participation more generally, have been particularly hard to implement. Such participation frequently tests structures, policies and ways of relating that were not developed with children and young people. Even more fundamentally, participation challenges 'traditional' views of childhood and children based on dependency and vulnerability (see James et al. 1998). Such views see children as 'in development', learning to become adults and full members of society. Thus their competencies, capacities, and citizenship are called into question – and as a result their rights to participate. Children and young people's participation presents different views of childhood and children, as social actors (Prout and James, 1990), which challenge hierarchical structures and ways of relating.

This chapter first explores definitions and typologies of children and young people's participation, in light of the UNCRC and the children's rights literature. The chapter then looks at two examples of children and young people's participation, based on research evidence from Scotland. First, it considers children's participation as *individuals*, in family law proceedings and, second, it considers children and young people's participation *collectively*, in school councils. The chapter concludes by discussing the limitations as well as the potential of the concept and practices of participation.

What is participation?

Like many popularised concepts, participation has many and varied definitions (Leal, 2010). A dictionary definition of participation is very broad: for example, "The act of taking part or sharing in something" (Free Dictionary, 2009, no page number). Hart's 1992 publication, *Children's Participation: From Tokenism to Citizenship*, is iconic in the children's rights field. Here, he defines participation as "the process of sharing decisions which affect one's life and the life of the community in which one lives" (p. 5). This definition has both an individual component – decisions which affect one's life – and a collective one – the life of one's community. Participation is a 'process' rather than an event, suggesting development and change over time rather than a single point of decision-making. In this definition, process is emphasised rather than outcome: there is no requirement for the participation to have an impact on the decisions.

Impact on decision-making, however, is explicitly recognised by the UN Committee on the Rights of the Child. In its General Comment on Article 12, the Committee puts

forward a description of participation:

> This term has evolved and is now widely used to describe ongoing processes, which include information-sharing and dialogue between children and adults based on mutual respect, and in which children can learn how their views and those of adults are taken into account and shape the outcome of such processes. (2009, p. 3)

Here there is an emphasis on *mutual* respect, between children and adults (and not just respect for children). There is an element of development – children learn about how views are taken into account. While there is a leaning towards processes, which should be ongoing, there is also some recognition of having an impact – shaping the outcome.

The General Comment underlines that children have the right to be heard as an individual and as a collective (that is, the right to be heard as applied to a group of children). In its analysis of Article 12, the General Comment emphasises certain aspects of Article 12's wording and their implications. Of note particularly for this chapter are:

- Children's rights under Article 12 are not discretionary.
- A child should be presumed to have the capacity to form a view. It is not up to the child to prove this capacity. The right to express a view has no age threshold and a child need not have comprehensive knowledge to be considered capable.
- Non-verbal communication should be recognised as expressing a view and not just verbal communication.

- Children should be supported to participate – and they may well need information to clarify their views and assistance to express them. They should be able to express their views 'freely', without being unduly influenced or pressured.

- The reach of Article 12 is wide, relating to 'all matters affecting' the child. The child's views must be given 'due weight': that is, to be considered seriously when the child is capable of forming a view.

- Children should have feedback on how their views have been taken into consideration.

In providing this literal analysis of Article 12, the UN Committee on the Rights of the Child implicitly addresses many of the challenges faced in trying to implement children and young people's participation (see Lansdown, 2010; Tisdall, 2014). The Committee emphasises that *all* children have the right to participate (and not just older children or articulate children), that they should be supported to do so, that their views should be weighed seriously in decision-making and that they should know what has happened to their input.

Typologies of participation

In the promotion of children and young people's participation, particularly at a collective level, typologies have been often cited and very influential. Hart's ladder of participation (1992: 8) is the most widely known; Hart's ladder was itself developed from Arnstein's ladder of citizen participation (1969). Hart's ladder has eight rungs, with the bottom three (manipulation, decoration, and tokenism) categorized as non-participation. The subsequent rungs represent varying degrees of participation, going

from the fourth rung of "assigned and informed" up to the top rung of "child-initiated, shared decisions with adults". The ladder has proven itself in training and development, in catalysing groups and individuals to (re)consider how children and young people are involved in decision-making locally and nationally, across services, projects and communities. Perhaps because of its popularity, however, it has been subjected to considerable criticism. The image of a ladder suggests that the ideal participation form is at the top (Sinclair, 2004); while "child initiated, shared decisions with adults" may suit some decisions, it does not suit others. Treseder (1997) stripped out the bottom three categories and placed the remaining five in a circle, to emphasise the non-hierarchical nature between these degrees of participation. Both typologies, however, risk being static, without taking into account change over time (see Cornwall, 2008; Tisdall, 2014). Indeed, Hart himself cautioned in 1992 not to use the ladder as a "simple measuring stick of quality" (p. 11).

Returning to Arnstein's original 1969 article, she herself notes the usefulness of the citizen participation ladder to highlight the need for power re-distribution but also three limitations. First, the ladder divides people into two groups, the have-nots and the powerful. However, they are not homogenous groups and power relationships exist within as well as between the groups. Second, the ladder does not incorporate the "most significant roadblocks" to "genuine" participation (p. 217), such as inadequate socio-economic infrastructure or racism and paternalism. Third, the ladder fails to recognise the potential mixing between rungs (e.g. a government programme hires certain 'have nots'). Such criticisms equally apply to Hart's ladder of participation, in relation to children and adults. Children and adults are divided into two groups, reifying the construction of childhood versus adulthood (see Shamgar-

Handelman, 1994; Oswell, 2013) and dampening recognition of diversity, vested interests within the two groups or commonalities across them. A great deal of effort has been on developing fun, engaging ways of involving children and young people in projects and research, without recognising and addressing wider contextual issues – which may well be one reason for the criticisms of children and young people's participation as being culturally inappropriate in some contexts (Valentin & Meinert, 2009) and ineffectual in influencing decision-making in others (Tisdall, 2008; Lansdown, 2010). The third limitation illuminates the potential for tokenism, even when children and young people are in the 'limelight' (e.g. participation in the UN General Assembly Special Session on Children 2002 (Ennew, 2008)) or peer research (Tisdall, 2012a), being more a performance than influencing practice or decisions (see Tisdall and Davis, 2004).

Other models have developed, addressing certain of these issues. For example, Shier's 2001 model emphasises what organisations need to do, to realise children and young people's participation. This begins to address the 'roadblocks' of organisational structures, practices and ethos that may prevent realising children and young people's participation. In 2009, he brings in experiences working with children involved in coffee-growing in Nicaragua, emphasising children's individual learning processes and development into community leaders. Johnson's Change-Scape model (2011) maintains a focus on institutional contexts but adds in considerations of culture, politics and policy, and the physical environment, which may impact on the effectiveness of children and young people's participation.

Thus, participation models are growing more complex, with wider recognition of institutional, social, political, cultural and economic influences, and the mechanisms to increase children and young people's involvement. Such models, however, still largely set up a dichotomy between children and adults and thus ignore the diversity of individuals and relationships. In part because of being written down on a page, they risk being perceived as static, without a sense of movement and evolution across time and space (see Tisdall, 2014). And they tend to posit children and young people's participation, as expressed in Article 12, as a normative good[4], without deeply interrogating participation as a term or as a discourse nor fully addressing Cornwall's (2008) three questions: who is participating, in what are they participating and for whose benefit?

Below two contentious examples of involving children and young people are discussed – involvement in disputed family law proceedings and in school councils. They are used to illuminate the dilemmas of a children's rights approach to participation and to interrogate more deeply what is meant, or what could be meant, by the concept.

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[4] To note that Hart (1992) is an exception, in recognising less benign self-organisation of children and young people, such as street gangs.

The right to be heard as an individual child: the example of family law proceedings

As family relationships have changed in the minority world[5], with increasing rates of parental separation and divorce in many countries, so has attention to the impact of family breakdown on dependent children[6]. Legal processes, within family law, have developed to dissolve the marriage contract and address implications thereof, and to address parental rights; the idea of including children in such decisions developed later and has been much debated. Such debates illuminate the fundamental challenge children's participation pose to traditional attitudes towards children and childhood, at least in the minority world, where children are the private responsibilities (if not property) of their parents, perceived as dependent and vulnerable, and seen as lacking the capacity to contribute to decisions about where they will live, contact with family members and property distribution.

Fuelled by Article 12 of the UNCRC, however, a number of legal jurisdictions have sought to ensure children's rights to participation are realised in family law proceedings when parents separate or divorce. Developments have been numerous: from enthusiasm for judges to speak directly to children and young people; to greater advocacy and/or legal representation for children and young people; to 'softer'

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[5] The terms 'majority world' and 'minority world' refer to what has traditionally been known as 'the third world' and 'the first world' or more recently as 'the Global South' and 'the Global North'. This acknowledges that the 'majority' of population, poverty, land mass and lifestyles is located in the former, in Africa, Asia and Latin America, and thus seeks to shift the balance of our world views that frequently privilege 'western' and 'northern' populations and issues (Punch 2003).

[6] In Scotland, a 'child' and 'young person' has a particular legal meaning in family and other legislation: a young person has legal capacity similar to an adult, albeit with some protections (Age of Legal Capacity (Scotland) Act 1991). Thus 'child' and 'children' are used in this section.

means of inclusion through mediation with parents (e.g. parents being advised to consider their children's views) (see Freeman, 2012; Birnbaum & Saini, 2013).

Scotland had leading legislation in this regard, with the Children (Scotland) Act 1995. First, the Act sets a wide (if largely unknown) duty on those with parental responsibilities to consider a child's view when making "any major decision" in exercising parental responsibilities or rights (s.6). The duty is subject to a child's age and maturity, picking up the wording of Article 12 in the UNCRC. A child aged 12 or older is presumed to have sufficient age and maturity, although the duty does apply to all children. Thus, even if parents did not go to court, children's views should be considered in major decisions relating to parental divorce or separation.

Second, if a case did reach court, the court must consider a child's views when making an order:

> … taking account of the child's age and maturity, shall so far as is practicable –
>
> i) give him an opportunity to indicate whether he wishes to express his views;
>
> ii) if he does so wish, give him an opportunity to express them; and
>
> iii) have regard to such views as he may express. (s.11(7)(b))

Again, a child aged 12 or over is presumed to have sufficient age and maturity to form a view. A child can sue or defend proceedings in relation to parental responsibilities and rights, and a child under the age of 16 has the legal capacity to instruct a lawyer in any civil matter when the child has a general understanding of what it means to do so (Age of Legal Capacity (Scotland) Act 1991, s. 2(4A)).

A child's views could be put forward to the court in numerous ways. For example, a child can send a form into the sheriff[7], stating the child's views; the court can appoint someone to report on the child's views as well as the child's best interests (typically by someone with a legal and/or psychology background); the sheriff can ask to hear directly from the child; or a child may take independent legal advice, with the lawyer having a range of ways to present the child's views (from writing to the court, to seeking to have the child involved as a party to the action). If a child expresses a view, the sheriff or someone appointed by the sheriff must record this view. The sheriff may decide whether this record should be kept confidentially.

In Scottish legislation, then, children and young people's right to participate in decisions about parental responsibilities and rights is strong. There have been leading Scottish cases, which have developed the details. For example, the Court of Session observed in *Shields v Shields* (2002 SC 246) that the question is not *whether* a child's views should be gathered but *how:* "But, if, by one method or another, it is 'practicable' to give a child the opportunity of expressing his views, then, in our view the only safe course is to employ that method" (para 11). Practicability is the first, low threshold for a child's views to be considered by the

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[7] A sheriff is a professional judge, in the second tier of courts. A sheriff would hear most family law cases in the first instance.

court. After that step, the court weighs the child's views in the court's decision, subject to the child's age and maturity. Suitably taking into account children's views is now a recognised ground of appeal and, in some cases, has been the *sole* ground (see also *C v McM* 2005 Fam LR 36). Such pronouncements from senior courts have promoted children's rights to participate, with considerable alignment with General Comment No. 12 (UNCRC, 2009) and Article 12. A shift can be described in family law proceedings:

> The welfare paradigm, which sees children as lacking the capacity and maturity to understand and assert their own needs, has been challenged by new paradigms, including children's rights and children as social actors and citizens. Within these new paradigms, children are no longer seen as dependent, vulnerable, at-risk victims of divorce and passive objects of law, but are seen as subjects with agency. (Hunter, 2007, p. 283 (writing about England)).

However, this positive, progressive description can be queried. The empirical research on children and young people's experiences of family law proceedings raises questions about the *quality* of their experiences (see Mackay, 2012; Tisdall and Morrison, 2012). Information for children remains problematic, from children knowing their rights, how such proceedings function and how they can become involved, to what the court's decision is and why (Potter, 2008). Procedures may be present, courts may ensure they take place and utilise children's views, but children may still not feel satisfied that their views are duly considered. Professional reports are relied upon, to meet children's rights to be heard, and practice is not always exemplary (Tisdall & Morrison, 2012; Whitecross, 2011). Despite the 1995 Act, the

courts have been ambivalent about children being directly involved in courts, particularly if the children's views are seen as the same as one of their parents (e.g. *Henderson and Henderson* 1997 Fam LR 120) or if parents are believed to have manipulated the child (Barnes, 2008). Legal representation has become even more problematic for children due to changes in legal aid funding, where the financial resources of parents are now considered alongside children's, except if it were "unjust or inequitable to do so" (see Morrison, Tisdall, Jones & Reid, 2013). Family law proceedings thus still have difficulty recognising the legal status of children as separate from their parents – despite the rights to be heard enshrined in law and procedures. .

Under the 1995 Act, the child's welfare is the paramount consideration of the court (s. 11(7)(a)), which is a stronger requirement even than Article 3 of the UNCRC (where a child's best interests is "a primary consideration"). Within the reported case law, the courts tend to privilege views on what a child's best interests are in the long-term, over the children's current views. This draws on traditional views of childhood, which focus on children as "human becomings" rather than as "human beings" (Qvortrup, 1994). There is evidence, however, of courts also considering children's wellbeing should they move schools, friendships, need to travel between parents and more (e.g. *M v M* 2000 Fam LR 84; *X v Y* 2007 Fam LR 153). Such considerations recognise children's present as well as their future.

The reported case law is not filled with court's pronouncements on children's capacity or competency, in weighing up their views. Instead, case law shows a divide between children's views deemed consistent, definite and clear – which would be

more persuasive to the courts -- and those described as ambivalent or anxious –
which would be given substantially less weight (Tisdall & Morrison, 2012).
Professional reports were frequently relied upon to support sheriffs' evaluations of
the children's views and thus the weight given to children's views. Such practices
raise questions. First, they suggest a presumption that there is a "true" or "authentic"
statement of children's views (Hunter, 2007, p. 283), "out there waiting to be
collected" (Mantle et al., 2006, p. 792). But, as Mantle and colleagues go on to
argue, "Interpretation is unavoidable and meanings are likely to be contested" (2006,
p. 792). Following the UNCRC, research and practice often purport to put forward
'children's voices', by direct verbal or written quotations from children and young
people. But the selection of quotations, how they are framed and how they are
analysed are very frequently carried out by adults. Adults are determining what
constitutes 'voice' and interpret what the 'voice' might be saying.

To be persuasive to the courts, children's views should not be changeable, they
should not be unduly influenced by others, and they should not be overly distressed
or anxious in expressing their views (see *H v H* 2000 Fam LR 73). This privileges
concepts of the autonomous individual and rationality, rather than recognising
relationality and emotions. Yet the autonomous and rational individual has been
questioned widely by feminism, communitarian philosophy and disability studies, as
no one is fully autonomous and independent but instead all humans are social
beings who are vulnerable and inter-dependent (see Arneil, 2002; Fineman, 2008).
Emotions are artificially separated from rationality, as expressed by Williams and
Bendelow (1998):

> Even to the present day, emotions are seen to be the very antithesis of the detached scientific mind and its quest for 'objectivity', 'truth' and 'wisdom' … Such a view neglects the fact that rational methods of scientific inquiry, even at their most positivistic, involve the incorporation of values and emotions. (p. xvi)

As Pinkney (2014) points out, the emotional and affective aspects of children's participation are often ignored. She encourages consideration of these aspects not only for children but also for professionals. She discusses the individual coping strategies of social workers, such as: avoiding seeing the child; avoiding touching the child; and focusing on managing violent or controlling parents. These strategies map surprisingly well to family law proceedings: sheriffs can be reluctant to meet with the child (*X v Y* 2007 Fam LR 153); the weight of children's views is undermined if they are considered manipulated by parents; and courts underplay the extent and impacts of domestic abuse in separation disputes (Morrison, Tisdall, Jones & Reid, 2013).

Thus, the advancement of children's rights to be heard in family law proceedings demonstrate both the 'success story' of children's rights and its potential problems. It shows practical problems of the 'top-down' approach, as discussed in the introductory chapter (**). Law and procedures lay down certain rules and practices, which are differentially enacted by those with power, experienced variably by children and young people, and have uneven impact on decisions. It shows the influence of different conceptualisations of childhood. These are still typically the more traditional views of children as human becomings, which side-line their current concerns. Or children may be seen as expressing agency but rationality and autonomy are privileged at the expense of acknowledging emotions and relationality.

It shows the difficulties of respecting children as social actors, when they are participating in adult structures that were not originally developed with children and young people's participation in mind – with subsequent legislation seeking to insert them into what are fundamentally adult-oriented procedures and spaces (see Tisdall & Bell, 2006; Kesby, 2007).

Comment [R11]: Reference here literature on 'created' vs invited space see Gready 2014

Comment [KT2]: As you know, a lot of people have written about this. I don't have the Gready reference to hand (looks interesting book!) so have added in some others.

School councils

Within schooling, school councils have been a popularised initiative to recognise pupils' collective right to be heard within their schools. While definitions may vary, the Welsh definition of school councils captures common understandings:

> … a representative group of pupils elected by their peers to discuss matters about their education and raise concerns with the senior managers and governors of their school. (Pupil Voice Wales, no date, para 1)

School councils have become ever more popular in the United Kingdom, in many European countries and elsewhere (Dürr, 2005). While examples of influential and active school councils have been documented (Yamashita and Davies, 2010), research on school councils suggests more ambivalence about school councils in general and their enactment of Article 12. The subsequent section draws on research undertaken in Scotland, which covered all local government areas in

Scotland, with surveys of all Scottish secondary schools and a representative sample of primary schools, and case studies of six schools[8].

Fundamentally, those involved in school councils – such as headteachers, local government education advisers, adult advisers to school councils, school council members and pupils more generally – had different ideas of what school councils were for. Despite certain rights to be heard in education legislation (influenced by the UNCRC) and increasing promotion in national guidance and advice (Tisdall, 2012b), children's legal rights were not a dominant reason to have a school council. School councils were seen as having 'symbolic' value, showing adult interest in the views and 'voice' of pupils (Baginsky & Hannam, 1999). The symbolic value of school councils did not necessarily translate into school councils' impact on decision-making. A pupil councillor in the Scottish research raised his frustration:

> I don't know whether they thought we would be dealing with making sure there was more toilet roll or trying to work our prices for lunch … I keep saying we are running out of small things to fix. It's the big things that are the problems. (secondary school, pupil councillor).

School councils across the UK have been criticised for focusing on 'inconsequential issues' rather than more fundamental academic issues like staffing and learning (Wyse, 2001; Maithes & Deuchar, 2006; Yamashita & Davies, 2010).

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[8] See http://www.havingasayatschool.org.uk/ for research methods

By far the most common purpose of school councils, for school staff, was educational: they were 'laboratories of democracy', where children and young people could practice formal democratic practices. Pupil councillors themselves felt they gained skills and confidence. A significant minority of Scottish children do have a chance to be a pupil councillor: over one-third of respondents to a large-scale survey of secondary school pupils reported having been a pupil councillor at least once (Tisdall with Milne & Iliasov, 2007). As school councils become even more popular, this proportion is likely to increase further over time. Despite the survey having a representative sample by socio-economic and other background characteristics, there were no statistically significant differences by such characteristics, in whether or not a young person had experience of being a pupil councillor. Rather, children and young people in the case study schools cited other social factors like popularity and "being cool" as influential on certain people becoming pupil councillors, while school staff reported some finessing of who stood and was elected to be a pupil councillor (e.g. many schools required both a boy and girl representative).

The research shows both the benefits and challenges of seeking to meet formal democratic requirements. In the surveys of school councils and adult advisers, there was a high correlation between perceiving the election/selection of pupil councillors as fair and perceiving the school council as effective. This was despite whether or not the school council was reported as accomplishing a great deal. The in-depth research in the six case study schools showed the considerable time and effort in took to practice formal democracy, which crowded out time to discuss action and make decisions. The large-scale survey of secondary school pupils (Tisdall, Milne & Iliasov, 2007) found that some children and young people feel excluded by a

competitive election process and were waiting to be invited to put themselves forward and/ or were reluctant to do so.

The research findings suggest practical action can be taken to improve school councils in Scotland, which echo more general concerns with children and young people's participation. The model lacks continuity, as school councils tend to renew themselves every school year, with new pupil councillors elected and little institutional memory. Having some carry-over of membership, whether through peer mentors, training, and/or staggered membership changes, would help address this continuity. Like many participation projects, school councils are very reliant on the commitment of the 'participation workers' (for school councils, the adult adviser), who may not be rewarded nor supported in their task. Money does equate to power: even small budgets resulted in perceived effectiveness and demonstrable outcomes. Budgets could be allocated regularly to school councils.

More fundamentally, the research demonstrates that children and young people's participation can have different purposes. Each purpose can have its advantages and disadvantages, in terms of participation being meaningful to those involved and effective. The research underlines the benefits of discussing and debating what participation is *for*: given that pupil councillors were more focused on the outcomes of school councils and school staff more on the processes, a greater consensus could assist in avoiding staff and/or children and young people becoming frustrated by how their particular school council functions.

Learning from the practices of participation

In presenting her ladder of citizenship participation, Arnstein wrote:

> The idea of citizen participation is a little like eating spinach: no one is against it in principle because it is good for you. Participation of the governed in their government is, in theory, the cornerstone of democracy – a revered idea that is vigorously applauded by virtually everyone. (1969, p. 216)

Children and young people's participation is similarly advocated as a normative good, as an inherently good thing. The avowal is more positive than spinach: it is not just a healthy but often unpopular nutrient, like spinach; children and young people's participation is celebrated for recognising their human rights, respecting and acknowledging their human dignity (see introduction **).

But like many other buzzwords, participation can stray from its aspirational roots and become conceptually and practically stretched beyond its original meanings and intentions. The development literature, for example, has strong critics of participation. Cooke and Kothari (2001) wrote of the 'tyranny of participation', when participatory approaches: override existing, legitimate decision-making processes; reinforce the interests of the already powerful; and drive out other methods with advantages participation cannot provide. Leal (2010) ties the ascendance of the participation buzzword with the promotion of neo-liberalism by the World Bank and the International Monetary Fund. Participation has become a way to control dissent, she argues, to co-opt people into the existing dominant order, rather than supporting

transformative agendas of social movements. Participation, according to these critiques, is not necessarily a normative good.

The examples of family law proceedings and school councils show the continued influence of how childhood is constructed and perceived, which can constrain or enable children and young people's participation. In family law, the traditional view of children as human becomings is still evident, so that children's current concerns are side-lined when making a decision based on a child's welfare. Beyond law, the dominant expertise brought to weighing up children's views and welfare is psychological, so the focus on the individual child and child development predominates in the framing of expert reports, without critical reflection. The 'new' sociology of childhood has disparaged the normalisation and individualisation of child development and the undue reification of development stages (e.g. James, Jenks & Prout, 1998). Work like Alderson's (2012), from a sociological and children's rights perspective, underlines the importance of context, information and experience for young children's capacities to participate in decision-making.

The examples in this chapter, of family law proceedings and school councils, show how current practices tend to separate out children from adults, reifying distinctions between childhood and adulthood. This lead to decisions about households and family life being fundamentally parent-oriented in family law proceedings, without recognising the 'care work' that children and young people frequently do to manage their family relationships during and afterwards (Morrison, 2014). Current practices reify the autonomous individual with agency, which can clash with a more collective ethos (Valentin & Meinert, 2009). Such practices identify adults specially mandated

to involve children and young people, like the adult advisers for school councils or the court reporters in family law proceedings, without questioning the expertise, support and training they have for such a role. Others, like sheriffs or school management, need not feel they are responsible for involving children and young people as part of their regular skills set. This risks 'ghettoising' rather than mainstreaming children and young people's participation, failing to recognise that children and young people are already family, community and societal members. While protected spaces can give children and young people opportunities to interact in ways that suit them, and gain skills and confidence, too much isolation means they do not link to other stakeholders, learning from them, and coming together in greater collective strength (Kesby, 2007; Tisdall, 2014). This can result in children and young people's participation being accepted when it is palatable to the decision-makers but easily side-lined if other (more powerful) stakeholders have competing views (Tisdall & Davis, 2004).

If children and young people's participation is always treated as 'special', something to be done separately from adult participation, then barriers presented by adult-oriented structures, networks and ways of working are not challenged nor encouraged to change: courts are not required to be more user-friendly; schools need not be more participative for all involved, from staff to parents to children; policy-making remains the familiar terrain of the policy-savvy (Tisdall, 2014). Over recent decades, children, young people and adults have devised engaging and productive ways to involve children and young people in both individual and collective decision-making (see Percy-Smith and Thomas, 2010). The most substantial barrier is not having ways to engage positively and productively with

children and young people, but whether their views are actually heard and duly considered in decision-making. Children and young people's participation risks fitting into a niche within bureaucratic structures, perhaps with good intentions but fundamentally kept within its place.

Other examples – and frequently examples that are *outwith* the institutional structures - have been documented with more transformative potential. For example, the radio project *Abaqophi BakwaZisize Abakhanyayo* in South Africa trained children and young people to become reporters on the popular local radio channel (see Meintjes, 2014). With the 'power of the microphone', children and young people were able to follow their interests and raise issues with other adults, that were normally not spoken about– such as parents moving away, deaths by HIV and AIDS, and discrimination. The radio project thus challenged and helped transform certain hierarchical and silencing relationships between children, young people and adults. A non-governmental organisation in India, the *Arunodhaya*-Centre for Street and Working Children, began to combat child labour (see Le Borgne, 2014). Over the years, taking a children's rights approach, the organisation has developed structures and ways of working to support children and young people's participation. Following up young adults, previously involved in the participation activities, shows how their experiences of participation have helped transform their lives – such as going onto to higher education and their career aspirations – and increasingly those of the next generation. An early years service in Scotland sought to develop meaningful ways to engage with very young children, using tactile objects and group work over time, so that children are now regularly engaged in their individual and collective learning and environment (see Tisdall, 2013).

These three examples all were influenced by the children's rights paradigm and UNCRC agenda. They all involved creating spaces for children and adults to communicate together and not separately. They involved changing hierarchies between children, young people and adults. Children and young people were seen as part of their communities and capable of contributing to decisions and enacting change. When at their most successful, participation has been a challenging activity, one requiring changing ways of working and for adults to develop an ethos of respect for children. These are not 'tick box' exercises but rather ones of values and relationships.

Conclusion

Participation rights have been held up as the most radical and controversial contribution of the UNCRC (Reid, 1994; Smith, 2013); protection and provision rights are more readily accepted as duties towards dependent and vulnerable children (Freeman, 1983). Article 12 and associated rights have been challenging and are often cited within policy, practice and the literature for encouraging changes in power relationships between children, young people and adults, in creating opportunities for children and young people to have influence on decisions that affect them, and recognising their citizenship (Jans, 2004; Cairns, 2006; Cockburn, 2012).

However, Article 12 is not that radical. It does not recognise a child's right to vote in political elections (which can be seen as a central citizenship right in a democracy (Marshall, 1950)). It facilitates children and young people to be involved in decision making and a wide range of decisions ("all matters that affect them") but it does not

discuss self-determination. According to Article 12, the decision-maker must give "due weight" to the child's views, qualified by a judgment about the "age and maturity" of the child, but ultimately the decision can be incongruent or against the child's views. A familiar debate in the literature is the potential tension between Article 12 and Article 3, which requires a child's best interests to be a primary consideration in all actions concerning children (Marshall, 1997; Archard & Skivene, 2009). The discretionary nature of judging a child's best interests can easily lead to adults silencing a child, or side-lining a child's views, rather than fulfilling Article 12's obligations. This is evident in the two examples discussed in this chapter: family law proceedings, where children's welfare is the paramount consideration, so legally it must trump children's views; and school councils, where the focus can be on *training* children in democracy, for their wellbeing as well as society's, rather than children and young people's current participation rights.

The development studies literature reminds us of the (elusive?) transformative potential of participation, at both individual and collective levels. Some of the problems so frequently found by children and young people's participation arise from top-down, tokenistic and/or instrumentalist participation – which can narrow the agenda, suppress dissent, and at worse control children and young people. Participation is not necessarily comfortable and the results can be challenging.

Wyness (2014) suggests five emerging narratives, in the literature on children and young people's participation:

1. Participation can be seen as embedded in children's 'everyday lives', routine and on-going rather than exceptional and event-based.

2. Participation is relational, enacted and created with others, rather than reifying the individual person with agency.

3. Participation is recognised as emotional and embodied, rather than solely rational and intellectual.

4. Participation is material as well as political, including the economic.

5. The distribution of participation should be considered, in how it follows or creates (in)equalities, identities and differences. (these points are expanded from Wyness, 2014.)

These narratives set up an agenda for children's participation rights, both practically and conceptually. They value the ground-up approach recommended by Shier (2009), recognising children and young people's participation in their 'everyday' spaces rather than seeking to extract them into adult, invited spaces (Percy-Smith, 2010). The narratives question the reification of 'voice' and discursive forms of participation, to value other forms of communication. They widen the 'participation' category, reminding us of the other participation rights in the UNCRC (like freedom of assembly), which are arguably more radical than Article 12, and even beyond that to consider interactions with the material and the economic. The divide between childhood and adulthood may have some merit in highlighting the discrimination so often experienced by children based on their age but the divide fails to recognise the diversity, differentiation and relationships between and within children and young people as well as adults. If there is growing recognition that children's rights should be seen as children's *human* rights and thus part of the broader human rights agenda, then we need to question why there are not more radical notions of children

and young people's involvement in their social, economic, cultural and political

contexts than to have due regard to their views.

Questions for Reflection

1. Should children and young people's participation always have an impact on decision-making?

2. Children and young people were not substantially involved in the creation of the UNCRC and thus the articulation of their participation rights. Does this matter?

3. Is children and young people's participation appropriate for 'all matters affecting them' and in all contexts around the world?

4. Do the 'participation rights', as expressed in the UNCRC, go far enough in recognising children and young people as social actors?

Acknowledgements

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