

Chapter 5 Activities

Activities

The following activities are designed to help reflect back on some of the key concerns over the chapter as a whole

Chapter activity 1

Consider Anderson's comment from earlier in the chapter regarding the UNCRC, children's rights and decision making:

The Committee has specifically stated that the rights to participation is important in ensuring a child's right to education, and child rights within the education system: 'education must be provided in a way that . . . enables the child to express his or her views freely in accordance with article 12 (1) and to participate in school life.'

(UN Committee on the Rights of the Child, Gen Comment No 1: The Aims of Education, CRC/GC/2001/1 (2001), para 8 (2008, 18))

How might the SCIE's four different elements – culture, structure, practice and review – help to critique and help change the practice described in the Research Example *Irish Youth Courts and Decision Making and Participation Rights in Courts* (Pages 119–25), concerning the courtrooms in Limerick, Cork and Waterford?

Chapter activity 2

Review the two examples concerning children's experiences of decision making within the UK education system (pages 126–30). Use the Canadian perspective, following CASH key points, to assess the efficacy of young people's involvement in the processes described.

CASH 3 – the processes to be used:

- a. Are basic principles of youth participation being respected?
- b. Are barriers being addressed?
- c. Are enabling factors in place?
- d. Are the developmental needs of youth being met?
- e. Are the young people accountable?
- f. Are adults prepared to assist young people to participate?

Do you think the Canadian perspective would see the UK ways of involving young people and children in decision making as effective?

Chapter 5 Example of research

Example of research: decision making and participation rights in youth courts

Kilkelly's (2008) research into Youth Courts in Ireland draws parallels and differences between children's experience of decision making in Ireland and that of other countries. Kilkelly's enquiry can help to identify the experiences of children and young people in this area in terms of decision making and the relationship between professional practice, adults and children.

Kilkelly notes that

it is clear from international standards of children's rights that young people have the right to be tried by a tribunal which takes their age and maturity into account, which protects their right to privacy and which facilitates their ability to understand and participate in the court process. Efforts must be made to adapt the court physically and procedurally in order to vindicate the child's rights.

(Kilkelly, 2008, 45)

The research, based in detailed observation of Irish Court proceedings looked at the involvement of young people in the processes surrounding decisions made relating to their lives and their future. The following issues were examined – whether the young people

- were included or excluded in proceedings;
- were consulted or ignored;
- were talked about in the third person, as if not present; and if
- any attention was given to whether they could even understand what was happening to them within the decisions

By examining this research we can see not only how the young people were, or were not, involved in this crucial area of decision making, but also, as argued earlier in this chapter, can see how decision making cannot be isolated as a discrete phenomenon, but is interconnected with other issues and processes.

Kilkelly contextualizes the research's observations within the Children Act 2001, Section 96 which states that: 'children have equal rights to adults and, in addition, that they have the right to be heard and to participate in any proceedings of the court that can affect them' (2001 in Kilkelly, 2008, 53)

The research firstly looks at the environment in relation to young people's participation in the processes at work:

The courtrooms in Limerick, Cork and Waterford constitute. . . formal and traditional court environments. Each court has a raised bench where the judge sits, with a further row of the bench in front to accommodate the clerk. Solicitors and the prosecutor sit in front of this and the young person tends to sit somewhere in the gallery as there is no specially assigned seat. . . . The fact that there is no dedicated place for the young person to sit/stand means that they can and do sit anywhere. Most young people in the proceedings observed sat or stood near the door, or towards the middle or rear of the courtroom. Few chose to sit at the top of the court, where their solicitor invariably sat, unless they were directed to do so (which in itself was rare). The impact of this physical detachment of the young person from the other persons involved in the proceedings was observed dramatically reinforcing the isolation of the young person from the proceedings; this was particularly so where acoustics were poor . . . the failure on the part of the young person's solicitor to ensure they are well placed in the court at least

© Phil Jones and Susan Welch

Jones, P. and S. Welch (2010) *Rethinking Children's Rights*. London: Continuum.

to hear the proceedings, if not also to ensure they have the opportunity to participate directly in them.

(2008, 52)

How do you think the space and the description of the way the space is used might impact on the young person's involvement in the court?

Interactions and involvement in decision making

Kilkelly then summarizes the way interactions occurred between the young person and those involved in decision making. The following give examples of his key findings:

- a. Those who wished to speak for themselves, and to follow what was going on appeared to find participation difficult if not impossible.
- b. Some were ordered to be quiet or to let their solicitor speak on their behalf, whilst others' efforts to intervene went unnoticed.
- c. In 55 per cent of the cases no communication between judges and young people took place: the judge did not greet young person, did not speak to them at any stage, and did not explain proceedings had been concluded.
- d. The young person was frequently referred to as 'he' or 'she'.
- e. The young person was observed frequently staring at the floor or ceiling or chatting to family members.
- f. Some did not realise their case was over until the next case was called.
- g. When interaction did take place between the judge and the young person it was usually minimal in nature involving a basic greeting at the start and the end of proceedings.
- h. On rare occasions the interaction between the young person and the judge was aggressive with the young person being ordered about, insulted or reprimanded about his/her dress or posture. In a small number of cases, efforts to engage the young person were made by the judge who addressed him/her by name and wished him/her good luck at the end.
- i. The young people were often visibly surprised at being spoken to, but appeared overwhelmingly pleased at being spoken to by name.

(2008, 51–2)

Take three of these many examples of the findings from (a) to (i) and identify how you imagine these impact the young person's experience of decision making.

Language as exclusion from decision making

Kilkelly also presents a section of the research's findings about the way language is used by the judges and solicitors. Here, again, is a representative sample of the findings.

- a. There was no adaptation of language: 'normal legal jargon and explanations are used.' Examples of this included electing trial in the circuit court and the imposition of bail conditions: 'with little or no attempt to adapt the explanations to facilitate their understanding by young people of varying ages and capacities'.

(2008, 51)

- b. In most cases the young person did not speak, nor was he/she spoken to.

(2008, 46)

- c. Kilkelly noted that when asked questions about issues or the final court decisions: 'young people frequently responded to such questions with blank faces or looked to their solicitor of family for assistance.'

(2009, 51)

© Phil Jones and Susan Welch

Jones, P. and S. Welch (2010) *Rethinking Children's Rights*. London: Continuum.

d. Kilkelly found that: 'on the small number of occasions when young people were asked to explain what their bail conditions meant, for example they were unable to do so. One boy asked what a curfew was simply shrugged his shoulders. Another, when questioned about his breach of an order not to trespass in a particular area answered, 'but I was just walking through.'

(2008, 51)

Reflections on the research

Activity 1

How do you see the relationship between the young people's experience of the decisions made as reflected in points (a) to (d) above with the earlier citation of the Children Act 2001, Section 96:

children have equal rights to adults and, in addition, that they have the right to be heard and to participate in any proceedings of the court that can affect them.

(2001 in Kilkelly, 2008, 53)

Activity 2

Kilkelly concludes from the research that

- the Children's Court continues to operate like an adult District Court and inadequate attention has been given to how to transform the court into a specialized forum for dealing with age appropriate manner.
- not sufficient attention is paid to the rights of young offenders; their right to a fair and expeditious hearing in the presence of their parents, and their right to be heard and to understand the proceedings that have such a dramatic affect on the lives.
- inadequate efforts to deal with any individual in terms of their specific maturity, or intellectual and emotional capacities, and young offenders' special difficulties in these areas.
- There needs to be:
 - age-appropriate language;
 - a clear structure to explain the processes and procedures to young people.

(2008, 53)

Re-examine three of the points from 'Interactions and involvement in decision making' (page 121) (a) to (i) above and think about how these three points from Kilkelly's conclusions could be used to help change the way the Youth Courts are conducted to assist the young people's engagement with the decision making process.

Activity 3

The following presents findings from reviews and research into youth justice situations in two different countries, New Zealand and the Netherlands:

- a. In New Zealand youth courts have a number of differences from adult courts

First the sentencing process is largely in the hands of the family conference, whose findings the judge is expected to endorse. Second, judges are expected to try and involve young people and their parents in the court processes and decisions, and to avoid the issue of court orders unless absolutely necessary. Thus, while generally speaking, the youth court is run in much the same way as the adult criminal court, except that it is closed to the public, in reality it is a recognizably different forum.

(Morris, 2004, p. 45)

© Phil Jones and Susan Welch

Jones, P. and S. Welch (2010) *Rethinking Children's Rights*. London: Continuum.

b. Recent analysis of Dutch court practise shows that 'the proceedings are first and foremost a dialogue between the juvenile judge (magistrate) and the young offender' (Weijers, 2004, 28). The conclusions of the review was that whilst legal jargon and court-specific abbreviations are frequently used,

the practice of the judge in the Dutch youth court is to ask at various points whether what they are saying is clear to the young offender . . . characterised by a 'moral dialogue' whereby the juvenile court usually undertakes some discussion with the offender about the consequences of his/her wrong-doing and in most cases puts questions to him/her that attempt to stimulate feelings of empathy for the victim and reflect on the impact of the offence

(Weijers, 2002)

Consider these ways of working in relation to those found in Kilkelly's research and compare them in relation to

- the way the relationships of the professionals involved relate to the young person involved,
- the ways the processes at work concerning decisions are made explicit to the young person and how they enable the young person to engage with them.

Example of research: rights and decision making – a Norwegian perspective

Research with Norwegian pupils into rights and decision making asked the question: 'How can pupils have a greater say in decision-making?'

The research presented the findings the following proposals from the pupils:

- That we have a lesson in which the teacher writes up the pupils' views.
- If the adults try harder to understand, it will be easier for the pupils' voice to be heard.
- The teachers can set up individual appointments with pupils in the class so the pupils can give their views without fear of being laughed at.
- The teachers should ask questions more often.

The children also emphasized the teachers' cooperativeness:

- The teacher should lend a hand in improving things, but the pupils must also play their part.
- Everyone should be allowed to express their views and adults should accept that our views differ from theirs and should try to see things from our point of view.
- The teachers and (some) pupils should improve their ability to work together.
- The pupils appreciated the significance of utilising formal bodies, especially the pupils' council, municipal council, the children and young people's municipal council, and believed that they themselves should do a better job in this respect and draw in teachers to make things work better.

(Sandbaek and Hafdis Einarsson, 2008, 33)

The research feedback from the children also suggested that various forms of preparation such as free class discussions or girls' and boys' meetings were useful. The answers within the research were commented on by the researchers as according with the impressions gained from other answers in the findings: 'Children and young people were eager for more influence' (Sandbaek and Hafdis Einarsson, 2008, 33)

Reflections on the research

Activity

Reflect on the proposals from pupils reported in the research.:

How do you see these reflecting a rights perspective?

Do you consider them realistic and appropriate? How they might be implemented and what barriers might be encountered in trying to implement them?

Chapter 5 Key points

Key points: spaces and norms in decision making

Space	Issue	Norms in decision-making processes
Education: school	Which type of education provision a child receives: which school to attend	Parents decide on options offered by adult education workers with no requirement for children to be involved
Education: school	School exclusions	Teachers and parents or guardians decide with no requirement to involve or hear a child within the decisions made and actions taken
Law: courts	Sentencing in Youth Courts	Decision are made by adults with little or no involvement of the child in the analysis and discussion of the situation
Health: medical centres and hospitals	Which treatment options are to be taken	Doctors and parent/guardians make decisions with no requirement to involve children in decision making or to act on decisions made by the child themselves

Activity 1

Consider the decisions listed in the column titled 'Norms in decision making processes':

- i. Reflect on your *own* experiences of decision making in each area – either your experiences as a child, or an adult. In particular, consider whether you as a child, or you now as an adult, experienced each of these in a way that is reflected by the 'norm' described, or whether your experience has been different? For example, in the norms concerning education – has your experience been that adults decide, or were children involved in the decision making about which type of school was attended?
- ii. Reflect on different ways in which children could be involved in decisions in each of these arenas. Ask yourself what assumptions you are making about why, how and whether children can be involved in decision making.

Activity 2

Consider the earlier quotation from Youth On Board:

In far too many situations, young people are not being heard. Their rights are being disregarded or violated, and adults do not seem to hear or care about it.

How do you see the connections between this quote and the material in the table about 'norms' and children's spaces?

Key points: ANCAC approach to decision making

- They see decision making as key to child rights, and they position it as a 'life skill' in need of time and practice to develop.
- The day care setting is seen by them as a safe environment to practice and rehearse decision making.
- This is accompanied by an assessment of the ways in which practical engagement between adults and children can foster decision making in children.
- They advocate involving young children in setting rules and boundaries in resolving everyday conflicts within the groups and encouraging decision making by support and positive feedback.
- Space and furnishings to enable children to make choices about what they do and with whom – to play with others, or alone, to be quiet or active
- Easy access to materials that allow children to obtain things they want independently, and that allow choice and decisions to match their level of competence with their play materials.

(www.ncac.gov.au/factsheets/factsheet2, 3)

Activity 1

How do you see these key points in relation to the relationship, made by ANCAC, between self-confidence, decision making and rights?

Activity 2

What models of relationship between adults and young children are reflected in the approach within the boxed key points?

Key points: CASH – five sets of criteria to assess youth involvement in public decision making

Each of these five sets includes several questions, derived from research, that assess the effectiveness of youth involvement programs and activities.

1. Relationship between Youth Involvement and Sponsor Organization Goals.
 - a) How do the characteristics of the sponsoring organization relate to youth involvement?
2. The Nature of the Youth Involvement.
 - a) How will youth participate collectively; is it episodic, developmental, structural or are various youth groups being linked together?
 - b) How will each young person be involved individually?
 - c) What are the roles to be assigned to young people?
3. The Processes to be Used.
 - a) Are basic principles of youth participation being respected?
 - b) Are barriers being addressed?
 - c) Are enabling factors in place?
 - d) Are the developmental needs of young people being met?
 - e) Are the young people accountable?
 - f) Are adults prepared to assist young people to participate?
4. How are these Criteria Applied to Different Types of Decision-Making? eg Youth Representatives on Governing Board or Regular Committees, Formal Consultations of Youth.
5. The Evidence of the Impact of Youth Involvement.
 - a) What evidence is there of the impact of the youth participation in the decision-making of the organization or on the youth leaders?

(McCall, 2009)

Activity 1

Review each of the five points and discuss how decision making and children's rights are present in each

Activity 2

Why do you think each are of the five is important to decision making?

Activity 3

Point 5 talks about the importance of 'impact' and evidence: why do you think this might be important to obtain?

Key points: SCIE guide to participation

The guide suggests that organizations should consider the following areas of service development in order to establish effective structures that support participation:

- development of a participation strategy
- partnership working
- identification of participation champions
- provision of adequate resources for participation.

(2006, 7)

The key to achieving involvement in decision making is seen to lie in the creation of an effective system or structure. They propose that there are four elements which need to be considered to ensure that such a whole-systems approach is established:

- Culture
- Structure
- Practice
- Review