

Young people's experience of law-related events:

The role of public legal education *

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Abstract

This paper aims to improve understanding of the need for and value of public legal education amongst young people. Evidence of young people's lack of awareness of legal rights and processes contrasts with the increased likelihood of experiencing a wide range of law-related events for which they often do not get help. Even when help is sought, young people are less likely to successfully take advantage of the services available to them and continue to suffer adverse consequences such as ill health, or the loss of income or a home. The findings indicate public legal education provides young people with the emotional and practical skills needed to manage risks and challenges, and equally, to identify and seize the opportunities of every day life. Drawing from studies on the role of public legal education in fostering resilience (understood as the ability to overcome difficulties and persevere in the face of risk and adversity); the results indicate an urgent need to improve the quantity and quality of public legal education available as a key to improving life-chances and ensuring access to justice.

Introduction

This paper provides an overview of research into young people's experience of law-related events, and the difficulties they are likely to encounter in seeking help. It introduces research into the benefits of law-related education, and its role in developing the core skills that form the basis of legal capability. Finally it proposes further research into the need for law-related education amongst disadvantaged young people in particular, and suggests some specific criterion for evaluating legal capability.

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'Public legal education provides people with the awareness, knowledge and understanding of rights and legal issues, together with the confidence and skills they need to deal with disputes and gain access to justice. Equally important it helps people to recognise when they might need support, what sort of advice they need and where to get it' (Pleas Task Force 2007). The scope of activities involved in public legal education is extremely broad and often overlaps with other disciplines contributing to a continuing lack of clarity as to its purpose and value. Some closely associated activities are illustrative if not definitive and include: legal literacy, citizenship education, rights awareness and legal empowerment. This overlap is also reflected in the under-development of public legal education as a discipline distinct from (albeit related to) legal advice and information services, "PLE has not yet found a natural 'home' - whether in advice or legal services, education or elsewhere"¹

Indeterminacy in what we mean by the notion of legal need has led to difficulty in measuring the extent of need across different jurisdictions (Mulherin and Coumarelos 2006), and in the case of legal capability, the threshold level of legal capability that determines a basic legal need. Whilst in the past there has been agreement that actively seeking legal resolution to a problem reflects the existence of some form of legal need (Mulherin and Coumarelos 2006), more recently legal need includes justiciable events; the events of every day life that raise legal issues, but that might not necessarily be dealt with by going to the formal justice system (Genn 1999).

Developments in defining legal need began to move away from a notion that any law-related event necessarily required a legal solution (the example often used is the tenant with a leaking roof; is it that a lawyer is needed or would he/she be better off with a ladder?)². However, law continues to be associated with the problems of every day life, a fact that obscures the role that law, or rather legal capability, has in identifying and securing the opportunities of everyday life. Justiciable events have recently been described as existing "at the intersection of the civil law and everyday adversity" (Sandefur 2006), but law-related events also occur at the intersection of everyday life and opportunity. In the case of our tenant the legal need arises from the simple fact of being or becoming a tenant. The basic legal capability needed to secure and retain decent accommodation arises long before the leaking roof.

What follows from this in policy terms is the need to situate a definition of justiciable events at the intersection between law and the challenges as well as opportunities that unfold in people's lives, (for example improving employment options, getting value for money in consumer transactions and negotiating personal

¹ PLEAS Task Force (2007:19)

² Lewis P (1973) c.f Pleasance et al (2001)

and professional relationships). This approach attempts to highlight the extent to which public legal education acts as tool to build capacity to manage the myriad life events that occur in the shadow of the law, as well the benefits it offers in the prevention and transformation of disputes. For the purposes of this paper the term law-related events will be used in preference to legal problems in order, wherever possible, to capture the wider scope of issues with which public legal education is concerned.

There is an increasing body of research both nationally and internationally into what people think and do about law, the number and extent of law-related events they encounter, and how – if at all, they respond to these challenges (e.g. Genn 1999, Pleasence et al 2004a, 2006, Felstiner et al 1980, Sarat and Kearns 1995). A recent study by Buck *et al* (2007:3) found that 62% of people who reported experiencing a civil justice problem also reported they did not know their legal rights at the time, and 69% reported they did not know what formal processes were used to deal with their sorts of problems. The impact of this lack of knowledge is borne disproportionately by the most vulnerable in society. For some people, law-related events can compound existing inequalities. For example, vulnerable groups are more likely to experience law-related events and are less likely to report them (Buck al 2005); these groups include younger and older people, those suffering from illness or disability, migrants, and homeless people.

There are also some marked differences in the consequences of law-related events when analysed across the socio-economic spectrum; recent research suggests that the consequences of problems are not distributed equally even when the same attempts are made to deal with problems (Sandefur 2008). People on a low income are not only more likely to experience negative consequences, but are more likely to experience multiple negative consequences, including impaired health and the loss of a home or breakdown of relationships. These adverse consequences in turn lead to increased vulnerability to further problems (Buck et al 2005) resulting in a “vicious cycle of adversity” (Pleasence et al 2007).

Young peoples experience of law-related events

In considering how law-related events can compound existing inequalities, Sandefur's analysis of the 2004 English and Welsh Civil and Social Justice Survey

(CSJS)³ describes the impact of civil justice problems as an 'engine of social inequality' (2008:159). Her findings conclude that even when lower socio-economic groups try the same responses as others they still end up with different outcomes. This paper discusses the findings alongside age-related factors, suggesting that in the case of young people law-related events are particularly likely to exacerbate the drivers of inequality and result in systemic and multiple disadvantages (Kenrick 2002, Social Exclusion Unit 2005).

A number of studies have sought to highlight the lack of awareness young people have of rights or legal systems. Sometimes described as legal consciousness⁴, this awareness is described as "the extent to which people's routine experiences and perceptions of law in every day life...can determine the appropriate use of legal remedies (Cowen 2004). Legal consciousness encompasses both the recognition that an event may have legal dimensions but also the possibility that appropriate advice can lead to better outcomes. Low levels of rights awareness amongst young people is made worse by a lack of awareness of the services that are available and how best to use them (Kenrick 2002).

A study of the education implications from the English and Welsh Civil and Social Justice Survey (Buck et al 2007) highlights the consequences of this lack of awareness in leading people to believe nothing can be done about a problem or that it would make no difference. Young people in the study were overall less likely to seek advice, but more likely to fail when they did try to get advice. Those people who reported a lack of awareness were also more likely to experience adverse consequences as a result of their problem. The need for increasing awareness amongst young people of rights and legal processes is one important factor in improving response strategies to the law-related events that young people experience, and reducing the likelihood of such events becoming a catalyst to further disadvantage.

The Social Exclusion Unit reported in 2005⁵ on the heightened risk factors that can result in social exclusion. Young people account for a disproportionately high number of homeless or vulnerably housed (Kenrick 2007), and are less economically independent (Pleasance et al 2004). They are more likely to suffer from depression or psychiatric disorders and are over-represented in the criminal justice systems as

³ Legal Service Research Centre is responsible for the survey which provides detailed information on the nature, pattern and impact of civil justice problems. The survey is representative of the household population of England and Wales

⁴ For further reading on legal consciousness see Silby S (2005) *After Legal Consciousness*, Hertogh, Marc (2004) *A European Conception of Legal Consciousness: Rediscovering Eugen Ehrlich*

⁵ Transitions: Young Adults with Complex Needs

both victims and perpetrators of crime. The mobility of young people as a group also presents challenges for support services in understanding the aetiology and scale of need, with many young people disappearing from official recording agencies such as benefits and employment services (De Paul Trust 1996). However, in a parallel survey to the LSRC with people living in temporary accommodation in which the respondents were substantially younger (43 % aged under 25), overall a striking 84% of respondents reported one or more law-related problems (Pleasance et al 2004:12).

The transitional experience of young people in moving from compulsory education and the family home to the world of work and adulthood has been described as the 'psychosocial moratorium of adolescence' (Feavious 1994)⁶, not only presenting practical implications such as gaining financial independence but also the emotional and psychological effects of puberty. This transition also exposes young people to a wider range of points of contact with the legal system. The complexity of rules and the transitional regulations of young peoples' entitlements increase the difficulties they face in ensuring adequate access to justice.

Young people are more susceptible than others to problem clusters (Balmer et al 2007) and are likely to experience a 'cascade effect' where one problem rapidly leads on to another, with an overall worsening situation until the problems are perceived to be overwhelming (Genn 1999, Currie 2006). Certain trigger factors that have been identified as most likely to lead to a cascade of further law-related problems including housing problems, illness/disability and relationship problems (Moorhead 2008) are more commonly experienced by young people.

The intersectionality of law-related events and social exclusion has been considered in a number of publications (Pleasance et al 2004, 2004a, Buck et al 2005, Currie 2007). The findings have contributed to an understanding of social exclusion both as a condition but also as a dynamic process (Burchardt et al 1999, Currie 2007). Young people that lack the knowledge, skills and confidence to deal with law-related events find themselves either being or becoming detached from the social mainstream and unable to access the basic services they need in order to combat the cycle of exclusion. Facing mounting law-related problems is a factor in entrenched disadvantage, for example, the loss of a home renders people more visible to law enforcement agencies and at a greater risk of crime, whilst less able to manage the bureaucracies of daily life such as receiving post, keeping records and dealing with benefits (Mulherein and Coumarelos 2007).

⁶ c.f. Kenrick (2002)

Responding to law-related events and adverse outcomes

Many young people fail to respond to law-related events, but even when they do, they may not achieve favourable outcomes, for example they might try - and fail to get help. There are a number of possible reasons why some people achieve less favourable outcomes (when controls for response strategies and problem type are taken into account). All have distinct policy implications for meeting the public legal education needs of young people.

Increased financial resources provide protective factors that enable the effects of negative consequences to be mitigated. Young people are less able to secure the financial resources necessary to provide protection from adverse consequences and are therefore particularly vulnerable to the knock-on effects; this implies an even greater need to focus early intervention and education strategies on young people in order to reduce the potential harm that results from law-related events. Alternatively services received by people on a lower income may unintentionally discriminate against them by 'giving less attention, support or trenchant advice or providing less aggressive advocacy' (Pleasence et al 2004a⁷); alongside a climate of generally negative portrayals of young people, (the Children's Commissioner recently reported an 'explosion of negative stereotyping⁸') may explain problems with the quality and effectiveness of the advocacy that some young people receive, and highlights the need for a cultural shift in the way young peoples services are tailored and targeted to encourage trust and confidence by young people in their advisers, and by advisers for the young people who seek their help.

Despite the fact that the presenting response strategies identified in surveys may appear to be similar, other factors such as persistence and improved negotiation style, will not be captured but may have significant effects on the outcomes of bilateral or third party approaches (Sandefur 2008). The current gap in survey information relating to legal capability presents challenges for the accurate analysis of the reasons for failure, it is however likely that young people in particular lack the experience to have developed strong negotiation and perseverance skills and this may account for poor outcomes in some cases.

Problems with response strategies can also occur when young people experience clusters of problems. Recent research by Moorhead (2008) suggests that

⁷ C.f Sandefur 2008

⁸ Sir Aynsley-Green (2005) "Nearly three-quarters (71%) of newspaper articles about young people were negative, but only 8% bothered to quote their views"
<http://www.guardian.co.uk/society/2005/oct/21/childrenservices.conferences>

advice services in some instances were found to focus on the presenting problems and not addressing other issues, or failing to refer problems outside of their expertise. At the other extreme, the phenomenon of referral fatigue describes the exhaustion experienced as a result of being pushed from adviser to adviser, or from one service to another. All of the scenarios described emphasise the importance of education and rights awareness, alongside help with emotional and practical skills to ensure young people are able to access the full range of support available to them and ultimately to redress the imbalance in access to justice young people currently experience.

Understanding legal capability

The need to improve methods of understanding and addressing inequality has in recent years led to a notion of ‘capabilities’, an approach developed as a functional description of human development and measure of well-being (Sen 1985, Nussbaum 1999). Rather than simply focus on a minimum set of resources that are necessary to live a dignified life, the notion of capabilities provides a means of drawing comparisons of well-being on the basis of what people are actually able to do and be, a “set of functioning’s that a person can achieve” (Sen 1999). In terms of traditional mechanism of measuring equality on the basis of available resources the result “fails to take account of the fact that individuals need differing levels of resources if they are to come up to the same level of capability to function. They also have differing abilities to convert resources into actual functioning.”⁹

Examples of this conceptual approach appear in a number of disciplines, notably development, human rights, health, and discrimination (Nussbaum 2000, Sen 1992, Sen and Nussbaum 1999). In relation to human rights, Nussbaum argues, “Thinking in terms of capability gives us a benchmark as we think about what it is really to secure a right to someone. It makes clear that this involves affirmative material and institutional support, not simply a failure to impede.”¹⁰

In the realm of access to justice¹¹ this means enhanced access is achieved by assessing the minimum level of capability required to manage the law-related events of every day life, followed by a range of interventions to ensure a basic level of

⁹ Nussbaum M *Capabilities as fundamental entitlements: Sen and social justice* in *Feminist Economics* 9(2 – 3), 2003, 33 – 59
http://www.hks.harvard.edu/wappp/research/Martha_Nussbaum_Seminar_Paper.pdf

¹⁰ Ibid p 6

¹¹ Further reading on considerations of access to justice as a human right see: Francioni F eds. (2007) *Access to Justice as a Human Right* OUP Oxford

capability is attained and institutional support for the processes by which this is achieved. This approach underpins wider policy developments such as extending access to legal advice and information services, improving court systems and law-enforcement strategies with educational interventions to improve the disparities in levels of skills, confidence, and knowledge of the people for whom services are intended (Garnham 1999).

Legal capability therefore makes a difference to the availability of real choices; in the context of threat of eviction - one person may seek and receive good advice and prevent eviction, whilst the other (with the same level of income and tangible resources) fails to act, does so too late, or is unable to effectively utilise the advice and support that is received. Equally when presented with new opportunities, one person may be able to identify and take advantage of them, whilst another lacks the legal capability to unlock the opportunities that they encounter; be it through poor negotiation skills, or lack of confidence or know-how to achieve the desired outcome. This applies across the whole range of activities and tools commonly associated with law-related events, from self-help to specialist representation. In one example of a public legal education initiative providing online information, the value of self-help materials¹² was undermined due to gaps in skills and confidence that affected the ability of people to access and use materials effectively.

Regardless of improved levels of capability, the need for specialist assistance is often unavoidable, and is often simply a source of support in helping people to find the right source of advice at the right time. The spectrum of legal need encompasses both education and access to quality advice, assistance and representation services. Higher levels of legal capability do not preclude the need for specialist advice and assistance, and public legal education initiatives cannot offer an expedient solution in the face of restricted budgets for legal services and confines in legal aid provision (Genn 1999, Giddings and Robertson 2003)¹³.

Resilience and legal capability; the role of evaluation

Good evaluation is a core principle in creating a framework for the successful delivery of public legal education initiatives (PLEAS Task Force 2007), there is currently no single indicator of what an adequate level of legal capability entails (Buck et al 2007). Developing a spectrum or classification of legal capability against

¹² ISB Self-Help Project Evaluation (2005)

<http://www.advicenow.org.uk/about-us/self-help-project-evaluation,10049,FP.html>

¹³ c.f Pleasance (2004:109)

which the value of the public legal education activity can be assessed provides a normative tool that can be used to assess needs and target delivery. On a spectrum of capability it would be possible to identify a set of components that determine what a legally capable person would look like, and thereby measure improvements based on the public legal education delivered. The need to identify the basic qualities necessary to function as a legally capable person provides both the building blocks for an evaluative framework and the means to ensure a targeted approach to providing services.

In beginning to identify the components of legal capability, resilience studies in children are instructive. Resilience is understood as 'a set of qualities that foster a process of adaptation and transformation despite risk and adversity' (Benard 1995). Many children experience adversity and encounter risk factors such as alienation from family, school, and community, poor family management practices, family conflict, and economic and social deprivation (Wright 1994). Yet multiple and severe risks are overcome (Werner and Smith 1992) in some studies by as many as between half and two-thirds of cases (Benard 1995).

Some of the qualities or characteristics of resilience identified in the research included: social competence (responsiveness, flexibility, and communication skills), problem-solving skills (the ability to plan, think critically, and be resourceful in seeking help from others), and sense of autonomy (independence, self-sufficiency, self-esteem, and belief in the future).

Improving legal capability through the provision of public legal education can both enhance the resilience of young people and protect against the risks they encounter in their daily lives. An evaluation of a number of public legal education projects found that the law-related education¹⁴ reduced anti-social behaviour by building attachments to school and adults (Parrini 2002), providing opportunities to participate, and by learning critical thinking and problem-solving. One of the studies indicated young people had an improved sense of purpose, independence and power. 'Youth learn how they can and should make a difference in the system of justice' (Pereira 1995). Finally one of the projects highlights how law-related education can develop citizen leaders and help young people 'develop a greater understanding and appreciation for others' (Crowley 1997).

¹⁴ Law related education is described as: Legal literacy focusing on civil, criminal and constitutional themes; practical information about the law and public policy; and concepts underlying constitutional democracy and skills including critical thinking, decision-making, problem solving, communication and cooperation and reasoning.' (Caliber Associates 2002)

The core components of legal capability imply the ability to recognise when a situation has legal dimensions, an awareness of rights and as well as the processes and procedures to enforce them. The emotional and practical skills needed include being able to communicate effectively and manage correspondence, to have confidence, determination and persistence as well as knowing when to get expert help. These components along with the qualities or characteristics identified in resilience combine to provide a clear focus for the measurements of legal capability.

In the associated field of financial capability the approach of taking financial capability domains (such as planning ahead and staying informed) were also used as opposed to a single measure which allowed for the fact that some people had abilities in certain domains but not in others (Atkinson et al 2006). The large-scale evaluation of financial capability provided indicators for a basic level of capability required by everyone in a society, the task of further research in the field of legal capability is to ensure that a base line is identified in order for development of future public legal education initiatives to be delivered effectively.

Conclusions

Research demonstrates that public legal education for young people can address age-related inequalities and act as a protective factor against the causes and effects of social exclusion. It provides a focus on improved awareness of rights and legal issues and enhanced skills and confidence in order to manage tasks, plan ahead, and negotiate more effectively. Most importantly it provides the building blocks for young people to realise their future potential, to develop independent life-strategies, and to expand the choices that are available to them.

Despite the encouraging findings of a number of research and evaluations projects there remain concerns with the lack of consistent and sustained approaches to developing public legal education. These include a lack of rigour in evaluation and research (PLEAS Task Force 2007, Caliber Associates et al 2002) as well as small samples and methodological flaws (Shaver et al). There is an urgent need to develop a wider research base on which the links between public legal education and improved outcomes for young people can be established. If key Government agendas intended to encourage young people to make a positive contribution and have a voice in the way services and policies concerning them are to be effective¹⁵, and the development goals (such as a reduction in social exclusion,

¹⁵ Every Child Matters <http://www.everychildmatters.gov.uk/aims/>

tackling poverty and promoting well being in later life, and increasing the number of young people on the path to success) outlined in public service agreements realised¹⁶, it is apparent that young people's overall experience of law-related events must be improved.

Effective methods of improving young people's experience of law-related events suggests a continuous cycle of needs assessment, tailored and targeted services to meet identified needs, and thorough evaluation at each stage of the process. Focus on improving preventative and early intervention approaches, as well as ensuring these are part of an overall strategy to improve access to legal and support services is indicated. This paper proposes further empirical research to establish the need for public legal education amongst a cross-section of young people, with a view to identifying a base-line indicator of legal capability, and developing and testing effective public legal education approaches. The increasing complexity of rules and laws that govern life act as a driver of other social and economic forces, and if unchecked undermine attempts to promote equality and improve life-chances. Public legal education aims to address these drivers and to empower people with the tools to make informed choices and navigate the laws they encounter in everyday life.¹⁷

¹⁶ Fairness and Opportunity For All: PSA 8-17
http://www.hm-treasury.gov.uk/pbr_csr/psa/pbr_csr07_psaopportunity.cfm

¹⁷ Many thanks to Martin Jones and Mary Webber for helpful comments throughout, and Alexy Buck for her generous research contributions and insights.

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