Participation and Practice in Youth Justice

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This article explores the limited development of participatory practices in the field of youth justice during a period when youth civic participation has experienced significant development in other fields, such as health, local government and youth work more broadly. It also considers what participation can mean in practice for young people in conflict with the law.

In recent decades, particularly since the adoption of the United Nations Convention on the Rights of the Child in 1989 (Barn and Franklin, 1996), we have witnessed a growth in the interest of our young people as citizens, as active participants in our communities. Over a similar timeframe, successive governments have suggested policies that have sought to devolve power, or rather decision-making responsibility, to communities and individuals across different sectors in public life. One area where this progression has been slow to develop has been in relation to the criminal justice system and the people who are subject to its interventions. However, if we want people to be able to move on effectively from life inside prison, we must accept that they need to be able to participate more meaningfully in society. This is particularly true for our young people who need to remain (or become) connected with civil life, not disconnected from it at such an early stage of their development.

This piece considers why participation is an important concept in relation to the youth justice system and what it can mean in practice. It draws partly on work the author was involved with as part of URBoss, a youth participation project based at the Howard League for Penal Reform. The project is funded by the Big Lottery Fund and engages with young people in the criminal justice system to secure their legal rights and to support them in impacting on policy, practice and the services that affect them. Importantly, the project is linked with the legal team based at The Howard League for Penal Reform, which works to provide free, independent and confidential advice, assistance and representation on a wide range of issues to young people under the age of 21 who are in prisons or secure children's homes and centres.

The work is significant in a number of ways because many people in the criminal justice system, particularly children, do not realise that their problems may have a legal answer. Equally, from a participatory and developmental perspective, it is important that children learn that the law is not just a tool used against them (Smith and Fleming, 2012), but that it is something that can help protect them from the brutality associated with the youth justice system (Muncie, 2006). Indeed, "the partnership between the legal and the participation work was crucial to the achievements of *U R Boss*" (Fleming, Hine and Smith, 2014). A key

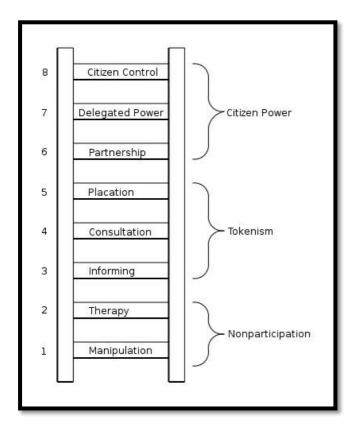
element of the project is the involvement of 'young advisors' who help to decide priorities and bring their unique voices to debates around the criminal justice system. Their role involves advocating on behalf of young people in the criminal justice system and influencing policy and practice through, for example, the writing of a manifesto, attendance at political party conferences, meeting politicians and shaping campaigns. One such campaign asked candidates in Police and Crime Commissioner elections in England in 2012 to pledge to 'keep it clean' and avoid the scapegoating of young people.

As noted above, in addition to supporting children and young people in the criminal justice system to secure their legal rights, the project seeks to help young people have an impact on policy, practice and the services that affect them. Young advisors, who are young people who have engaged with the project over a period of time, were involved in activities such as meeting MPs and attending the party political conferences in 2012 and 2013. For the latter event they produced a manifesto outlining their ten priorities for change in the criminal justice system. One of these priorities was "Participation...The voices of children and young people in the criminal justice system are not listened to. The more young people in the system are heard and their opinions acted on, the better the outcomes for everyone" (*U R Boss* Manifesto, 2013).

In addition to production of the manifesto, and reports such as Life Inside and Life Outside (The Howard League for Penal Reform, 2010, 2011) the *UR Boss* project also engages in ad hoc pieces of work such as undertaking participatory research and development work in Young Offenders Institutions (YOI). One of these projects focused on what young people had to say about the education provision in the YOI they were held in. This is the subject of a forthcoming publication by this author in the British Journal of Community Justice.

The free legal advice line was a key element of the project that pre-dated the participatory element. Over a quarter of the first 1,900 calls to the legal advice line at the Howard League concerned the issue of resettlement. The project therefore produced a guide to resettlement law for practitioners (The Howard League for Penal Reform, 2013) and a series of associated training seminars. Guides on *Moving On* and *What is MAPPA?* were also developed as part of a participatory process involving groups of children held in a Young Offenders Institution. The purpose of these guides was to provide a source of information to children in prison, to help them move on from their life in custody and to aid the transition back to citizenship in mainstream society.

As citizens in contemporary consumer society we are well accustomed to being requested for our feedback on a wide range of products and services we consume and experience. This creates an opportunity to sell us even more things, but also - we hope - helps improve the services we use. Which of these activities our information supports determines the level of our participation – whether we are merely consulted (and potentially ignored) or whether we have a genuine say in how a service is designed and delivered. Arnstein, writing in the 1960s on citizen involvement in planning processes in the United States, was the first to describe a hierarchy of citizen participation, expressed visually as a ladder (1969). She produced this typology of citizen participation in order to improve the quality of the conversations we have when we talk about citizen participation and how it works in practice.



The words chosen for each of the eight rungs in Arnstein's ladder, and even the nature of a hierarchy, are open to debate but it helped to demonstrate that not all forms of participation are equal. It should be recognised that the purpose of the ladder diagram was to be provocative and "encourage a more enlightened dialogue" (Arnstein, 1969: Arnstein helped us recognise that some forms of 'participation' we experience, such as 'therapy' and 'manipulation' are inherently non-participative. forms. such as 'informing', 'consultation' and 'placation' tend to be rather tokenistic in nature. Real citizen power, she wrote, is confined to activities such as working in 'partnership', 'delegated power' and 'citizen control' of resources. This represented an important step forward in recognising the

complexity of people's involvement in social projects and the relevance of underlying power relations. These distinctions help us to see how disempowered children in our criminal justice system are. They are far more likely to be engaged in interactions at the lower rungs of the ladder. Participation associated with the top rungs of the ladder is alien to children in our criminal justice system (Case and Haines, 2009). At best, they may feel 'informed' but adult practitioner and child perceptions of the qualitative nature of this information tend to vary (Case and Haines, 2015).

Hart (1992) adapted Arnstein's ladder for the youth sector, placing youth-adult partnership or 'equality' at the top of the ladder. The ladder was valuable partly because there was very little else at the time written on the theory of children's participation in projects and programmes. It was also valuable because the approach linked strongly the notion of involvement in the evolving notion of human rights in advanced democracies:

"The confidence and competence to be involved must be gradually acquired through practice. It is for this reason that there should be gradually increasing opportunities for children to participate in any aspiring democracy, and particularly in those nations already convinced that they are democratic." (Hart, 1992: 1)

Hart's representation of participation of young people in our democracy has been criticized for its hierarchical approach to thinking about participation, for implying that one type of participation is inherently better than another, regardless of context. We should note here that Hart's approach, he later wrote, was only ever intended as a framework for discussion, a position to start from (Hart, 2008), rather than a definitive template to adhere to.

Shier (2001) instead suggests five levels of participation that can each be considered useful in different contexts and suggests pathways for getting to the next level. Shier's five levels are:

- 1. Children are listened to
- 2. Children are supported in expressing their views
- 3. Children's views are taken into account
- 4. Children are involved in decision-making processes
- 5. Children share power and responsibility for decision-making

Shier's model is a practical planning and evaluation tool to use in settings where adults work with children. He proposed different 'openings', 'opportunities' and 'obligations' to indicate how one can progress along a pathway through the levels of participation. Whilst Shier's approach has also received some criticism for its perceived hierarchical approach (Sinclair, 2004), Shier responded that:

Sometimes we use a ladder to climb to the top and move on, but very often we just want to get to a rung some way up so as to work at the correct height for the job we are doing, for example painting a window frame. This may be only half-way up, but if this is the right height for the job in hand, it would be counterproductive to climb higher. Without the ladder, however, it would be impossible to climb to the appropriate height for the job. (Shier, 2006: 18).

These models are significant because they represented, and generated, growing interest in children and young people having a say in issues that affected them. However, as mentioned already, this interest has not been evident within the field of youth justice. Whilst interest in youth participation flourished in the first decade of the new century, particularly in academic circles (Reynaert et al, 2009), local authorities and health related partnerships, this interest did not extend to Youth Offending Teams and Young Offender Institutions. This lack of interest is likely to have been for reasons such as perceived irrelevance for the youth justice sector, perceived or real limitations of the participation tools on offer for the youth justice context or a lack of knowledge, understanding or imagination about what participation might mean in practice. A perceived incompatibility with a managerialist, target-driven culture (Muncie, 2006) is also likely to have played its part. More fundamentally, the involuntary nature of children's involvement in the youth justice system and its associated interventions does not lend itself easily to the human rights oriented perspective that the concept of 'participation' has emerged from. 'The European Rules for juvenile offenders subject to sanctions or measures' have attempted to bridge this gap (Council of Europe, 2009).

Canton finds that the "language of human rights is the most promising discourse within which to affirm the well-being of children and defend the rights of young people" (2010: 211) and the Council of Europe has "taken a lead in proposing how values may be given expression in the work of youth justice" (2010: 211). One of the key limitations of rights, he states, is their 'minimal' nature. For example, the rights of the European Convention prohibit, for example, torture but we can, and should, seek to do better than that for our children in conflict with the law. Rather than seeking to avoid gross violations of human rights, Canton suggests an important role for "positive action-guiding ethics" (2010: 217). Here, the Council of Europe's 'Guidelines on Child Friendly Justice' (2010) are useful to think about how to go about the implementation of 'doing justice' in a way that also takes account of the developmental maturity of children who are subject to it.

Unfortunately, institutions with a dominant ethos of security and control do not lend themselves very well to practices associated with the affirmation and promotion of individual rights or the psycho-social development of an individual contained within it (The Howard League for Penal Reform, 2010). Within prisons for children in England and Wales exist dehumanizing practices such as physical restraint, solitary confinement and strip searching (The Howard League for Penal Reform, 2006). Feeling safe is a pre-requisite for participative practice to have a chance of existing in custody and almost one third of children and young people reported feeling unsafe to Her Majesty's Inspectorate of Prison in 2012-13 (HMIP, 2014). Recent calls to rethink youth justice (Drake, Fergusson and Briggs, 2014) at what has been termed a 'crossroads' in the sector (Creaney and Smith, 2014) have focused on seeking to understand and improve the relationships between practitioners and young people as part of the solution.

The lack of participative practice in the youth justice sector is, however, noteworthy as children in conflict with the law are some of the most disenfranchised, least empowered people in England and Wales (Bateman, 2011). Indeed, the rights of children in prison tend to lag considerably behind those of children in society generally. For example, it took thirteen years for the Children Act 1989 to be recognised as applicable to children in custodial facilities (Munby, 2002). It would have been longer still had it not been for the intervention of the legal team at the Howard League for Penal Reform and its partners, in the form of an application to the High Court. Here it is crucially important to recognise that a state is not absolved of its responsibilities to children simply because they are in conflict with its laws (Canton, 2010; Hollingsworth, 2014).

Whilst the High Court judgement by Mr Justice Munby (2002) related particularly to children detained in custodial facilities, it is clear too that children subject to less severe interventions than prison are also treated as lesser citizens, if they are considered citizens at all. This is partly due to the punitive nature of the youth justice system in England and Wales (particularly the former) and a harsher environment that has developed towards children in conflict with the law in recent years (Bateman, 2011).

Given the scale of evidence produced in recent years by academics, charities and others of the multiple disadvantages experienced by children who find themselves in conflict with the law (McAra and McVie, 2010; Bateman, 2011), it is vitally important that these children's voices are heard. Recent cases highlighted by the mainstream media in the English towns of Rochdale and Rotherham (BBC News, 2014, 2014a; 2014b) have highlighted the dramatic and damaging consequences of ignoring our most vulnerable children. It is the case, unfortunately, that children being sexually exploited can find that the first time they are recognised by mainstream services is when they come to the attention of the criminal justice system, most commonly initially in the form of the police (The Howard League for Penal Reform, 2013).

This poses a question of how, and at what stage, children in the criminal justice system can 'participate' in the system and what this participation might mean in practice. Considerations of space do not permit an in-depth investigation in this piece but it is clear that 'participation' can manifest itself in different ways at different stages of the criminal justice system. It means being listened to and respected from a child's first contact with the police, being informed about - and represented through - the prosecution process, through any subsequent period of custody, and post-custody, during what might be termed the 'resettlement' period. The chaotic lives of children in conflict with the law means that they often need support with a whole range of things that many of us take for granted. Having worked as part of the Howard League's *UR Boss* youth participation project, the difficulties that young people have adjusting to life after

custody are painfully apparent. Moving on, building and sustaining relationships based on mutual trust, getting a job and becoming a productive member of society following a period in prison can only realistically take place once they have accommodation, access to a phone, a bank account and overcome barriers such as society's stigma towards people with criminal convictions. These are just some of the practical steps, but places to go, things to do and trustworthy people to talk to help provide emotional support and people they can call friends (and not just in the social media sense) are all fundamentally important. Determining which of these an individual most needs, and when, involves speaking to the child who is in, or has emerged from, prison.

One area in which children in prison could participate more fully and effectively is in having a say in where they live following a spell in prison. Being given the opportunity to fully understand the consequences of their decision is also a fundamental part of making these types of decision. This is particularly the case for children who are eligible for further support due to their care histories. Since the introduction of the Legal Aid, Sentencing of Punishment of Offenders Act from the end of 2012 (LASPO, 2012), all children remanded securely have been treated as looked after by the local authority. This gives them the potential to accrue leaving care rights. This should not be a controversial suggestion in 21st Century Britain, but it is clear from calls made to the legal helpline at the Howard League that giving children an informed say in where they live following a period in prison remains to be realized in many cases across the country, despite it being a clear legal requirement. Changes to Legal Aid provisions made by the current government make this participation less, not more, likely – a reminder that progress in the area of civil rights can slip backwards as well progress forwards.

Of course it is not just within the youth justice system but the wider system of criminal justice that participation practice lags so far behind the mainstream. This is perhaps not so surprising given that one of the purposes of prison is to take liberty from the individuals contained therein. However, as a society we do need to question our contentment with dehumanizing an individual to such an extent that future effective participation in society is virtually impossible. The Ministry of Justice's ban on prisoners receiving books is a recent example of the British government's desire to be seen to be tough on people in prisons and cause genuine harm to their prospects of self-education and passing sentence time constructively (The Independent, 2014; Gov.uk, 2013; Politics, 2014).

Beyond important practical issues such as deciding where we might live, putting participation principles into practice is helpful in other ways. When speaking with six different young advisors working with the UR Boss project they highlighted other things, in response to the question "What does participation mean to you?"

"Joining in without being told to get involved"

"Getting involved, being open-minded...getting active"

"Getting involved, working with people in a group, or individually"

"For me coming here it's like trying to make sure that other people don't have the same problems I did – with my custody and my parole"

"Getting people involved in an activity they're interested in. It's also a good teaching mechanism – it's a good way for people to learn how to express themselves"

"Taking part"

In terms of the perceived benefits of participation:

"A lot, from CV building to...yourself...you come in here with no job and have no experience of a job and you can actually learn"

"You need things to do...most of the time if you've been locked up you've been kicked out of school"

"I think it's endless – it can be so many different things"

In terms of some of the benefits of opportunities provided by the *UR Boss* project:

"[W]e are trying to help young people's needs and trying to get their voices heard. We are breaking the communication barrier. I've had experience of being on panel, the awards, events, experiences most young people don't have." (Young person D)

"I learnt about politics. I didn't know about politics, I had never thought, it was the last thing I'd have known about or understood. My main gain is to understand." (Young person K)

"Two years ago I knew nothing about the law other than what it did to you. Now we have an understanding of the law from a different perspective. Before what I knew of the law was in a police cell waiting for my solicitor, now we are looking at the law."

"It's really good man, it's amazing in fact".

These were comments made by young people now living in the community. Children detained in prison were also involved in the production of 'public legal education' materials. For example, children in one Young Offenders Institution initiated the idea for a leaflet entitled What is MAPPA? In discussions about resettlement, the children identified Multi-Agency Public Protection Arrangements as something they wanted to know more about. Content was drafted by members of the UR Boss team in conjunction with legal team members according to heading questions supplied by children detained in the YOI. These young participants also commented on the text and were involved in the design, layout, drafting and revision of content.

Young advisors were able to attend associated resettlement training events and learn about their rights and how to support other young people to obtain their rights. One young advisor attended the training twice, as a participant alongside the professionals, said:

I am coming from a young person's perspective in the group... I think that it's not an opinion that they expect to hear. I think if you are trying to provide a service for someone but you have never been the person in need of the service, if you have got someone that is working next to you that has been the recipient of the service, but is trying to understand how you give the service, then I might see something that they wouldn't. So I hope to think that...me being there [it] does make a difference because I don't think it happens all the time (Young Advisor in Fleming, Hine and Smith, 2014b).

What is clear from their involvement in the *UR Boss* project was that they felt they had been participating in ways that were meaningful to them and different to the opportunities they had previously experienced. This is consistent with what Charles and Haines (in press) refer to as 'participative quality' as the key determinant of effective youth justice practice from the child's perspective. This is the "extent to which children felt able to contribute to decision-making in an autonomous, equitable manner without hindrance, coercion, control or enforcement from adults". Charles and Haines found that adult practitioners were perceived as over-valuing adult-centric decision-making at the expense of inclusionary and equitable (legitimate) relationships with children guided by child-friendly standards such as using simple language, appropriate digestible presentations (in reports and meetings) and non-hierarchical models of participation.

Some organisations, such as *User Voice* and the Care Leavers Association, have sought to change the lack of service user engagement in relation to criminal justice and the care system over time. Having also been a part of the STREAM project, focusing on research and evaluation in European Probation services, undertaken with colleagues at De Montfort University, it is clear that when judging the quality of criminal justice services, excluding the voices of those who experience them most closely is not a problem only confined to England. Working alongside the criminal justice system in England and Wales also serves as a reminder that us humans can be remarkably reluctant to give up power and responsibility, even when there are clear advantages to others and society more broadly.

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