

Young people's experience of law-related events:

The role of public legal education *

Abstract

The negative impact of young people's lack of awareness of legal rights and processes is compounded by evidence that age-related factors increase the chances of experiencing a wide range of law-related issues. All too often, 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 effects such as ill health, or the loss of income or a home.

This paper aims to improve understanding of the need for and value of public legal education amongst young people as an essential component of access to justice. 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 findings suggest that public legal education can provide young people with the core emotional and practical skills needed to improve their overall life-chances. Improving levels of legal capability through the provision of legal education not only means individuals are better equipped to cope with risks and challenges, but also to recognise and take advantage of the opportunities they encounter.

Introduction

The following discussion of research into young people's experience of law-related issues and the difficulties they are likely to encounter in seeking help considers the benefits of law-related education, and its role in developing the core skills that form the basis of the concept of legal capability. The purpose of this preliminary paper is to identify gaps in what we currently know about legal capability

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and to make some observations about specific criteria for evaluating legal capability in future studies.

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 issues and are less likely to report them (Buck et 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 resolve them (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).

Public legal education and 'legal need'

Public legal education has, in recent years, received more focused attention in the realm of socio-legal research. An investigation into the extent to which people lack awareness of legal entitlements and justice processes was highlighted in the work of the Public Legal Education and Support Task Force (2007), alongside a review of the existing activities which aimed to meet these needs. The Task Force defined PLE as an activity that provides people with: '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'. It also has a role in helping people to 'recognise when they might need support, and where to get it' (Pleas Task Force 2007). The

scope of activities involved in public legal education is broad and overlaps with other disciplines such as citizenship education, rights awareness and legal empowerment, leading to a lack of clarity about what is meant by PLE¹. This lack of distinction has been implicated in the under-development of public legal education as different from (albeit related to) existing legal advice, information and education provision; "PLE has not yet found a natural 'home' - whether in advice or legal services, education or elsewhere"²

The indeterminacy of what we mean by PLE has its roots in the lack of clarity of what we mean by the concept of legal need. Interestingly, the PLEAS Task Force avoided any discussion of legal need in its concluding report. The expansion and contraction of the definition of legal need, and indeed the use of 'need' altogether, has shown itself to be sensitive to the economic and political climates in which legal need research evolved. So for example the earliest empirical studies can be traced back to the 1930's to climate in which the American Bar was facing recession, resulting in research that aimed to 'show how the needs of the community for legal service were being met.'" (Pleasence et al 2001:8).

Between the 1930's and the 1970's the enthusiasm for equating unmet legal need to the existence of a problem to which the law offered a framework for resolution, but for which there had been no access to a lawyer, peaked. However the restriction of legal need to instances in which parties actively seek legal resolution to a problem, or *should* seek legal resolution, was criticised as failing to provide a useful account of what constituted unmet need. More recently, legal need has therefore come to include justiciable events, understood as: '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 issue necessarily required a legal solution, recognising the value laden implication that all problems need a lawyers help, (the example often used is the tenant with a leaking roof; is it that a lawyer is needed or would she be better off with a ladder?)³.

¹ PLES Task Force inaugural meeting 12 January 2006. Paper 1/03 p8
<http://www.pleas.org.uk/uploads/Public%20Legal%20Education%20-%20%20a%20Proposal%20for%20Development.pdf>

² PLEAS Task Force (2007:19)

³ Lewis P (1973) c.f Pleasance et al (2001)

The historically narrow lens through which legal need has been viewed also therefore obscured the role that law, or rather legal capability, has in identifying and securing opportunities. A study by the Royal Commission on Legal Services in Scotland (the Hughes Commission) in 1980 applied a more sophisticated two-stage analysis to the notion of legal need, one which recognised the initial ability to recognise the existence of legal dimensions of a situation, followed by an ability to choose a legal solution: 'In assessing the need for legal services, we must therefore think in terms of two stages - firstly enabling the client to identify and, if he judges it appropriate, to choose a legal solution; and secondly, enabling the client to pursue a chosen legal solution' (para 2.9) '.....When we speak of 'unmet need' we are concerned about instances where a citizen is unaware that he has a legal right, or where he would prefer to assert or defend a right but fails to do so for want of legal services of adequate quality or supply'(para 2.10).⁴ The view that justiciable events exist "at the intersection of the civil law and everyday adversity" (Sandefur 2006) thus fails to adequately capture the range of opportunities that can be secured through the ability to make and actively pursue informed legal choices.

Basic legal capability is therefore not a problem-centric approach, but one that offers a person-centred and preventative view. Taking this much wider approach to legal need returns us to the problem of measuring the extent of unmet need and exploring the options for meeting needs through the provision of legal services. In the context of the UK, it has only been in recent years that the education needs arising from civil and social justice issues have received significant attention, yet there still remains insufficient research to establish a threshold level of legal capability that would determine a basic legal need (Buck et al 2008). The following chapters attempt to examine in more detail the considerations of young people's capability in the light of the evidence of their increased susceptibility to the negative impact of law-related events.

⁴ CF. Pleasence et al (2001) *Local Legal Need Research Paper 7Legal Services Research Centre* p15

Young peoples experience of law-related events

A number of studies have sought to highlight the lack of awareness young people have of rights or legal systems. Sometimes described as legal consciousness⁵, 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. In the case of young people, low levels of rights awareness 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 Survey⁶ (Buck et al 2007) looks at 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. Lack of awareness is also directly linked with poor outcomes; therefore the need to increase awareness amongst young people of rights and legal processes is one important factor in improving response strategies to the situations they encounter in order to reduce the likelihood of legal issues becoming a catalyst to further disadvantage.

The intersectionality of law-related events and social exclusion has been considered in a number of publications (Pleasence 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 issues 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.

⁵ 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*

⁶ 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

The Social Exclusion Unit reported in 2005⁷ 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), 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). Facing these mounting 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).

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 (Balmer 2007). 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), research by Rebecca Sandefur (2008) looks at the strategies and consequences of civil justice problems and the policy implications that follow.

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

Young people are less able to secure the financial resources necessary to provide protection from adverse consequences and they are particularly vulnerable to knock-on effects (Pleasance et al 2004). They therefore lack the protective factors that financial resources offer to enable the effects of negative consequences to be

⁷ Transitions: Young Adults with Complex Needs

mitigated (Sandefur 2008:116). Another possible cause for poorer outcomes arises from the services received by people on a lower income which may unintentionally discriminate against them on the basis of social class by 'giving less attention, support or trenchant advice or providing less aggressive advocacy' (Pleasence et al 2004a⁸). This observation, considered alongside a climate of generally negative portrayals of young people (the Children's Commissioner recently reported an 'explosion of negative stereotyping'⁹), could point to reasons for the less effective advocacy that some young people receive. These factors highlight 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 (see generally Kenrick 2002).

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 research relating to legal capability presents challenges for the accurate analysis of the reasons for failure, however it is 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 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 (Pleasence et al 2004a). 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.

Understanding legal capability

⁸ C.f Sandefur 2008

⁹ 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>

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 a 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). Traditional mechanism of measuring equality on the basis of available resources, argues Nussbaum "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."¹⁰

Examples of this conceptual approach appear in a number of disciplines, notably development studies, human rights, health, and discrimination (Nussbaum 2000, Sen 1992, Sen and Nussbaum 1999). In relation to human rights the functional emphasis means on 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."¹¹ In order to achieve enhanced access to justice then, the approach assumes the need to assess a threshold level of capability that is needed to manage routine legal issues, followed by a range of interventions to improve basic levels of capability where needed. This re-conceptualisation of capability underpins and strengthens attempts to improve access to justice through increasing access to legal advice and representation services. Educational interventions are designed to produce changes in fundamental disparities, such as levels of skills, confidence, and knowledge of the people for whom services are intended (Garnham 1999).

Legal capability therefore makes a fundamental difference to the availability of range of choices when facing law-related issues. However legal need is defined, the provision of services to alleviate it can only succeed if those services are a genuine option for the person in need. A basic level of legal capability enables an individual to identify a legal issue, and either defend or assert a right thereby unlocking the opportunities that they encounter and averting the risks. Poor negotiation skills or

¹⁰ 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

¹¹ Ibid p 6

lack of confidence or know-how to achieve the desired outcome has a profound impact on the ability to resolve an issue. In one evaluation 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 the information that had been offered.

Similarly, regardless of improved levels of capability, the need for specialist assistance is often unavoidable; 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, but complement them. As other commentators have warned, 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

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

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)

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).

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.

Good evaluation is a core principle in creating a framework for the successful delivery of public legal education initiatives (PLEAS Task Force 2007), yet 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 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. 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 the associated field of financial capability the approach of taking financial capability domains (such as planning ahead and staying informed) were 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

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)

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 evaluation projects there is a lack of consistent and sustained approach to developing public legal education. This includes 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. There are currently a number of key Government social agendas in which improved legal capability are implicit; the aim to encourage young people to make a positive contribution and have a voice in the way services and policies concerning them¹⁵, and development goals (such as a reduction in social exclusion, tackling poverty and promoting well being in later life, and increasing the number of young people on the path to success)¹⁶, these and many others are linked to young people's overall experience of routine legal issues.

The increasing complexity of rules and laws that govern life act as a driver of wider social and economic forces, and if unchecked undermine attempts to promote equality and improve life-chances. Some of the studies outlined in this paper suggest that public legal education plays a positive role in addressing these drivers and provides people with essential tools with which they are better equipped to make

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

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

informed choices and navigate the complex bureaucracies they encounter in everyday life.¹⁷

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