

PARTICIPATION AND THE ROLE OF PUBLIC SPACE

OUR SPACE, THEIR SPACE AND MYSPACE

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Abstract

This article examines participatory rights as human rights and considers their importance to the lives of children and young people. It argues that a broad definition of participation needs to be used which takes us from 'round tables' to understanding that young people participate in many different ways. It points out that failure to recognise and respect the many varied ways that children and young people choose to participate results in a breach of their human rights. It shows how our socio-legal system operates to permit and support these breaches of the rights of children and young people, resulting in their alienation from civic society.

Introduction

In Heidegger and Merleau-Ponty, it is not merely human identity that is tied to place or locality, but the very possibility of being the sort of creature that can engage *with* a world ... that can think *about* that world, and that find itself *in* the world.

J.E. Malpas, *Place and Experience*

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Basic to the key human rights which can collectively be referred to as participation – freedom of expression, freedom of association and the right to influence decisions that affect us – is the opportunity to engage with and be part of society. Yet for children and young people there are many long standing practices and assumptions that undermine and limit these rights. Despite recent expansion in the field of ‘youth participation’, young people are still ignored in many areas of public life. This paper discusses the limitations of what will be called the ‘roundtable’ model of participation and then turns to consider the spaces and places in which children and young people choose to participate. Taking up the framework of the participatory rights set out in the United Nations’ Convention on the Rights of the Child, it argues that true participation depends on recognising and valuing young people in precisely the places they choose to create and inhabit.

Models of Youth Participation

Participation in its broadest sense denotes the ways in which individuals interact with the society around them and construct and develop the very ideas, norms and practices which determine our social experience. This broader conceptualisation of participation is sometimes forgotten for a narrower concept with a specific focus on skills acquisition and input in decision-making. This is particularly true of the concept when it is applied to children and young people. As we will see, this conceptualisation of youth participation locates it in specific sites; sites which fit with accepted ideas of how young people should engage (against which charges are made that young people are disengaged and apathetic).

Youth participation is one of those contemporary concepts that virtually nobody takes issue with. It has been widely accepted as beneficial and wholeheartedly embraced in

policy documents across schools, health institutions, community agencies, local and state government; in fact anywhere that has a focus on children and young people. There is a lot of literature on the development and implementation of youth participation¹ and all of it talks about the undeniable value of children and young people having a role in decision-making that affects their lives.

Consistent with its general appeal, youth participation has some influential proponents; it is unequivocally adopted and promoted by the United Nations through both its instruments and its institutions. The United Nations Children's Fund (UNICEF) describes a basic concept of participation the idea that *people are free to involve themselves in social and developmental processes and that self-involvement is active, voluntary and informed.*² The Convention on the Rights of the Child is also clear on the role of participation: Articles 12 through 15 set out a clear framework. These articles acknowledge children's right to freedom of expression, thought, conscience, religion, association and peaceful assembly. They also expressly state that *the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child.*

So participation as it is conceptualised within the international human rights framework is broad and envisages children and young people expressing their views and engaging with the world around them in a number of ways. As the literature explains, the benefits of participation are well established and have been found to

¹ Lansdown, G, 'Taking Part, Children's Participation in Decision Making' (1995) in Christenson, P and Allison, J, (eds), *Research with Children: Perspectives and Practice* (2000).

² UNICEF, *UNICEF/Commonwealth Youth Programme Participation Toolkits Book One* (2006) 7.

include enhancement of skills, capacity, competence and self-esteem;³ and strengthening of social, negotiation and judgment skills through trial, error and compromise.⁴

These are all admirable qualities and few would argue that young people would not benefit from such skills. However, they are the skills which can mould young people in the direction of the archetypal democratic citizen, as it is perceived - even dreamed of - by adults. As pointed out by Graham et al

*...as the youth participation movement has gained momentum, it has at times been clothed in a convincing rhetoric of benefits, not always voiced by those who know best, that is, the young people themselves.*⁵

The nature of these processes and the way they are run is rarely selected by young people themselves: *skill development such as chairing a meeting or writing funding submissions was rated quite low by [youth participants], while it was assumed by the facilitator to be of significant benefit.*⁶ The result may be discordance between the benefits as perceived by organisers and the benefits perceived by young people themselves.

³ Alderson, P, 'Young Children's Rights, Exploring Beliefs, Principles and Practice'. (2000). in Graham, A, Whelan, J and Fitzgerald, R (eds) 'Progressing Participation: Taming the Space between Rhetoric and Reality' *Children, Youth and Environments* (2006) 16(2) 231-247, <http://www.colorado.edu/journals/cye> accessed 1 August 2007

⁴ Raynor, M, 'Why Children's Participation in Decision-Making is Important' (Paper presented at the Childlaw Conference, Auckland, New Zealand) (2003).

⁵ Graham, A, Whelan, J, Fitzgerald, R, 'Progressing Participation: Taming the Space between Rhetoric and Reality' (2006) 16(2) *Children, Youth and Environments* 231-247 <<http://www.colorado.edu/journals/cye>> accessed 1 August 2007.

⁶ *Ibid*, 233.

Roundtable model of Participation

Most current models of youth participation focus more narrowly on the *process* by which young people are involved in decision making and governance.⁷ and the process by which the young people involved develop skills which enhance their capacity to participate. Young people will be frustrated and ultimately disenfranchised if the reason to acquire these skills is to be heard more clearly and the framework within which they are taught is designed to limit the extent to which they are heard. There is evidence that this is the outcome from many models of participation, particularly those that set up consultative or advisory frameworks that have no actual outcome in terms of influencing social policy or law reform.

*What the Roundtable does not do is to facilitate young people to contribute their views on policy debate or make it possible for Members of Parliament to consult with young people on policy issues.*⁸

Another layer of difficulty is added when we take a top down approach which entails a pre-set process for the benefit of a group of select and extraordinary young people. This makes it even harder for a majority of young people to participate effectively. As pointed out by Harris:

*...this renewed interest in youth participation has brought about prescriptions for being a properly engaged, good youth citizen, along with an increased regulation of young people's lives.*⁹

⁷ Cashmore, J, 'Promoting the Participation of Children and Young People in Care' (2002) 26(8) *Child Abuse and Neglect* 837-847.

⁸ Bo'sher, L, 'Where are the Priorities? Where is the Action?' (2006) 16(2) *Children, Youth and Environments*, 341 < <http://www.colorado.edu/journals/cye>> accessed 1 August 2007..

⁹ Harris, A, *Future Girl: Young Women in the 21 Century* (2004) 139.

It is common for participatory mechanisms to be tied to traditional ideas of participatory democracy. For example, Youth Advisory Councils, Youth Committees or Roundtables are all mechanisms which hark back to traditional methods of democracy and notably exclude all but a few select young people who are often exemplary students or noted civil citizens. A recent study undertaken in New Zealand clearly showed that inclusion in youth participation programs;

*depended on which groups of young people adults in local government deemed important to include and, by default, which young people would therefore be excluded.*¹⁰

This model of democracy mirrors a time before universal suffrage, when only the members of the white male community were trusted with the vote.

Feeding into this approach are the widely held assumptions that young people in contemporary Australia are disengaged, apathetic or indifferent to the political processes. While the work of Vromen¹¹ and others has done much to clarify these misconceptions, it is lamentable that there are still many politicians and commentators characterising young people as *ignorant and apathetic and consequently in need of remedial 'fixing'*.¹²

It is no coincidence that the need to 'fix' young people is in part satisfied by building their political skills and engagement through many current models of

¹⁰ Nairn, K, Sligo, J and Freeman, C, 'Polarizing Participation in Local Government: Which Young People are Included and Excluded?' *Children, Youth and Environments* (2006) 16(2) 248-271 [249] <<http://www.colorado.edu/journals/cye>> accessed 24 February 2008.

¹¹ Vromen, A, 'Youth participation in Australia today' (Paper presented at the *Seen and Heard Workshop*, Melbourne, December 2007) and Vromen, A, 'Young people's participation and representation during the Howard decade' (Paper presented at John Howard's Decade Conference, Canberra, 4 March 2006).

¹² Vromen, A, 'Young people's participation and representation during the Howard decade' (Paper presented at John Howard's Decade Conference, Canberra, 4 March 2006).

participation. At its worst, participation becomes a method by which young people are encouraged to engage politically in the way adults want them to. One example of this approach is the National Youth Roundtable mentioned above, which is structured in such a way that the young people involved

*may not explore issues that are outside of the Australian government-defined boundaries that have been set by the Youth Bureau and do not necessarily reflect the issues of concern for young people.*¹³

Claims that this is truly youth participation are hardly convincing if the participants are not even setting the agenda.

Beyond the Roundtable Model

There are, of course, examples of youth participation which go beyond the roundtable model. Some understand the ways in which young people do engage and the forums they use, and have very successfully used the internet to develop a dialogue with children and young people.¹⁴ Others are based in models that are far more participatory or which have as their outcome actual consequences for legislators and bureaucrats.¹⁵ Yet even these have their shortcomings, framing participation with an adult-designated time and space. The question is how can participation be truly meaningful to children and young people? How can it be moved away from models which ‘encourage’ the sort of traditional political participation that adults want young people to engage in, to a more legitimate space

¹³ Bo’sher, L, ‘Where are the Priorities? Where is the Action?’ (2006) 16(2) *Children, Youth and Environments*, 341 <<http://www.colorado.edu/journals/cye>> accessed 1 August 2007..

¹⁴ See for example the Inspire Foundation at <http://http://www.inspire.org.au> or the National Children’s and Youth Law Centre at <http://http://www.ncylc.org.au/>

¹⁵ See for example the model used by the Greater London Borough described by M Raynor at <http://http://www.abc.net.au/rn/talks/lm/stories/s421848.htm>

where young people participate in the ways they want, because they have something to say, and they consider themselves part of the community?

The way to do this does not lie in a particular model of participation but rather by focusing attention on the places that young people claim and create within the community. In order to fully participate, children and young people must be full citizens. They must be acknowledged as contributing and valuable members of the community and this recognition needs to seek them out wherever they are, in their space.

Children's social participation is limited, as it is for all people, by the space and places they are allowed to inhabit and enjoy and with which they identify. Malpas¹⁶ suggests that place is crucial to the ways in which we engage with the world; it is crucial to participation. He also suggests that the concept of place is not limited to simple physical location and this point is particularly pertinent to children and young people. Access to physical space is often denied to them: they may be excluded from shopping centres,¹⁷ or policed out of city streets or squares;¹⁸ even at home the space is rarely under their control. Yet children and young people find places in which to participate and to fully recognise and understand these we must begin to see 'place' more broadly. It is not simply a physical location, but a conceptual one as well. It is a location in which someone might place themselves in relation to others – it might be a website or even a subculture. By being a 'goth', for example, a young person is conceptualising themselves in a

¹⁶ Malpas, J E, *Place and Experience* (1999).

¹⁷ See further explanation in Copeland, A, "Public Space; A rights-based approach" (2004) 23(3) *Youth Studies Australia*.

¹⁸ See further explanation in Blagg, H and Wilkie, M, *Young People and Police Powers* (1995).

different space from the mainstream and in doing so creates a ‘place’ that they inhabit and control.

This conceptualisation opens the door to many possibilities in which place becomes not only a physical reality but a cyber reality also. Young people create such cyber-places through development of their own websites or their own page on ‘myspace’, ‘facebook’ ‘friendster’ or ‘youtube’ which have experienced exponential growth in membership in recent years. These networks are often promoted as offering a means for interaction and communication but they are also important for the opportunity it gives young people to define and create a place of their own. The idea of place – whether it be physical, cyber or even more abstract – is incredibly influential on the way people make sense of the world.

Convention on the Rights of the Child

This fluid idea of place is exactly what was envisaged by the *Convention on the Rights of the Child*. It is the exercise of these rights which *constitutes* participation such as the right to freedom of expression, thought, conscience, religion, association and peaceful assembly. The Committee on the Rights of the Child has stated:

*The Convention on the Rights of the Child principally enshrines children’s participation in all matters affecting children. Therefore, States parties must take all appropriate measures to ensure that the concept of the child as rights-holders is anchored in the child’s daily life from the earliest stage: at home (and including, when applicable, the extended family); in school; in day care facilities and in his or her community.*¹⁹

¹⁹ Committee on the Rights of the Child, 37th Session in Geneva on 17 September 2004

A closer examination of how we support and protect these rights of young people reveals serious deficiencies in our commitment to participation.

This point is particularly pertinent as we contemplate the 10th anniversary of the *Seen and Heard; Priority for Children in the Legal Process*. This report was commissioned by the Australian Law Reform Commission and the Human Rights and Equal Opportunity Commission in 1997. Its comprehensive analysis of the legal system and the ways in which it serves children and young people did not produce encouraging results. The report began with the following:

*Australia's children are the nation's future. Australia's legal processes have consistently failed to recognise this fact by ignoring, marginalising and mistreating the children who turn to them for assistance.*²⁰

It found that children were far more likely to be dragged into compulsory legal processes such as criminal, family or welfare proceedings than to initiate legal action to protect their own rights.²¹ It also found that once they entered legal proceedings their voices were rarely heard.

The report illuminated the many difficulties within the courts and the legal processes which had an impact on children's lives.²² Examples in the report included a criminal case in which the young person charged did not speak and yet was sentenced by the court and a family law case which decided children's future with out even setting eyes on them, much less hearing from them. These were

²⁰ Australian Law Reform Commission, *Seen and Heard: Priority for Children in the Legal Process*, Report 84, (intro) at <http://www.austlii.edu.au/au/other/alrc/publications/reports/84/04.html> accessed 26 February 2008

²¹ Ibid, see Ch 4 [4.16].

²² Above n Ch 14-17.

processes imposed upon children often against their will and sometimes because of no actions of their own: criminal proceedings due to some unintended transgression of public order or welfare proceedings due to their parent's inability to care for them.

But the more important point that the report made was that children and young people hardly ever enlist the legal system to further their own interests, protect their own rights or seek their own legal remedies. The number of children and young people taking legal action against discrimination or suing due to injury or to assert their rights in any way is relatively low. The report found that children are more likely to appear in compulsory legal proceedings and it is those children and young people, who may have broken the law or are the victims of abuse, who become the visible face of children within the legal system.

This observation underlines the argument of this paper. In the same way that the legal system ignores the ways in which children and young people might *choose* to promote or protect their rights, our broader social system substantially ignores the ways children and young people choose to participate. Instead, it spends much time and energy dragging young people into participatory mechanisms that mean nothing to them. In addition, any resistance on the part of young people to these mechanisms is met with criticism and allegations of apathy or disinterest.

Young people may find themselves marginalised even when they attempt to find or create a space of their own. The internet is an interesting example. As noted above, there are some effective initiatives which attempt to use the internet to engage

young people. Government has also made use of the internet to disseminate information however, while there are many sites available, most focus on providing wide-ranging information in a top-down format rather than encouraging interactivity, reciprocity and feedback between young people and decision-makers.²³ While the internet is seen as a useful tool to get information to young people, there is distrust of any 'interaction' between it and young people. This is because unlike television, which has been incorporated into family life, the internet remains for many unknown, uncontrollable and frightening.

There are very few positive messages about young people's use of the internet and even fewer when they step out of the prescribed confines of its use. For example, most parents would be comfortable knowing that their child is looking up information for a school project, but searching for like-minded young people for discussions in chatrooms would cause disquiet. Fear can contribute to the marginalisation of young peoples' ability to freely interact and express themselves: consider the large amount of money spent by the Howard government on an advertising campaign directed at the dangers of the internet.²⁴

Freedom of expression, thought, conscience and religion

If as a society we were sincerely committed to youth participation, we would demonstrate an actual and everyday commitment to children and young people's participation. This commitment would prioritise not merely when and where they

²³ Above n, final para.

²⁴ 'Howard's pre-election promise to spend \$189 million on "cleaning up the internet" for Australian families' <http://www.australianit.news.com.au/story/0,24897,22218715-15306,00.html> accessed 21 February 2008.

are *invited* to participate but where they *choose* to participate in their everyday activities of meeting with friends and being part of *their* community.

These freedoms of choice are intrinsic to participatory democracy. However, children and young people are often assumed to possess them simply as a corollary of adults' expression of rights. Children are assumed to have the same religion as their parents and often also the same views on a range of topics. Too often when young people express their own opinion they are berated for being 'manipulated' or 'not understanding the issues'.

In 2003 when there were mass rallies across Australia protesting the war on Iraq many children and young people took part. They were publicly criticised by many as naïve, impressionable and simplistic. Then-Prime Minister Howard also stated that it was not appropriate for children to participate in the rally during school hours. The New South Wales Premier *urged parents to take charge of their own youngsters and stop them attending the rally*, characterising the 'Books not Bombs' group organising the rally as a *front organisation from an extreme left group that wants to radicalise youngsters by throwing them into a clash on the streets*. This position sits uncomfortably with the criticism often made of young people: that they are apathetic and politically disengaged. It also points to a tenuous distinction between the kinds of political participation that are seen as legitimate (such as joining political parties or participating in roundtables) and those that are seen as illegitimate (such as demonstrating or expressing dissent).

This distinction becomes even more problematic when we consider that children and young people in Australia are also denied the right to vote. Voting is often held out as the most comprehensive participatory framework in modern democracies, yet children and young people as a group are expressly prohibited from voting. This is despite the fact that young people often work, pay taxes and are affected by governmental decision making in substantially the same way as adults. In fact, it could be argued that due to the involuntary and intrusive impact of the legal system on many children and the fact that decisions are often made for them government decision-making has a higher impact on the lives of children and young people.

There have been several proposals to lower the voting age over the years; the most recent was a report tabled in the ACT Parliament in 2007 which recommended lowering the voting age to 16.²⁵ Changes at a federal level would have greater impact given that the electoral role is held at a federal level and to accommodate inconsistencies between states would be difficult. There have been attempts to lower the voting age across Australia through private members' bills proposed in the Federal Parliament²⁶ but they have never obtained the support of the major parties.

Even those who had reached the voting age faced another hurdle in 2007 when legislative changes dictated that the electoral roll would be closed the same day that the election writs were issued. This move disenfranchised young people. The Opposition characterised it as an attempt to *gain a political advantage and to knock*

²⁵ 'ACT to consider lowering the voting age' ABC news online
<http://www.abc.net.au/news/stories/2007/09/26/2043628.htm> accessed 25 October 2007

²⁶ Christobel Chamarette the Greens Senator proposed such amendments in the Federal Parliament more than 20 years ago.

*out thousands of particularly young people, people who they [the Government] think won't be voting for them.*²⁷ The Greens' Bob Brown was even bolder in his criticism:

*It's legalised corruption of the political system for a government in control of both houses to have rammed through legislation which is going to deprive 143,000 Australians of their right to vote.*²⁸

Given that in the past there has been a gap of two to three weeks to allow first time voters or those needing to change their details time to get on the roll, these amendments raise some interesting questions about the level to which youth participation in the political process is supported.

Another way in which young people's participatory rights are curtailed is the systematic undermining of their freedom of expression by discounting what they have to say. This approach supports young people expressing themselves but does so in an unshakeable belief that what young people say will be naïve, ill-informed and irrational. Ideas that children and young people are in some way biologically and cognitively deficient are not new.²⁹ Jean Piaget's theory of cognitive development suggests that children are not capable of the higher forms of rationality that adults practice. He asserted that social processes could only have an effect on the child after a certain level of cognitive development. Piaget's theories were, however, challenged by his contemporary Vygotsky who suggested that social processes were important from a very early age:

²⁷ Comments from Alan Griffin as reported on PM ABC at <http://http://www.abc.net.au/pm/content/2007/s2062405.htm> accessed on 21 October 2007

²⁸ Comments from Bob Brown as reported on PM ABC at <http://http://www.abc.net.au/pm/content/2007/s2062405.htm> accessed on 21 October 2007

²⁹ see for examples of work by Jean Piaget, Eric Erickson and Laurence Kohlberg in Bessant, J, 'Mixed Messages: Youth Participation and Democratic Practice' (2004) 39(2) *Australian Journal of Political Science*. 387- 404 [396].

*Hence children's development is profoundly affected by other people, culture and the tools of culture (particularly language), institutions and history.*³⁰

Set ideas about what children can and cannot do at different stages due to their internal cognitive development have since been challenged by sociocultural theory, which argues that children's capabilities depend not so much on their age as on the activities and social contexts in which they have participated.³¹

Adolescent brain theory and the work of Barbara Stauch³² and here in Australia Michael Carr-Gregg is a modern manifestation of the cognitive development approach. It asserts that young people's brains do not fully develop until their early twenties and therefore anyone below that age lacks judgement, rationality and the ability to express an informed opinion. Carr-Gregg asserts that *we are naive in the extreme if we think that young people are going to make sensible choices without some guidance.*³³ This approach is counterproductive to freedom of expression as it absolves us of actually having to listen to what is said by young people. Worse still it leads to an approach to participation which sees its major value as allowing young people to "have their say" – but this occurs in a patronising environment where what they say will not be taken seriously. This approach, coupled with one which emphasises skill acquisition as the main reason for participation, can lead young people into a frustrating situation where they are told that their view is valued but it is actually ignored.

³⁰ Taylor, N, 'What do we know about involving children in family law decision making? A research update' (2006) 20, *Australian Journal of Family Law* 154.

³¹ Ibid.

³² Stauch, B, *The Primal Teen: What the new discoveries about the teenage brain tell us about our kids* (2004).

³³ Michael Carr-Gregg in an interview on 702 ABC Sydney, transcript at <http://www.abc.net.au/queensland/conversations/stories/s2026015.htm?sydney> accessed on 24 February 2008

Much more could be said about the barriers that exist for young people's participation in these aspects of democratic practice.³⁴ However, in considering the ongoing issues articulated in the *Seen and Heard* report it is important to examine the extent to which the right to freedom of association and peaceful assembly is protected and promoted within the Australian context. This is because these freedoms have particular currency for young people as they describe the ways in which they can use (and are restricted in) public space. And it is this policing of public space which is perhaps the largest single area of interaction between young people and the legal system.

Freedom of association and peaceful assembly

There are many impediments to young people's ability to assemble and associate freely. An understanding of the ways in which young people use public space is fundamental to understanding how they are impeded in that use. Young people are frequent users of public space; they use public space because they do not own or have access to more private spaces in which to congregate. They use public spaces to meet, socialise and form connections with their peers and their community:

*“Hanging out” is about independence, meeting and being with friends and being in a place where they can see and be seen.*³⁵

In this context, the right to peaceful assembly is very important and it is intrinsically linked to freedom of association. However, the ways in which young people are governed within public spaces is far from supportive of their right to assemble.

³⁴ Bessant, J, 'Mixed Messages: Youth Participation and Democratic Practice' (2004) 39(2) *Australian Journal of Political Science*. 387- 404.

³⁵ Panelli, R, Nairn, R, Atwool, N and McCormack, J, ' "Hanging out" Print media constructions of young people in "public space" ' (2002) 21(4) *Youth Studies Australia* 38..

There is substantial literature looking at the social circumstances which lead to young people's high visibility and increased policing within public space. Some argue that the increased commercialisation of public space³⁶ and the decreasing relative economic power of young people make them more visible.³⁷ Coupled with the development of public space as consumer space, this means they are targeted for partial or complete exclusion.

There has been widespread shift in the nature of public space itself from publicly owned spaces such as town squares or main streets to privately owned shopping malls and centres.³⁸ This has resulted in the exclusion of those not considered 'legitimately there' – that is, not shopping. For young people, this has resulted in the increased use of 'banning notices' and exclusions which effectively breach a young person's right to associate and freely assemble.³⁹

Perceptions of young people as dangerous or disruptive play into this trend, which in turn seeks to minimise the risk that young people represent by excluding them. The exclusion of young people is simply a commodification of 'safety'⁴⁰ which can then be 'sold' to those with market power. This is possible not because young people are dangerous but because they are *perceived* as dangerous. One way in which security can be sold is to target those considered a risk and visibly 'police'

³⁶ Malone, K and Hasluck, L, 'Geographies of Exclusion' (1998) 40 *Family Matters* 20-26.

³⁷ White, R, 'Young People, Community Space and Social Control' (Paper presented at the Juvenile Justice Conference, Adelaide, September 1992) and White, R, 'Young People and the Policing of Community Space' (1993) 26 *Australian and New Zealand Journal of Criminology* (207-218),

³⁸ Crane, P and Dee, M, 'Young people, public space & new urbanism' (2001) 20(1) *Youth Studies Australia*.

³⁹ Grant, C, 'Practice Pointers: Banning the Banning Notice' (2000) 21(1) *Alternative Law Journal*

<<http://www.austlii.edu.au/au/journals/AltLJ/2000/7.html>> accessed 26 February 2008

⁴⁰ Crane, P and Dee, M, 'Young people, public space & new urbanism' (2001) 20(1) *Youth Studies Australia*.

them or remove them from the space.⁴¹ Young people have been easy targets for this kind of treatment:

*The difficulties for young people in this type of social context is that very often they are the prime targets for private and public police intervention. This is because they usually travel and hangout in groups, which may be regarded as disturbing to other customers or users of public space. Or, they are perceived as non-consumers, or at best marginal consumers, and hence not suitable patrons within the shopping centre confines.*⁴²

One of the major problems with the use of banning notices or exclusions is that they are often arbitrary and not subject to any legal checks and balances or review processes (at least none that are accessible to young people). Shopping centre owners and management often argue that as their centres are privately owned they have the legal right to exclude whoever they wish. This right may not be as broad as they assert (as I have argued elsewhere)⁴³ and as evidenced from the Tasmanian Supreme Court decision in *O v Wedd, Nicola*.⁴⁴ However, as many shopping centres are private property the owner or occupier does retain a certain amount of control over who can access them.

Perhaps even more troubling is the situation within publicly owned public spaces: those spaces that are policed by public law enforcement agencies such as police,

⁴¹ White, R, 'Hassle-Free Policing and the Creation of Community Space' (1998) 9(3) *Current Issues in Criminal Justice*, 312 [316-317].

⁴²Ibid.

⁴³ Copeland, A, 'Public Space; A rights-based approach' (2004) 23(3) *Youth Studies Australia* 41-45.

⁴⁴ [2000] TASSC 74 (26 June 2000).

rangers or railway/transit officers. There is substantial literature on the ways in which young people are policed within public spaces.⁴⁵

*Young people, particularly those from Indigenous, migrant and ethnic minority backgrounds, those deemed to be street present, homeless or in some way marginal to society, have disproportionately higher levels of contact with the police than other social groups.*⁴⁶

A report undertaken in Sydney in the early 1990s surveyed a group of young people and found that a staggering 80% had been stopped and spoken to by the police in public spaces. A further 50% had been taken to a police station.⁴⁷ In Western Australia a 1995 report documented a similar experience, and suggested that these interactions with police (for non-criminal behaviour) often developed into conflict, resulting in criminal charges against the young person who has been approached.⁴⁸

The picture has not improved since the 1990s. In fact, with the introduction of move-on orders in many jurisdictions and the debate over introducing anti-social behaviour orders, young people are more policed in public space than ever before. Move-on orders have been introduced in every Australian jurisdiction except Victoria. While they purport to be for general application there is growing evidence that they are used disproportionately against young, Aboriginal or street-present people.⁴⁹ In Western Australia, an active campaign by youth advocates has coincided with a retreat by the State Government from a prior commitment to

⁴⁵ See a Western Australian example in Blagg, H and Wilkie, M, *Young People and Police Powers* (1995).

⁴⁶ Blagg, H and Wilkie, M, 'Young People and Policing in Australia: The relevance of the UN Convention on the Rights of the Child' (1998) *Australian Journal of Human Rights*, Austlii.

⁴⁷ Alder, C, O'Connor, I, Warner, K and White, R, *Perceptions of the Treatment of Juveniles in the Legal System* (1992).

⁴⁸ Blagg, H and Wilkie, M, *Young People and Police Powers* (1995).

⁴⁹ Taylor, M and Walsh, T, *Nowhere to Go; The impact of Police Move-on Powers on Homeless People in Queensland* (2006).

introduce anti-social behaviour orders. However, anecdotal reports suggest they are now turning to the *Restraining Orders Act* to explore how misconduct restraining orders could better be ‘used to control anti-social behaviour’.

It is difficult to pinpoint what sort of behaviour move-on powers and anti-social behaviour orders are intended to target. If it is criminal behaviour then we must ask: why are the existing laws insufficient? Offences such as obscene language, disorderly conduct, disturbing the peace and even loitering still exist in criminal and public order legislation across the country. If the intention of move-on and anti-social behaviour orders is to target perpetrators of these sorts of offences it raises some serious questions about ‘back door’ prosecutions. The orders, when used in this way, have the effect of lowering the evidentiary burden allowing police to take action when they would not otherwise be able to prove their case due to lack of evidence. This opens the process up to abuse as it brings with it none of the attended checks and balances on state power that exists within the criminal law system.

If, on the other hand, these orders are designed to target behaviour that is not criminal we must ask why we need to regulate such behaviour. Or perhaps more appropriately: why do we need to regulate the non-criminal behaviour of young people? Anecdotal information from Western Australia suggests that young people who are ‘Goths’ are targeted by police with move-on orders purely based on their appearance. In Sydney, the Shopfront Youth Legal Centre has reported numerous incidents of young people being told to move on ‘for no apparent reason’.⁵⁰ Use of

⁵⁰ Shopfront Youth Legal Centre, Submission to NSW Ombudsman Re: *Crimes Legislation Amendment (Police and Public Safety) Act 1998*, (2003) 22.

move-on orders in this way have a clear impact on young people's ability to exercise their rights to assembly and association.

Curfews are also used throughout Australia to ban young people from certain areas at certain times. Some, such as the Northbridge Curfew in Western Australia, are alleged to have their legal basis in welfare legislation. The Government uses this argument to characterise the curfew as offering protection to young people. The "welfare" argument is often used in defence of laws which undermine or curtail young people's ability to exercise their civil rights.

This tension also points to the competing rights evident in the Convention on the Rights of the Child. For example Article 3 emphasises the need to provide children with *such protection and care as is necessary for his or her well-being* while Article 12 clearly asserts *the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child.*⁵¹

Legislation which curtails young people's ability to exercise their civil rights is a matter which affects the child. A child's right to protection should not be used in order to curtail other rights set out in the Convention.

Measures which curtail use of public space and undermine freedom of movement and association in turn have an impact on the way in which young people see themselves as participating members of the community. This was clear from the responses of young people to research undertaken on this issue in Queensland:

⁵¹ United Nations *Convention on the Rights of the Child* at <<http://www.unhchr.ch/html/menu3/b/k2crc.htm>> accessed 20 February 2008

*They make me feel less of a citizen. I can't hang around my own state – my own Brisbane. If we can't live here, where are we supposed to go?*⁵²

Research in the area of participation in Britain has given us some warnings about the possible negative impact of poor approaches to participation:

*Unless young people are confident that their opinions will be treated with respect and seriousness, they will quickly become discouraged and dismiss the participation process as ineffective with all the implications this has for the confidence in democratic processes as they grow into adulthood.*⁵³

In the same way, if young people receive messages that they are not wanted in public spaces and that they have no visible role to play in the everyday comings and goings of the community, it may have far-reaching consequences for how they see themselves as active (and valued) community members. It is interesting to contemplate the effect if these rights were being taken from other citizen in society.

The regulation of young people's exercise of rights such as freedom of movement and association goes far beyond the interaction between young people and police or security personnel. The ways in which young people are regulated and controlled around a number of different areas such as work and education also point to a fundamental undermining of their exercise of participatory rights.⁵⁴ For example, in every jurisdiction across Australia there has been a push to increase the age of compulsory education and with it have come a number of legal measures which

⁵² Taylor, M and Walsh, T, *Nowhere to Go; The impact of Police Move-on Powers on Homeless People in Queensland* (2006).

⁵³ Matthews, H, Limb, M, Harrison, L and Taylor, M, 'Local Places and the Political Engagement of Young People: Youth Councils as Participatory Structures' (1998-99) *Youth and Policy: The Journal of Critical Analysis* 62,16-31.

⁵⁴ Bessant, J, 'Mixed Messages: Youth Participation and Democratic Practice' (2004) 39(2) *Australian Journal of Political Science* 387- 404 [392] in which she sets out a long list of the ways young people are prevented from civil, social and political engagement..

criminalise truancy. In Western Australia this manifested in a campaign which encourages local shop keepers and members of the public to telephone a “hotline” if they see school age children out of school during school hours. The hotline connected the caller to designated ‘truancy’ police officers, who would then ‘pick-up’ the young people. This approach impacted on all young people; those on their way to school organised off-campus sporting activities and those excluded from school or on their way to medical appointments.

Conclusion

It is meaningless to talk about youth participation within a legal and social context which actively disables the participatory rights of young people. *Seen and Heard* illuminated the legal system with all of its shortcomings concerning the treatment and the exclusion of the young people that it came into contact with very little of which has been meaningfully addressed in the 10 years since the report was written.

There are clear messages that young people should participate more. However, young people’s attempts to act on this so are met with discouragement. Young people’s use of public space is ‘hyper’-governed, while any attempts to find alternative space such as Myspace or similar internet locales is characterised as dangerous. Even within the formal structures for participation such as the Youth Round Tables, Youth Affairs Councils or Youth Committees, young people have little opportunity to set the agenda or decided on how their output will be used. An examination of the implications and consequences of a socio-legal system that at best ignores and at worst intentional undermines the human rights of young people reveals further challenges to young people’s participation. How are young people to

construct themselves as participatory citizens? While continually calling on young people to participate, we systematically undermine their attempts. We leave young people in no doubt about our aversion to hearing what they say. Our approach to youth participation simultaneously constructs a barbed wire fence between young people and effective participation, and blames young people for their inability to penetrate it.

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