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# **Social Justice, The Common Weal and Children and Young People in Scotland**



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**In association with the Institute of Education, Community and Society and  
in association with the Centre for Research on Families and Relationships,  
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Please note that the views in this paper are those of the authors and are not necessarily the views of the organisations or funding bodies that they work for.

# Executive Summary

This paper argues that:

- Scotland should organise itself around social justice, which addresses entitlements, redistribution, recognition and respect.
- Children and young people have particular views on what social justice means for them.
- Rights have a particular contribution to make to social justice in term of entitlements, claims and minimal standards.
- The combination of piecemeal incorporation of children’s rights, an apolitical wellbeing framework and a lack of strong legislation to hold local authorities and other public services, private sector organisations and the third sector to account, results in children and young people encountering discrimination on an everyday basis.
- To achieve social justice, a change is needed in how adults perceive children and childhood, young people and youth. Children and young people need to be recognised as contributors to their families, institutions and communities now – and not just in the future.
- For children and young people to be included in the Common Weal, it needs to be concerned with the full and diverse range of structural, cultural and individual barriers that they encounter in their lives.

## Children and Social Justice

This paper considers how the Common Weal can connect to children and young people’s concepts of social justice. It considers children and young people’s experiences, in light of the Christie Commission’s call for public service provision to confront inequalities. The paper poses questions about the extent to which children and young people will be involved in, and be able to define, the Common Weal.

The paper argues that:

- Research in the field of childhood studies defines social justice in terms of children and young people’s entitlement (e.g. to the law, services and democratic processes), redistribution (e.g. of rights, duties and resources), recognition (e.g. of culture, difference, capacity) and respect (e.g. of strengths, attributes, abilities).
- Children and young people believe that exclusion, poverty and a lack of support impact greatly on their lives. In particular, these factors inhibit their ability to build strong long-term relationships with peers, family members and adults.

- For children and young people to be included in the Common Weal, they need support to address the full and diverse range of structural, cultural and individual barriers that they encounter in their lives.

## **The Common Weal and Participation**

The paper argues that the Common Weal can be connected to writing in childhood studies concerning participation, partnership and power. It suggests that:

- A complex social justice approach requires organisations to: place rights, recognition and respect at the centre of their work; develop collaborative relations with children, young people and their families that enable them to negotiate agreed outcomes; and offer flexible solutions based on a recognition of difference and the idea that children and young people have views that are worth taking into account.
- Children and young people of all ages (including the youngest children) possess abilities, can identify their own social justice issues, aspire to exercise their rights, have diverse opinions and can make complex decisions about their lives.
- Children and young people should not simply be categorised by adult- defined criteria. We need to move beyond inflexible traditional approaches to childhood. Such as shift requires an examination of the local power-politics that occur between children, young people, their families and professionals.
- At present, a lack of appropriate collaborative structures and relationships mean that children and young people find it difficult to access decision-making processes and, when they do manage to raise issues, the pace of response is slow.
- In spite of the recent passing of the Children and Young People’s (Scotland) Act 2014, no clear framework ensures that children and young people’s participation in decision making processes is meaningful, effective and sustainable.
- Children and young people have the right to the participatory democracy envisioned for adults in the Common Weal. However, if children and young people are to exercise that right, we need to recognise that many participatory approaches fail to achieve change for children and young people because they are tokenistic and do not enable a shift in power relations between children, young people and adults.

## **The Common Weal and Developments in Children’s Policy**

The paper argues that the recent Children and Young People (Scotland) Act 2014 promotes an aspirational notion of wellbeing at the expense of broader and more politically hard edged concepts such as rights and social justice. The Act does not address the wider political context of wellbeing such as children’s status in society, adult arbitrary use of power, unequal distribution of resources and fair access to legal representation.

This section concludes that:

- Current legislation does not promote the radical shift of child-adult relations that would ensure that children and young people’s aspirations and experiences become central to the Common Weal.

- The Children and Young People (Scotland) Act 2014, and the Getting it Right for Every Child (GIRFEC) initiative it enshrines, does not require a fundamental shift in thinking within local authorities and partner agencies that will challenge the power relationships in children's services
- The Act enshrines the collaborative working aspects of earlier policy initiatives on wellbeing such as information sharing, joint planning and assessment. While well meaning, it fails to confront conceptual ambiguity in local authorities concerning children's rights.
- We agree with the recommendation of Together: the Scottish Alliance for Children's Rights that a commission should be set up: to investigate what further approaches are required to ensure children's rights are at the centre of legislation in Scotland; to examine the evidence for fuller incorporation of the United Nations Convention on the Rights of the Child (UNCRC); and to work out how legislation might be worded to ensure children and families experience minimum standards of provision in a way that recognises adult's and children's rights.
- The Act fails to ensure public authorities have an enforceable duty to realise children's rights and this means that, despite the stated commitment to 'make rights real', the Act is unlikely to improve upon the current ambiguous and piecemeal approach to rights in local services.
- In terms of social justice and the right to legal redress, problems remain about how children and young people can redress violations of the full range of children's rights enshrined in the UNCRC.
- Any duty to implement children's rights, on Scottish Ministers or public bodies, must be meaningful, transparent, accountable and effectively monitored to ascertain current status, measure progress and provide mechanisms to address a lack of progress or failures to report.
- The gaps in the new Act raise questions about the extent to which children and young people will be included in any new political settlement that promotes the concept of the Common Weal.

## **Who sets the Agenda for the Common Weal?**

Jimmy Reid in his now famous speech defined alienation, amongst other things, as:

The frustration of ordinary people excluded from the processes of decision-making. The feeling of despair and hopelessness that pervades people who feel with justification that they have no real say in shaping or determining their own destinies.

Jimmy Reid was concerned to root out those things that distort and devalue human relations and to confront alienation as it starves young people of hope.

The paper argues that the top-down performance cultures and national target setting in public services 'for' children and young people can distort opportunities for children and young people to set local and national agendas. It suggests that professionals are forced into achieving short-term targets and prevented from developing cultures of participation by performance indicator cultures. The paper concludes that:

- Whilst national policies set over-all frameworks, they cannot provide the local answers to what outcomes mean. More local collaborative spaces are required if professionals are to be enabled to develop services 'with' children and young people.
- Rigid attempts to resolve people's life problems, inflexible standardisation of services and top-down outcomes based on professional notions of wellbeing can, in themselves, become further sources of exclusion
- A new politics in Scotland would pose questions about how to break down the power relations between adults, young people and children to enable them to work collaboratively. A new politics would also seek to develop local frameworks to enable adults, young people and children to be at the forefront of putting agreed solutions into practice, to address the range of fundamental inequalities that children, young people and families experience within their local communities.
- A new politics would root out the fundamental causes of childhood inequality so that less GIRFEC-type professional intervention was required because children, young people and families were: better off; more integrated into their communities; had a greater sense of the Common Weal; and, therefore, experienced less day to day life issues. Without a radical edge, GIRFEC becomes a 'sticking plaster' applied at the expense of confronting the fundamental causes of inequality in childhood such as poverty, discrimination and disempowerment.

Jimmy Reid rejected the concentration of power in too few hands, asked children and young people to reject the notion that we should look after 'number one' and suggested that real fulfilment for all lies in service to their fellow man and woman. The aspirations of the Scottish Government to make Scotland "the best place for children and young people to grow up" requires a radical shift. The Scottish Government has an action plan for children's rights but it is neither comprehensive nor precise enough. Mechanisms for accountability, transparency and redress for children's rights violations must be embedded into everyday practice to ensure that children and young people feel respected, recognised and supported.

Jimmy Reid stated, "Society and its prevailing sense of values leads to another form of alienation. It alienates some from humanity. It partially dehumanises some people, makes them insensitive, ruthless in their handling of fellow human beings, self-centred and grasping." He called for an enriched quality of life, for social/cultural/spiritual transformation, for people to be involved more in decision-making, and for society to make greater use of the untapped resources of young people. Children and young people continually demonstrate that they have much to offer Scottish society, yet they also regularly experience discrimination in everyday settings. Jimmy Reid argued that, for their latent talents to be unleashed, the institutions of government must be restructured. Where necessary, additional structures must be evolved that enable wider processes of decision making. Jimmy Reid rejected the notion that participation led to inefficiency and highlighted the crime that many people go through life, "without even a glimmer of what they could have contributed to their fellow human beings".

Research, carried out with children and young people in Scotland, indicates that children and young people agree with Jimmy Reid's ideas and aspire to have the same chances (no matter how much money their families have) and to be included (no matter how different they are). A new politics in Scotland offers an opportunity to articulate the process through which such a more equal and childhood focussed future can be achieved.

# Social Justice, The Common Weal and Children and Young People in Scotland

## A Snapshot of Scotland's Children and Young People

- In 2012, 85 per cent of pupils feel that they learn things in school that will be useful when they're older, and 77 per cent say they enjoy school. Views on whether school lessons are inspiring are more mixed with just over half of pupils (55 per cent) saying they find school lessons inspiring. (Ipsos Mori 2013)
- One in five Scottish children and young people live in poverty. An estimated 100 000 children and young people will be pushed into poverty by 2020 in Scotland. (McKendrick et al. 2014)
- In 2012/13, 22 561 children and young people were referred to the Scottish Children's Reporter: 20 308 referrals on care and protection grounds and 3636 on offence grounds (some children were referred on more than one ground). (SCRA 2013)
- As of 31 July 2013, 2681 children and young people were on a Child Protection Register in Scotland. 16 041 were 'looked after'. (Scottish Government 2014a)
- In 2012/13, there were 21 955 exclusions from local authority schools in Scotland. Pupils who are excluded are more likely to live in areas of deprivation, have additional support requirements and be 'looked after' by a local authority. (Scottish Government 2014b)
- A national consultation with 74 059 children and young people in Scotland found the top four important children's rights issues were: Being safe and secure, Being treated fairly, Being respected and Being included. (SCCYP 2010)

## Will the Common Weal ensure Social Justice for Children in Scotland?

The Christie Commission (2011) on the future of public services connected ideas of equity, power, rights and social justice:

...tackling inequalities not only promotes more positive outcomes for individuals but also has benefits for the 'Common Weal'. We are convinced that Scotland, as a more equal society, can deliver better social and health outcomes for its people. The Commission also concurs with the Scottish Human Rights Commission (2011) that [it is where] "the core principles of a human rights based approach of participation, accountability, non-discrimination, empowerment and legality are embedded into the development, design and delivery of public service provision that dignity and fairness for all can be better achieved'. (Christie Commission 2011: 56)

The term 'Common Weal' relates to equality, mutual working and wealth shared in common, rather than ruthless competition (The Jimmy Reid Foundation 2013). The Commission argued

that public services should be re-developed within the context of the Common Weal, better outcomes and the principles of human rights. Public services, recommended the Commission, should develop preventative solutions, address persistent problems, overcome multiple negative outcomes and confront the consequences of socio-economic inequality and disadvantage. This paper seeks to pose questions about what mutual working with children and young people might look like and the extent to which a children's rights focus connects to the Common Weal.

The Common Weal also connects to local and participatory democracy, suggesting we all have something to contribute to our communities. For example, the Christie Commission (2011) advocated the re-development, design and delivery of public services to tackle inequalities and promoted positive outcomes for individuals. Families and their communities should play a pivotal role in the development of services:

We recommend that, in developing new patterns of service provision, public service organisations should increasingly develop and adopt positive approaches which build services around people and communities, their needs, aspirations, capacities and skills, and work to build up their autonomy and resilience (2011: 27).

When connected to research that examines children and young people's lives in Scotland, this aspiration raises questions about the role of children and young people within the Common Weal. For example:

- Will the Common Weal build on an understanding of the challenges and opportunities for children and young people to be involved in dialogue and change?
- Does the Common Weal value assets that children and young people bring to local communities?
- Will the Common Weal enable adults to adopt asset- and strength-based approaches and recognise children and young people's capabilities to change their communities?

Asset- or strengths-based approaches recognise local people's abilities to contribute to change, enable minimum intervention by professionals and foster community based solutions (Dolan 2006). They seek to ensure that services are developed *with* people, rather than *for* people. A Common Weal where adults make all the decisions will lead to adults making decisions *for* rather than *with* children and young people. A Common Weal where adults make all the decisions will not ensure fairness, participation or social justice for children and young people.

The Christie Commission highlighted a number of barriers to developing participatory, preventative and fairer local services:

- Different accountability frameworks (statutory duties, audit and inspection) often pull organisations in different directions;
- Performance management processes are generally expressed in terms of inputs and outputs (activities and service standards) rather than outcomes;
- Joint activity is often inhibited by different arrangements for funding, budgeting and accounting for the use of resources;
- Established ways of working often do not make the most positive impact on outcomes;
- Services may not know enough about the outcomes most valued by people and communities; and

- A narrow or short-term focus on the objectives of particular organisations acts against the adoption of preventative initiatives.

The Christie Commission argued that these barriers need to be overcome and that 'a key objective of public services reform is to ensure public services are enabled and incentivised to work together effectively to achieve outcomes' (2011: 42). The Commission also argued that partnership working needs to be at the heart of the reform process in local communities. But how do we ensure that children and young people are enabled to collaborate with adults to set the agenda for the Common Weal and are included in local partnership working?

## **The Common Weal and Children and Young People's Definitions of Social Justice**

This paper suggests that the Common Weal becomes relevant to children and young people if it connects substantively to children and young people's everyday definitions of social justice. Writing on social justice identifies the diverse range of things that children and young people wish to be addressed in their lives. For example:

- Help to get jobs
- Legal advice
- Opportunities to learn and support to develop their self-capacity
- Entitlement (e.g. to the law, services and democratic processes)
- Redistribution (e.g. access to rights, duties and resources)
- Recognition (e.g. of culture, difference, capacity)
- Respect (e.g. for strengths, attributes, abilities)
- Complex solutions to everyday problems
- Approaches that confront the stigmatisation of young people
- The removal of structural barriers such as a lack of transport, poor play facilities or inadequate housing. (Davis 2007, 2011, Davis and Smith 2012, Dolan 2006, Gilligan 2000, Honneth 2000, Konstantoni 2011, Percy-Smith et al. 2001, Thomas 2009, Vincent 2003)

This paper, unusually for the authors, has not sought to represent directly the views of children and young people in quotes. A substantial body of work now does so and demonstrates that social justice has diverse, complex and dynamic meanings (see Davis 2011, Davis and Smith 2012, Elsley et al. 2013, and references there in). This work shows that children, young people and their families aspire to a range of outcomes including the recognition of rights, the addressing of injustice, access to material benefits, local conflict resolution, stronger relationships, anti-discriminatory responses, social integration, social dynamism, and the removal of structural barriers (Davis and Smith 2012).

Such work broadens our understanding of social justice because it encourages us to view children and young people's definitions of social justice as diverse (dependent on their varying life experiences) (Davis 2011). We can conclude that children and young people aspire to collaborate to identify and address the full range of structural, cultural and individual barriers that they encounter in their lives.

## **Case Example: Social Justice Access to Redistribution, Relationships and Creative Spaces**

Children and young people tell us that exclusion, poverty and a lack of support impact greatly on their lives. In particular, they believe that these factors inhibit their ability to build strong long-term relationships with peers, family members and adults. For example, they suggest that poverty impacts on the relational aspects of their lives when they: do not live in accommodation that they can bring a friend home to; do not have socially acceptable clothing; are unable to gain access to school-related events, equipment or opportunities; cannot afford transport to meet friends; do not have access to play and leisure; and do not feel safe to travel between local areas (Davis 2007, Morrow 1999, Ridge 2002).

They specifically highlight how issues concerning safety, aggressive behaviour and bullying (by adults, children and young people in schools and local communities) are co-joined to issues of a lack of parental income, poor curriculum access, disablist/racist/sexist/homophobic/ageist attitudes, a dearth of employment opportunities and poor training of local authority staff (e.g. on children's issues). They have stated concerns that their parents have to spend so much time at work (e.g. to pay the bills) and would prefer them to be able to spend more time with them (Davis 2007).

The Growing Up In Scotland study (GUS 2011) found that young children who experience a higher level of home learning activities, such as reading, painting and games involving shapes and numbers, subsequently have increased abilities in problem solving, cognition and vocabulary. The Growing Up In Scotland study findings tells us that, if parents were enabled to spend time with and play creatively with their children in the early years, their children do better at primary school.

Such barriers are addressed within the United Nations Convention on the Rights of the Child (UNCRC). Ratified by the UK Government in 1991, the UNCRC covers participation, protection and provision rights. For example, it recognises children's rights to access services (education, health and care services). It recognises children's right to protection from harm and discrimination, including protection from attack on their privacy, reputation or honour and protection from experiencing exploitation neglect or maltreatment. This articulation of rights seeks to ensure the human dignity of children and young people is respected and recognised. The right to participate in decision-making is particularly relevant to notion of the Common Weal. The UN Committee on the Rights of the Child defines participation as 'ongoing processes, which include information sharing and dialogue between children and adults based on mutual respect, and in which children can learn how their views and those of adults are taken into account and shape the outcome of such processes' (2009: 2).

Social justice approaches to children and young people promote integrated working as a way to surmount professional silos that resist change and as an approach that encourage professionals to engage with the cross-cutting issues of childhood. Contemporary thinking in the field of

childhood studies has been utilised: to promote the local negotiation of collaborative outcomes between professionals, families and communities; to encourage local collective decision making; and to enable local participative assessment, planning, delivery and evaluation (Davis and Smith 2012).

## **The Common Weal and Participation**

Spaces of dialogue are required in local settings that enable adults to listen to and understand the life issues of children and young people (Moss and Petrie 2002).

At a conceptual level, different types of local approaches are identified as attending to issues of social justice. These include approaches that involve: relationship building, service outreach, participatory planning, self-referral and flexible service pathways (Chaskin 2006). There are often tensions in public services between child-led initiatives and child-development ideas that promote adult intervention (Davis 2007, Dolan 2006, 2008). In order to address issues of social justice, service providers are encouraged to: place rights, recognition and respect at the centre of their work; develop collaborative relations with children, young people and their families that enable them to negotiate service aims and to offer flexible solutions based on a recognition of difference and the idea that children and young people have views that are worth taking into account (Davis 2011, Davis and Smith 2012).

### **Case Example: Problems with Collaboration:**

The Education (Additional Support for Learning) (Scotland) Act 2004 (as amended) and Health for All Children (HALL 4) Guidance on Implementation in Scotland sought to move away from deficit and medical models of intervention to approaches that were more collaborative, involved forward planning and were underpinned by wider ideas of 'support' (Stradling and Alexander 2012). Instead of forcing children and young people to adapt to the system, services were encouraged to understand, work with and fulfil children and young people's aspirations as articulated in local settings (Stradling and Alexander 2012). These policies critiqued single professional, sequential and deferred referral approaches and promoted local support partnerships, integrated assessments and quicker solutions (Stradling and Alexander 2012).

Yet, the national review of services for people with learning disabilities (Scottish Government 2011) argued that, though some processes of assessment, planning and transition have changed, disabled children still experienced inequitable systems, cultures and practices in local services. There was still great variability in the way that information on disabled pupils was collected and managed and the subsequent services they received. This report contrasted effective services that were organised, proactive and took account of family life, with poorly led services that forced parents, children and young people to struggle with mechanistic systems and jargon. It argued, once again, that services plans should be flexible to take account of the fact that disabled children do not have uniform needs and that over-protective notions of medical risk prevented disabled children and young people from experiencing equity in education settings. This report associated

positive outcomes with: a shared approach between child and adult services; clear agreements and timescales to avoid crisis-driven responses; accurate transfer of information between services; and flexible service delivery (Scottish Government 2011: 22).

The participation of children and young people can take many forms, from involvement in everyday decisions in a nursery, to influencing national policy making. A Scottish Think Tank in 2011 (Barnardo's Scotland et al. 2011) noted the opportunities and challenges for such participation in Scotland. Opportunities included – Government commitment, an ever-growing number of committed practitioners, managers and policymakers, productive approaches and the potential of technology. Challenges included – tokenism, lack of feedback, questions of who is included and excluded in such activities, and adult-dominated structures and process. The Think Tank noted promising examples – such as the Youth Commission on Alcohol, which involved an intensive investigation by 16 Youth Commissioners over one year, and the Climate Change Project of the Children's Parliament. But the Think Tank noted the continuing difficulties in ensuring that participation was meaningful, effective and sustainable – requiring widespread cultural change in organisations, policy-making and adults more generally.

The idea that children and young people have their own cultures, identities and opinions emerged in anthropological research of the 1960s, 1970s and 1980s (Corsaro 1985, Fine and Sandstrom 1988, Hardman 1973, Kessel and Siegel 1981, Opie and Opie 1969, Tammivaara and Enright 1986). By the 1990s, a more wide-spread shift across academic disciplines focussed on children and young people's aspirations, ideas and identities. For example, in the 1990s academic subject areas such as education, geography, politics and sociology began to engage with children and young people's worlds and over time the multi-disciplinary field of childhood studies emerged.

The field of childhood studies enables a wider recognition of a range of different ideas concerning childhood: e.g. that children and young people are social actors who already contribute to society (James and Prout 1990, Waksler 1991); that children and young people's lives are impacted upon by economic decisions (Qvortrup 1994); that child-adult relations involve two-way inter-generational exchange (children and young people learn from adults but also impact on adults' learning) (Alanen and Mayall 2001); and that children and young people possess complex identities and opinions that could be taken into account in local settings (Davis and Watson 2002).

Through such shifts in conceptualising childhood, it is recognised that children and young people of all ages (including the youngest children) possess abilities, can identify their own social justice issues, can exercise their rights, can hold opinions, and can make complex decisions about them (Alderson 2000). This recognition confronts the idea that children and young people who have complex life issues cannot be included in dialogue because they are incomplete, irrational and inadequate. It challenges the categorisation of children and young people by adult-defined criteria, criticises the inflexibility of traditional approaches to childhood and questions the local power-politics between children, young people, their families and professionals. It promotes an alternative view that children and young people, like adults, have different capacities that shift over time and different approaches are required to enable their inclusion in democratic decision making (Lansdown 2001, 2005). Thus, if local organisations make the effort to utilise innovative approaches, children, young people and families can actively be involved in collaborative processes that seek to resolve their life problems (Davis 2011, Moss et al. 2000, Smith and Davis 2010).

Moreover, children and young people do not have to wait for adults to put their views forward. For example, the 'Glasgow Girls' from Drumchapel High School highlighted the poor treatment of asylum seekers (including their school friends) who had experienced and lived in fear of dawn

raids, detention and deportation. They demonstrated their ability to influence the political agenda in Scotland, to communicate clearly to adults and to seek solutions to local life issues. They also demonstrated their wish to be involved in national decision-making processes.

Collaborative participatory working enables children and young people to be more involved in decision making. At present, a lack of appropriate collaborative structures and relationships means that responses are slow when children and young people raise issues (Davis 2007). Indeed, this raises questions for the Common Weal about how children and young people's involvement will be meaningful, effective and sustainable. Genuine participation involves children and young people in decision-making about issue of real relevance in their lives, ensures participation processes are: properly resourced (e.g. time and money), set out agreed goals from the start, enable trust, foster mutual respect and provide training to professionals (Lansdown 2001).

The benefits of participation processes for children and young people are that such processes: aid children and young people's development, develop their sense of responsibility, improve self-esteem, enhance their ability to collaborate with others, improve problem solving skills, provide work experience and increase their ability to deliver to time-scales (Hogan 2002, Kirby 1999, Kirby with Bryson 2002, Kjørholt 2002, Lansdown 2001, Sinclair and Franklin 2000). The benefits of participation for organisations are that they become more relevant, improve efficiency, boost staff moral, enable resources to be targeted more effectively and aid professional development (Hogan 2002, Kirby with Bryson 2002).

Yet, participation processes are not perfect: e.g. some have little impact on public decision-making (Kirby with Bryson 2002) and others, such as school councils and youth parliaments, have been criticised for promoting representative democracy over participatory democracy (Cairns 2001, 2006). Involvement fails when participatory structures: are too selective, do not enable a shift in power relations, are too short term to have impact, fail to fulfil promises made, promote rhetoric over staff skills and commitment and are tokenistic (Alderson 2000, 2002, Borland et al. 2001, Cockburn 1998, 2002, Dorrian et al. 2000, Gilligan 2000, Kirby with Bryson 2002, Tisdall and Davis 2004).

Participation can be limited by scarce resources, inadequate spaces, a lack of motivation and inhibited opportunities (Moss and Petrie 2002, Prout et al. 2006,). Participation processes can also become cynical and manipulative tools (Malone and Hartung 2010, Pupavac 2002, Seddon 2008) where politicians carry out consultations during the school holidays when children and young people are not around to participate and local authorities ask people to vote on what service cuts are to take place -- rather than whether cuts should take place at all.

Other authors have criticised participation for being too concerned with technical rational issues and not enough about transformative relationships that provide time and space for problems to be identified collaboratively, solutions to be co-constructed and agreements to be implemented collectively (Barnardo's Scotland et al. 2011, Hickey and Mohan 2004, Tisdall 2013). Dynamic and transformative participation are defined as enabling self-empowerment at local levels (Davis 2007, Hickey and Mohan 2004) and as creating new possibilities. Participation also needs to be connected with rights because, without minimum requirements, the process of participation lacks teeth and there is no obligation for dialogue to lead to change.

Genuine participation processes can be transformative in different ways: they transform participants' lives by recognising them as experts on the issues; they transform adult perspectives of and relationships with participants; and they transform national and local approaches (Tisdall 2013). In this way participation enables people to change their perspectives and positions and therefore is creative, collaborative, embodied and valorizing (Tisdall 2013).

## Case Example: Effective, Embedded, Meaningful and Sustained Participation

Investing in Children (liC) is an organisation that uses sustained processes to promote the human rights of children and young people in the UK (Davis 2011, Williamson 2003). liC has developed a range of practices designed to support children and young people, as 'competent community builders', to intervene in public decision-making and that aim to promote change. These include:

- A Membership Award Scheme - a kitemark which recognises projects which listen to children
- Agenda Days - where children and young people come together in large groups to identify the issues they would like to change in their lives
- Dialogue Groups - where smaller groups focus on particular themes and enter into dialogue with staff from relevant agencies

To gain liC membership, children and young people must state that they have been listened to and that their views have led to change. For example Cowgate Under Five's Centre in Edinburgh has liC Membership status because it demonstrably promotes young children's choices on an everyday basis. This centre also consistently receives outstanding adult-based inspection reports; their most recent report stated, 'Children are encouraged to explore and investigate the world around them, both indoors and outside ... Adults place trust in children and allow them to drive their own learning.'

liC has a very long tradition of embedded processes of change. For example, in 2012, liC began working with children and young people on a former council housing estate. The aim was to create spaces for children and young people to explore what they liked about their community, what they did not like and what should change. A strong local partnership existed between the schools, community organisations, the housing association and a youth project who were all liC members.

By building on these existing partnerships (using agenda days and smaller dialogue groups) children and young people were enabled to create a shared agenda for action. Three priorities for action were identified: places to go and things to do; relationships with the police; and environment and safety. Some adults took longer than others to become accustomed to children and young people making decisions on behalf of the community; however, resources were secured to increase the level of youth provision on the estate and to enable greater accessibility to community facilities (e.g. renovations to two outdoor play and recreation areas). A series of discussions were carried out with the local police that resulted in improved relationships and police action on children and young people's concerns such as traffic management and safe play priorities.

The process has taken two years. Lessons include:

- Shifting entrenched attitudes takes time.
- Estates can become more equal communities, where resources are better distributed between generations, and children and young people feel more respected.
- By engaging with children and young people as community members and supporting them to develop their own approaches and ideas, children and young people are recognised as rights holders and community-based services and outcomes can be improved.

Such approaches enable a real shift in power when children and young people are enabled to choose how local resources are spent. They also require effective monitoring, review and evaluation if they are not to become tokenistic (Davis and Smith 2012, Johnson 2014).

## **The Common Weal and Developments in Children's Policy**

Over recent years, there are discernible trends in children's policy in Scotland: increased attention to children's rights, with a particular emphasis on children and young people's participation; a more preventive approach to children's services; and attempts to improve service integration (Tisdall and Hill 2011). These trends are promising, potentially fitting well with the concept of social justice. Change, though, has arguably not been radical enough, with legislation not comprehensively holding professionals, services and society to account. Change has also been inhibited by top-down standards being imposed, which can ignore local views, and insufficient progress on the aspiration to develop new forms of service provision and professional working.

Both the promise and the caveats can be found in the recent legislation that has passed through the Scottish Parliament in February 2014: the Children and Young People (Scotland) Bill. The Bill was introduced with laudable aspirations,

It is the aspiration of the Scottish Government for Scotland to be the best place to grow up in. The objective of the Children & Young People (Scotland) Bill is to make real this ambition by putting children and young people at the heart of planning and delivery of services and ensuring their rights are respected across the public sector. (Scottish Parliament 2013: 1)

Part I, for example, is titled the 'Rights of Children' and aims to assist in 'making rights real' for children. Scotland is currently under an obligation 'to observe and implement international obligations' (Schedule 5, Part 1, S.7 Scotland Act 1998); such international obligations include the United Nations Convention on the Rights of the Child (UNCRC). The UNCRC is the most ratified human rights treaty in the world. With 54 articles and 3 Optional Protocols, it addresses a holistic range of children's provision, protection and participation rights.

The UK Government ratified the UNCRC in 1991. This ratification, however, did not fully incorporate the UNCRC into domestic law, in Scotland and the UK more generally. The Scottish Government prefers a 'case by case' approach to bring the UNCRC into Scottish policy and practice (Together 2013a). This approach can be followed across numerous pieces of legislation, from children's rights to have their views considered in decisions that significantly affect them about their schooling (S.2(2) Standards in Scotland's Schools etc. Act 2000), to the requirement on the Scotland's Commissioner for Children and Young People to promote and safeguard the rights of children and young people (S.4(1) Commissioner for Children and Young People (Scotland) Act 2003). Incorporation of various rights also comes indirectly and gradually through domestic and European court decisions, as courts refer to these rights. The 'case by case' approach risks being piecemeal, however, with significant gaps in coverage (see Together 2013a). It means that the full range of children's rights under the UNCRC is not directly justiciable in court.

Part 1 of the Act, with its aspiration to ensure rights are respected, is thus promising. Scottish Ministers will have new duties under S.1. First, they must "keep under consideration whether there

are any steps which they could take which would or might secure better or further effect in Scotland of the UNCRC requirements". They must take account "as they consider appropriate" any relevant views of children that Ministers are aware of. Second, if they consider it appropriate to do so, they can then take such steps. Further, Scottish Ministers have a new duty to promote public awareness and understanding on children's rights. Scottish Ministers will report every 3 years to the Scottish Parliament on these duties and also future plans. The Act thus requires Scottish Ministers to be transparent and accountable. Yet, these requirements create little substantive obligations and, despite some encouragement from public sector organisations and the firm support of children's rights alliances, the Government has not proposed a similar duty on public authorities (i.e. the actual providers of children's services, who include local authorities and other providers (see S.3)). A public authority will have a duty to report on "what steps it has taken in that [three year] period to secure better or further effect within its areas of responsibility of the UNCRC requirements" (S.2(1)).

The weaknesses of the Part 1 duties for children's rights become particularly evident, when comparing them with those outlined in Part 3 (see Tisdall and Davis forthcoming, Together 2013b). Part 3 requires a local authority and the relevant health board to prepare a children's services plan for every three year period (S.8). The plan seeks to ensure children's services in the area: better safeguard, support and promote children's wellbeing; that action is taken to prevent needs arising and, if there are needs, to meet them at the earliest appropriate time; are more integrated from the recipients' viewpoints; and make the best use of available resources (paraphrased from S.9(2)(a)). The plan must be kept under review and must be implemented "so far as reasonably practicable" (S.12(1)). After each one year period, a report must be published on what has been provided, how aims have been achieved and wellbeing outcomes (S.13(1)).

Thus, a local authority under Part 1 will have an obligation to publish a report, on what steps it has taken to secure or further effect children's rights, but the local authority has no domestic duty to implement the UNCRC. A local authority could simply publish that it has done nothing, beyond what is required in domestic law, and the local authority would meet the Part 1 requirement. Under Part 3, a local authority must orient planning and thus provision towards children's wellbeing and report on wellbeing outcomes – and not children's rights. A local authority's plan, under Part 3, thus has an expectation of implementation.

The emphasis on wellbeing in Part 3 of the Act is connected to the Getting It Right For Every Child (GIRFEC) improvement agenda (Scottish Executive 2005). GIRFEC seeks to: promote culture change in services, stimulate workforce reform, improve outcomes for children, young people and their families, transform professional practice and promote more integrated approaches (Davis and Smith 2012, Hill 2012). GIRFEC is a change from past initiatives, in its strong emphasis on early stage/age intervention and prevention (Davis and Smith 2012). Early intervention requires local forums, processes and relationships to be based on what families believe works for them and to enable children and young people's ideas on change to be articulated more clearly, shared and utilised at the earliest opportunity (Carpenter 1997, Davis and Smith 2012). The Children and Young People (Scotland) Act does not *define* wellbeing but relates it to the *assessment* of wellbeing needs, on the basis of eight wellbeing indicators: Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible and Included (S.74).

GIRFEC encourages professionals to improve their processes for collecting information and promotes holistic assessment (see Stradling et al. 2008). GIRFEC has the potential to promote a participatory approach that enables children, young people and families to interact better with professionals. But GIRFEC does not require any fundamental shift in thinking in local authorities that will challenge the power relationships in children's services.

Indeed, the Scottish Government has been aware of tensions between rights and wellbeing and it commissioned a report to show the linkages between GIRFEC and the UNCRC (Aldgate 2013). This report presents different linkages between the two: that GIRFEC was built from a children's rights starting point, that GIRFEC aligns with the UNCRC, and that GIRFEC enables the practical implementation of children's rights by putting children "at the centre" of processes of assessment and planning (Aldgate 2013: 4). The report provides an impressive mapping of how UNCRC articles relate to GIRFEC but the report misses an opportunity to analyse the relationship between rights and wellbeing in principle and does not discuss where GIRFEC does not align with the UNCRC (Tisdall and Davis forthcoming).

## **Case Example: Right to Privacy- A Lower Threshold?**

Article 16 of the UNCRC states that children have a right to privacy and Article 8 of the European Convention on Human Rights (ECHR) states that everybody has the right to respect for her or his private and family life. As part of the National Child Protection Reform programme in 2003/4, a consultation with children and young people produced: *Protecting children and young people: The Charter* (Scottish Executive 2004). The Charter included key messages to "respect our privacy" and "think carefully about how you use information about us". This illustrates the importance children and young people place on respecting their confidentiality.

Evidence was submitted to the Scottish Parliament's Education and Culture Committee in relation to the Children and Young People (Scotland) Bill, because of concerns that S.26 and 27 would significantly increase the sharing of information about a child with a much lower threshold (concern about their wellbeing) and without a specific duty on seeking the child's consent. Furthermore, the Scottish Government's earlier consultation on the Bill had included proposals on the information sharing duties and thus children and young people's views on the proposed changes had not been considered. A Child Rights Impact Assessment (CRIA) and up-to-date Privacy Impact Assessment had not been conducted. The evidence noted that appropriate information sharing to protect children was already happening under current legislation. The National Guidance for Child Protection in Scotland (Scottish Government 2010) states that professionals have a duty to share information when a child is at risk of significant harm, through designated social service procedures. Sharing information that is relevant and proportionate about children who are at risk of harm is fundamental to keeping children safe.

This 'balance' of information sharing was acutely highlighted in a roundtable event exploring the important role of confidential services for children and young people (such as ChildLine and Eighteen and Under, Dundee) (Hill and Wales 2011). Children and young people may be less likely to disclose abuse and neglect if they think this information will be shared widely and inappropriately. Fears around a lack of confidentiality deter some vulnerable young people from accessing services, leaving them at increased risk of harm. Professionals stated the fundamental importance of developing trusting relationships and exercising professional judgement.

The impact of the new duty on information sharing in the Children and Young People (Scotland) Act 2014 may have unforeseen consequences. These new provisions arguably override a child's right to privacy as set out in the UNCRC and ECHR.

The Act's focus on enshrining the collaborative working aspects, of earlier policy initiatives on wellbeing, fails to confront conceptual ambiguity in local authorities concerning children's rights. This potentially reduces the scope of children and young people's issues (e.g. a need for

redistribution or compensation). It limits the potential for local dialogue between children, young people and adults to deliver radical change. Rights are a vital part of social justice because they provide minimum thresholds, claims and duties.

The recent Act demonstrates the gaps and tensions in the legal context of childhood in Scotland. In particular, it shows a tension in policy and practice between rights (which are inalienable - they cannot be taken away) and wellbeing (an aspirational concept). The Children and Young People (Scotland) Act, by concentrating on the aspirational concept of wellbeing over the more enforceable concept of rights, falls short of fulfilling the Christie Commission's objectives to clarify the frameworks of local services and enable fundamental change. GIRFEC would have more strength if it were located in an Act that also: set minimum standards, challenged disparities in different local authorities and fostered radical change in local power relationships. This would be in keeping with the aspirations of the Christie Commission.

Strong coalitions promote children's rights in the UK overall,<sup>ii</sup> and in Scotland specifically. Together: the Scottish Alliance for Children's Rights, unite individuals, voluntary and statutory sector organisations to promote children's rights in Scotland. Indeed, Together has recommended that a commission should be set up to investigate what further legislative steps should be taken to give the UNCRC further effect. Such a commission could examine the evidence for fuller incorporation of the UNCRC, consider how to overcome the wellbeing and rights' tension and work out how legislation might be worded to ensure children, young people and their families experience minimum standards of service provision. There is a need to examine how legal changes relating to families, children and young people might support wider political process of social change within the Common Weal, so that we fully understand the extent to which legislation can enable social justice. In this way rights are both a means to achieve change (e.g. they can act as a sign post and help set out legislative framework for change) and an end in themselves (e.g. their achievement changes lives).

We do not wish to diminish the importance of the 2014 Act and its underlying aims for public services to promote and enable change in the cultures, structures and relationships that define and influence the life experiences of children, young people and their families'. For example GIRFEC has: improved assessment frameworks; increased the breadth of issues that are discussed with children and young people; sought to encourage practitioners to recognise children and young people's abilities; instigated more collaborative working; improved staff confidence; and led to improvements in planning, delivery and evaluation (Davis 2010, Davis 2011, Scottish Government 2013, Smith 2009, Stradling et al. 2009, Stradling and Alexander 2012). GIRFEC could make children's rights a reality when utilised in progressive ways by practitioners (Davis and Smith 2012). But that potential is reduced if children's rights have little legal basis in Scotland.

## **Case Example: Access to Justice- Barriers to Legal Support**

Children and young people's equitable access to legal representation is problematic. Although competent children have the right to instruct a solicitor, this is still not well known and rarely used. Further, as from 31 January 2011, the assessment of children for civil and children's legal assistance was altered by the Advice and Assistance (Scotland) Amendment Regulations 2010 and the Civil Legal Aid (Scotland) Amendment Regulations 2010.

Under these new rules, access to legal aid relies on parental disclosure of income unless deemed to be a case where this would be "unjust or inequitable". Children's access to legal support should not be dependent on parental compliance. For children who are in dispute with a parent or are simply not able to be supported by parents, this framework is particularly discriminatory.

Currently children also require parental instigation to appeal the Education (Additional Support for Learning) (Scotland) Act 2004 (as amended) via the tribunal system. All looked after children can be assessed for additional support for learning. For some of these children, legal parental responsibility may reside with the local authority. Therefore, there is a clear conflict of interest and anomaly where a child requires a local authority to consent to an appeal process often in conflict with the same local authority. Unsurprisingly, we are not aware of any cases to be progressed (or even lodged) for looked after children through the tribunal system. The Scottish Government are currently undertaking a consultation that proposes to extend the rights of children with capacity under the Education (Additional Support for Learning) (Scotland) Act 2004 (as amended). This could help to ensure children's individual right to access the Additional Support Needs Tribunal for Scotland. We would welcome the recognition of children's capacity to enable them to access justice.

The Children and Young People (Scotland) Act fails to ensure public authorities have an enforceable duty to realise children's rights and this means that it is unlikely to improve upon the current ambiguous and piecemeal approach to rights in local services (Tisdall and Davis forthcoming). In terms of social justice and the right to legal redress, most rights under the UNCRC are not directly justiciable in Scottish courts – and the Act does not substantially improve this. Any 'duty' on public authorities on implementing children's rights must be meaningful and substantive, as well as transparent and accountable. To ensure progress on children's rights and social justice, effective monitoring is needed to ascertain current status, measure progress and provide mechanisms to address lack of progress or failures to report. It is unclear which body will fulfil this role and the Act's reporting requirements are very limited.

The Scottish Government stated a commitment to conducting children's rights impact assessments in *Do the Right Thing* (2012). A children's rights impact assessment has been trialled in Scotland, with a proposed system produced by Scotland's Commissioner for Children & Young People (SCCYP) (Paton and Munro 2006). Despite having been published in 2006 and certain enthusiasm from policy-makers, it has not been comprehensively introduced. The SCCYP model is not merely a paper-based one; it emphasises process as well as content. Thus, just as with UNCRC incorporation, the process of discussing the potential impact of legislation and other policy, on children, young people and their rights, is productive in itself.<sup>iii</sup> The Education and Culture Committee's Stage 1 Report on the Bill recommended that the Scottish Government should commit to undertake child rights impact assessments on all future legislation. Unfortunately, a children's rights impact assessment was not produced for the Children and Young People (Scotland) Act.

The combination of piecemeal incorporation of children's rights, an apolitical wellbeing framework and a lack of strong legislation to hold local authorities and other public services, private sector organisations and the third sector to account, results in children and young people encountering discrimination on an everyday basis. Children and young people report that their rights, opinions and aspirations are regularly ignored within adult-designed organisations and structures. Children and young people are used to being discriminated against - whether it is a local shop keeper that utilises mosquito devices, calls the police without cause and views all children and young people as thieves; or a head teacher who bans children and young people who dye their hair from representing the school (including potential visits to the Scottish Parliament); or a care system that moves children and young people around without prior warning nor discussion; or local services that do not carry out regular reviews to ensure children and young people are receiving appropriate services. If children and young people are to engage with the notion of the Common Weal, everyday power relations need to be questioned. In a country where children's human dignity and contributions are not always recognised or supported, a rights framework is needed to promote more sustained and serious change.

# Who sets the Agenda for the Common Weal?

Jimmy Reid in his now famous speech defined alienation, amongst other things, as:

The frustration of ordinary people excluded from the processes of decision-making. The feeling of despair and hopelessness that pervades people who feel with justification that they have no real say in shaping or determining their own destinies.

Jimmy Reid was concerned to root out those things that distort and devalue human relations and to confront alienation as it starves young people of hope.

In the UK, opportunities for dialogue between children, young people and professionals have been reduced and a performance indicator culture has forced professionals into achieving short-term targets and prevented them from developing cultures of participation (Dahlberg et al. 2007, Moss and Petrie 2002, Munroe 2011). In particular, professionals have been criticised for ignoring the potential to involve children and young people in decision-making processes (Davis 2011, Hill et al. 2004).

## Case Example: Top-Down Outcomes for Children and Young People

Current reporting arrangements for Scotland include the National Performance Framework with 45 National Indicators and related outcomes. Relevant outcomes are:

- Our children have the best start in life and are ready to succeed
- Our young people are successful learners, confident individuals, effective contributors and responsible citizens
- We have improved the life chances for children, young people and families at risk
- We have strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others
- We have tackled the significant inequalities in Scottish society
- We live our lives safe from crime, disorder and danger
- We live longer, healthier lives
- Our public services are high quality, continually improving, efficient and responsive to local people's needs

The Government's progress on these outcomes is monitored and publicly reported

Similarly, the Early Years Collaborative is a national multi-agency quality improvement programme with defined outcomes for various age groups of children from conception to primary school. It aims to reduce still births, ensure positive pregnancies, improve rates of breast feeding, reduce rates of domestic violence, increase early identification of mental health issues, improve brain development, and improve play.

These are worthy aims; however they were not developed with children, young people, their families and communities and may have unintended consequences if professionals 'game' the targets at

the expense of listening to services users (see Seddon 2008 for an explanation of this practice which for example in health involves manipulating waiting lists rather than providing treatment within prescribed time-tables). There is little evidence that children, families and communities have been enabled to examine the limitations of the early years collaborative outcomes. Greater research is required concerning what the outcomes mean in practice, how they operate, whether they lead to discrimination or stigmatisation in community-service relationships (e.g. of women who are unable to breast feed) and their potential to do harm (Tisdall and Davis forthcoming).

Research in public services associates the proliferation of top-down targets with successive governments and argues that top-down targets result in a lack of opportunity to experience flexible services, prevent the emergence of complex solutions and lead to services that users do not want (Seddon 2008). Notions of distributional justice, 'the politics of difference' (the idea that power can be shared between diverse people) have also been used to critique standardisation and rigid top-down outcomes approaches in public service (Dahlberg et al. 2007, Davis and Smith 2012). This position suggests that: rigid attempts to resolve people's life problems based on professional notions of wellbeing can in themselves become further sources of exclusion (Davis and Smith 2012). Writing in childhood studies encourages pragmatic and critical examination of the range of local issues that come into conflict with nationally imposed outcomes, such as worker capacity, professional motivation, local cultures and existing collaborative structures/relationships (Davis 2011, Davis and Smith 2012, Gilligan 2000, Malone and Hartung 2010, Moss and Petrie 2002).

## Conclusion

Social justice approaches not only raise questions about the way that people are treated within public services (Davis 2011). They also suggest that public services should support people to change their lives. The Christie Commission connects social justice to preventative solutions, addressing persistent problems, overcoming multiple negative outcomes and confronting the consequences of socio-economic inequality and disadvantage. A new politics in Scotland would not only start to pose questions about how to break down the power relations between adults, children and young people to enable them to work collaboratively, but would also seek to develop local frameworks to enable adults, children and young people to be at the forefront of putting agreed solutions into practice to address the range of fundamental inequalities that children, young people and their families experience within their local communities.

Wellbeing approaches to children's services do not engage with fundamental inequalities in childhood. A new repositioned of politics would seek to root out the fundamental causes of childhood inequality so that less GIRFEC-type professional interventions are required because children, young people and their families are better off, more integrated into their communities, have a greater ownership of the Common Weal and, therefore, experience less day-to-day problematic life issues.

Such a repositioning of political debate would provide us with an opportunity to analyse adult-child relations in Scotland in a way that recognises our collaborative strengths, abilities and potential. Scotland's National Action Plan for Human Rights (Scottish Human Rights Commission 2013) recognises the connections between human and children's rights. We are of the view that adults

should not fear children's rights, that they should engage with children's rights and compare them to their own rights. We also believe that the concept of the Common Weal requires us to consider how to balance different people's rights and create frameworks for dialogue to reconcile them.

Jimmy Reid rejected the concentration of power in too few hands, asked children and young people to reject the notion that we should look after 'number one' and suggested to all of us that real fulfilment for any person lies in their service to their fellow man and woman. The Scottish Government's aspiration to make Scotland "the best place for children and young people to grow up" requires a radical shift. The Scottish Government has an action plan for children's rights but it is not comprehensive nor precise enough. There should be greater recognition of the local politics of adult-child relations and a re-consideration of the power relations at a local and national level between children, young people and adults. Mechanisms for accountability, transparency and redress for children's rights violations must be embedded into everyday practices to ensure that children and young people feel respected, recognised and supported.

Jimmy Reid stated, "Society and its prevailing sense of values leads to another form of alienation. It alienates some from humanity. It partially dehumanises some people, makes them insensitive, ruthless in their handling of fellow human beings, self-centred and grasping." He called for an enriched quality of life, for social/cultural/spiritual transformation, for people to be involved more in decision-making, and for society to make greater use of the untapped resources of our young people. Children and young people continually demonstrate that they have much to offer Scottish society, yet they also regularly experience discrimination in everyday settings. Jimmy Reid argued government institutions must be restructured for children and young people's latent talents to be unleashed. Where necessary, additional structures must be evolved that enable wider processes of decision making. Jimmy Reid rejected the notion that participation led to inefficiency and highlighted the crime that many people go through life, "without even a glimmer of what they could have contributed to their fellow human beings". He promoted the idea that education systems should educate the person for life not just a profession and that we should enable the flowering of each individual's personality and talents.

Research, carried out with children and young people in Scotland, indicates that children and young people agree with Jimmy Reid's ideas and aspire to have the same chances (no matter how much money their families have) and to be included (no matter how different they are). A new politics in Scotland offers an opportunity to articulate the process through which such a more equal and childhood focussed future can be achieved.

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