

RESEARCH ARTICLE

Exploring children's understanding of law in their everyday lives

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Abstract

This paper sets out the findings of an exploratory study that, drawing on the so-called 'new sociology of childhood', has theorised the child as a competent social actor and conjectured that, on this basis, whilst they might lack formal legal capacity, children may nevertheless possess legal capability. Taking a child-first (as opposed to a law-first) approach, the study has sought to assess children's legal understanding using digital gaming as a research tool. We have identified as an area of particular strength children's attitudes to gender equality, and we have determined that many children demonstrate competency to deal with consumer-related issues appropriately. However, at the other extreme, we have established that children demonstrate considerable uncertainty concerning the levels of force that adult authority figures are permitted to exercise over them. We have found in the course of this study that children are competent and willing to express their views on matters that concern them. However, they do not expect to be invited to do this in their day-to-day lives. Related to this we have found a vast lack of awareness among children concerning the rights afforded to them under the United Nations Convention on the Rights of the Child.

Keywords: child law; public legal education; UN Convention on the Rights of the Child; gamification; children's rights

Introduction

This paper discusses the key findings of an exploratory study *Law in Children's Lives*, funded by the Economic and Social Research Council (ESRC) under its transformative research grant scheme. Using a specially designed digital game as a research tool, the study has assessed and explored the legal understanding and knowledge of over 600 children aged 8–11 years, situated in the context of scenarios that children themselves identified as being relevant to their everyday lives.

The study has drawn on the so-called 'new sociology of childhood' as its theoretical basis. This is an approach that 'emphasises the competence of children as social actors'¹ and provides the foundation from which we seek to challenge the dominance of developmental theory in law and legal discourses concerning children. More particularly, we conjecture that, whilst they might lack formal legal capacity, children may nevertheless possess legal capability. Therefore this study and the findings presented in this paper are significant not only because they tell us about the current state of children's legal knowledge and understanding, but also because they represent a first step within a wider body of work that aims to explore and to pursue the reconceptualisation of the child as a potentially legally capable actor.

[†]We dedicate this paper to Elee Kirk, a brilliant and sadly missed colleague, who passed away prior to the publication of this paper.

¹C McDonald, 'The importance of identity in policy: the case for and of children' (2009) 23 *Children and Society* 241 at 245.

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Recognising that such ideas are likely to be considered controversial, we provide a more detailed explanation and justification of this approach in the first part of this paper. Here we also situate the study in its wider context, drawing on the relevant literature and explaining how our determinedly ‘child-first’ approach represents a departure from previous work in the field. Recognising too that the development and use of a digital game as a research tool represents a significant deviation from more established research methods, we preface our discussion of the research findings with an explanation of our research design, the recruitment of participants and our approach to data analysis. In doing so we seek to both emphasise and evidence the robust nature of this innovative study.

Our key findings are discussed under five headings. Under the first of these (legal knowledge and legal terminology) we identify as apparent strengths in children’s legal knowledge a very strong concern for gender equality, and a good level of competency in dealing with consumer-related issues. However, we temper these findings through a consideration of the terms that children employ to explain their reasoning on these issues. We found that where children adopt legal or quasi-legal terminology, they tend to use criminal law rather than civil law terms; and we found that children are very unlikely to refer to their legal rights when explaining their actions. We address this issue more closely under the second heading (recognising the relevance of human rights) where we identify that, although there are numerous instances where it was anticipated that children may refer to their rights under the United Nations Convention on the Rights of the Child (UNCRC), no child made reference to the UNCRC or to his or her rights under it across the entire study. Clearly the increased awareness of children’s rights in recent decades among scholars and activists has not translated into increased understanding and awareness for children themselves, and, drawing on the relevant literature, we explore some possible reasons for this. Turning more specifically to children’s so-called participation rights under the UNCRC, under our third heading (Article 12 Participation) we report very low expectations among children concerning their ability to positively or meaningfully influence their environments. Here we examine very closely the reasons that children themselves give for this, noting that they tend not to see themselves as inherently incapable of expressing their views on matters that affect them. Rather, we argue, for many children their perceived lack of competency here relates either to their socially constructed view of what constitutes appropriate behaviour from ‘a child’ or to their anticipated response from adults.

Under our fourth heading (recognising legal responsibilities) we report that children’s views concerning their own and others’ legal responsibilities vary across and within contexts, and we identify here that children are likely to profess high levels of certainty concerning issues that actually lack legal certainty. Whilst we acknowledge this ‘lack of uncertainty’ as a potential limitation to children’s legal understanding, we draw on findings from studies among adults to demonstrate that these limitations should not be seen as being peculiar to children. We continue this theme in our discussion under the fifth and final heading (adulthood and competency) where we both acknowledge and challenge the high level of trust and confidence that children place in adults to deal effectively and appropriately with legal problems, as well a belief that such abilities develop ‘naturally’ with age. Finally, and juxtaposed to this, we conclude by demonstrating considerable uncertainty among children concerning the levels of force that adult authority figures are permitted to exercise over them.

The context of this research

Previous studies of children’s legal understanding have focused on such issues as children’s knowledge and understanding of legal systems, legal terminology and the roles of legal actors, across a range of jurisdictions and in a variety of contexts.² Perhaps not surprisingly, they have revealed a significant

²K Saywitz ‘Children’s conceptions of the legal system: “court is a place to play basketball”’ in SJ Ceci, DF Ross and MP Toglia (eds) *Perspectives on Children’s Testimony* (New York: Springer-Verlag, 1989) p 131; A Warren-Leubecker, C Tate, I Hinton and I Ozbeck ‘What do children know about the legal system and when do they know it? First steps down a

lack of formal legal knowledge among children and young people.³ For example, Karen Saywitz and colleagues report that young children tended to define 'jury' as 'like the stuff ladies wear on their fingers and ears and around their neck', and '[e]ven when the word was repeated, the children were asked if the word could mean anything else in a court of law ... children remained steadfast in their definitions'.⁴ These studies provide an important evidence base from which to argue for improvements in dealing with child witnesses and preparing them for court⁵ and, for the purposes of this study, they are significant because they demonstrate that any attempt to assess children's understanding of law using legal terminology will be highly problematic. We know what we mean, but even when children appear to know what we mean, we cannot be sure of a shared understanding. As Saywitz and colleagues point out: 'recognition is not always a valid predictor of accuracy ... when asked "do you know what an allegation is?" a young child is likely to answer yes, but may be thinking about alligators.'⁶

Because they have taken a 'law-first' approach, these previous studies tell us little about children's broader understandings and perceptions of law, or about their perceived capability to deal with legally relevant issues that they encounter in their day-to-day lives. By contrast, in adopting a 'child-first' approach, a particular concern of this study has been to examine how far, if at all, children understand law as a positive and empowering force in their lives, as opposed to just a constraining one. When encountering problems or difficulties, how far might children recognise that there are legal dimensions to such problems? And to what extent do they perceive that 'the law' in terms of its systems, rules, principles and actors can assist them in dealing with these problems effectively? Do they recognise the legal responsibilities that arise in everyday situations, both for themselves and for others, and to what extent do they recognise the relevance of human rights in an everyday context?

Implicit in the framing of these questions is the assumption that children, even at a young age, can deal independently with some of the legally relevant problems that they encounter. This is a controversial approach; at least in the context of English civil law. Here legal capacity tends to be synonymous with adulthood, and even in situations where a child is recognised as having the capacity to sue (eg in contract or in tort), then he or she will normally be required to do so via an adult 'litigation friend',⁷ and this same practical requirement applies when a child seeks to formally enforce his or her human rights.⁸ So how can such an approach be justified?

First of all, a distinction needs to be drawn between legal capacity and legal capability. Legal capability has been defined broadly as 'the abilities that a person needs to be able to deal effectively with

less traveled path in child witness research' in SJ Ceci, DF Ross and MP Toglia (eds) *Perspectives on Children's Testimony* (New York: Springer-Verlag, 1989) p 158; R Flin, Y Stevenson and G Davies 'Children's knowledge of court proceedings' (1989) 80 *British Journal of Psychology* 285; E Greenburg Garrison 'Children's competence to participate in divorce custody decisions' (1991) 20 *Journal of Child Psychology* 78; J Cashmore and K Bussey 'Children's conceptions of the witness role' in JR Spencer, G Nicholson, R Flin and R Bull (eds) *Children's Evidence in Legal Proceedings* (London: Hawksmere, 1990) p 177; M Peterson-Badali and R Abramovitch 'Children's knowledge of the legal system: Are they competent to instruct legal counsel?' (1992) 34 *Canadian Journal of Criminology* 139; M Peterson-Badali, R Abramovitch and J Duda 'Young children's legal knowledge and reasoning ability' (1997) 39 *Canadian Journal of Criminology* 145; K Saywitz, C Jaenicke and L Camparo 'Children's knowledge of legal terminology' (1990) 14 *Law and Human Behavior* 523.

³L Sas *The Interaction Between Children's Developmental Capabilities and the Courtroom Environment: The Impact on Testimonial Competency* (Canada: Department of Justice, 2002) p 25; S Ceci, F Markle and Y Chae 'Children's understanding of the law and legal processes' in M Barrett and E Buchanan-Barrow (eds) *Children's Understanding of Society* (Hove: Psychology Press, 2005) p 105 at 108.

⁴Saywitz et al, above n 2, p 528.

⁵Sas, above n 3, p 25.

⁶Saywitz et al, above n 2, p 533.

⁷Civil Procedure Rules, Rule 21.2 para (2) requires this. However, under paras (3) and (4) the rule does also allow the child to apply for permission to conduct proceedings without a litigation friend.

⁸Here of course there is the added difficulty that whilst children are recognised as rights holders under the Universal Declaration of Human Rights and the UNCRC, neither Convention has been incorporated into English law. Elements of the UNCRC have been incorporated into Welsh legislation under the Rights of Children and Young Persons Measure (Wales) 2011, but this measure creates no right of action for children.

law-related issues',⁹ and in recent years this has become both the aim and the focus of research in the growing field of public legal education (PLE). Until now, such studies have focused primarily on adults and those nearing adulthood.¹⁰ This study is original in that it focuses on children and it hypothesises that, whilst they might lack formal legal capacity, children may nevertheless possess legal capability. Of course, if taken to its extreme, this proposition could be interpreted as meaning that it will always be appropriate for children to assert their legal rights independently of adults; or conversely, that children's reliance on adults implies a lack of legal capability on their part. Neither of these interpretations is suggested here. An important element of legal capability is 'knowing where to go for help',¹¹ and we acknowledge that there are many situations in which children will need to seek help from appropriate adults. However, this study is based around the 'everydayness' of children's lives and, in this context, we assert that it is possible for children to possess knowledge of their legal rights, and to draw on this knowledge in dealing effectively with some of the law-related issues that they encounter.

In making this assertion, we draw on theory from the so-called 'new sociology of childhood' that emerged in the 1980s and 1990s and that has since flourished in the field of childhood studies.¹² As one commentator has noted, any attempt to summarise this 'robust and complex body of interdisciplinary work'¹³ runs the risk of oversimplification, but there are some key characteristics of the approach that have particular relevance to this study. First and primarily, scholars working in the field have argued persuasively that 'childhood' needs to be recognised as a social construction. On this basis, 'the immaturity of children is a biological fact of life but the way in which this immaturity is understood and made meaningful is a fact of culture'.¹⁴ Consequently, hitherto unquestioned approaches, 'common-sense' views, and apparently uncontroversial practices are rendered 'culturally strange' and laid open to scrutiny.¹⁵

Second, proponents of this approach maintain that children 'must be seen as active in the construction and determination of their own social lives, the lives of those around them and of the societies in which they live',¹⁶ or in other words, as 'active social agents who are significantly involved in the co-construction of their own lives and cultures'.¹⁷ Linked to this is the insistence that children's relationships and cultures are worthy of investigation 'in their own right'. As Berry Mayall explains, this does not require that adults are excluded as subjects of enquiry, since a specific point of interest for research from this perspective is 'children's relations with adults in their daily lives'.¹⁸ The key concern is that children and their first-hand views form the basis of the investigation. So, applied in the context of this study, this central focus on children has not precluded an investigation into children's views on the roles and competencies of adults in relation to many of the legally relevant problems that children may encounter.

When first put forward, the new sociology of childhood was expressed in strongly oppositional terms. Allison James and colleagues called into question the ideas of child developmental psychologists

⁹M Jones *Legal Capability* (London: Public Legal Education Network (Plenet), 2009) p 1.

¹⁰Hazel Genn's *Paths to Justice – What People Do and Think about Going to Law* (Oxford: Hart, 1999) is a landmark study in this field. It has informed a further nine Civil and Social Justice Panel Surveys in England and Wales. Lewis Parle's report *Measuring Young People's Legal Capability* (London: Plenet, 2009) focused on people aged 16–25 years.

¹¹Parle, *ibid.*, p 24.

¹²Seminal texts in this field include C Jenks (ed) *The Sociology of Childhood – Essential Readings* (London: Batsford, 1982), A James and A Prout (eds) *Constructing and Reconstructing Childhood* (London: Routledge, 2nd edn, 1997), A James, C Jenks and A Prout *Theorizing Childhood* (Oxford: Polity Press, 1998), R Stainton-Rogers 'The social construction of childhood' in W Stainton-Rogers, D Harvey and E Ash (eds) *Child Abuse and Neglect* (London: Open University Press, 1989) pp 23–29.

¹³C McDonald 'The importance of identity in policy: the case for and of children' (2009) 23 *Children and Society* 241 at 244.

¹⁴A James and A Prout 'A new paradigm for the sociology of childhood? Provenance, promise and problems' in A James and A Prout (eds) *Constructing and Reconstructing Childhood* (London: Routledge, 2nd edn, 1997) p 7.

¹⁵*Ibid.*, p 15.

¹⁶C Jenks 'Constructing childhood sociologically' in M Kehily *Introduction to Childhood Studies* (Milton Keynes: Open University, 2008) p 93 at 94.

¹⁷C Robinson 'Translating human rights principles into classroom practices: inequities in educating about human rights' (2016) *The Curriculum Journal* 5.

¹⁸B Mayall *Towards a Sociology for Childhood* (Buckingham: Open University Press, 2002) p 22.

such Jean Piaget (1896–1980) and the hitherto widespread allegiance to the claim that there is a ‘universal, standardized and inevitable programme of development stages’¹⁹ through which children naturally progress. They argued that this concept, when contrasted with the assumed competency of adults, has established and validated the view that children inevitably lack competence.²⁰ They also called into question pervasive attitudes within their own discipline. Formerly, sociological research had tended to theorise children’s socialisation into adulthood as an essentially passive process,²¹ and it was argued that this, when combined with the dominance of development psychology, had emphasised the idea that children were worthy of attention only as ‘human becomings’ and not as ‘human beings’ in their own right.²²

More recently, researchers in the field have moved away from explaining their work in such strongly oppositional terms. For example, Alan Prout suggests that, in the light of changing social patterns whereby adults no longer necessarily enter into lifelong marriages or pursue single careers, both children and adults might be seen as ‘becomings’ but ‘without compromising the need to respect their status as beings or persons’.²³ However, as Prout concedes, ‘reconstituting the ground on which biology and culture can be understood ... as not necessarily oppositional, is not an easy task’.²⁴ Child development theory has long held supremacy in law and many other fields²⁵ and it has contributed to the prevailing view that children’s interests are best served via the adults who have responsibility for them. By basing this study on the view that children can be conceived as competent social and legal actors, at least with regard to some of the issues that they face in their day-to-day lives, and by drawing on elements of the new sociology of childhood to support this, we are again employing the theory in an oppositional role. We are actively seeking to challenge the mainstream view that children inevitably lack legal competence. Moving forward, we consider that the crucial challenge is to formulate a theory of children’s legal capability that takes into account the sociological, biological, legal and technological aspects of their lives, all of which are ‘complex, emergent and open to contingency’.²⁶

In the field of PLE, the precise manner in which legal capability can be measured or understood is still a matter of debate,²⁷ but legal knowledge is generally considered as a basic factor of relevance.²⁸ Accordingly, the predominant focus of this initial, explorative study has been the legal knowledge of children. Nevertheless, we recognise that there are significant other factors that, together with legal knowledge, will constitute children’s legal capability. Lewis Parle maintains that, as well as legal knowledge, five further competencies together constitute legal capability among young people aged 16–25 years,²⁹ and in studies that have sought to assess and measure adult legal capabilities, factors such as confidence, professed (as opposed to actual) legal knowledge, recognising the legal dimensions of a problem and

¹⁹A James, C Jenks and A Prout *Theorizing Childhood* (Oxford: Polity Press, 1998) p 18.

²⁰*Ibid.*

²¹The so-called deterministic model. See further W Corsaro *The Sociology of Childhood* (Thousand Oaks, CA: SAGE, 3rd edn, 2011) pp 9–12.

²²EK Tisdall and S Punch ‘Not so “new”? Looking critically at childhood studies’ (2012) 10 *Children’s Geographies* 249 at 250.

²³A Prout *The Future of Childhood* (Abingdon: RoutledgeFalmer, 2005) p 66.

²⁴*Ibid.*, p 86.

²⁵Berry Mayall argues that ‘Lawyers, doctors, social workers, educationalists and academics depend on child development theory as a basis for their work on, for and with children. They do because it has high status and by doing so they raise its status further.’ B Mayall ‘The sociology of childhood in relation to children’s rights’ (2000) 8 *International Journal of Children’s Rights* 243 at 245.

²⁶A Prout ‘Culture-nature and the construction of childhood’ in S Livingstone and K Drotner (eds) *The International Handbook of Children, Media and Culture* (London: Sage, 2008) p 21 at 34.

²⁷See further P Pleasence, C Coumarelos, S Forell and H McDonald *Reshaping Legal Assistance Services: Building on the Evidence Base* (New South Wales: Law and Justice Foundation of New South Wales, 2014) pp 130–131.

²⁸C Denvir, N Balmer and P Pleasence ‘When legal rights are not a reality: do individuals know their rights and how can we tell?’ (2013) 35 *Journal of Social Welfare and Family Law* 139 at 140.

²⁹These additional competencies are spotting a legal issue; knowing where to go for help; planning how to resolve the issue; communicating effectively and managing emotions. See Parle, above n 10, p 7.

previous experience of legal problems have all been taken into account. Researchers in the field of Development Studies have also adopted various methods to assess adults' 'subjective legal empowerment' (SLE),³⁰ drawing in particular on self-efficacy theory as a means for both measuring and predicting how individuals solve legal problems,³¹ concepts that have been incorporated recently into adult PLE research.³² We recognise then, that whilst the findings presented in this paper represent an original and significant contribution to the much-needed evidence base in child-focused PLE, there remains more work to be done to formulate a wider, holistic measurement of legal capability among children.

Research design

A particularly innovative feature of this research was the use of a digital game as a research tool.³³ The game was developed using a participatory approach, one that 'treats children as experts and agents in their own lives'.³⁴ At the outset we conducted discussions with six focus groups of children from three different primary schools. Initially our focus group children were invited to talk about their daily lives, the types of activities that they were involved in and the places that they visited with minimal or no adult supervision. They talked about the types of games that they played, establishing that they all were familiar with digital gaming and that they particularly enjoyed games in which they had the opportunity to build or create something.³⁵ We also consulted the Young Research Advisors at the National Children's Bureau during this phase.³⁶

Building on information gathered from our focus groups, the game was designed to consist of four everyday 'worlds' or domains: a school, a park, a shop and a friend's house. A range of law-related hypothetical scenarios or vignettes were incorporated into each of these domains, communicated through a combination of still and animated visual images, spoken words and text. Since this research is based on the premise that children do not have a good understanding of legal terminology, we avoided the use of any technical legal language in these scenarios. We followed an iterative process whereby children advised on draft designs and images, as well as offering advice on the most appropriate forms of language to adopt in the scenarios and associated questions, so as to ensure as far as possible that these would be clearly understood. A beta version of the game was tested by approximately 60 children from one of these schools, and by adult members of the project advisory board,³⁷ prior to its final modification and use in the research study.

³⁰The concept of 'legal empowerment' is described as 'the use of law specifically to strengthen the disadvantaged'. See S Goulb 'What is legal empowerment? An introduction' in S Golub (ed) *Legal Empowerment: Practitioners' Perspectives* (Rome: International Development Law Organization, 2010) p 12. As recognised in the Report of the UN Secretary General on Legal Empowerment of the Poor and Eradication of Poverty A/64/133 (July 2009), para. 77, research and interventions in this field have been primarily adult-focused.

³¹See for example M Gramatikov and R Porter 'Yes, I can: subjective legal empowerment' (2011) 18 *Georgetown Journal on Poverty Law & Policy* 169.

³²See for example P Pleasence, N Balmer and C Denvir *How People Understand and Interact with the Law* (Cambridge: PPSR, 2015) pp 118–132.

³³For a detailed discussion of the rationale behind the use of a digital gaming as a research tool see J Barwick, D Watkins, E Kirk and E Lai-Chong Law 'Adventures with Lex: the gamification of research' (2016) *Convergence: The International Journal of Research into New Media Technologies*, available at <http://journals.sagepub.com/doi/abs/10.1177/1354856516677682>, and for a critical evaluation of this method see E Lai-Chong Law, D Watkins, J P Barwick and E Kirk 'An experiential approach to the design and evaluation of a gamified research tool for law in children's lives' in *Proceedings of the 15th Conference on Interaction Design and Children* (Association for Computing Machinery, 2016), 322–333, available at <https://lra.le.ac.uk/handle/2381/39484>.

³⁴A Clark and P Moss *Listening to Young Children: the Mosaic Approach* (London: National Children's Bureau, 2nd edn, 2011) p 7.

³⁵For example, Minecraft. See website available at <https://minecraft.net/>.

³⁶The Young Research Advisors are a group of research-trained young people aged 12–21, who consult on research projects.

³⁷Members of our advisory board are Fiona Cownie, Rose Griffiths, Alex Mosely, Pascoe Pleasence and Lisa Wintersteiger. We are sincerely grateful to them for volunteering their valuable advice and support throughout the duration of this project.



Figure 1.

Each scenario provided the context for a question, in response to which children were invited variously to drag and drop characters into categories; to choose a point on a sliding scale; or to press a button that corresponded to their choice of answer. Frequently, once they had selected their response, children were then asked to audio-record their reasoning into the game. This provided the all-important opportunity for children to express their views, and to explain the thinking behind their quantitative choices. This multidimensional approach is facilitated by an alien ‘Lex’ (Figure 1) who asks the children questions such as ‘What can you do about this?’ or ‘Why do you say that?’ as they navigate the game. In addition, for a small number of scenarios, ‘quantitative only’ or ‘qualitative only’ data were gathered respectively through a fixed-choice response (without follow-up) or through audio-recording the child’s response to an open-ended question.

Recruiting research participants

Participants were invited to take part via their schools’ head teachers. Prior to contacting them, and in order to involve children from diverse backgrounds, we created three categories of school: most deprived, median deprived and least deprived.³⁸ These are referred to respectively as IDACI groups 1, 2 and 3 subsequently in this paper. Children from eight different schools participated in the study and, of these, three schools were from IDACI group 1, two from IDACI group 2 and three from IDACI group 3. Although, as we would expect, there was some variance across schools, the overall take-up rate was very good, with 634 children out of a possible 885 (72%) taking part.

Research ethics approval was obtained prior to the commencement of the project. Written information was provided to children and their parents/carers, with details of who to contact for further information. Informed, signed consent was obtained from each child’s parent/carer regarding their child’s involvement, and children themselves provided their own signed consent to participate. A

³⁸The categories were created with reference to secure data provided to us by the East Midlands Widening Participation Research and Evaluation Partnership. These map all local schools against the Income Deprivation affecting Children Index (IDACI).

safeguarding policy was agreed with each school prior to the commencement of the research. To ensure full anonymity, each participating school was assigned a unique code, and each child was assigned a unique identification number that was combined with numbers to indicate school year group and gender to produce a 'cosmic code' (eg XX-1-5-001) that the child entered into the tablet to start the game. Children played the game in a classroom setting, the class sizes varying from 15 to 39 children. Each child navigated the game individually, using a tablet and headset provided to them.³⁹

Approach to data analysis

In the light of the exploratory nature of our research, and in contrast with more traditional mixed-methods approaches,⁴⁰ we have sought to apply equal weight to the quantitative and qualitative data, adopting a broadly integrative strategy to our analysis. It has been argued that such an approach is well suited to 'initiation' or the creation of new perspectives, as it allows for the discovery of paradox and contradiction, as well as creating the potential for 'enriched understanding'.⁴¹

Our data set comprises 634 records (one record per participating child), and it was designed in such a way that children's transcribed audio comments could be read in conjunction with their quantitative answer for every question. A range of basic (eg bivariate correlation analysis) and advanced statistical methods (eg multivariate regression analysis) were used to analyse the quantitative data. This included testing for significant relationships between children's characteristics (gender, school, school year and IDACI group) and their responses to the scenarios. We took a thematic approach to the qualitative data, reading this within the context of the quantitative data and adopting an inductive approach initially.⁴² As Virginia Braun and Victoria Clarke describe, this involves a process of coding, categorisation and analysis that seeks to be 'data-driven' rather than corresponding to a pre-existing theoretical framework.⁴³ Subsequently, we adopted a more deductive approach to analysing the qualitative data as a whole, quantifying aspects of the qualitative data through a simple counting of occurrences for certain words or phrases.⁴⁴ As the forthcoming discussion will demonstrate, our analysis has revealed that children's understanding of law in their everyday lives varies across and within contexts and, although it has certainly been possible to identify some clear findings, the overall picture is a paradoxical one.

³⁹The functions of each tablet were locked down via secure software, meaning that the child could access only the Adventures with Lex game and no other offline or online materials. A scripted feedback session was given to all children after they had played the game.

⁴⁰A more traditional approach is to analyse quantitative and qualitative data separately, in order to triangulate findings. See J Creswell and V Piano Clark *Designing and Conducting Mixed Methods Research* (London and Thousand Oaks, CA: Sage, 2nd edn, 2011) p 63.

⁴¹See further P Bazely 'The contribution of computer software to integrating qualitative and quantitative data and analyses' (2006) 13 *Research in the Schools* 64 at 65.

⁴²An initial coding scheme was developed collaboratively by three members of the research team. In order to achieve inter-coder reliability, a sample of segmented data was coded by each of us independently and scored for reliability. Although the results of initial reliability test were adequate ($k = 0.61$), further discussions prompted agreed amendments to the coding scheme. Coding from then on was carried out by just two members of the research team, and an intercoder reliability test on 20% of the data demonstrated a much higher level of reliability ($k = 0.74$). There is no clear consensus on the strength of agreement revealed by kappa scoring. In J Landis and G Koch 'The measurement of observer agreement for categorical data' (1977) 33 *Biometrics* 159, it is suggested that a score of 0.41–0.60 indicates moderate strength of agreement; 0.61–0.80 substantial and 0.81–1.00 almost perfect (p 165). In J Fleiss *Statistical Methods for Rates and Proportions* (New York: John Wiley, 2nd edn, 1981), a score of >0.75 is considered to demonstrate an excellent strength of agreement; 0.40 to 0.75 is fair to good and <0.40 is poor.

⁴³V Braun and V Clarke 'Using thematic analysis in psychology' (2006) 3 *Qualitative Research in Psychology* 77 at 83.

⁴⁴Here we used a simple frequency method, drawing on K Krippendorff *Content Analysis* (London: Sage, 3rd edn, 2013) and M Chi 'Quantifying qualitative analyses of verbal data: a practical guide' (1997) 6 *Journal of the Learning Sciences* 271.

Legal knowledge and legal terminology

Our findings demonstrate that children have a very strong understanding of and concern for gender equality. In the context of school, we created an apparently discriminatory scenario in which only boys are going on a school trip to the zoo. This was depicted in the form of a poster on the school notice-board in response to which Lex asks: 'So only boys are allowed on that trip to the zoo. Is that OK?' Some 94% of children answered that 'no' this was not OK. Of the very small number of children (5%) who answered 'yes' to this question, whilst some of their explanations reveal a flippant attitude – *Because girls are annoying* (Boy, Year 4); *Because the boys are better than the girls* (Boy, Year 4) – others adopted a more pragmatic approach – *I said that because there could be trips for girls and trips for boys so it is fair* (Boy, Year 5).

In the light of previous research that highlights children's lack of understanding of legal terminology, we did not necessarily expect our participants to explain their choice of answer here with reference to technical legal terms. Accordingly, most children explained their choice of answer here with reference to general principles of fairness and equality – *Because it won't be fair if only boys can go* (Boy, Year 4); *Because it is not fair on the girls* (Girl, Year 4); *Because girls want to go to the zoo and see animals not boys ... It is not fair for girls – it is not really good for girls to not to go to the zoo and trips just because they are girls* (Girl, Year 4); *Because boys and girls are equal* (Girl, Year 4); *Why should there be any difference between boys and girls?* (Boy, Year 5).⁴⁵

However, this question did prompt some children to articulate their responses in terms of 'rights' (discussed further below), and it also prompted some children to adopt, or seek to adopt, more formal language when explaining their responses – *It's sexist to say that just boys are allowed. Girls should be allowed as well* (Girl, Year 6); *Because that would be sexism* (Boy, Year 5); *It is not very nice to the girls because it is discriminatory* (Boy, Year 6); *Because it is racial discrimination and if you discriminate girls from the trip then that is bad* (Boy, Year 5). Whilst there is some confusion in the last example, the application of words such as 'sexist' and 'discrimination' in children's responses to this question here indicate a level of sophistication that is not found elsewhere in the data. Consequently we consider this to be a particular area of strength in children's legal knowledge. It is heartening to note also that, looking at children's responses to this question as a whole, there is no association between children's gender and their choice of answers.

A second apparent area of strength we have identified relates to children's competency to deal with consumer-related issues. However, here the picture is more equivocal than the previous finding. Children who took part in our initial focus group discussions explained that they had almost all had experience of going into a local shop unaccompanied, to purchase small items such as drinks or sweets. This provided then an ideal setting to investigate how children would deal with problems arising in consumer transactions. The first scenario that children encounter is one in which they purchase a £1 drink with a £5 note and the shopkeeper does not provide them with any change. In response to Lex's question 'What can you do about that?' 64.2% of children answered 'ask the shopkeeper for my change', rather than opting to do 'nothing', 'call the police', 'ask a friend for help' or 'go home and get help'. Children's approach to dealing with consumer issues was then tested further by asking (in homage to *Donoghue v Stevenson* [1932] UKHL 100) what they would do if on opening their drink they found a dead snail in it. Here some 90.9% of children indicated that they would act independently in this instance, either by asking for their money back (48.6%) or by asking for a new drink (42.3%). Only a small number (4.1%) reported that they would do 'nothing, throw it in the bin' and 0.9% would 'ask a friend for help'.

If taken alone, the quantitative data here indicate a strong level of competence or knowledge of consumer rights, and we were also able to infer from the qualitative data some understanding of legal entitlement. This was occasionally expressed in 'negative' legal terms – *Because if they don't give*

⁴⁵Interestingly, this tendency to explain responses to legal problems in terms of 'fairness' has been identified also in studies with adults. See P Kim 'Norms, learning and law: exploring the influences on workers' legal knowledge' (1999) University of Illinois L Rev 447.

you any change then that is illegal and you should get change when you pay for something (Girl, Year 5); *Because it is against the law for the shopkeeper to take your money and not give you change* (Girl, Year 4) – but, as we would expect, most children did not necessarily express this in legal or appropriate legal terms. They did, however, demonstrate broader awareness of their entitlements in this situation, based on their personal opinion and/or previous experience – *Because I am not going without change* (Girl, Year 5); *Because it is my money and I deserve to have my money back* (Girl, Year 5); *Because I am meant to get change* (Girl, Year 5); *Because it actually happened to me before and I asked for it back and they said ‘Oh yes, I forgot’* (Boy, Year 5).

Conversely, however, we also identified in the qualitative data a tendency for children to adopt criminal law terminology in their reasoning relating to this question. Many children identified the shopkeeper’s actions as ‘stealing’ – *Because he can’t, he can’t steal my change. He can’t. That’s my change, not his. It’s my money, not his. He’s stealing* (Boy, Year 5); *Because he nicked my money, didn’t he? He stole £4 off me* (Boy, Year 5) – and, in a few responses, some children even identified the shopkeeper as ‘a robber’ or as someone who *is robbing you* (Girl, Year 5). This tendency for children to frame their responses to this scenario within the criminal law explains why some 29.8% of children reported that they would ‘call the police’ in response to this question, rather than ask for their change – *Because it is just like stealing because you gave more and you didn’t get any change and the police can do things about stealing* (Boy, Year 5).⁴⁶ Through a broader interrogation of the data for children’s usage of legal terminology⁴⁷ we identified that across the entire data set the most common form of legal terminology that was used related to ‘stealing’, and the most frequent occurrence of this term was in relation to this wrong change scenario in the shop. More generally we have found that where children adopt legal terminology in their reasoning, then they have a propensity to adopt criminal law, as opposed to civil law, terms.⁴⁸

Recognising the relevance of human rights

There were a number of scenarios in the game where it was anticipated that children may refer to their human rights, and especially their rights under the UNCRC. For example, in school, we anticipated that children may refer to their right to an education (Article 28); their right to participate (Article 12); or their non-discrimination right (Article 2). At the park, we anticipated that children might refer to their right to play (Article 31). In fact there were just 27 references to possessing a ‘right’ or ‘rights’ across the entire data set and, of these, the majority occurred in the context of the gender-related zoo trip question discussed previously.⁴⁹ When framing their references to possessing rights in this scenario, children tend to explain this simply – *Because girls have the same rights as boys – just because they are a different gender doesn’t mean they should be treated any differently* (Girl, Year 5); *Because girls have the right to go on school trips as well* (Boy, Year 5). Just one child stated specifically – *Because girls have human rights and they should be allowed to go on school trips as well as boys* (Girl, Year 4) – and across the whole study no child made reference to the UNCRC, or to his or her rights under it.

This finding accords with earlier studies; for example, in their review of the relevant literature in 2005, Brian Howe and Katherine Covell report that ‘surveys conducted over the past few years have demonstrated the lack of knowledge of the children’s rights Convention among children (as well as adults) living in the countries that have ratified it’.⁵⁰ More recently, in 2015, the Children’s Rights

⁴⁶Our findings here align with those of a much earlier study of 15-year-olds by Gwyneth Vorhaus, who found that these young people were broadly unaware of the distinction between civil law and criminal law processes. See G Vorhaus *Ignorance of the Law: A Research Report of Juveniles’ Legal Knowledge* (London: Hillingdon Legal Resources Centre, 1984).

⁴⁷This excluded punishments, which were treated separately.

⁴⁸145 uses of some form of legal terminology were identified from the children’s answers. Of these, 57 referred to stealing, 31 to robbery and 22 to kidnap. The most commonly used civil law term was ‘property’, with 14 references.

⁴⁹22 of the 27 references to possessing a right or rights occurred in this context.

⁵⁰B Howe and K Covell *Empowering Children: Children’s Rights Education as a Pathway to Citizenship* (Toronto: University of Toronto Press, 2005) p 14.

Alliance for England (CRAE) reported some awareness of UNCRC rights among children and young people, although reported levels of knowledge varied considerably.⁵¹ So whilst among scholars and activists there has been increased awareness and discussion of children's rights in recent decades,⁵² this has not translated into increased understanding and awareness for children themselves, indicating that the government is not effectively fulfilling its positive obligation to widely publicise the provisions of the UNCRC.⁵³ As Michael Freeman acknowledges, the idea that children should possess rights (and indeed know that they possess rights) is a contested one, not least because of the perceived threat that children's rights pose to the notion of parental authority.⁵⁴ Howe and Covell provide a salient example of this in their recounting of the 'vociferous objections'⁵⁵ engendered by a children's election in Canada, where children from a large number of schools were invited to vote on those rights under the UNCRC that they considered to be most important to them. Howe and Covell observe that '[t]he underlying concern appears to be mainly the fear that if children are aware of their rights, then teachers, parents and other adults will lose their authority and their ability to control children'.⁵⁶

In the context of primary schools in England, Allison Struthers has identified in a recent study that although 'it is not only possible to teach human rights to learners of primary school age, it is also beneficial',⁵⁷ teachers are reluctant or hesitant to provide human rights education at this level, either because they consider the topic to be overly biased, too controversial or too abstract for children of this age, this last concern being closely associated with Piagetian theories of childhood that remain highly influential in the education sector.⁵⁸ Struthers identifies also that teachers can be influenced by negative reporting of human rights issues in the media, and that many view the topic as one that is 'likely to antagonize parents'.⁵⁹ In these circumstances, Struthers argues that it is unlikely that even teachers who are inclined to teach human rights will be able to do so 'to any meaningful extent',⁶⁰ and she concludes that it is only through a cultural shift in the education sector that the situation can be improved.

Article 12 participation

In the light of our theoretical framing of the child as an active social agent, a particular concern of this study has been to both respect and to investigate children's so-called right to participation under Article 12 of the UNCRC. This provides that every child 'who is capable of forming his or her own views' should be afforded the opportunity to 'express those views freely' in all matters affecting

⁵¹CRAE *See It, Say It, Change It* (2015). See website available at http://www.crae.org.uk/media/78664/crae_seeit-sayit-changeit_web.pdf. The study was led by a steering group of 22 children aged 7 to 18 years. Data was gathered via focus groups and an online survey. At p 9, CRAE report that 'of 819 children who answered the question "have you heard of the CRC?" 46% told us they had not heard of it and a further 10% were not sure. When asked "how much do you know about the CRC?", only 1 in 5 said "a lot". The majority of children (56%) said they only knew "a little".'

⁵²C Helwig and E Turiel 'Civil liberties, autonomy, and democracy: children's perspectives' (2002) 25 *International Journal of Law and Psychiatry* 253 at 253.

⁵³UNCRC Article 42 requires that 'States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike'.

⁵⁴M Freeman 'Why it remains important to take children's rights seriously' (2007) 15 *International Journal of Children's Rights* 5 at 7.

⁵⁵B Howe and K Covell *Empowering Children: Children's Rights Education as a Pathway to Citizenship* (Toronto: University of Toronto Press, 2005) p 4. They report that 'Strong opposition was expressed by a number of groups including family values organizations, traditional conservative politicians and parents' groups who actively campaigned against the election, writing letters to educational authorities urging that schools should not participate.'

⁵⁶*Ibid*, p 5.

⁵⁷A Struthers 'Human rights: a topic too controversial for mainstream education?' (2016) 16 *Human Rights Law Review* 131 at 145. See further A Struthers 'The underdeveloped transformative potential of human rights education: English primary education as a case study' (2017) 9 *J Hum Rights Pract* 68.

⁵⁸Struthers (2016), *ibid*, at 145–151.

⁵⁹*Ibid*, at 158.

⁶⁰*Ibid*.

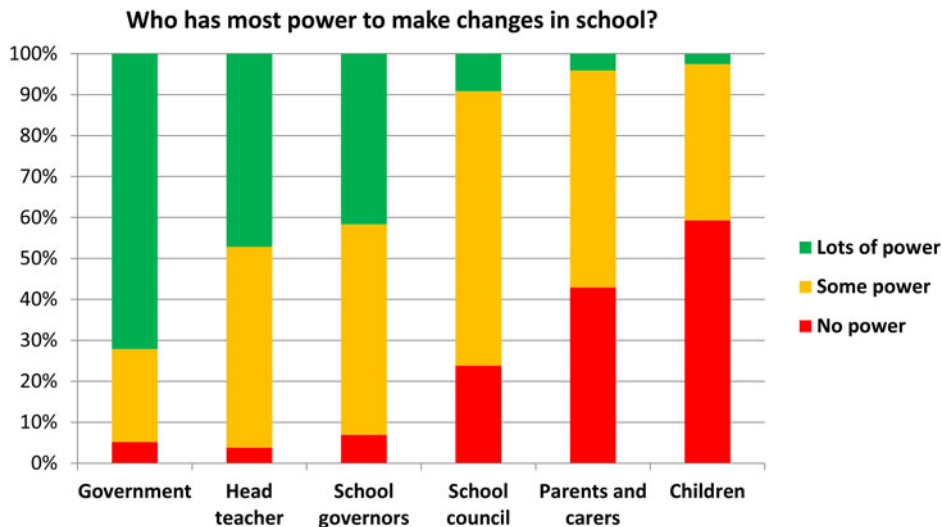


Figure 2.

them. Kay Tisdall and colleagues point out that, at a basic behavioural level, children and young people are continually participating in their school and local communities since ‘going to or absenting themselves from school, their activities in public space, their everyday actions within their families, with peers, with others in their communities’ are ‘all forms of participation, of influencing change, of expressing their views’.⁶¹ It was these more immediate forms of participation that were the focus of our study, examined in the contexts of the school and the park. As the forthcoming discussion will show, in both of these settings we found that children have very low expectations concerning their capacity to actively participate in decision making.

In order to assess the extent to which children felt able to participate in school, we asked simply ‘Who has the most power to make changes in your school?’ and children used a sliding scale to attribute levels of power (lots, some and none) to various actors. As demonstrated in Figure 2, the government was seen as the most powerful influence on changes in school and the head teacher was the next most powerful. Children were considered to be the least powerful, with 59.3% of children answering that children have no power.

As Figure 2 demonstrates, parents and carers were perceived similarly to lack any significant power to influence changes in school (42.9% of children said the parents/carers had no power), but bivariate analysis revealed that children tended to perceive themselves as more powerful when they also perceived their parents and carers to be powerful.⁶² Interestingly, our analysis also revealed that children tended to perceive themselves as more powerful when they perceived the school council to be powerful.⁶³ In all ‘rights respecting schools’,⁶⁴ school councils have been identified as ‘one key mechanism’

⁶¹E K Tisdall, J M Davis and M Gallagher ‘Reflecting on children and young people’s participation in the UK’ (2008) 19 *International Journal of Children’s Rights* 343 at 343. In their paper, Tisdall et al provide an insightful critical analysis of the various formal approaches that have been taken to encourage children and young people’s participation in the UK. See also K Nairn, J Silgo and C Freeman ‘Polarizing participation in local government: which people are included and excluded?’ (2006) 16 *Children, Youth and Environments* 248.

⁶²To investigate the relationship between children’s perceptions of their own power and children’s perception of their parents’/carers’ power, a bivariate correlation test was conducted. The statistical result showed a highly positive significant correlation between the two variables ($r = 0.587$, $N = 634$, $p < .01$).

⁶³Similarly, a bivariate correlation test was conducted between the two variables – children’s perceptions of their own power and children’s perceptions of their school councils’ power. The statistical result also showed a highly positive correlation between the two variables ($r = 0.388$, $N = 634$, $p < .01$).

⁶⁴Schools accredited under UNICEF’s Rights Respecting Schools programme; see website available at <http://www.unicef.org.uk/rights-respecting-schools/about-the-award/awarded-schools/>.

through which pupils participate in decision making,⁶⁵ and our findings would seem to support the view that school councils can help to make children feel more empowered. Nevertheless, the extent to which school councils actually empower children remains open to debate. Based on her work in schools in Northern Ireland, Priscilla Alderson has found that there can be discrepancies between the espoused aims of the school council and wider school practices.⁶⁶ Similarly, based on her research in rights respecting schools, Carol Robinson has found that the decisions in which children were involved tended ‘not to be of central importance to school policy and practice’,⁶⁷ and she expresses concern as to whether ‘the voices of all pupils are listened to and respected equally’.⁶⁸ Elsewhere, Robinson argues persuasively that there is a need to move away from adult-centric decision making practices in primary schools, and a move towards incorporating ‘the opinions and perspectives of the children themselves’⁶⁹ on a day-to-day basis.

Specifically with reference to Article 12, Sue Lyle has identified among teachers attitudes that are analogous to Struthers’ findings concerning human rights in general. First, it was felt that children lacked the developmental capacity to be involved in decision making, and that ‘the best interests of the child’ under Article 3 legitimated adults’ overriding of Article 12 in some situations. Secondly, teachers’ varying conceptions of ‘childhood’ as either ‘innocent’ or ‘unruly’, as well as the pressure to deliver the set curriculum, all had the effect of shielding children or withholding from them opportunities to exercise their Article 12 rights. Lastly, the acknowledged power imbalance between adults and children emerged ‘as a stumbling block to participatory practices’ and ‘a key objection came from those who saw teachers as authority figures that should not be challenged’.⁷⁰

As demonstrated by policy developments in Wales, it is thought that one area in which children’s participation can be developed meaningfully is in the context of implementing their right to play under UNCRC Article 31.⁷¹ With this in mind, we created a scenario within the park in which the play equipment is broken, prompting Lex to say ‘We can’t play here. What can you do about this?’, and both quantitative and qualitative data were gathered in response to this question.

As demonstrated in Figure 3, 66.7% of children would ‘ask an adult to contact the council’, as compared to 20.5% who would simply ‘tell an adult’. From this we concluded that children demonstrated a good degree of formal knowledge concerning the role and responsibility of the local council and its property here, and this was confirmed in the qualitative data – *Because the council looks after the park* (Boy, Year 5); *Because the council owns the park and they should be more responsible and care for the park and fix it* (Boy, Year 6); *Because it is council property and it needs to be fixed ...* (Girl, Year 5). But of course these findings also show us that the possession of this formal knowledge by no means rendered children more likely to act independently to resolve the problem. Some 87.2% of children deferred to an adult, and we identified two key themes in children’s explanations of their answers here. First, some children expressed the view that children – because they are children – are not competent to act independently in these circumstances – *Because a child can’t contact the council* (Girl, Year 4); *Because it’s very important. You can’t do it by yourself so you have to ask an*

⁶⁵J Sebba and C Robinson *Evaluation of Unicef UK’s Rights Respecting Schools Award, Final Report* (London: UNICEF, 2010) p 28.

⁶⁶P Alderson ‘School students’ views on school councils and daily life at school’ (2000) 14 *Children and Society* 121.

⁶⁷C Robinson ‘Developing mutually respectful adult-child relationships in school’ (2014) 125 *Research Intelligence: Respecting Children – A Global Issue*, BERA 18–19.

⁶⁸*Ibid.*

⁶⁹C Robinson *Children, their Voices and their Experiences of School: What Does the Evidence Tell Us?* (Cambridge: Cambridge Primary Review Trust, 2014).

⁷⁰S Lyle ‘Embracing the UNCRC in Wales (UK): policy, pedagogy and prejudices’ (2014) 40 *Educational Studies* 215 at 221.

⁷¹Local authorities in Wales have been placed under a legislative duty to secure sufficient play opportunities for children and, more broadly, to make provision for arrangements for participation of children in local authority decisions that might affect them. See *Children and Families (Wales) Measure 2010*, ss. 11 and 12. See further ‘Wales: A Play Friendly Country’ *Statutory Guidance to Local Authorities* (July 2014), and *Welsh Government Consultation Document Local Participation Strategies*, Draft Guidance Number: WG13434 (November 2011).

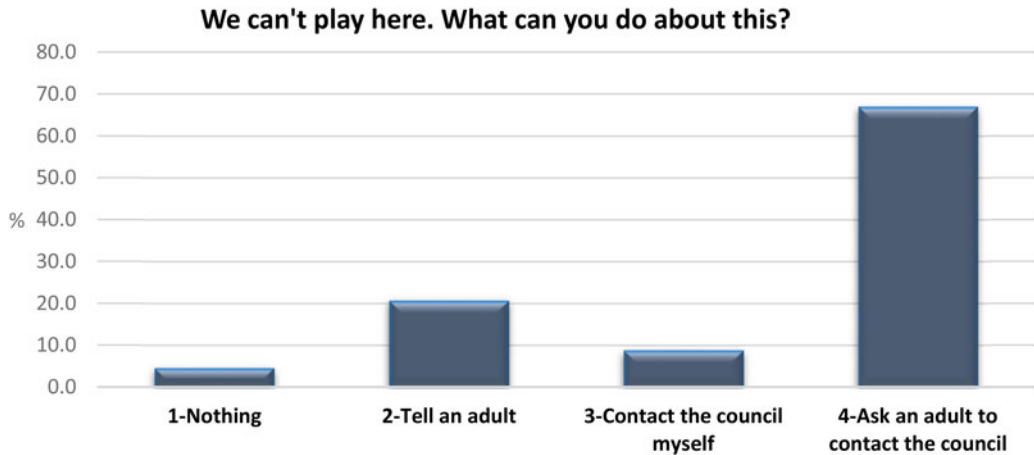


Figure 3.

adult to do it (Girl, Year 6); *Because the council might not believe you and you might be a bit young to do it* (Girl, Year 5). As this last comment also demonstrates, the second theme identified in children's responses was that children will not be taken seriously in this situation – *Because the adult won't be telling a lie, and the council might be thinking that the children might be lying* (Girl, Year 4); *It's the right thing to do and also we can't do it ourselves, because they'll be like, oh you can't do that because you're a child* (Boy, Year 5). This is also apparent in the explanations of children who said that they would do 'nothing' – *Because nobody would listen to you.* (Boy, Year 5).

Thus for many children their perceived lack of competency here relates either to their objective view of what constitutes appropriate behaviour from 'a child' or to their anticipated response from adults. They did not tend to see themselves as being inherently incapable of acting independently in this situation. Indeed, a small number of children (8.5%) reported that they would 'contact the council myself' in response to this scenario, and their self-efficacy was either expressly stated or assumed in their explanations of this choice of answer – *Because you might as well do it yourself because people might not do that for you so you got to do it yourself* (Boy, Year 4); *Because adults or children can contact the council* (Girl, Year 5); *Because if something is broken, it needs to be fixed especially if it is something for children at a park* (Girl, Year 5).

There are of course many possible factors influencing children's responses to this question. We found, for example, that children who reported that they would 'contact the council myself' were more likely to be boys, and more likely to come from IDACI group 1, but arguably the earlier discussion of adults' negative conceptions of children as rights holders are also highly relevant here, insofar as they are reflected also in children's qualitative responses.

Recognising legal responsibilities⁷²

Children's understanding of and attitudes toward their own and others' legal responsibilities varied across and within contexts. For example, where we examined children's awareness that persons not physically present in a scenario could nevertheless be responsible, children were much more likely to appreciate this in the context of the shop than in the context of school. As demonstrated in Figure 4, whilst many were aware of, and more certain of, a manufacturer's responsibility to produce

⁷²In the light of their distinct potential to impact current policy, our findings concerning children's knowledge and understanding of the age of criminal responsibility have been written up and published as a discrete journal paper; D Watkins, E Lai-Chong Law, J Barwick and E Kirk "If you are 10 you go to prison": children's understanding of the age of criminal responsibility' (2016) 67 Northern Ireland Legal Quarterly 311.

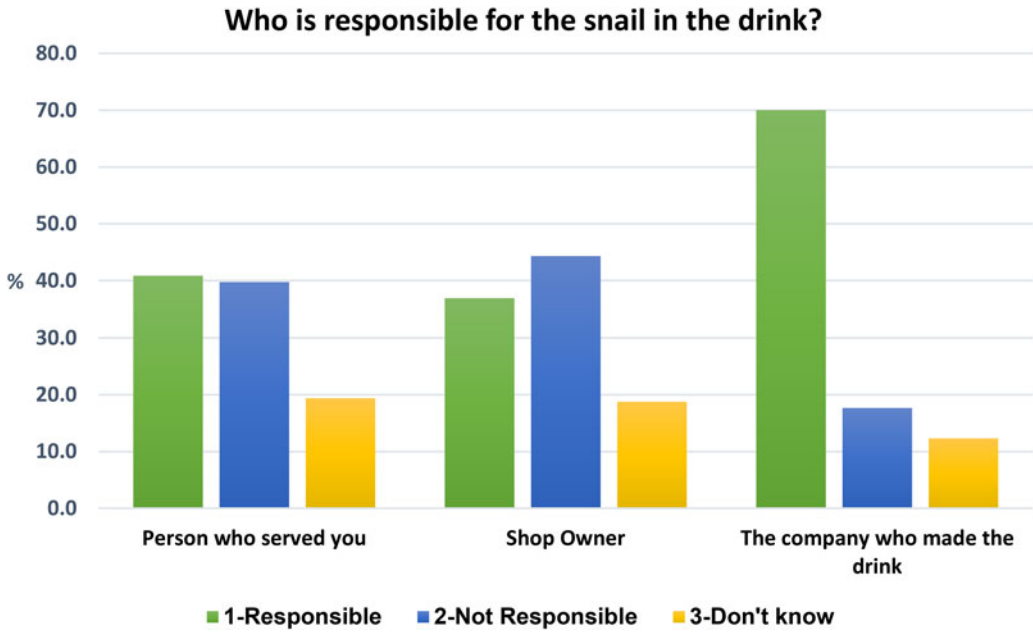


Figure 4.

safe products, they were less certain of the responsibilities of the shop owner that would arise by virtue of their contractual relationship.

In school, children were presented with an animated ruler fight scenario (see Figure 5) based on *Mullin v Richards* [1998] 1 All ER 920. Of course, we were not expecting children to demonstrate a detailed understanding of the principles that govern liability in negligence. Rather, we sought to



Figure 5.

investigate how far children would identify that both the child who caused the injury and the injured child could be considered responsible. We sought also to assess how far children would allocate responsibility to the teacher by placing the teacher in the scenario, and the extent to which children would apportion responsibility to third parties outside the classroom was also assessed in the formatting of the question.⁷³

Because of the way in which the ruler fight is depicted (with one girl appearing to be more aggressive than the other) it is perhaps not surprising that the majority of children (83.1%) considered the girl who was not hurt to be mostly responsible, contrasting with the child who was hurt (41%) and the teacher (40.5%). Notably, children considered that parties outside the classroom were mostly not responsible⁷⁴ – *I think that because the head teacher, the school governors and the government weren't actually there* (Girl, Year 5); *I don't know about the head teacher because I don't think she would really have anything to do with it and the school governors and the government – I think no – they wouldn't even know what was going on. They are in completely different places* (Boy, Year 5).

Another notable feature of both the quantitative and qualitative data concerning this scenario was the high levels of certainty with which children responded to it.⁷⁵ This is most apparent concerning the girl who was not hurt – *Because she was snatching something off the child who was hurt so she got hurt because of that ... because of the child who wasn't hurt so it is her fault. Definitely* (Girl, Year 4). But it is a feature in children's responses concerning all of the other agents too – *Firstly, the child who got hurt shouldn't have been using a ruler to fight and the one that hurt the child shouldn't have been doing that. And the teacher should be looking at the children* (Boy, Year 5). Arguably, children's failure to express uncertainty here, having only witnessed part of the story, can be seen as a limitation on their abilities to recognise the legal responsibilities that may or may not arise in everyday situations. Crucially, however, this tendency to make an assured yet incorrect assertion is not just limited to primary school-aged children. In an early study of juveniles' legal knowledge, Gwyneth Vorhaus found that, where a lack of knowledge existed, this lack was 'filled' by incorrect knowledge rather than by acknowledged ignorance,⁷⁶ and in more recent PLE research with adults, Pascoe Pleasence and colleagues report a significant level of inconsistency between adults' professed knowledge and their actual knowledge of their legal rights.⁷⁷

Adulthood and competency

From our analysis of the data set as a whole it is clear children that place a very strong degree of trust and confidence in adults as people who can and will help children to resolve problems – *If they ask an adult to help, it will be perfectly fine* (Girl, Year 4); *Everyone needs an adult to help them* (Girl, Year 5); *If you go home and get help, you will get help* (Boy, Year 6). Children see adults as people who *always know what to do* and they defer to them because adults *know best*. Where this trust is well placed and appropriate to the context, then it is, of course, to be welcomed. For example, at the friend's house, the friend receives a text message stating 'Everyone hates u – I'm gonna get you after school' and Lex asks 'What can your friend do about that?' In answer to this question, 64% of children answered that they

⁷³Children were asked 'Who is responsible for this?' and invited to answer 'yes', 'no' or 'don't know' concerning the child who was hurt, the child who wasn't hurt, the teacher, the head teacher, school governors and the government. Note that 'the government' was adopted here to refer to an external, public authority, following advice from our child focus groups. The original wording of 'the local authority' was considered by them to be confusing in this context.

⁷⁴68.3% of children considered that the head teacher was not responsible, 81.2% of children thought that the school governors were not responsible and 83.9% of children thought that the government was not responsible.

⁷⁵Only 4.4% answered 'don't know' concerning the responsibility of the girl who was not hurt, otherwise the number of 'don't know' answers was comparable across the other five agents (child who was hurt, teacher, head teacher, school governors and government) with an average of 71 (11%) responses.

⁷⁶As such she concluded that 'juveniles are under the impression that they know more about the law than they do'; Vorhaus, above n 46, p 101.

⁷⁷Pleasence et al, above n 32, pp 46–62.

would ‘ask an adult to help them’, and in their comments children demonstrate strong faith in the capacity of adults to resolve this problem successfully – *Well, the adult could help a lot* (Boy, Year 6); *Because adults can always sort things out for you* (Girl, Year 5). By contrast, it was felt that the child could make the situation worse by dealing with it on their own – *If you sort it out yourself, you might make it a bigger problem* (Girl, Year 5).⁷⁸

Notably, some 31.9% of children answered that they would ‘tell the police’ in response to this ‘bullying’ scenario. There is for some children an expectation that the police will readily appear when summoned, coupled with confidence that they will swiftly act to remedy the situation – *The police will actually help them by actually doing something about it instead of just sitting there and watching the children be cyber-bullied* (Boy, Year 5). This same perception of the police is apparent in the comments of children who opted to ‘call the police’ in response to being given the wrong change in the shop – *I would go and tell the police because they would know what to do about it* (Girl, Year 5); *Because the police will make the shop keeper give the money back, or he will get arrested* (Boy, Year 6); *You could just call the police and then the police will arrest him and you will get your change* (Boy, Year 4).

Children’s faith in adults is partly based on their assumption that once a person is 18, and an adult, he or she is competent to deal with any situation *because you are an adult* (Girl, Year 5). An adult *will know what to do* (Girl, Year 4); *will know what to say* (Girl, Year 4); and *knows the right things* (Boy, Year 5). Adults are *more responsible than children* (Boy, Year 5); *more mature* (Girl, Year 6); *more sensible* (Girl, Year 6); and have *more power* (Girl, Year 5). Children also assume that their own competency to deal with situations will develop and improve with age – *The older you are the more you know about how and what to do if different things happen* (Boy, Year 4). Indeed, in their comments, children portray a view of a seemingly inevitable journey towards adult competency, with becoming a teenager being identified as an important milestone.⁷⁹ As Emily Buss has noted, the expectation that children will develop and acquire general knowledge over time is broadly correct and, in their belief that capacity will be automatically realised at 18, children are after all in line with an assumption that exists in many areas of English law. However, as Buss goes on to state:

This simple truth does not mean ... that all children move lock step through the various stages of development at the same ages, nor does it mean that children manifest capacities uniformly and consistently in all aspects of their lives ... Moreover, no dramatic shift in development occurs between childhood and adulthood, despite the law’s suggestion to the contrary.⁸⁰

In terms of children’s knowledge and understanding of legal terminology, Warren-Leubecker and colleagues⁸¹ and Flin and colleagues⁸² report some improvement in understanding among the children who participated in their small-scale studies, but importantly Warren-Leubecker et al also found that children’s understanding developed ‘through several stages of misconceptions’ and not necessarily in a logical order.⁸³ Vorhaus found no progression in the levels of legal knowledge of participants over a three-year period⁸⁴ and, perhaps most importantly, we know that children’s assumptions that adults

⁷⁸There was significant association between IDACI groupings and children’s choice of answer here. Participants from IDACI group 2 were more likely to choose to ask an adult to help them, compared with their counterparts from groups 1 and 3. Participants from IDACI group 3 showed a higher tendency, albeit still very low, to choose to do nothing, as compared with their counterparts from groups 1 and 2.

⁷⁹Although occasionally children identified teenagers as potentially irresponsible or *not responsible enough* (Girl, Year 5) the majority of comments framed teenagers as competent; as a teenager you are a *young adult* (Boy, Year 4); *almost an adult* (Girl, Year 5); and *starting to be a grown-up* (Girl, Year 4).

⁸⁰E Buss ‘Confronting developmental barriers to the empowerment of child clients’ (1998–1999) 84 *Cornell L Rev* 895 at 918–919.

⁸¹Warren-Leubecker et al, above n 2.

⁸²Flin et al, above n 2, pp. 285–297.

⁸³Warren-Leubecker et al, above n 2, p 176.

⁸⁴Cited in D. Rowe ‘Law-related education – an overview’ in J Lynch, C Modgil and S Modgil *Cultural Diversity and the Schools vol 4: Human Rights, Education and Global Responsibilities* (London: Falmer Press, 1992) pp 69–86.

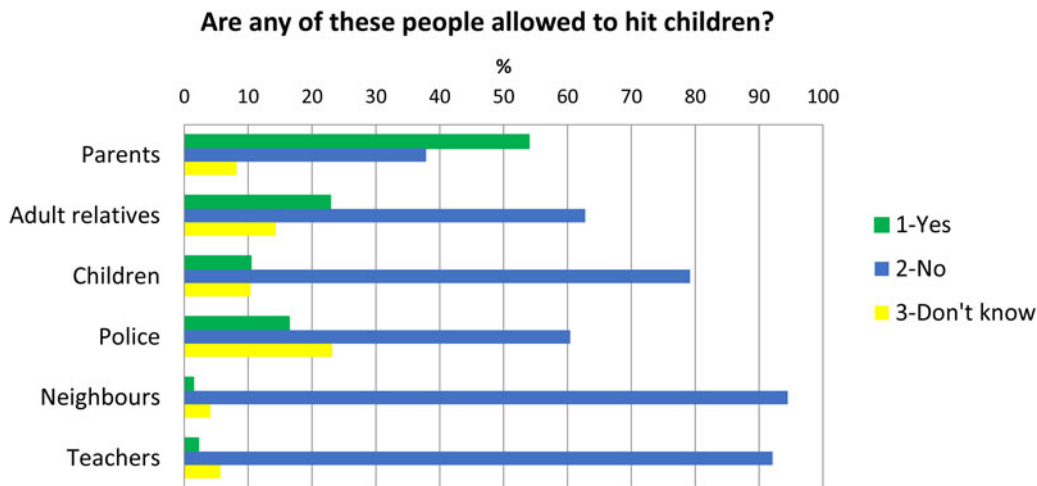


Figure 6.

are competent to deal with legally relevant problems are misplaced, since ‘most people in the UK lack knowledge of their legal rights’.⁸⁵

Finally, children’s professed confidence in adults must itself be considered in the light of children’s misunderstandings of the legal limits that are in place concerning adults’ interactions with them. For obvious reasons, great care had to be taken when designing this element of the research, and the question addressing appropriate adult behaviour was based on a scenario in the park, where a parent is depicted chastising a child. First, Lex asks simply: ‘Are people allowed to hit children?’ Just 4.7% of children answered ‘yes’ to this question; 28.7% answered ‘sometimes’ and 61.7% said ‘no’; 4.9% of children chose ‘don’t know’. Subsequently, however, Lex asks ‘Are any of these people allowed to hit children?’, and children give their answers via a ‘drag and drop’ method, placing various actors into three different test tubes named ‘yes’, ‘no’ and ‘don’t know’.⁸⁶ As demonstrated in Figure 6, the findings reveal a good deal of uncertainty among children on this issue, and perhaps most concerning from this data is the finding that 16.4% of children expressed the view that the police are allowed to hit children, and 23.2% of children were unsure whether or not the police are allowed to hit them. Here, there were some significant associations between schools and some particular actors, and significant associations between all of the IDACI groups concerning parents and the police. Children from IDACI group 3 were more likely than children from IDACI group 1 to answer that parents are not allowed to hit children, whereas children from IDACI groups 1 and 2 were more likely than children from IDACI group 3 to know that police are not allowed to hit them.⁸⁷

Popular concerns regarding children’s rights and the perceived potential threat that they represent to adult authority have already been discussed in this paper. Following this adult-centric line of thought, it might be considered convenient for children to hold limited knowledge or erroneous beliefs concerning the levels of force that adult authority figures are permitted to exercise over them, not least

⁸⁵P Pleasence, N Balmer and C Denvir, ‘Mind the gap: all party parliamentary group on public legal education briefing’ October 2016, p 2.

⁸⁶On discussing this scenario with our focus group children, they expressed the view that the word ‘hit’ had the clearest meaning in this context, hence this word was adopted in the questions that related to this scenario.

⁸⁷There are also differences in children’s level of certainty in regard to some of their choices: children from IDACI group 1 were more likely than children from group 3 to think that they know whether police were allowed to hit children (ie the percentage of ‘don’t knows’ is significantly lower), and children from IDACI group 1 were also more likely than participants from IDACI group 3 to think that they know whether parents are allowed to hit children (ie the percentage of ‘don’t knows’ is significantly lower).

insofar as this overestimation of adult power is perceived to operate as a deterrent to antisocial or illegal behaviour. Conversely, however, we know that children necessarily require ‘an understanding of the limits of appropriate/inappropriate adult behaviour’⁸⁸ in order to reduce their vulnerability to abuse. In a challenging and thought-provoking contribution to one of the new sociology of childhood texts, Jenny Kitzinger contends that ‘child abuse is not an anomaly but part of the structural oppression of children. Assault and exploitation are risks inherent to “childhood” as it is currently lived. It is not just the *abuse* of power over children that is the problem but the existence and maintenance of that power itself.’⁸⁹ On this view, it is at least arguable that a prerequisite to reducing children’s vulnerability to abuse by some adults is the willingness of all adults to reconceptualise children as competent social and legal actors.

Conclusion

Certainly, the most positive finding from this first explorative study into children’s understanding of law in their everyday lives has been children’s concern for gender equality, expressed most commonly in terms of fairness and equality but also, for just a few children, through the use of legal or quasi-legal terminology. By contrast, we have found that many children demonstrate uncertainty or a lack of knowledge concerning the legal limits that are in place regarding adults’ interactions with them; children’s perceptions concerning the police are of particular concern here. In between these two extremes, we have found that children’s legal knowledge varies across and within different contexts and we have determined that, in general, many children lack knowledge of their rights.

We conclude by arguing that any demonstrated lack of legal knowledge among children cannot and should not be dismissed or explained simply as an inevitable stage in their development towards adulthood competency. Working with us during both the design and empirical phases of this study, children demonstrated that they were capable of thinking about and contributing meaningfully to discussions on legally relevant issues, and that they welcomed the opportunity to do so. Similarly, in an overview of extensive research carried out in the new sociology of childhood field, Prout reports that children are ‘keen, constructive and thoughtful commentators on their everyday lives at home, at school and in the wider community’.⁹⁰ This, we suggest, when combined with our research findings, demonstrates that children *can* develop legal capability, or at least elements of legal capability (such as gaining legal knowledge) when given the opportunity to do so.

Furthermore, as alluded to already in this paper, the idea that legal capability and legal knowledge are synonymous with adulthood is not supported by empirical research. Studies have found a high degree of variance in legal knowledge among adults,⁹¹ and they have shown too that adults generally possess inadequate levels of legal knowledge.⁹² So whereas we began by conjecturing that, whilst children might lack formal legal capacity, they may nevertheless possess legal capability, we conclude by emphasising that whilst adults may possess legal capacity, they most often do not possess legal capability.

In the light of this, a number of PLE resources have been developed to assist adults and young people in dealing with a variety of legal problems.⁹³ This study represents the first step towards the

⁸⁸F Briggs and RMF Hawkins ‘Children’s perceptions of personal safety issues and their vulnerability to molestation’ (1993) 18 *Children Australia* 4 at 4.

⁸⁹J Kitzinger ‘Who are you kidding? Children, power and the struggle against sexual abuse’ in A James and A Prout (eds) *Constructing and Reconstructing Childhood* (London: Routledge, 2nd edn, 1997) pp. 165–189 at 185. Emphasis in original.

⁹⁰A Prout ‘Researching children as social actors’ (2002) 16 *Children and Society* 67 at 71. Prout is commenting here on the large-scale ‘Children 5–16 Research Programme’ project funded by the ESRC from 1995–2001, comprising 22 linked projects researching various aspects of children’s social lives.

⁹¹Pleasence et al, above n 32. They report at p 60 that ‘while modest levels of public understanding were evident in respect of rented housing (71% correct) and employment law (66% correct), profound ignorance was observed in the case of consumer law’.

⁹²Pleasence et al, above n 85.

⁹³*Ibid.*

development of PLE resources for children, designed to increase their legal knowledge and, more broadly, to develop their legal capabilities. However, recognising that the notion of children possessing legal capability remains both contentious and undefined, we consider that two significant bodies of work must be undertaken prior to this. First, we intend to interrogate the bio-social divide that is presently embodied in the concept of the legally capable child, and to find ways in which theories relating to the developmental and the sociological aspects of childhood can both be drawn upon, with neither entirely dismissing the other, in an attempt to formulate a robust and comprehensive theory of children's legal capability. This investigation will be augmented and informed through the analysis and synthesis of the many other theories from multiple disciplines that are relevant yet hitherto unexplored collectively and/or individually in this context.⁹⁴ Secondly, drawing on this theoretical model and recognising that legal knowledge is necessary to but insufficient for legal capability, we intend to carry out further interdisciplinary, empirical work with children to ascertain the attributes that, together with legal knowledge, constitute legal capability for children across a wide range of ages and abilities.⁹⁵

Finally, in the light of the significant attitudinal barriers that currently exist, we anticipate that even strongly theorised PLE interventions for children will not be welcomed by all adults. Therefore we consider it necessary to design at least some resources for children that do not require adult facilitation. Digital gaming of course offers an ideal platform to achieve this and the *Law in Children's Lives* project has taken place within a wider theory of change that has as one of its final aims the development of a digital game that children can play in order to assess and improve their levels of legal understanding. It is intended that this game will be openly available and accessible to all children and designed to be compatible with multiple UK and non-UK platforms.

⁹⁴As well as law, sociology and developmental psychology, relevant disciplines include education, information science, human geography, development studies, childhood studies and economics.

⁹⁵Alongside this we will seek to formulate a robust and holistic measurement of legal capability among children, incorporating at this stage a realist evaluation method that both requires and allows for an active and ongoing assessment of the effectiveness of this tool. See R Pawson and N Tilley *Realistic Evaluation* (London: Sage Publications, 1997).