Introduction

As noted throughout this book, professionals and bureaucrats have traditionally held the balance of power in educational decision-making in the field of special and additional support needs. Reforms of the 1990s and 2000s in England and Scotland tilted the balance of power away from local authority officers and professionals, justifying this shift through the rhetoric of parental empowerment. Research at the time showed that the major beneficiaries were families who could mobilise sufficient economic, social and cultural resources to navigate the system successfully (Weedon and Riddell 2009; Riddell et al. 2010). Until recently, little attention has been paid to the rights of children and young people, who have been largely excluded from educational decision-making (Harris 2009). However, over the last few years, the independent rights of children and young people have been boosted significantly by international treaties and domestic legislation, particularly the Children and Families Act 2014 and the Education (Scotland) Act 2016. These measures have ostensibly empowered young people and children as independent actors, with rights
to participate in all aspects of their education in accordance with their age and maturity.

In the sections below, I return to the central question considered in this book concerning the extent to which the foregrounding of children’s human rights has had a positive impact on their experiences and outcomes in the real world of schools and classrooms. As the evidence presented in the preceding chapters suggests, rather than simply relying on the rhetorical flourishes of official policy discourse, it is essential to examine the material consequences of the enacted policy, including its varying impact on different social groups. In this concluding chapter, I begin with a summary of the evidence discussed in different chapters, before considering the wider issues and dilemmas arising from the foregrounding of children’s rights in special and additional support needs.

Overview of the Book’s Central Messages

Chapter 1 investigated the emergence of service user autonomy as a central precept within public policy decision-making. The concept of autonomy, when applied to children and young people, has the potential to raise awareness of their unconditional human rights, the first step to ensuring that these rights are enacted in practice. At the same time, the chapter highlighted the dysphoric aspects of focusing on individual autonomy as the overriding principle in decision-making, since this may lead to undue emphasis on the responsibility of the individual child or young person for their own wellbeing, rather than seeing this as a collective societal obligation. At national and local levels, the state clearly has a key role to play as the ultimate arbiter of fairness in resource distribution, and this may be forgotten if individuals are left to fend for themselves, in competition with their neighbours for privileged access to resources.

In Chap. 2, an overview was provided of the mixed methods research design adopted in the study, with policy and administrative data providing the backcloth against which the fine-grained qualitative data were placed and interpreted. Chapter 3 summarised the policy discourses informing the development of special and inclusive education, further discussed in Chap. 5 with reference to key informants’ accounts. Early
developments placed power in the hands of professionals and bureau-
crats, with scant regard to the views and wishes of parents and children.
The discourses underpinning this division of power were scarcely chal-
lenged until the later decades of the twentieth century, when Warnock’s
concerns with parental partnership emerged. The growth of neo-liberalism
in the 1980s led to an increased emphasis on consumer empowerment.
In the field of education, parental choice was harnessed to drive the devel-
opment of a marketised system but this consumerist version of rights
allowed little space for the independent rights of children and young
people. It is only very recently that international treaties and domestic
legislation have focused attention on the autonomous rights of children
and young people. Chapter 3 concluded by considering the opportuni-
ties and challenges emerging from the new children’s rights agenda.

The quantitative data presented in Chap. 4 provided an overview of
the social characteristics of those with special and additional support
needs and the categories employed in their identification, focusing on
disproportionalities related to social deprivation, gender and ethnicity.
In England and Scotland, the new rights regime does not appear to have
altered familiar patterns, with stigmatising labels disproportionately
applied to boys from socially deprived neighbourhoods. Additional
analysis of Scottish data suggested that those with ASN from more
deprived neighbourhoods were less likely to receive a statutory support
plan compared with those from less deprived areas. Since statutory sup-
port plans underpin rights of review and redress, this social inequality in
their allocation may have consequences in terms of reinforcing dispari-
ties in resource distribution. The analysis of administrative data also
informed the case study sampling framework. Children and young peo-
ple were selected to reflect the characteristics of the wider special educa-
tional needs/additional support needs (SEN/ASN) population in
relation to their principal difficulty, level of social deprivation, gender
and ethnicity.

The case study data in Chaps. 6, 7, 8, 9 and 10 highlighted the impor-
tance of social actors’ perceptions, which both reflect and shape the con-
tours of the material world. Evidence from the case studies illustrates the
way in which lives are influenced by powerful structural factors, but these
factors are not rigidly deterministic. These chapters address children and
young people’s involvement in everyday classroom decision-making, as well as their participation in representative bodies, educational planning, school choice and dispute resolution. In all of these areas, clear patterns of inequality emerged. Those with more significant difficulties were less likely to be involved in quotidian decisions on school routines, as well as major decisions with implications for future life changes, such as the handling of disputes and school choice. Across all of these areas, social deprivation played a significant role in limiting opportunities for children and young people to exercise their rights. Parents’ and children’s experiences and opportunities were clearly intertwined, since parents living with social disadvantage frequently experienced stigma and disrespect, limiting their efficacy. By way of contrast, those in more advantaged circumstances were better able to access information about their rights, use an appropriate linguistic register when dealing with professionals and have the financial resources to fund legal support. This, of course, does not mean that middle-class families always succeeded in getting improved provision, and they often had to engage in protracted, expensive and energy-sapping struggles with schools and local authorities. Care experienced children and young people, lacking parental advocacy, were the most disadvantaged in terms of using their rights. Identified by the Scottish Government as the group most likely to benefit from the new children’s rights agenda, the evidence suggests that, despite the funding of additional advocacy services, this group is still disenfranchised.

Cross-cutting Tensions and Dilemmas

In this final section, I review some outstanding issues and dilemmas, focusing on central emergent themes.

Autonomy, Capacity and the Conditional Nature of Children’s Rights

There continue to be major debates about whether children should be regarded as autonomous actors with full rights of participation and
redress. While some sociologists of childhood emphasise children’s right to self-determination (Scott et al. 1998), most of those working in the field of children’s rights suggest there is a need to recognise the ways in which children’s autonomy differs from that of adults. Hollingsworth (2013) points out that legally, children are not considered to be fully autonomous rights holders, because childhood is regarded as a time for gathering and developing the assets necessary for full autonomy. She argues that children should be regarded as having rights of a foundational nature, acknowledging their status as rights bearers, while simultaneously recognising their need to be treated differently from adults. In education, the idea of foundational rights may be used to reinforce arguments for children’s involvement in decision-making, while not expecting them to make the type of decisions which might have long-term adverse consequences, such as deciding to opt out of education altogether.

In this study, education professionals revealed their unease about children’s independent rights, suggesting that many children with special and additional support needs may lack the capacity and maturity to make independent decisions. Teachers tended to believe that children and young people may be unduly influenced by their parents, and may often simply repeat their parents’ opinions. Conversely, there were fears that children and young people might exert undue influence over the education system, for example, by abusing their right to make a tribunal reference in Scotland. Both of these views are reflected in the words of this Sea City headteacher:

We have an ongoing and live issue with a young person who’s fourteen who has exercised this right [to make a reference to the tribunal]. I’m not so sure that it’s not under the direction of the parent who’s very critical of not just this school but critical of the city, of CAMHS, of Police Scotland, of the Educational Psychology Department. Of basically every professional who doesn’t work the way that he would like them to work. So this system, like any system, is open to abuse. What’s happening here is that we have a young person who doesn’t have the capacity. She is a highly autistic young person. She doesn’t have the capacity to … maybe exercise the degree of skill that’s required to, to do this properly and fairly. And I think it’s been managed by her parent … There have been fifteen different aspects of chal-
lenge via a lawyer. And the city have addressed these fifteen. One was an exclusion from the school which was a very, very sad episode but entirely necessary at the time for a range of reasons. But that has been contested and overturned. The level of support in the school has been challenged. And I have some sympathy because most of the support was coming from Pupil Support Assistants who I don’t think are necessarily skilled enough to deliver that degree of support. But it’s also, largely I would say, from the young person’s perception. And this is the imponderable and undefinable thing that you could be here forever more. Because this young person believes that we as a school do not act properly on her demands. And often her demands in the view of many adults [are not reasonable]. But when you’ve got a young person who has got significant autism, they have fixations and they are quite clear in their own beliefs. (Head teacher, Sea City High School)

As noted in Chap. 1, the concept of interdependency may be useful in understanding children as social actors rooted within their families and wider social relationships. Cockburn (2013) proposes that the link between rights and autonomy should be severed, with a focus instead on the notion of interdependence, reflecting the reality that at different points in the life cycle, and in different dimensions of life, people both give and receive care. Accordingly, the distinction between autonomous beings and dependent beings is artificial. While individuals need to exercise autonomy as far as they are able, there remains a strong role for the state in ensuring that adequate services are available to all. This conceptualisation avoids setting up a false dichotomy between the child’s views and the parents’ views, recognising parents’ role as children’s principal advocates who gradually move into a supportive but less directive role as the child matures. External advocates clearly have a role to play too in terms of helping the child see themselves as separate from, but connected to, their parents and carers. Evidence presented in this book suggests that children and young people who are able to participate effectively in educational decision-making are almost always surrounded by a circle of supporters who have their best interests at heart.
The Voice of the Child: A Redundant Concept?

As noted throughout this book, Article 12 of the UN Convention on the Rights of the Child, replicated in Article 7.3 of the UN Convention on the Rights of Disabled Persons, sets a basic standard for the realisation of children’s rights. Whenever a child is able to express their views, agencies of the state are required to listen and give due weight to these views in accordance with the age and maturity of the individual child. Despite the centrality of the idea of the voice of the child, the utility of the concept is disputed. Some writers suggest that the idea of the voice of the child needs to be understood in a more nuanced fashion, while others regard the concept as vague and possibly meaningless (for example, see the collection of papers edited by Jackson and Mazzei 2009).

Commenting on the implementation of Article 12, Lundy (2007) argues that, rather than abandoning the idea of the voice of the child, the concept should be viewed as multi-faceted and context-dependent. For their views to be accessed in a meaningful way, the child must have not only the opportunity to express their views but also access to appropriate support, the certainty that the views expressed will be listened to and ultimately acted upon. Lundy (2018) notes that to date much participation by children has been tokenistic and that this has been generally dismissed by children’s rights advocates as fairly worthless. Revisiting these arguments, she concludes that ‘tokenism is sometimes a start’ and that not listening to children’s voices is always wrong—‘a breach of their human rights’. Lundy suggests that whenever attempts are made to seek children’s views, this should be followed up by feedback which is child-friendly, fast and explains how the views expressed will be translated into action. Efforts to capture children’s voices which at first appear to be tokenistic may subsequently result in incremental social change. Tisdall (2008) also commenting on the dangers of tokenism, maintains that there is an urgent need to ensure that the reality of children’s participation in grassroots activities catches up with the rhetoric around the celebration of children’s voices.

What does the evidence presented in this book suggest about the extent to which the views of children and young people are being sought
and implemented? As noted above, professionals were generally enthusiastic about the idea of listening to the voice of the child, but practice on the ground reflected the structural inequalities highlighted throughout the book. More able children with strong parental support were much more likely to have their views taken into account in everyday classroom interactions and welcomed the sense of agency this provided. For example, 14-year-old Ruth, who features in Chap. 6, was able to leave the mainstream class and go to the pupil support base whenever she felt that the noise levels were over-powering, enabling her to participate as fully as possible. Similarly, seven-year-old Sophie enjoyed the freedom to control the way in which she interacted with her classmates, deciding when she wanted help in moving around the school and when she wanted to move her wheelchair independently. By way of contrast, teachers said that they had great difficulty in accessing the views of those with little or no speech, such as Catherine, and had to rely on observing the child’s body language which might be subject to multiple interpretations. Finally, children from socially deprived backgrounds, who were disproportionately identified as having behavioural difficulties, were less likely to have their views listened to or acted upon. Negative labels were readily applied to parents and children in this group. For example, Colin, whose case is discussed in Chap. 10, was characterised as a ‘work avoider’ and his mother’s concerns were dismissed on the grounds that she herself had learning difficulties. Care experienced children, such as Nathalie and Noah, discussed in Chap. 9, were also likely to have their views ignored. Nathalie, removed from an abusive family, was labelled as sexually manipulative and professionals appeared reluctant to listen to her opinions.

On a more positive note, Chap. 7 highlights the importance of representative bodies as a means of enhancing children’s human rights. Although questions have been asked about the utility of school councils on the grounds that they provide restricted opportunities for pupil consultation, children in this study were positive about participating in such bodies and did not regard them as merely tokenistic. Young people in England, such as Jacob and James, who participated in local authority representative bodies, were also positive about their experiences, describing the way in which their horizons had widened as a result. They could point to concrete improvements in local authority practice resulting from
the representation of young people’s views, such as the production of an accessible website. However, the support of voluntary organisations such as Barnardo’s was often crucial to young people’s participation.

The damaging consequences of enforced participation were also a prominent theme throughout the book. In Chap. 9, Claire describes her feelings of humiliation at an exclusions appeal hearing, where she felt at the mercy of adults in positions of power:

The new headmistress. I remember her sat there smiling whilst I was crying my eyes out. I’ll never forget that. They were just trying to make out as if I was just this massive monster.

They’re just acting as if I’m, you know, an axe murderer or something. Like, I was only a fourteen year old girl at the time.

Lizzie, described in Chap. 10, decided not to use her right to give evidence directly at a tribunal hearing because of the stress involved, and in Chap. 8, David’s mother spoke of her son’s right to opt out of planning meetings:

David is not keen to be involved in meetings. And whether that’s because he doesn’t have the capacity to understand what the meetings are about and … the relevance of him being there. And I personally don’t think he would have gained much from being involved in something he didn’t want to be involved in. And whenever we have a meeting in school I always give him the option to come. And he’s quite adamant he doesn’t want to come which is him exercising his right, I suppose. (David’s mother)

To summarise, listening to children’s views and acting on them where appropriate is a cornerstone of children’s human rights. Educational professionals are ostensibly enthusiastic about this agenda, however, the experiences described in this book point to major inequalities associated with social deprivation, looked after status and type of disability. Furthermore, while many children and young people welcome formal and informal opportunities to be involved in decision-making, an expectation that the child will always participate may be oppressive, particularly when the terms of the encounter are determined by adults. Finally,
children and young people may be involved in everyday classroom decision-making, where the stakes are relatively low but are generally excluded from major decisions such as whether to make a placing request or use a formal mechanism to challenge a local authority decision. Rather than rejecting the concept of pupil voice altogether, there is clearly a need for further discussion of the use and abuse of pupil voice and the power relations surrounding it.

**Tensions Between Equality and Rights**

As I have indicated throughout the book, there are ongoing debates on the relative emphasis which should be placed on individual and social rights. According to Cockburn (2013), before the advent of the welfare state, the liberal rights agenda focused on ‘the autonomous individual freely operating in the world without constraint’ (Cockburn 2013, p. 14). He maintained that liberal welfare states such as the UK tend to ‘respect the autonomy of individuals contingent on their ability to be self-sufficient’ (Cockburn 2013, p. 14). This version of rights and citizenship, he suggests, tends to exclude children, and disabled children in particular, because it ‘places children as an ‘other’ that is defined entirely as linked, dependent, reliant and constantly under the influences of other people’ (Cockburn 2013, p. 14).

Children and young have been granted significant additional legal rights to challenge local authority provision, and are no longer entirely dependent on parents acting on their behalf. The critical question is the extent to which all children are able to use these rights, recognising that children are certainly not a homogeneous group. Like adults, children’s ability to access their rights is strongly influenced by a range of variables including social class, disability, gender, ethnicity and age. It is clearly counter-productive to boost children’s legal rights if, at exactly the same time, resources are being withdrawn from education and social welfare. Following the financial crash of 2008, major reductions in welfare have had a particularly adverse effect on families at the social margins reliant on insecure employment and uncertain benefit payments (Toynbee and Walker 2020). Further austerity is likely to follow the 2020 coronavirus
pandemic. As the evidence presented in this book underlines, the ability to use existing rights is contingent on social class, but unless rights are usable in practice by all social groups, we should question their value.

Parents in this study have a strong sense of the social injustices involved in determining which families are able to use their rights in practice. Jeanette’s parents, for example, living in a socially advantaged part of Sea City, believe that the system only works because middle-class families get more than their share of resources, leaving others to manage with what remains:

Well I do feel that, yes, we’ve got some advantages. I mean that doesn’t make us any better or worse than anybody else. It’s just that’s been the luck of the draw for us. Christine has done some amazing research and she’s got a network of friends there that help her and she helps them. I’m not wanting to speak out of turn about any other families, but some other families have got a hundred other challenges to deal with at the same time. I mean they might be in the benefit system. They might have physical disabilities in the family and stuff like that. And to be honest, you just think how difficult it is for them. I mean we’ve got a lot of advantages that some other families don’t have. And therefore they don’t get anywhere near the clarity of what’s possible. Or they’ll just take it as being, ‘Oh well that’s what we got told. That’s what we got told so that must be what it is’. The sad fact is that because some families don’t get what they should be getting in terms of rights or in terms of entitlements, that’s how the system balances itself. The sad fact is that if everybody got what they should be getting, the whole thing would just implode. (Jeanette’s father)

In order to address these injustices, there is a need to reconcile individual and collective versions of children’s human rights, so that equalising opportunities to exercise rights is prioritised. This will involve a much greater focus on addressing the disrespect which is felt by many children and parents from socially deprived backgrounds, channelling resources into additional advocacy provision and ensuring that, if some families choose not to engage with the education system or are unable to do so, children do not suffer as a result.
Devolution and Universalism

A major concern of this book is to compare the rights regimes operating in England and Scotland. There is something of a paradox, in that stronger children’s rights legislation in Scotland compared with England has not obviously led to a greater degree of empowerment for children and young people. This is at least in part due to the existence of a more tightly regulated planning system in England leading to greater participation by children and young people in formal processes. Scotland, by way of contrast, has adopted a laissez-faire approach to educational planning and the use of statutory support plans, so that these are only provided if parents are sufficiently insistent.

By way of contrast, the increased demand for local authority assessments in England and the growing use of Education, Health and Care Plans means that children and young people are much more likely to be involved in formal planning processes. Furthermore, in England compared with Scotland, much greater use is made of formal dispute resolution routes, calling for the active engagement of schools and local authorities with family concerns. Children’s engagement with these processes may be tokenistic, but systems which require the reporting of the child’s views have the potential to promote positive change.

Overall, the growing divergence of education systems in England and Scotland following devolution could lead to the emergence of growing geographical inequalities between the two jurisdictions. At the same time, it opens up opportunities for natural experiments in relation to the efficacy of different approaches to education policy which may be further developed in the future.

Conclusion

Attempts to advance the children’s human rights agenda over the past decade have coincided with significant cuts to education budgets. Britton et al. (2019) note that total school spending per pupil fell by 8% in real terms between 2009–2010 and 2019–2020 in England and by 2% in
Scotland. The average education spend per pupil is more generous in Scotland than in England (£6,600 in Scotland as opposed to £6,000 in England). It is argued by Britton et al. that the harsher cuts to educational spending in England reflect large increases in pupil numbers, compared with a relatively static child population in Scotland. It is clearly very difficult to improve the position of children with special and additional support needs at a time of shrinking resources, and this has led to disputes focusing on resource issues rather than broader issues of principle. Growing public concern about the funding of SEN and ASN systems has been highlighted in recent inquiries conducted by Education Committees at Westminster and Holyrood (Scottish Parliament Education and Skills Committee 2017; House of Commons Education Committee 2019). Despite evidence of the ongoing dissatisfaction of a significant proportion of parents in both jurisdictions, these inquiries tend to exonerate the SEN/ASN systems, while blaming local authorities for mal-administration.

Finally, the Covid-19 pandemic and its aftermath pose significant challenges for children’s human rights. In both England and Scotland, emergency legislation passed in March 2020 effectively suspended local authority duties to educate children and parents’ responsibility to ensure that their children are educated. The full impact of school closures on children’s educational development and wider wellbeing is likely to be severe and enduring, and debates around the epidemic have paid little attention to children’s rights. In the months and years ahead, it will be vital to ensure that attention to children’s rights is not occluded by wider social and economic concerns.

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