



Understanding

**Youth**

**Work**

**Law**

**Brian P. McGinley**



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This book is dedicated to:

My early educators and mentors for instilling the self-belief and drawing out the intellectual curiosity; my family for their continuous encouragement and love; my colleagues for helping to create the space to write; my publishers for their patience and guidance.

# ABOUT THE AUTHOR

Brian McGinley is a lecturer in Community Education within the School of Social Sciences at the University of Strathclyde. Prior to taking up his full-time academic career in 2005, Brian was a senior officer in a Scottish Local Authority with responsibility for developing inter-organisational partnerships under the umbrella of Community Planning. Throughout his twenty-one years in practice, he built up substantial experience at operational, middle and senior management levels, directing inter-disciplinary teams and delivering multi-dimensional services. These experiences have enabled him to carve out an academic profile through regular research, teaching, learning and writing.

Brian is also a Director of the Scottish Centre for Youth Work Studies and Editor of the *International Journal of Youth Work*. He is also an elected politician in South Ayrshire and is chair of the council's Scrutiny and Governance Management Panel. He was a member of Strathclyde Police Authority (2102–13) which is a tripartite governance arrangement with Scottish Ministers and the Chief Constable to execute statutory functions. Brian is currently a substitute member of Strathclyde Passenger Transport, a member of the Ayrshire Educational Trust and a Fellow of Higher Education Academy (HEA).

Brian's main research interests include investigating and substantiating different forms of community-based practice, especially youth work, with an emphasis on the learning process in informal educational settings. A main thread of his research has concentrated on the importance of the ethical learning relationship within informal educational settings to uncover the learners' voice and identify the pedagogical features that are valued most. His research also identifies the use of practitioners' reflective, personal and public voice as a way of encouraging improvements in teaching practice.

Another key feature of his research is exploring the extent to which the political and educational policy context in the UK continues to demand constant change which increasingly requires youth workers to be legally and politically aware, up to date and critically reflective. He also researches the effectiveness of policy implementation in establishing appropriate spaces and structures for meaningful and critical participation to overcome exclusion and help people to make a useful contribution to society.

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# PART 1

## THE PRINCIPLE OF LAW AND YOUTH WORK



# 1

## LAW, YOUTH WORK AND ETHICS

### Chapter Aims

- Introduce the notion of law, youth work practice and ethics
- Discuss the contested nature and different dimensions of youth work
- Demonstrate an understanding of the social and legal interpretation of childhood
- Outline the legal context and operational guidance for the enactment of police powers
- Identify the age restrictions placed on children and young people
- Detail the importance of personal and professional values to developing ethical practice

### INTRODUCTION

In simple terms, laws are the rules devised by government and enforced by an administration of justice to keep public order, outline and protect individual freedoms, regulate relationships, detail acceptable standards, and arbitrate on legal disputes. Although there are international laws, which are applicable to all countries in the world, each nation state devises its own laws which are socially and culturally bound. In Europe, for example, citizens are guaranteed the right of liberty, freedom of movement and freedom from discrimination. In England and Wales, there are different classifications of laws: international and national; public (including constitutional, administrative and criminal); and private/civil (including contract, family law, company law and tort).

### THE CONNECTION BETWEEN LAW AND YOUTH WORK

At first glance, it may be difficult to see the connection between law and youth work practice other than the need for this social practice to comply with the law

of the land in which it operates. However, there is another connection in that both practices provide a distinct societal function which operates along the same continuum. The main aim of the law is to provide for human protection while youth work exists to advocate for human development. The former practice, given its protective task, provides a framework and view that require both case law and new legislation to reflect current and emerging social circumstances, whereas the latter operates best in a developmental creative space which necessarily grapples with the real-life everyday circumstances of the young people it serves. Both practices optimally serve society, in the service of justice and social justice, and work best together when the rules are enriched and integrated with a human developmental understanding.

However, for our purpose here, the law provides an operational context for professional practice with young people. Although youth work is a non-statutory service, it is regulated and directed by a range of legislation, government reports and policies. Work with young people is subject to international and UK national laws, European legislation and policy directives, and shaped by organisational policies and procedures. While all laws will be relevant in particular situations, the main legislative focus for work with young people includes the areas of human rights, social welfare, youth justice, organisational law, management systems, and operational practice. These laws aim to ensure that the right attitudes, protections and procedures are built into the operational planning and practice for safe and enjoyable learning. However, it is also worth noting that the increase in recent legislation around children and young people is, at least in part, due to western societies becoming more risk averse and further aware of people's rights that are inherent in their understanding of citizenship in a particular society. It is also the case that laws do not always provide sufficient guidance when the principles are translated into reality through youth work practice.

## SOCIAL CONTEXT FOR YOUTH WORK AND LAW

It could be asserted that a main rationale for the existence of youth work is that it is a practice which is aimed at a group of people who do not yet have full citizen rights and who need time and space with a significant adult, other than their parents, in which to explore their circumstances and come to a fuller understanding of themselves within the society in which they live. It is also a period of life where young people experience difference and seek the company of peers (Savage, 2007). However, in legal terms, there is not a clear age at which childhood ends and adulthood begins. In fact the laws concerning the rights and responsibilities of children and young people 'present a complex array of definitions which have been developed by the different institutions of the state, for different purposes and at different moments in history' (Cole, 1995: 7).

## RESTRICTIONS BY AGE

In spite of the law's increasing recognition of the rights of children over the past fifty years or more, all people under the age of 18 years are legally regarded as children and are restricted by age in the type of actions that they can take. However, discriminating against adults, post 18, on the basis of age restrictions is prohibited by law except in defined circumstances: 'a proportionate means of achieving a legitimate aim' (Employment Equality (Age) Regulations 2006). However, it is still deemed appropriate by the state to pay a young person, over 16, less money than the minimum wage for adults and to receive no or reduced levels of social security rates when unemployed.

## INCREASED LEGISLATION

In addition, over the past thirty years there has been a significant increase in specific types of legislation aimed at children: for example; the Children Act 1989, 2004; the Protection of Children Act 1999; the Crime and Disorder Act 1998; and the Youth Justice & Criminal Evidence Act 1999. This means that there is increased protection for children's rights and stricter requirements on local and other authorities to ensure that they are working together and sharing information for the protection of everyone's rights. In terms of law enforcement, parliament also provides guidance on how members of the public should be treated when an investigation is taking place to determine if a law has been broken.

## LANGUAGE USED

At this point, it may be useful to point out that the language we adopt to describe what youth workers do reveals a set of expectations and assumptions which sets the operational position and determines the extent to which we can understand another's view and practice. This social discourse also affects the ability to reach out and effectively enter into dialogue with the other person and people. This interactive practice is inevitably framed within a societal framework which shapes the values, intentions and judgements that construct a legal, ethical and purposeful practice. It is useful to realise that language is not neutral and that it can be used to maintain unequal power relationships which will be to the detriment or benefit of particular groups (Spender, 1980).

It is important at the outset to be clear that while we would seek practice simplicity and clarity, the operational reality is often more opaque, diverse and complex. It is only by recognising the importance of personal and social development through reading, thinking, acting, reflecting and believing that we may develop experience, further understanding and a useful interpretation of what is perceivably occurring in practice.



## Reflective Challenge – Questions

- Do you think that the law is supportive of children and young people?
- With increased legislation, nationally and internationally, over the past fifty years, do you think that children and young people are better protected now than in the past?

## Comment

It is clear to me that young people are not prioritised in terms of legislation. Much of the law that related directly to young people in particular is now outdated. Young people would especially benefit from a fresh look at legislation around their status and rights through the development of laws based on capacity rather than age. Obviously, for children, it is vital that they are protected from harm, but evidence suggests that these laws are usually retrospectively based on reviews of cases and that safeguarding policies and procedures are not as effective as they could be.

## WHAT IS YOUTH WORK?

In this section the first question which we may usefully consider is this: what is youth work? The answer to this important question will allow us to identify to what we are referring and will provide a framework for our discussion throughout the book. Unfortunately or fortunately, depending on how you view it, there are many different definitions and explanations of what constitutes the practice of youth work. This could be regarded as unfortunate if you are looking for a simple operational definition that will provide a security blanket for practice. On the other hand, you may see this as fortunate if you are a youth worker who finds pre-determined definitions restrictive and is liberated by defining the practice through creative meaningful interactions with young people. However, in spite of your perspective and preference there is an operational context to working with young people which is influenced by the current, dominant views of adults in society as expressed through laws, policies, and acceptable ethical judgements.

## DIFFERENT PERSPECTIVES

The nature, extent and purpose of youth work have long been debated and rightly so, because at its best it is a dynamic developmental practice which is both highly disciplined and flexible in the moment. It is a practice which is defined by historical traditions and through legal, social, ethical, economic and political demands (Jeffs and Smith, 2010: 1–3) that delineate the key elements which define youth work: voluntary participation; education and welfare; young people; association, relationship and community; and being friendly, accessible and responsive while acting with integrity. Spence (2006: 48) suggests that youth work has a ‘particular set of difficulties for the status, visibility and naming of the reality of youth practice’. Martin