

Making Inclusion Happen Podcast – Episode 4: Do the rights of the many outweigh the rights of the few?

With Associate Professor Jenna Gillett-Swan

Haley: Welcome to Making Inclusion Happen, A podcast that opens up conversations about what genuine inclusive education is and is not, and what we can do to make inclusive education a reality. This week I'm speaking with C4IE centre member and Health and Well-being program co-leader, Associate Professor Jenna Gillett-Swan. Jenna began her career as a classroom teacher, which is when she became interested in student rights, participation and voice. Welcome Jenna.

Jenna: Thanks Hayley, Lovely to be here.

It's great to have you. I'm really looking forward to this conversation. You've been doing some really kind of frontline work around children and participatory rights, and so I'm super excited for our listeners to hear some of your thoughts today and unpacking some of the really, really high-quality publications that you've had out in the last few years. We'll be sure to share those in the show notes so people can access the full publications.

Jenna: That'd be great, thanks Hayley.

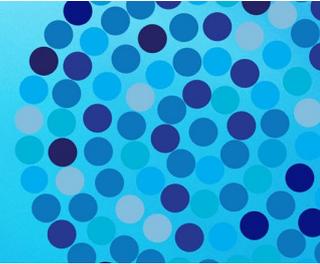
Haley: This podcast is a place where we think and talk about what we need to do to make inclusion happen. The flip side of inclusion is exclusion, but it gets less attention in education policy and it certainly isn't explicitly stitched into the inclusive education policy statements. Why do you think that is?

Jenna: What a question to start with. Wow! Well, there are so many different elements I think that feed into that. But I'll talk most specifically in relation to perhaps the visibility. So, once exclusion happens, particularly if we look at this from a rights-based perspective – which I think you're going to ask me more about as we move throughout this discussion today – once exclusion happens, it's kind of out of sight, out of mind. And so, I think perhaps that might be one of the reasons why it's less present and less evident in policy. Because when we look at inclusion, it's about what do we do to make sure that we are including everybody. And there are tangible, explicit reminders about when that's not occurring or not occurring to the same degree that it should be.

Haley: What I'm hearing is you make a really good, point when students are included and we're working towards inclusion. Things are taking place, ideally, to be wrapping around the child to support their inclusion. But when students are being excluded, It's a very different situation.

Jenna: That's exactly right, Haley. And one of the things that we talked about in the paper, *Children classrooms and challenging behaviour: do the rights of the many outweigh the rights of the few?* is that in approaches that do that when responding to, for example, rights conflicts or rights tensions in education, all it does is it really removes or moves the – inverted commas – “problem” from where it is being experienced by the young person or the school or whomever to another part of the education system, or to another school or somewhere else. It doesn't actually address the root things that are causing whatever it is to be an issue in the first place. And I'm sure it's probably an issue from multiple people's perspectives. And I'm sure many would benefit from being able to rectify this.

Haley: Absolutely. So it's almost that the systems that are put in place to support inclusion break down and thereby the student may be excluded. And then it doesn't actually resolve those pre-existing functions that hadn't been taking place. Interesting. Alright, so on the question of exclusion, there's a

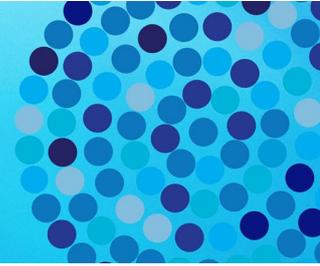


common theme in statements justifying the practice, one of which is, “what about the other 29?” So, the subtext is that their right to learn is being impacted by inclusion. And that the right of the 29 collectively outweighs the right of the one to be included. So, do the rights of the many outweigh the rights of the few?

Jenna: That's a great question, Haley. And It's not quite as simple as there's a one-size-fits-all answer to this. And there are many things that come into play, which is what makes this so complex. Not only are there many different, many/few type instances that might occur in an education context, but their resolution also might end up being different or, or circumstances that might seem very similar on the outset might have different outcomes. So, I guess the first point that I'd want to clarify in relation to that many/few positioning is that a greater number of people involved does not strengthen their claim for rights. So that means that there are individual rights holders here, whether that's the many, that should be considered as 29 in this instance, 29 individual rights holders, each with individual rights claims, as well as the individual or the few, as well as the others that are involved. So, teachers, for example, or parents. There will be a number of different people who all have rights in any given many/few situation. And that's where a rights-based approach to resolving potential conflicts or tensions in rights, in education is really valuable because then it gives you the opportunity to really look at what's in play and what's at stake, and what are really the rights issues and what are not.

In the paper, we use the example of a child with disability whose behaviour is disrupting the class. And the reason why we chose that is because often when teachers, parents, even students, sometimes, talk to us about possible rights tensions, this is one of the most frequent examples that come up. So, we thought it would be something that people would really like to know. What are some of the rights in play here and what's the process for potentially taking a rights-based approach to resolving that? So, if we take that example of the child with disability whose behaviour is disrupting the class, some of the rights that could be said to be at stake for that individual would be: the right to inclusive education, so through Article 24 of the CRPD, article 28 and Article 29 of the Convention on the Rights of the Child or CRC; the right to be protected from harm, not to be subjected to inhumane or degrading treatment; the best interests of the child being the primary consideration; the right to non-discrimination; and that their views are given due weight. When we then look at identifying the rights at stake for their peers, keeping in mind that a greater number of people making these rights claims does not increase the power of those claims – so having 29 people making a rights claim does not make the claim 29 times more powerful – so, we're looking at 29 individual claims, rather than it being to a greater power. So, some of the rights at stake generally for their peers, might be also the right to education; the right to be protected from harm; the best interests being the primary consideration; and also, for their views to be given due weight. One of the things that we have tended to find is that young people themselves aren't consulted or involved when it comes to potential conflicts of rights in schools. So, even before it gets to the point of making a potential decision around whose rights are restricted or not, or whose rights are provided, actually seeking the perspectives of young people around whatever it is that's at the centre of this conversation to do with rights tensions is valuable and also a part of all the children's rights. So, we give an example again in the paper that possibly what seen as an issue or a potential restriction on others' right to learn might actually be a welcome distraction. So even though one person, in this instance, perhaps the teacher, views this rights tension in one way, it might actually not be viewed the same way by the students who are in theory experiencing this impact on their right to education.

Haley: So then, does that mean that if problem-solving approach to unpicking these ideas of competing rights should take place, is that a more proactive approach? And can that be more helpful to educators that might find themselves trying to make this balance of the rights of the many versus the rights of the few.



Jenna: So, one of the things that I think is quite interesting when it comes to Article 12 in relation to young people's views being sought and given due weight, is that in practice, often it happens for things that are safer. So when it comes to potential conflicts and tensions of rights, this is possibly less of a safe area from the perspective of those doing the eliciting of the views. But I do wonder whether or not some of these could be resolved before it even gets to the point of considering rights, tensions, or someone's right to education potentially being limited or denied or impacted in any way. If we just talked to all of the young people involved, not meaning make it a class discussion or anything by any means, but looking at what one person positions as an issue or problem and seeing it from multiple perspectives. Because it might actually be the case that this could be resolved quite easily without actually going down the route of somebody having to have potential restrictions placed on their education. Or alternatively for others to have to compromise in a way that they actually don't see themselves as a compromise.

Haley: It sounds like what you're saying is that sometimes kids have ideas about things that we might not have come up with as adults. And so just asking them as a good place to start.

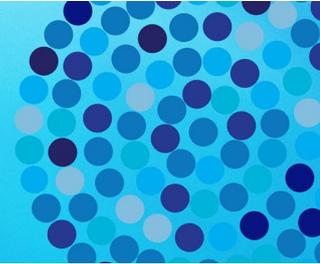
Jenna: Absolutely. And they might experience things differently to the way that we do. How young people experience things might be different to how adults or even other young people experience things. So, what some might see as an issue, whether or not it's the adult or a parent or another child, might not actually be seen as an issue by others. And so, in terms of obviously ensuring that we're respecting child views and giving everyone's views due weight, getting the views on these issues at the centre of possible rights tensions before it even gets to that point could be a positive and proactive step in the right direction to actually diffusing a situation before it even gets to the point where it becomes a rights conflict.

Haley: Okay. So, when you speak to rights issues, can you tell me a bit more about that?

Jenna: When we talk about possible rights issues or rights tensions in education, there are multiple ways that this can play out. In the paper that we mentioned earlier, we use the example of a child exhibiting challenging behaviour and then add on the additional dimension of, what if that child that is exhibiting the challenging behaviour also has a disability? Because then there are other international human rights treaties that come into play into these rights considerations. There are a number of ways that rights tensions and rights conflicts can play out in education. And it's been really interesting when I have these sorts of conversations with people because things that they might not have even thought of as rights issues or potential rights issues often come up and then they might think about things differently. So, this could even be things to do with curriculum choices and reflecting certain beliefs or not reflecting certain beliefs. It could be even to do with mandatory vaccinations or compulsory vaccinations in order to have school attendance. Obviously, in the current climate, this is quite topical. And it could also be the number of students that belong to a culturally and linguistically diverse background and how many students are required before they have the right to be educated in their own language.

So, these are some of the tensions that might be present or exist, as well as obviously, there are the ones that we explore in the paper, such as children exhibiting challenging behaviour or to do with inclusion of children with disability in mainstream education or in different educational contexts.

Haley: So, I'm thinking about situations that just pop up in, you know, barbecue conversation. And someone might say, we're talking about their child and say, "Oh, we've got this situation and there's a child in the class and they're really disruptive and my child, it's impacting their learning." How do we conceptualise those kinds of anecdotes and think about them through that rights lens?



Jenna: So, I think the first thing to remember is that all the children in that classroom have the same right to education. The right to education is more than just the delivery or the imparting of knowledge. So, there's the content side of things and the learning aspects as well. All children really have the right to enjoy all aspects of that. For children with disability, for example, they also have the right to an inclusive education, which comes with it, several other considerations in terms of ensuring that that right to inclusive education is actually provided to the children in the classroom.

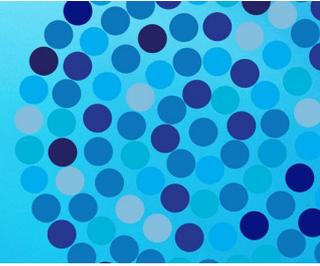
Similarly, when we're looking at the different rights at play, the different claims to rights may not all necessarily be equal based on these other factors that come into the equation here. So, for example, we might be thinking of it in terms of something called proportionality. So, if one's right to education, if we use this as our example, is impacted or potentially denied based on another right – so, for example, someone's freedom of expression and opinion – we can see that the effect of someone losing their right to education outweighs in many respects in this instance, that other individual's right to freely express themselves in that context or environment. And so, it would be a disproportionate burden on the individual who's losing that right to have that right taken away from them. That is, to have their education taken away from them because it comes into tension with someone else's right.

So, in the model that we propose in the article that we mentioned earlier, it takes us through what a rights-based approach to managing and resolving conflicts of rights in educational contexts goes through. And the first step of that is to identify all the rights at play, all the rights at stake for all of the different stakeholders involved. So that's the child at the centre, the other children in the class, the teacher, whoever else is involved in these, and all of the rights that come into play there. Keeping in mind that it might be drawing upon multiple different international human rights treaties. And so, then, what the right to education looks like for each of the different individuals is rights claims in that situation might actually be different.

Haley: Interesting. So, you alluded there to other people in that situation. And of course, in a classroom there's always a teacher. Another common statement that is often used to justify the exclusion of students is something that might be typically in response to students that are described as disengaged or disruptive. And the statement that often is used is that teachers have a right to teach. So do they?

Jenna: I hear that quite often in a lot of the work that I do in working with teachers and people training to be teachers. That often comes up when we talk about rights and they'll say, "What about my right to teach?" So, at this current point, there is no United Nations Convention on the Rights of Teachers or rights that specifically enshrine a teacher's right to teach. However, teachers do have rights. All humans have human rights. And there are rights associated with work-related provisions. So, for example, for teachers, they have the right to safe and healthy work conditions through the ICSCR. And also the material conditions of teaching staff that are continually improved. When it comes to the argument of, "I have the right to teach, this is my human right to teach." The right, actually, is the child's right, not the teacher's. So, if the teacher does not provide the education to the young person, the right that might be in tension or in breach is actually the child's right to receive the education, rather than the teacher's rights being impacted.

When we were running the paper, we looked at a number of different court cases involving conflicts of rights in education and looked at the decision-making processes that those presiding took, and the rationale and the justification for that. So, what did these decision-makers in the courts bring into the equation and bring into consideration when deciding the outcomes of resolving the different rights tensions that were escalated essentially all the way to be heard in these platforms.



Obviously, one of the tensions when it comes to taking rights-based approaches is that, well, it's international human rights law until it's actually embedded and enshrined in national law, it's not very enforceable. And so that's where one of the tensions arises in relation to the enforceability. Because if the local jurisdictional affordances don't actually support what's enshrined in international human rights law, then there's very little consequence that then comes as a result. I think one of the challenges is in the reticence to actually enshrine the provisions of different international human rights treaties clearly into local domestic law so that it is more enforceable and carries more weight. So, while there are a number of provisions that help to support different stakeholders in different contexts and obviously trying to keep best interests of all of those involved in these potential rights tensions in mind, there is that disconnect, I guess, between what international human rights law positions and what actually happens in practice across multiple levels. One of the difficulties for those working in schools is also that many of them won't have law or legal training. And so then, being essentially asked to make decisions that have significant implications and can be escalated because they are human rights issues is a significant responsibility and often with a lack of support to be able to actually help those that need to make these decisions, make them in a way that is most rights-aligned and really does consider and take into consideration the things that need to be, from a rights-based perspective.

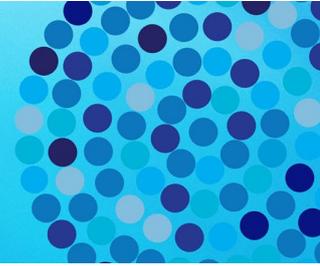
Haley: It does make me feel very lucky that we're here in Queensland because the inclusive education policy in our state does align with the Convention on the Rights of Persons with Disability. So, I guess, would you agree that that helps with that connection between teachers and school leaders, and making those connections back to those international instruments?

Jenna: I think it's a really positive step in the right direction that different educational jurisdictions in Australia are actively incorporating and referencing different international human rights treaties in their policy revisions. So, whether that's with inclusive education or behaviour or a variety of other educational policies that are either newly developed or being revised. So, I think that's a really promising development and I think it really points to the importance that we place on rights both as individuals but also in relation to rights related to education.

Haley: You've done a lot of research with schools with the aim of eliciting student voice as a means to guide inclusive school reform. But you've also made some important observations over time about how student voice is used. So, how should educators engage with students and what's in it for them?

Jenna: Another great question, Haley. One of the most useful frameworks that's actually embedded and used a lot across multiple sectors, not just education, is the Lundy Participation Model, and it's a rights-based model that really makes accessible some of those key aspects to do with ensuring and supporting the participation of children and young people from a rights-based perspective. So, the Lundy Participation Model takes you through the four interrelated elements of space, voice, audience, and influence. And I find this is a really useful way to think about it and almost use it somewhat as a checklist to think about when you are going in and working with children and young people. Or, if you are seeking their views and perspectives on things, that you're actually doing something with it. And both in the literature and in practice, one of the things that I have noticed is that disconnect between the elicitation and the action resulting from that.

One of the things that I'm really finding exciting in relation to student voice, particularly in recent years, is that there seems to be an increased appetite across the board around seeking and eliciting students' perspectives, and really actively trying to embed them in different aspects of everyday school life and education generally in ways that perhaps only a brave few might've attempted before. So, I'm really excited to see some of the work that's happening, definitely, at the local level in that way. And



looking at educators, either by themselves or as part of school teams or with university research teams thinking about possibilities and potential and really extending the way that we think about and utilise and ensure that what students share with us actually results in something, particularly something designed to benefit them.

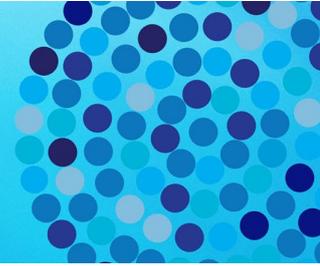
Another thing that I think is really important and a shift is in these multi-stakeholder collaborative partnerships. The opportunity there is to ensure that everybody with a stake in the decision has equal and valued seat at the table, but also the value in listening to one another's perspectives and hearing things from someone else's point of view. I've been lucky enough to be involved in some really transformational research that brings together different stakeholders in the school environment from upper leadership right through to the youngest students in the school, where they work together in multi-stakeholder collaborative partnerships to really elicit school change and looking to ensure that the decisions that are made are really driven by the interests of those who have a stake in the outcome.

Haley: So, it sounds like there definitely is something in this for the adults involved. It's beyond doing it because it feels good. There's obviously positive change that can come. Can you share some examples of that positive change from your research?

Jenna: Absolutely. I mean, all of the adults that I have worked with in student voice initiatives or multi-stakeholder collaborative partnerships have always reflected on some of the personal values and benefits that they've received from it, even in terms of doing things from a different perspective. One example that comes to mind is where we were going over the student feedback in relation to wellbeing provision at this particular school. And we were going over the feedback with a group of school leadership, well-being leadership team, so that involved heads of department, deputy principals well-being coordinators, guidance officers, facilities manager, business manager. So, a variety of different adult stakeholders who each had a different piece of the puzzle to fill in relation to supporting student well-being. And one of the things that was very eye-opening from the perspective of those involved was that disconnect between how they saw something done and what the young people were sharing. So, in particular, they were talking about – the young people were talking about – the availability and accessibility of support services when they needed support. And so, when we unpacked this further, one of the things that was shared from the adult perspective was, well, we have people sitting here almost twiddling their thumbs waiting for students to come and see. So what's the disconnect here? We were able to unpack that further, both with the staff and with the students to find out it wasn't the availability and accessibility in terms of not enough times to be able to go. It was that *where* they had to go to access support, particularly for their mental health and well-being was in the school administration block. And the school administration block is also where they go when there's a negative consequence, so they get suspended or in trouble. And so, from the student's perspective, if they needed help or they needed support, they didn't want to go to the same place where they went to get in trouble. And so simply changing or shifting the view about what that feedback actually was then enabled a really minor change, ultimately, of shifting where students could actually go to access the support, to be able to then better support the staff and the students in supporting student well-being needs in that context.

Haley: Great example. Alright, final question. So, the Centre for Inclusive Education aims to produce high-quality impactful research on matters that affect students in school education, both in Australia and around the world. And with the aim of improving the educational experiences and outcomes of all, but particularly those experiencing marginalisation. So basically, the plan is to change the world. How does your research contribute to that important goal?

Jenna: I think one of the main ways that my research contributes is through the awareness raising. So,



a lot of the time when I talk to people about rights, they had no idea of some of the rights that they actually have themselves, let alone the rights that people they work with might have as well. And so, I think the awareness of, hey, there are these things called Human Rights. Every human being has them and you don't have to do anything at all to get them. Might as well take a look at them and say what's involved. But then thinking more specifically about, what are the implications for that in terms of me and my practice. For educators, that might be your responsibilities and obligations as a duty bearer under respective conventions. So, for example, the Convention on the Rights of the Child. And then also the obligation to ensure and support children in knowing about and learning about their own rights as provided through Article 42 of the Convention on the Rights of the Child. Just the other week, I was working with pre-service teachers around children's rights. And I asked how many of them even knew that this Convention on the Rights of the Child existed. And this particular unit is a first year, first semester unit. So, a lot of the young people who are taking this unit have recently left school. Some of them are under eighteen themselves. And I would say, based on their responses and their visible reactions, some of them were completely unaware that this convention even existed, let alone in some instances still applied to them. It was really eye-opening for them both in terms of where they are as young people themselves, and also in terms of their preparation to become future teachers in knowing and understanding that these rights exist and thinking in practical ways around what those implications are.

Another way that I think my research contributes to these goal is through trying to encourage people to think differently about rights. Usually there are only a couple of reactions that I get when I mention what I do and the types of things that I research. And, particularly, when I mention children in relation to this concept of human rights. So sometimes it's met with a bit of resistance around "children should be seen and not heard", or "children have to be responsible to earn their rights", or "make sure that they know that with rights come responsibilities so until they show that they're responsible, we're not going to even entertain this idea of rights", which of course is very problematic. Or, on the flip side, sometimes it's met with this apprehension of, "Oh my goodness, I feel overwhelmed. There are all these rights I have to know and understand and how do I actually do it?" But I think, actually, rights are really exciting and they should be really empowering both in terms of knowing that we have these wonderful things called rights that are there to support us and others and to help us live the life that we would like to live, the life that we should live. But similarly, I also think it really reinforces the responsibility that all of us have as global citizens to be able to look to support those who might have rights, justices, injustices occurring to them. And for many of us, we'll be in the position where we may not have any really big tensions or conflicts of rights ourselves. So, it's up to us to help, support, empower. Although the word 'empower', we can have a whole other podcast about that! But I think it is up to us to be able to advocate for and support and to help make sure that those for whom their rights might be stifled or breached or not actually afforded, to make sure that we can help support them to be able to make their full claims to the right to which they're entitled.

Haley: Fantastic. Thank you so much, Jenna. That's been a fascinating interview and I'm sure you've really got lots of cogs turning in people's heads. We will make sure that your paper that you've mentioned in this interview is available to folks. And we'll share some of the other eprints that you mentioned around the participatory rights and works you've done in that space. So, thank you so much for your time today. It's been an excellent interview.

Jenna: Thanks, Hayley.