

Book Review

Book Title

Daly, A., (2018). *Children, Autonomy and the Courts: Beyond the Right to be Heard*. Leiden: Brill Nijhoff. 9789004355828

Corresponding author:

Robert Porter, Research Associate, CELCIS, 94 Cathedral Street, Glasgow, G4 0LG, Robert.porter@strath.ac.uk

'Children, Autonomy and the Courts' is based upon Aoife Daly's PhD thesis, and presents her argument that Article 12 of the United Nations Convention on the Rights of the Child – which she refers to as the 'right to be heard' – does not go far enough in securing the rights of children in relation to court proceedings. In particular, Daly focuses on those proceedings where 'best interests of the child' is the paramount concern, and although there is a focus on private law, it is also of interest to those involved in child protection and welfare decision-making in public law. That this is an adaptation from a thesis is clear in the style and structure of the book. This is no reference book, nor a book that can be easily dipped into to extract particular information, but it takes the reader on a compelling journey, from illustrating the limitations of Article 12, through to the need for, and arguments in favour of, an autonomy principle, and its implementation.

The book is not a short one, running at over 440 pages, but this simply reflects the thorough approach taken to the topic. Beginning with the centrepiece proposal: To replace a right to be heard with a 'Children's autonomy principle'. This is founded in an argument that the existing Article 12 right does not provide the protections and opportunities that were envisaged when it was drafted. In particular, Daly emphasises (with clear examples) that the right to be heard as it is currently performed in courts and tribunals does not provide the protection envisaged, and does not go far enough in promoting the rights and interests of children and young people.

This book does not shy away from challenging 'accepted wisdom' or current practice. In particular, highlighting that individual autonomy is one of the cornerstones of our liberal society, Daly disputes the idea that children should be presumed to be less capable than adults of making their own choices, deploying both evidence and reason to convince the reader. These deployments are carefully orchestrated and managed, and as a result, bring the reader along with the author, presenting the evidence and drawing consistent, reasonable conclusions that steer clear of grandstanding or evangelising for a particular standpoint.

Daly presents these arguments throughout each of the first five chapters of the book, building a clear and coherent argument for her central thesis. However, the final two chapters go further, to begin to look at how an 'autonomy principle' might be put into practice. As a researcher with a practice-focused outlook, I found these chapters particularly interesting. Not just because they are often absent from many such books, with the author content to simply present the rationale and arguments for their case, but also because they address head on the argument that an autonomy principle may be fine in theory, but wouldn't work in practice. In chapters six and seven, Daly provides a blueprint for moving from our current 'competence' based approach, through to implementation of an autonomy principle, and the support that would be necessary to make it a reality.

Coming from Scotland, and with a particular interest in the Children's Hearings System, I was curious as to how this system would be presented or addressed. While there are references to the Hearings System, and it is often cited as an example, the private law focus of the book means there are limits to its relevance. However, there is still much that can be taken as learning within the Hearings System, with the caveat that there will be many more cases where the risk to the child or young person means that their autonomy must be overruled. The adoption of an autonomy principle might well provide for greater engagement in the hearings, and create additional pressures to ensure decisions are clearly reasoned. Accordingly, there is much to be taken from this book for those concerned or in contact with both public and private law.

Finally, it is important to note that, throughout the book, the voices of children and young people are clearly represented and prioritised. Each chapter has a quotation from a young person as an epigraph, as well as frequent and apposite quotes throughout both descriptions and arguments in the text. Daly's concern for children and young people and their lack of agency or autonomy in courts jumps from the page. This is particularly clearly demonstrated in the presence of a 'Child-Friendly Summary' which lays out the basic argument of the book in seven bullet points and less than 115 words, an innovation that I have certainly not come across before in legal textbooks, and shows Daly leading by example.

In summary, 'Children, Autonomy and the Courts: Beyond the Right to be Heard', pushes us to think about the voice, participation and representation of children and young people in all legal settings. The book is engaging and easy to comprehend throughout, while presenting a persuasive argument for the next step in the realisation of children's rights.

About the author

Robert is a social legal researcher with a background in Psychology and PhD in Law. He has a particular interest in the Scottish Children's Hearings System having previously been a Panel Member. Robert currently works at CELCIS, carrying out evaluation and research activity. His recent research has included looking at decisions relating to contact, as well as the role of solicitors, in the Hearing System.