### Contents

Foreword XI
Preface XIII
A Child-Friendly Summary XV
Acknowledgments XVI

Introduction: Children, Autonomy and the Courts: Beyond the Right to be Heard 1

- The Argument in Favour of Prioritising Children's Autonomy in Best Interest Proceedings 1
- 2 The Problem with Best Interest Proceedings 4
- 3 Introducing the Children's Autonomy Principle 9
- The Aim of this Book: Embedding Children's Autonomy in Official Decisions 11
- 5 Overview of this Book 14
- 1 A Proposal: Replace the 'Right to be Heard' with a 'Children's Autonomy Principle' 15

Introduction 15

- Children and Proceedings: Is Article 12 Effective or is it Just Rhetoric? 17
- 2 The Obscured Autonomy Idea in the CRC 21
- 3 Let's Talk about Autonomy Instead of a Right to be Heard 30
- 4 Do Children Want Autonomy in Proceedings? 36
- 5 Why the Text of CRC Article 12 is Flawed 43
- The Right to be Heard is a Right Particular to Children: Due Process and Fair Trial Rights 58
- Comparison with Legal Rights for Adults with Cognitive
   Impairment 63
- 8 Concluding Thoughts on the Validity of the 'Right to be Heard' in Proceedings 67
- 2 The Children's Autonomy Principle and the Best Interest of the Child 71

Introduction 71

- The 'Children's Rights' Age: The Legal Journey and the Best Interest Principle 73
- 2 The Best Interest Principle: Focusing on the Child 80

- 3 Where Should the Limits of the Best Interest Principle Lie? 90
- 4 The Best Interest Principle in Practice 97
- The Interests of Which Children? 102
  Concluding Thoughts on Autonomy in the Context of the Best
  Interest Principle 112
- 3 The 'Liberal Ideal': Autonomy, Capacity and the Adult/Child Divide 115
  Introduction 115
  - 1 Introducing Autonomy 118
  - 2 What Does 'Autonomy' Actually Mean? 122
  - 3 Self Determination Theory: Autonomy as Crucial to Well-being 132
  - 4 Is it so Obvious that Children Should be Denied Legal Autonomy? 138
  - 5 What We Can Learn about Autonomy from Medical Law 146
  - 6 Children's Autonomy in Medical Law (Compared to Other Areas of Law): A Different Ball Game? 162
  - Developmental Psychology and Children's Decision-Making
     Abilities 175
     Conclusions on Children and Autonomy 189
- 4 Ensuring Good Processes for Children through Respect for Autonomy 192

Introduction 192

- Provision at National Level for the Right of Children to be Heard in Best Interest Proceedings: Being Heard is Not Seen as a *Right* 194
- Providing the Opportunity to be Heard: Too Little Too Late?'Capability', Being Heard 'Freely' and the Issue of Resources 208
- Do Children Enjoy the Right to be Heard the Way they Wish?
  Representation, Judicial Interviews and Due Process 235
  Concluding Thoughts on the Process of the Right to be Heard 277
- 5 'Weighing' Views: The Right to be Heard Does Not Allow Children to Sufficiently Influence Outcomes 280

Introduction 280

- The Right to be Heard is Not Making a Sufficient Difference 283
- 2 The Right to be Heard Has Benefited Some Older Children 318
- 3 Younger Children's Wishes Devalued 324
- Why the Right to be Heard Gives Children Little Influence on Outcomes 325

5	Concluding Thoughts on the Inability of Children to	
	Influence Outcomes	345

# 6 Putting the Autonomy Principle into Practice: Moving from a Focus on 'Competence' to One on Significant Harm 350

Introduction 350

- Justifying a Focus on Significant Harm 352
- 2 Redefining Harm: Repressing Autonomy as Harmful 355
- 3 Significant Harm in the Context of Respect for Children's Autonomy 363
- The Concern that Children Will be Pressured or Manipulated in Proceedings 372
- 5 The Complexity of Reality: Resources and Other Obstacles 380
- 6 The Process of the Children's Autonomy Principle and
  Its Application 387
  Concluding Thoughts on a Focus on Significant Harm 390

## 7 Autonomy Support: Embedding the Children's Autonomy Principle in Good Systems 393

Introduction 393

- A Different Approach for Legal Systems: Children as Equals 396
- Balancing Autonomy and the Integrity of the Family 404
- 3 Not Just Providing an Opportunity: Encouraging and Assisting 409
- 4 Autonomy Support: Structuring Respect 418
- 5 Systems Suitable for Autonomy Support 423 Conclusions on Embedding the Children's Autonomy Principle in Good Systems 431

#### Conclusion 434

- Recognising that Children Deserve More than a Right to be Heard 434
- 2 Prioritising Children's Autonomy in the Courts: Moving Beyond a Right to be Heard 436
- Reframing the Best Interest Principle to Explicitly
  Include Autonomy 437
- 4 Respecting Families and Supporting Autonomy 439
- 5 Reframing Systems for Best Interest Proceedings 439

## Index 443