Kind-zijn tussen opvoeding en recht: een grondslagenonderzoek naar kindbeelden in discussies op het grensvlak van opvoeding en recht

Hemrica, J.C.

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Summary

Chapter 1

The first chapter discusses the theoretical background of this (doctoral) research. Its main topic concerns the ways authors distinguish 'childhood' from 'adulthood' in scientific publications discussing issues in which children's rights and children's welfare-interests are at stake at the same time. To that end, conceptions of childhood are understood as depending on cultural as well as discourse contexts. This view allows for various conceptions of childhood in society being used alternately, depending on the subject and the context (here: welfare or judicial) in which it is discussed, due to the context-dependent character of the implicitly taken-for-granted 'presumed common ground' in discussions. Against this background, the main aim of further research - to be reported about in the following chapters - would be to reconstruct such implicitly presupposed conceptions of childhood as were part of the 'presumed common ground' in three well-delineated discussions. It concerns debates in scientific media with respect to situations in England and in the Netherlands, and dealing with the following topics: 1) the desirability and interpretation of children having a say in their own medical treatment, 2) the desirability and interpretation of children having a say in devising settlements in case of parental divorce, and 3) the desirability and interpretation of a separate criminal law for children and youngsters.

Chapter 2

The discussion about children's right to decide on their own medical treatment is an issue in The Netherlands as well as in England. This chapter reports about a reconstruction of some major presuppositions underlying discussant's opinions on the conditions under which children could be assigned medical decision rights. In both countries a majority of the discussants in scientific media appears to give evidence of the presupposition that especially cognitive abilities should be considered conditional for competent decision-making and assigning decision rights. A second presupposition, underlying ideas on children's interests in medical decision rights, concerns them having basic rights as human subjects. However, the dominant opinion - more so in Dutch than in English discussions - that these rights should be refused in case of 'incompetence' gives evidence of the presupposition that avoiding health risks should overrule these basic rights. Though Dutch and English discussions appear to be largely similar, in English discussions the judicial perspective seems to prevail to a larger extent than in Dutch discussions. As compared to medical and judicial perspectives the relatively minor impor-
tance of the psychological-educational perspective seems a striking lacuna in these discussions.

Chapter 3

This chapter reports about a reconstruction of some major pragmatic presuppositions in recent Dutch and English discussions in scientific media about children's say in devising settlements after parental divorce. Pragmatic presuppositions - such views as discussants implicitly assume to be taken for granted by their audience - were interpreted as indicating implicit conventions with respect to conceptions of childhood, underlying explicit discussions. Analyses concentrated on three dimensions of such underlying conventions: the child's presupposed interests in having a say, supposedly required competences for having a say, and the presupposed mutual relations and relative priority of child-welfare and judicial perspectives in this issue. Because of similar legislation in both countries, the analysis regards discussions with respect to the Dutch as well as the English situation; analysis mainly confirms the similarity of presuppositions in both discussions. Main results are: 1) families are presupposed to be democratic unities allowing for full child participation; 2) with respect to social and emotional-affective dimensions, children are implicitly considered unfinished human beings; 3) children are presupposed to be full human beings in having basic rights that should be respected; 4) with respect to competences required for granting a say to children, discussants give evidence of the presupposition that primarily cognitive competences should be considered relevant; 5) especially arguments to deny children a say in matters concerning parental divorce give evidence of the presupposition that children lack the ability to judge their situation in the long term. Finally, 6) discussants argue on the basis of the presupposition that a welfare perspective should have priority over judicial perspective. Not all of the presuppositions that appear to be characteristic for the discussion at hand seem as self-evident on closer consideration.

Chapter 4

Implicitly presupposed conceptions of childhood were reconstructed in Dutch and English scientific publications about the desirability and organisation of a separate criminal law for children and youngsters. Starting from a view of giving meaning as a socially embedded process, a theory, which specifies presupposed conceptions as discursively 'presumed common ground' has been developed. Subsequently, three aspects of the presumed common ground in the above-mentioned discussion were reconstructed. These are ideas about: (1) the mutual relations of educational and judicial perspectives in argumentations about the desirability and organisation of a separate youth criminal law,
(2) child-interests involved in this issue, and (3) the nature of the 
(existing or lacking) competences that are relevant in this context. 
Though a tendency towards a more judicial approach seems observable 
in both countries, many discussants still presuppose the primacy of an 
educational perspective in these matters. However, presuppositions do 
demonstrate a tension with respect to balancing both perspectives. In 
addition, discussants attune their argumentations to the presupposition 
of a prevailing relevance of cognitive moral competencies, as well as a 
prevailing child interest in structured developmental support.

Chapter 5

This concluding chapter discusses some connections between results 
from the three projects as described in the previous chapters. First, the 
expected variability of implicitly presupposed conceptions of childhood 
depending on discourse contexts (Chapter 1) is discussed by looking at 
differences and similarities in results. Expectations were confirmed, that 
Dutch and English cultures would roughly display similar conceptions 
of childhood, as well as differences supposedly due to different legal 
systems, but also variations at a more detailed level dependent on the 
specific discourse context. Second, this chapter discusses some striking 
characteristics of the implicitly conceptions of childhood that were found 
throughout the material. It concerns consecutively: 1) the lack of cogni-
tive competency as a distinguishing characteristic of the ‘child’, 2) the 
specific conception of ‘competency’ that appeared to dominate concep-
tions of childhood, 3) the long-term orientation that appears to be con-
sidered in the interest of the ‘child’, and 4) the tendency towards a uni-
ified conception of childhood. On second thoughts, each of these implicit-
ly presupposed characteristics gives rise to debate, and in each case 
alternatives seem possible. Accepting those alternatives would also im-
ply the necessity of revising traditional conceptions of education, con-
centrating more on guiding and supporting children in current contexts 
than on preparing them for an unforeseeable future.