

Publication

Is decision-making capacity and "essentially contested" concept in pediatrics?

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Key legislations in many countries emphasize the importance of involving children in decisions regarding their own health at a level commensurate with their age and capacities. Research is engaged in developing tools to assess capacity in children in order to facilitate their responsible involvement. These instruments, however, are usually based on the cognitive criteria for capacity assessment as defined by Appelbaum and Grisso and thus ill adapted to address the life-situation of children. The aim of this paper is to revisit and critically reflect upon the current definitions of decision-making capacity. For this purpose, we propose to see capacity through the lens of essential contestability as it warns us against any reification of what it means to have capacity. Currently, capacity is often perceived of as a mental or cognitive ability which somehow resides within the person, obscuring the fact that capacity is not just an objective property which can be assessed, but always operates within a dominant cultural framework that "creates" that same capacity and defines the threshold between capable and incapable in a specific situation. Defining capacity as an essentially contested concept means using it in a questioning mode and giving space to alternative interpretations that might inform and advance the debate surrounding decision-making.

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