
LEGAL UPDATE

Children's Decision-Making Competency Misunderstanding Piaget

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Children's decision-making ability is important in a number of areas in the law. A child's competence to decide affects how her actions and opinions are evaluated in family court proceedings, dependency actions, delinquency cases, and civil suits.

Whether the child is capable of making choices knowingly, intelligently, and voluntarily determines whether she is considered a rational agent or a competent decision maker, as well as whether she is given the right to make decisions regarding her future or whether she is held responsible for her actions.

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Children are typically presumed incapable of competent choice until they reach the age of majority. Psychologists, on the other hand, frequently argue that by adolescence, children acquire the reasoning abilities of adults. Relying on their interpretation of Piaget's theories, psychologists argue that children from 12 to 16 years of age acquire formal operational thought, which allows them to "generate many possible solutions to a problem, to think about each possible solution hypothetically . . . and to weigh and balance

these various outcomes to reach a conclusion about the decision to be made" (1).

According to many researchers, before the age of 12, children are capable only of concrete operational thought, which impairs their ability to hypothesize about the future.

Ironically, although the popular interpretation of Piaget's theory has been used to advocate greater rights for adolescents, it does so at the cost of denying rights to preadolescents, who are presumably incapable of considering hypothetical options. In fact, the popular interpretation of Piaget's theory underestimates what preadolescents can do.

Thinking Processes

Formal operational thinking is much more complex than is popularly conveyed. What commentators have called "hypothetical" thinking is an oversimplification of what Piaget called "hypothetico-deductive" thinking.

Hypothetico-deductive Thinking

Hypothetico-deductive thinking entails an approach to problem solving that has been characterized as scientific: a person systematically imagines all logically possible actions and consequences, generates hypotheses as to the relationship between those actions and outcomes, and tests those hypotheses. Hypothetico-deductive thinking also entails facility in logic such that one can reason with premises that are entirely abstract. The imagination of possibilities includes those that are theoretically possible but that could never exist in fact. Moreover, the formal operational thinker can maintain that, in principle, an infinite number of possibilities might exist.

Operational Thinkers— Concrete versus Formal

The concrete operational thinker is able to think about various possibilities but is less systematic than the formal operational thinker. The concrete thinker collects information about the relationship among various factors but does so without a specific hypothesis to test. She is more tied to reality in that she can generate a

number of possibilities but is limited to those possibilities that could exist in fact. Moreover, she can reason with premises, but only when those premises are grounded in reality.

The Oversimplification of Piaget's Theories

The complexity of formal operational thinking has been oversimplified by the popularized version of Piaget. An ability to imagine all possible consequences is translated into an ability to imagine many possible consequences. An awareness of infinite possibilities is translated into an awareness of more than one possibility. An ability to generate and test hypotheses and to reason about wholly theoretical entities is translated into an ability to think hypothetically. Formal operational thinking has been equated with competent decision making, when it is, in fact, more complex than the type of reasoning ability necessary for mature judgments.

Indeed, equating formal operational thought with competent decision making may even justify denying decision-making rights to adolescents. Barely half of adults use formal operational thinking on many of Piaget's tasks (2). In fact, in support of its argument that minors are not competent decision makers (and, therefore, should not be subject to capital punishment), the American Society for Adolescent Psychiatry argued that "most adolescents cannot be shown to have reached the stage of formal reasoning by the end of high school" (3).

Research specifically exploring children's decision-making competency does not support the notion that preadolescents are qualitatively inferior to older subjects presumably in the formal operational stage. Typically, the differences are quantitative: Younger children mention fewer options than older children. In these studies, however, the conclusions that younger children reached when faced with hypothetical dilemmas are usually as reasonable as—or the same as—those of older subjects. Moreover, the reasons that they do in fact generate are appropriate.

Continued on page 9

Book of the Month

Health Care Services for Battered Women **Susan Schechter and Lisa Tieszen Gary**

A manual published by Children's Hospital of Boston, Massachusetts, available for \$20.00

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This is truly the most comprehensive manual—or, more appropriately, how-to-do-it-right workbook for battered women and their children—ever published. It is brief, simply written, and complete.

Schechter and Gary pay attention to every component in the evaluation of these

high-risk families, from philosophy and goals of the project to an example of a Basic Data Form for statistical accountability. The only element lacking is the money to actually institute AWAKE, the hospital-based program Advocacy for Women and Kids in Emergencies.

For a nominal \$20.00, a person can request the manual and have a tailor-made, cost-effective program of advocacy or “case management,” including staffing, administration, and training focused on a vulnerable group of individuals too often overlooked and ignored in our health care system.

In some respects, it's an appalling commentary that we continue to need such a manual or a program as AWAKE. Because of the lack of formal training in our professional schools, including our nation's medical schools and schools of social

work, we desperately need programs like AWAKE. These programs address not only services, but training, advocacy, consultation, and community resource management.

Until the last battered woman and abused child are attended to, and until interpersonal violence disappears from our nation, we will need to advocate for programs like AWAKE, especially in our hospitals, which have often become the 24-hour social agency of our time.

AWAKE is right on target, inexpensive, uses carefully selected community volunteers paired with trained professionals, and *it works*.

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Legal Update

Continued from page 6

It appears that younger subjects' difficulty is in generating explanations for their reasoning. If provided with risks and benefits, younger subjects are as proficient as older subjects in recognizing them as such. Developmental differences appear when children must recall risks and benefits from scenarios presented to them, and differences continue into adulthood when subjects are required to generate the risks, benefits, and alternatives on their own.

In several ways, our failure to give minors decision-making power ensures their incompetence. Children's imagination is impaired by their lack of experience. Research into children's real-world decision making suggests that children's lacking perceptions of freedom to decide constricts their ability to imagine alternatives. An adaptive response to coercive intervention is to deny problems and refuse to cooperate, which is then labeled as “resistance” and proof of incompetence.

Children's competency is not as much a product of maturation of general cognitive abilities as it is of meaningful experiences and adult support.

Rather than assuming that preadolescent children are concrete operational and therefore somehow incapable of participating in important decisions regarding their future, professionals should cooperate with the child by suggesting options and eliciting the child's opinions.

Although in some circumstances children may not wish to make difficult decisions, they should in all cases be asked if they wish to participate. Professionals should help children maximize their competency rather than presume incompetence based on misguided assumptions about cognitive development.

Primary Sources

1. American Psychological Association. (1987). Amicus Curiae Brief. *Hartigan v. Zbaraz*, No. 85-673, February 12, 1987. Available on LEXIS.
2. Byrnes, J. P. (1988). Formal operations: A systematic reformulation. *Development Review*, 8, 66-87.

3. American Society for Adolescent Psychiatry and the American Orthopsychiatric Association. (1988). Amicus Curiae Brief. *High v. Zant*, No. 87-5666/87-6026, September 2. Available on LEXIS.

4. Garrison, E. G. (1991). Children's competence to participate in divorce custody decision making. *Journal of Clinical Child Psychology*, 20, 78-87.

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