

Kirsty MORETON: Caring in 'The Middle': Judicial Interpretation of the Best Interests Test for Health-Care Decision-Making in Mid-Childhood.

The approach of healthcare law to children is inconsistent. While much has been written both about parental dilemmas surrounding care for young and disabled children, and the scope for competence at the borders of adulthood, the 'middle' has been under theorized in the academic literature and largely ignored in the courtroom. In this poster I shall illustrate how the period of mid-childhood (approx. aged 8 -14 years) reveals profound questions around the nature of vulnerability, the importance of relational identity, the value of bodily integrity and the potential for active participation in decision-making. Whilst I shall argue that neither the current construction of the 'best interests' test, nor the criteria for establishing Gillick competence adequately addresses these issues, I maintain that best interests is still the pragmatic choice for children's healthcare decision-making.

Acknowledging that the criticisms oft cited against best interests - that it is poorly defined, atomistic, deferential to medical opinion and absent relational concern, resound more loudly in the context of mid-childhood, I will employ an Ethic of Care as a means of reviving the test. I shall draw upon the 3 guidelines presented by Jo Bridgeman in her 2007 monograph, *Parental Responsibility, Young Children and Healthcare Law* and show how they can be developed into a framework to be used as tool in interpreting mid-childhood best interests. I shall conclude with the results of a systematic review of judicial healthcare decision-making in mid-childhood over a 25 year period, to demonstrate the pitfalls of best interests and how employing a care framework reveals the potential descriptive and normative efficacy of the Ethics of Care.