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WHEN CRIMINALS EXPLOIT BLOCKCHAIN: DETERMINING PERSONAL JURISDICTION IN A DECENTRALIZED DIGITAL ENVIRONMENT

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ABSTRACT

Abstract The legal framework governing children's and adolescents' decision-making is evolving, navigating the delicate balance between protection and empowerment. This article examines key legal developments, focusing on the landmark Bell v. Tavistock case (2020, 2021), which highlighted tensions in recognizing minors' autonomy, particularly in medical consent for gender-affirming care. The reversal of the initial ruling reaffirmed the Gillick competency principle, emphasizing individualized assessments of maturity over rigid age-based rules. Drawing on interdisciplinary insights from developmental science, bioethics, and human rights, the article explores how legal systems address children's participation across domains like healthcare, criminal justice, and child protection. It critiques inconsistencies in applying principles like Gillick competency and the United Nations Convention on the Rights of the Child (UNCRC), which recognizes children as rights-holders. The analysis advocates for reforms that integrate developmental evidence and ethical considerations to foster equitable frameworks, ensuring children's voices are heard while safeguarding their well-being. By addressing these complexities, the article contributes to advancing legal systems that respect children's evolving capacities.

Keywords: *children's decision-making, Gillick competency, Bell v. Tavistock, children's rights, UNCRC, autonomy, protection, developmental science, bioethics, legal reform*

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1. INTRODUCTION

The evolving legal landscape surrounding children's and adolescents' decision-making reflects a complex interplay between protection and empowerment, shaped by shifting societal norms, legal principles, and developmental science. A pivotal moment in this discourse occurred in 2020, when the United Kingdom's Divisional Court issued a landmark ruling in *Bell v. Tavistock* (2020), which garnered significant international attention. The court mandated judicial approval for transgender and gender-diverse youth under 16 seeking to commence puberty-blocking hormonal treatment, a critical initial step in addressing gender dysphoria. This decision sparked widespread concern, as it declared all children under 16 incapable of providing informed consent for such treatments, labeling puberty blockers as "experimental" and asserting that courts should determine the best interests of these children. This ruling marked a departure from prior case law, which had recognized that mature minors could make autonomous medical decisions, including accessing puberty blockers for gender dysphoria (Chua, 2023). By stripping decision-making autonomy from these young individuals, the *Bell v. Tavistock* (2020) decision ignited debates about the balance between safeguarding vulnerable youth and respecting their capacity for self-determination.

The controversy surrounding *Bell v. Tavistock* (2020) was short-lived, as the Court of Appeal overturned the decision in *Bell v. Tavistock* (2021). The appellate court emphasized that established health law principles, particularly the concept of "Gillick competency," had been inadequately considered. Gillick competency, a cornerstone of common law in the UK and other jurisdictions, holds that there should be no fixed minimum age for determining a minor's capacity to consent to medical treatment. Instead, the principle assesses a child's maturity and understanding on a case-by-case basis, allowing those deemed competent to make decisions about their healthcare. The reversal in *Bell v. Tavistock* (2021) reaffirmed the importance of respecting the evolving capacities of minors and highlighted the broader challenges in crafting legal frameworks that appropriately balance protection with empowerment.

The *Bell v. Tavistock* case underscores several critical considerations in the legal principles governing children's decision-making. First, children and adolescents possess developing attributes that influence their ability to provide informed consent and make autonomous decisions. These attributes vary widely across individuals and stages of development, complicating the application of universal legal standards. Second, societal standards are continually evolving, necessitating corresponding adaptations in legal frameworks to reflect contemporary understandings of children's capacities. Third, children have a fundamental interest in participating in decisions that affect their lives, as recognized by international human rights frameworks such as the United Nations Convention on the Rights of the Child (UNCRC) (United Nations, 1989). Finally, there is a noticeable shift in legal approaches, moving away from paternalistic control toward more nuanced frameworks that seek to balance protection with empowerment. However, when superior courts struggle to determine the extent of

autonomy children should have, it is unsurprising that the broader legal landscape governing children's decision-making can appear inconsistent, confusing, and at times chaotic.

The spectrum of childhood and adolescence, spanning from birth to age 18, presents a dynamic range of capacities and attributes that challenge legal systems. This developmental continuum influences how laws and policies address children's agency, participation, and decision-making authority. Historically, the common law treated children as chattels—akin to property—subject to parental control (Butler & Mathews, 2007). While this perspective has largely been abandoned, remnants of paternalistic approaches persist, often prioritizing protection over empowerment. The law frequently seeks to safeguard children due to their inherent vulnerability, guided by principles such as parental responsibility, paternalism, and the best interests of the child. However, these approaches sometimes fail to account for children's wishes or recognize their capacity to contribute meaningfully to decisions affecting them. Striking a balance between protecting children from harm and fostering their autonomy remains a significant challenge for policymakers, legislators, and the judiciary.

This tension between protection and empowerment is a central theme explored in the *Law and Children's Decision-Making Special Issue* of *Laws*. The special issue examines how legal systems navigate the continuum from safeguarding vulnerable children to enabling their agency as they develop. It highlights the need for legal frameworks to evolve in response to interdisciplinary insights, including developmental psychology, bioethics, and human rights. A key challenge lies in the diversity of capacities across the span of childhood, which complicates the establishment of uniform legal principles. Legal systems often resort to "bright line" age-based rules for administrative convenience, such as setting minimum ages for decision-making in areas like medical consent or criminal responsibility. While these rules provide clarity, they can sacrifice accuracy and justice by failing to account for individual variations in maturity and understanding (Bridgeman, 2007). Such universal approaches may protect children in some instances but often fall short of empowering them, particularly when developmental evidence suggests that many adolescents possess the cognitive capacity for informed decision-making (Steinberg & Icenogle, 2019).

The legal principles governing children's decision-making must address several key issues: defining the right to participation and the mechanisms to facilitate it, establishing capacity-based requirements for independent consent, and determining lawful decision-making authority. These issues are particularly complex given the cross-disciplinary nature of children's decision-making, which draws on insights from developmental science, ethics, and human rights. For instance, the UNCRC explicitly recognizes children as rights-holders with the capacity to express their views freely in matters affecting them (United Nations, 1989, art. 12). This right to participation underscores the importance of involving children in decisions, yet domestic legal systems often fall short of fully implementing these international norms. In Australia,

for example, the absence of enforceable human rights legislation at the domestic level limits the practical application of UNCRC principles (Kirby, 2011).

The *Bell v. Tavistock* case and its aftermath illustrate the broader challenges in children's decision-making law. The initial ruling reflected a protective stance, prioritizing judicial oversight over the autonomy of trans and gender-diverse youth. The subsequent reversal highlighted the importance of respecting established legal principles like Gillick competency, which prioritize individual capacity over arbitrary age thresholds. This case also exemplifies the broader societal and legal shift toward recognizing children's evolving capacities. However, inconsistencies remain across jurisdictions and legal domains, particularly in areas such as medical consent, criminal responsibility, and participation in social policy. For example, while adolescents may be denied the right to vote due to perceived insufficient capacity, they can face criminal accountability at younger ages, revealing contradictions in how the law assesses their decision-making abilities (Davis, 2022; Crofts, 2018).

This special issue seeks to address these complexities by exploring the continuum from protection to empowerment in children's legal agency. It emphasizes the need for legal frameworks to integrate developmental evidence, ethical considerations, and human rights principles to better support children's participation and autonomy. The contributions in this issue draw on cross-jurisdictional and interdisciplinary perspectives, particularly from Australian and British contexts, to highlight shortcomings, challenges, and successes in the evolving legal landscape. Key areas of focus include children's rights to participation, the ethical implications of decision-making frameworks, and the developmental factors that influence how children's capacities are assessed. By examining these issues, the special issue aims to advance understanding of how the law can better facilitate children's agency while ensuring their protection, ultimately contributing to more just and equitable legal systems for children and adolescents.

2. CHILDREN'S RIGHTS OF PARTICIPATION AND DECISION-MAKING

The legal framework governing children's participation and decision-making is intricate, spanning multiple areas of law and intersecting with various disciplines and jurisdictions. As societal challenges evolve and new scientific evidence emerges, the law must continually adapt to address the complexities of involving children in decisions that impact their lives. Crafting legal strategies that promote children's contributions to decision-making requires integrating insights from diverse fields, including psychology, ethics, and developmental science. This interdisciplinary approach is crucial to ensuring that legal developments align with the best interests of children while respecting their evolving capacities. A key feature of this *Law and Children's Decision-Making Special Issue* of *Laws* is its emphasis on interdisciplinary perspectives, which provide essential context for understanding the nuances of children's agency in legal settings (Bridgeman, 2007).

Children's development is highly individualized, with each child progressing at a unique pace through cognitive, emotional, and social stages. This variability poses significant challenges for policymakers tasked with designing frameworks that enable meaningful participation in decisions affecting children. Developmental research, particularly in cognitive, psychosocial, and neurobiological domains, indicates that adolescents at certain developmental stages possess the capacity for informed decision-making, especially in contexts that allow for deliberate, unhurried reflection (Steinberg & Icenogle, 2019). However, legal systems often struggle to accommodate this diversity, frequently relying on standardized age-based thresholds to determine decision-making capacity. These "bright line" rules prioritize administrative efficiency but may fail to account for individual differences in maturity, potentially undermining both justice and developmental accuracy (Bridgeman, 2007).

Children's rights serve as a critical lens for navigating the evolving landscape of decision-making law. International instruments, such as the United Nations Convention on the Rights of the Child (UNCRC), explicitly recognize children as rights-holders with inherent entitlements (United Nations, 1989). The UNCRC outlines specific rights relevant to decision-making, including the right to freedom of expression (Article 13), dignity (Article 23), and parental guidance that evolves in accordance with a child's developing capacities (Article 5). Central to the UNCRC is the right to participation, articulated in Article 12(1), which mandates that states ensure children capable of forming their own views have the opportunity to express them freely in all matters affecting them. These views must be given due weight based on the child's age and maturity. This principle underscores the importance of involving children in decisions, both individually and collectively, and emphasizes their visibility as active participants in legal processes (Goldhagen et al., 2020; Mauras, 2011).

Despite the UNCRC's clear directives, the implementation of children's rights in domestic legal systems often falls short. International norms provide a universal benchmark for how governments should legislate on issues concerning children, but these norms are not automatically binding at the domestic level without specific incorporation into national laws. In Australia, for instance, the absence of enforceable human rights legislation limits the practical application of UNCRC principles, leading to inconsistencies across jurisdictions (Kirby, 2011). This gap is particularly evident in areas such as the minimum age of criminal responsibility. The UN Committee on the Rights of the Child (2007) recommends a minimum age of at least 12, preferably 14–16, to account for children's emotional, mental, and intellectual maturity. Yet, countries like Australia and England hold children criminally accountable at younger ages, often as low as 10, which conflicts with developmental evidence and international standards (Davis, 2022; Crofts, 2018). This discrepancy highlights a broader issue: the failure to align legal frameworks with developmental science can result in policies that neither protect nor empower children effectively.

The recognition of children as independent rights-holders marks a significant departure from historical common law perspectives, which often treated children as extensions of their parents or as property (Polonko et al., 2016). The UNCRC has played a pivotal role in reframing children as autonomous entities with their own rights, distinct from those of their parents or carers. However, parental influence remains a significant factor in children's decision-making. Adults, by virtue of legal and social structures, often retain significant control over the extent of autonomy children are granted (Cherney et al., 2008). Bridgeman (2007) cautions that rights-based approaches to decision-making can sometimes be applied abstractly, detached from the lived realities of children and their families. Thus, while children's rights provide a framework for inclusion, they must be considered alongside interdisciplinary perspectives to ensure that legal strategies are grounded in practical and developmental realities.

Scholarship on children's involvement in decision-making identifies three key dimensions: expressing views, active participation, and full agency (Kosher, 2018). These dimensions represent a continuum of engagement, each with distinct implications for children's autonomy. Expressing views allows children to communicate their perspectives, which is a fundamental right under the UNCRC (Article 12). Even very young children can articulate their views, with the level of sophistication depending on their age and maturity. Research by Alderson et al. (2022) demonstrates that children as young as six, particularly those with significant medical experiences such as congenital heart surgery, can provide informed and meaningful input into health decisions. This suggests that age alone is not a reliable indicator of a child's ability to contribute to decisions. However, expressing views does not guarantee that these perspectives will influence outcomes, as adult decision-makers may not always act on or prioritize children's input. This limitation underscores the distinction between expressing views and achieving true participation.

Participation goes beyond merely voicing opinions; it involves active engagement in the decision-making process, where children can influence outcomes by persuading decision-makers. The UNCRC emphasizes participation as a foundational principle, with no minimum age for involvement in decisions affecting children (Inter-Agency Working Group on Children's Participation, 2007; Lansdown et al., 2014). Participation represents a middle ground on the protection-empowerment continuum, as it allows children to contribute meaningfully without granting full decision-making authority. However, the extent to which children's participation is meaningful depends on the mechanisms in place to facilitate it and the willingness of adults to incorporate children's perspectives. For example, in child protection proceedings, the integrity of the process—built on trust in caseworkers, advocates, and judicial systems—is critical to ensuring that children's voices are heard and respected (Cashmore et al., 2023).

Full agency, in contrast, occurs when children are granted the authority to make decisions independently, irrespective of parental or carer input. This level of autonomy

typically requires a legal or policy framework that recognizes a child's capacity to provide informed consent. To achieve this, a child must demonstrate the ability to understand relevant information, retain it, weigh it to make reasoned choices, and act voluntarily (Alderson, 2007). In some jurisdictions, such as South Australia, adolescents aged 16 and older are granted full decision-making authority in medical contexts, equivalent to that of adults (Consent to Medical Treatment and Palliative Care Act, 1995). However, such progressive policies are exceptions rather than the norm. Even when children demonstrate the requisite cognitive capacity, legal systems often hesitate to confer full agency, particularly in high-stakes decisions like medical treatment refusal or participation in social policy (Smith, 2023).

A critical area where the absence of full agency is particularly evident is suffrage. In many countries, adolescents under 18 are denied the right to vote, despite their stake in shaping social and political policies that affect their future. Issues such as climate change, economic policy, and social justice are of profound relevance to youth, yet their exclusion from electoral processes limits their ability to influence these domains (Loughran et al., 2022; Oosterhoff et al., 2022). Recent debates and legislative changes in some jurisdictions, such as lowering the voting age to 16, reflect growing recognition of adolescents' capacity for civic engagement. These developments align with developmental evidence suggesting that adolescents possess sufficient cognitive maturity for deliberative decision-making in "cold" contexts, where decisions are made without emotional pressure (Steinberg & Icenogle, 2019).

The application of legal principles like Gillick competency further illustrates the complexities of children's decision-making. Originating from *Gillick v. West Norfolk and Wisbech Area Health Authority* (1986) and adopted in Australia through *Marion's Case* (1992), Gillick competency allows children with sufficient understanding and maturity to consent to medical treatment independently. This principle acknowledges developmental variability, avoiding rigid age-based criteria. However, its application is inconsistent, particularly in cases involving gender-affirming care, where courts have sometimes prioritized parental involvement or best interests over a child's autonomy, even when Gillick competency is established (Smith, 2023). Such inconsistencies highlight the tension between empowering children and protecting them from potentially irreversible decisions.

In conclusion, children's rights to participation and decision-making require legal frameworks that integrate developmental science, ethical considerations, and human rights principles. The UNCRC provides a robust foundation for recognizing children as rights-holders, but domestic implementation remains uneven. The spectrum of engagement—from expressing views to active participation to full agency—offers a framework for understanding how children can be involved in decisions. However, achieving meaningful participation requires overcoming systemic barriers, such as reliance on age-based rules and inconsistent application of principles like Gillick competency. By addressing these challenges, legal systems can better balance

protection and empowerment, ensuring that children's voices are heard and their autonomy respected in accordance with their evolving capacities.

3. ETHICAL CONSIDERATIONS

The legal frameworks governing children's decision-making must be informed by ethical principles to ensure fairness and respect for their evolving capacities. Inconsistencies in how decision-making authority is assigned based on age or attributes can violate core ethical principles, particularly those of bioethics: autonomy, beneficence, non-maleficence, and justice (Beauchamp & Childress, 2018). These principles, collectively known as principlism, offer critical insights into the legitimacy of restricting or enabling children's participation, consent, and decision-making authority. Autonomy emphasizes an individual's right to control decisions affecting their body and life. For children, this principle supports their involvement in decisions, yet participation alone does not equate to full autonomy, as final decision-making power often remains with adults. Recognizing children's autonomy requires safeguarding their rights to express views and, where appropriate, make independent choices (Bridgeman, 2007).

Beneficence mandates that decisions, particularly in medical contexts, should promote the well-being of the child. The "best interests of the child" standard, deeply embedded in legal systems like Australia's *Family Law Act* (1975), reflects this principle by prioritizing outcomes that benefit the child, especially when they lack the capacity to decide for themselves. However, this standard can conflict with autonomy, particularly when a child refuses potentially beneficial medical treatment. For example, courts may override a child's refusal of treatment to prioritize their best interests, as seen in cases like *Mercy Hospitals Victoria v D1 and Anor* (2018), where a 17-year-old's decision was overruled due to concerns about life-threatening consequences (Moritz & Ebbs, 2021). This tension highlights the challenge of balancing beneficence with respect for a child's developing autonomy.

Non-maleficence, the principle of avoiding harm, aligns closely with beneficence in ensuring that decisions minimize negative outcomes for children. Research suggests that non-maleficence is often prioritized in decision-making, particularly when it conflicts with other principles (Page, 2012). Excluding children from decisions about themselves can inadvertently cause harm, as it may disregard their perspectives or undermine their sense of agency. For instance, denying children a voice in medical or legal matters can lead to emotional or psychological distress, contradicting the goal of harm avoidance.

Justice requires fair and equitable treatment in decision-making processes, balancing individual needs with societal considerations, such as non-discrimination and resource allocation (Cookson, 2015). In urgent situations, justice may take precedence to ensure fairness, particularly when children's rights to participation are at stake (Lindridge, 2017). In medical settings, these ethical principles provide a framework for healthcare professionals to make decisions independent of personal biases, ensuring that

children's rights are upheld (Beauchamp & Childress, 2018). Beyond healthcare, these principles can guide broader decision-making contexts, such as child protection or criminal justice, where fairness and respect for children's agency are equally critical.

The interplay between ethical principles and children's rights underscores the need for legal frameworks to move beyond paternalistic approaches. While the best interests standard and harm avoidance are essential for protecting vulnerable children, they must be balanced with respect for autonomy and justice to empower children as rights-holders. This balance is particularly crucial in high-stakes decisions, such as medical treatment or participation in social policy, where children's voices are often sidelined. By integrating ethical considerations, legal systems can better support children's participation and decision-making, fostering outcomes that respect both their vulnerability and their capacity for agency.

4. DEVELOPMENTAL PERSPECTIVE AND CONSEQUENCES

The developmental perspective is a cornerstone in understanding how children and adolescents make decisions and how legal frameworks should respond to their evolving capacities. Legal systems often define decision-making authority based on age or specific attributes, typically through age-of-majority legislation that sets a general threshold for adulthood, applied across contexts like voting or medical consent. However, many jurisdictions also establish specific ages of consent for particular purposes, which may differ from the general age of majority. In areas where legislation does not explicitly define a child's capacity to consent, such as in certain medical or social policy contexts, the principle of Gillick competency—originating from *Gillick v. West Norfolk and Wisbech Area Health Authority* (1986) and adopted in Australia via *Marion's Case* (1992)—is often applied. This principle assesses a child's maturity and understanding to determine their ability to consent to specific decisions, particularly in healthcare. However, in non-legislated domains, a lack of clear legal guidance creates uncertainty, leading to inconsistent approaches driven by administrative convenience, parental authority, or institutional biases. This can result in the exclusion of children from decisions about themselves, potentially undermining their autonomy and leading to unjust outcomes (Mathews & Smith, 2023).

Developmental factors significantly influence how children respond to situations and make decisions, often differing from adult responses due to variations in cognitive, emotional, and psychosocial maturity. Children develop at different rates, influenced by factors such as age, upbringing, education, and individual temperament (*Marion's Case*, 1992). This variability complicates the application of uniform age-based rules, as developmental stages cannot be precisely tied to specific ages. International human rights frameworks, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (United Nations, 1985), emphasize the importance of considering emotional, mental, and intellectual maturity when determining legal thresholds, such as the age of criminal responsibility. Similarly, the United Nations Convention on the Rights of the Child (UNCRC) mandates that children capable of

forming views should have the right to express them, with due weight given based on their age and maturity (United Nations, 1989, art. 12). These developmental considerations are critical for crafting legal frameworks that balance protection and empowerment, ensuring children are neither unduly restricted nor held accountable beyond their capacities.

Children's cognitive development shapes their decision-making processes, affecting their ability to assess risks, benefits, and consequences. Research highlights that cognitive capacities, such as logical reasoning and problem-solving, continue to develop through adolescence, with younger children often struggling to fully evaluate the implications of their choices (Lamb & Sim, 2013). Psychosocial factors further complicate decision-making, as children are highly susceptible to external influences, such as peer pressure, and tend to prioritize short-term rewards over long-term consequences (Steinberg, 2009). Adolescents, in particular, exhibit heightened vulnerability to risk-taking behaviors due to the asynchronous development of the brain's reward and control systems. The reward system matures earlier, driving impulsive decisions, while the prefrontal cortex, responsible for impulse control and long-term planning, develops later, often into early adulthood (Grootens-Wiegers et al., 2017). This developmental gap can lead to decisions that appear irrational or harmful, particularly in emotionally charged or high-pressure situations.

Steinberg and Icenogle (2019) distinguish between "cold" and "hot" decision-making contexts to explain how developmental factors influence adolescent behavior. Cold contexts involve unhurried deliberation without emotional arousal, allowing adolescents to leverage mature cognitive abilities, such as working memory, response inhibition, and logical reasoning, which are typically developed by age 16. In these settings, adolescents can make informed decisions, such as consenting to medical treatment or participating in research (Steinberg & Icenogle, 2019). Hot contexts, conversely, involve immediate decisions under emotional or social pressure, where adolescents' underdeveloped psychosocial traits—such as impulse control and resistance to peer influence—can lead to risky or reactive choices (Blakemore & Robbins, 2012; Steinberg & Icenogle, 2019). This distinction is critical for legal systems, as it suggests that adolescents may be competent in deliberative settings but less so in situations requiring rapid responses.

The susceptibility of children to external influences, particularly peer pressure, is a significant developmental factor. During adolescence, children shift from seeking parental approval to valuing peer validation, which can shape their behavior in both positive and negative ways (Crone & Dahl, 2012). Positive peer influences can promote social adjustment, but negative influences may lead to risky or criminal behavior, especially in the absence of supportive family structures (Telzer et al., 2018; Monahan et al., 2009). Adolescents' tendency to minimize consequences and their limited ability to self-regulate further exacerbate these risks, particularly in hot contexts where emotional regulation is challenging (Mathews, 2023). For example, peer-influenced

decisions may contribute to juvenile offending, as adolescents are more likely to engage in impulsive or antisocial behavior when swayed by peers (Leverso et al., 2015).

The legal system's response to children's developmental capacities often reflects a tension between protection and accountability. In healthcare, courts frequently override children's decisions when the consequences are deemed significant, prioritizing the child's best interests over autonomy. For instance, in *Mercy Hospitals Victoria v D1 and Anor* (2018), a 17-year-old's refusal of treatment was overruled because the court doubted her ability to fully comprehend the life-threatening implications of her decision (*Re W*, 1992). This protective approach contrasts sharply with criminal law, where children as young as 10 in Australia can be held criminally responsible, despite developmental evidence suggesting limited capacity for reasoned decision-making in emotionally charged situations (Davis, 2022; Crofts, 2018). This discrepancy highlights a broader inconsistency: children are often denied autonomy in contexts where they demonstrate competence, yet held accountable in others where their developmental limitations are evident.

Gillick competency offers a framework for addressing these developmental nuances, particularly in healthcare. By assessing a child's understanding and maturity, rather than relying on age, Gillick competency allows for individualized evaluations of decision-making capacity (*Gillick v. West Norfolk and Wisbech Area Health Authority*, 1986; *Marion's Case*, 1992). This principle acknowledges that some younger children may possess sufficient maturity to consent to treatment, while some older adolescents may not. However, its application is inconsistent, particularly in complex cases like gender-affirming care, where courts may prioritize parental input or best interests over a child's autonomy, even when Gillick competency is established (Smith, 2023). This variability underscores the challenge of aligning legal standards with developmental realities.

The consequences of children's developmental stage extend beyond individual decisions to broader social and legal outcomes. Adolescents' limited ability to future-orient or resist external pressures can lead to behaviors with significant legal ramifications, such as criminal activity or refusal of medical treatment. Legal systems must account for these developmental differences to avoid punishing children for decisions influenced by their immaturity. For example, holding a child criminally accountable in a hot context, where emotional and social pressures dominate, fails to consider their psychosocial limitations (Steinberg & Icenogle, 2019). Conversely, denying adolescents the right to participate in cold contexts, such as voting or research consent, overlooks their cognitive maturity and undermines their potential contributions to society (Mathews, 2023).

The developmental perspective also has implications for children's rights under international frameworks. The UNCRC emphasizes that children's views should be given due weight based on their age and maturity, recognizing that developmental stages influence decision-making capacity (United Nations, 1989). This principle

supports empowering children in deliberative settings while protecting them from the consequences of decisions made under pressure. However, domestic legal systems often fail to fully integrate these developmental insights, resulting in policies that either overprotect or unduly penalize children. For instance, while adolescents may be denied voting rights due to perceived immaturity, they face criminal accountability at younger ages, revealing a lack of coherence in how capacity is assessed across domains (Loughran et al., 2022; Oosterhoff et al., 2022).

To address these challenges, legal frameworks must incorporate developmental science to create more equitable and effective policies. Steinberg and Icenogle (2019) suggest that setting an age boundary around 16 for decisions in cold contexts, such as medical consent or research participation, is reasonable, given the maturity of cognitive abilities by this age. However, they note that some adolescents may reach this capacity earlier, highlighting the need for individualized assessments like Gillick competency. In criminal law, aligning accountability with developmental maturity could reduce the punitive treatment of children in hot contexts, where their decisions are driven by psychosocial immaturity (Moritz, 2023). By integrating these insights, legal systems can better balance protection and empowerment, ensuring that children's developmental capacities are respected while safeguarding their well-being.

In conclusion, the developmental perspective underscores the need for legal frameworks to adapt to the unique and evolving capacities of children and adolescents. By recognizing the differences between cold and hot decision-making contexts, and incorporating principles like Gillick competency, the law can better support children's autonomy while protecting them from the consequences of immature decisions. Addressing these developmental nuances is essential for creating just and equitable legal systems that respect children's rights and capacities.

5. THE EVOLVING LEGAL LANDSCAPE

The legal landscape governing children's decision-making is undergoing significant transformation, driven by new insights from developmental science, human rights principles, and bioethical frameworks. This *Law and Children's Decision-Making Special Issue* of *Laws* aims to synthesize emerging perspectives on how children engage with legal systems, focusing on their participation, consent, and decision-making authority. By inviting cross-disciplinary contributions, the issue explores reforms across diverse domains, including criminal law, child protection, healthcare, forensic interviewing, and sexual consent. A recurring theme is the critical role of human rights, developmental evidence, and bioethics in shaping legal approaches to children's agency. However, the law frequently fails to fully integrate these perspectives, leading to inconsistent and sometimes inequitable outcomes. The scholarship in this issue proposes significant reforms to address these gaps, emphasizing the need for legal systems to balance protection with empowerment (Mathews, 2023; Tobin, 2023).

One of the most pressing challenges in children's decision-making law is the uncertainty surrounding healthcare decisions, particularly for transgender and gender-diverse youth. The common law principle of Gillick competency, which allows mature minors to consent to medical treatment based on their understanding and maturity, has been inconsistently applied, creating volatility for children, families, and healthcare providers (*Gillick v. West Norfolk and Wisbech Area Health Authority*, 1986; *Marion's Case*, 1992). Jowett et al. (2022) highlight the harms caused by court interventions in gender-affirming care, including negative impacts on health, well-being, and financial stability. Their analysis reveals widespread concern among legal professionals, judges, and healthcare practitioners about the current legal framework's inadequacy. To address this, Jowett et al. (2022) propose legislative reforms, such as establishing a statutory presumption of capacity at age 16 for medical decisions, replacing the common law mature minor principle with a legislative test, or creating specific provisions for gender-affirming care. These proposals shift away from welfare-based approaches toward rights-based frameworks, prioritizing children's autonomy in appropriate contexts.

Similarly, Smith (2023) critiques the inconsistent application of Gillick competency in gender-affirming care cases. Despite the principle's clear mandate that minors with sufficient capacity can consent to treatment, courts have increasingly favored a best interests approach, often requiring parental involvement even when a child is deemed Gillick competent. This departure undermines the foundational logic of the Gillick decision, which emphasizes a child's right to self-determination (Smith, 2023). The reliance on parental consent can be particularly problematic when families do not support a child's decision, as is often the case for trans and gender-diverse youth. Such practices violate the mature minor principle and highlight the need for clearer legal standards to ensure children's autonomy is respected. These challenges underscore the broader difficulty of supporting children's decision-making while protecting them from significant consequences, particularly in medical contexts where outcomes may be irreversible (*X v. Sydney Children's Hospital Network*, 2013).

The consequences of decisions play a pivotal role in determining the level of autonomy granted to children. Courts in Australia and the UK are notably cautious about allowing children to refuse treatment when the decision could lead to severe or permanent harm. This protective stance often overrides a child's autonomy, prioritizing their best interests as seen in cases like *Mercy Hospitals Victoria v D1 and Anor* (2018). Moritz (2023) examines this tension across health and criminal law, revealing conflicting approaches. In health law, children's vulnerability is prioritized, limiting their autonomy to ensure decisions align with their best interests. In contrast, criminal law assumes children are fully accountable at certain ages, despite developmental evidence indicating limited capacity in emotionally reactive situations (Steinberg & Icenogle, 2019). Moritz (2023) advocates for aligning criminal law with healthcare principles, proposing that developmental immaturity be considered to avoid holding children accountable for decisions made in "hot" contexts, where emotional and social

pressures dominate. Such reforms would better protect children from the consequences of their developmental limitations while fostering consistency across legal domains.

Developmental science provides compelling evidence that adolescents over 16 possess sufficient cognitive maturity for certain decisions, particularly in deliberative settings. Mathews (2023) conducts a multidisciplinary review of developmental, legal, ethical, and human rights perspectives on adolescents' capacity to consent to research participation. The analysis reveals gaps in existing legal principles and national ethics guidelines, which often fail to recognize adolescents' decision-making abilities. Mathews (2023) proposes legislative reforms to grant independent consent authority to those aged 16 for social, humanities, and health-related research, supported by evidence that adolescents at this age have mature cognitive capacities for unhurried decisions (Steinberg & Icenogle, 2019). These reforms would enhance adolescents' participation in knowledge generation and public policy, addressing urgent societal needs while respecting their rights. Additionally, Mathews recommends updating national ethics guidelines to support such participation, ensuring alignment with developmental and human rights principles.

The conceptualization of children's decision-making varies across legal frameworks, as explored by Tobin (2023). Tobin compares three models shaping the law's approach to children's involvement: the property/instrumentalist model, which views children as parental extensions; the welfare model, prioritizing protection; and the rights-based model, emphasizing autonomy and participation. Through a rights-based lens, Tobin (2023) critiques contemporary practices, including rigid age-based standards and the interplay between Gillick competency and courts' parens patriae jurisdiction. A rights-based approach tolerates minimum age rules under specific conditions but aligns closely with Gillick competency, offering a nuanced framework for supporting children's decision-making across childhood. Tobin (2023) suggests that courts' parens patriae powers can evolve to better protect children's rights and autonomy, providing deeper insights into how legal systems can balance protection and empowerment.

Children's participation in child protection and care proceedings is another critical area requiring reform. Cashmore et al. (2023) (2023) evaluate the mechanisms designed to involve children in these processes, assessing whether they meet the UNCRC's requirement to give children's views due weight based on age and maturity (United Nations, 2023). Their analysis of Australian law, policy, and practice in New South Wales highlights significant shortcomings. Children often lack access to clear information about court processes, and there is a scarcity of trusted advocates to facilitate their participation. Cultural backgrounds and trust in caseworkers and decision-makers are essential but frequently overlooked factors in ensuring meaningful involvement. Cashmore et al. (2023) (2023) emphasize that trust in the process is crucial for empowering children, yet current mechanisms often fail to provide clarity on how children's views are interpreted or weighted. Globally, much work remains to

align child protection systems with Article 12 of the UNCRC, ensuring children's voices are heard in decisions that shape their safety and well-being.

Empowering children, even at young ages, is equally vital in forensic contexts, particularly when they are victims of sexual abuse. Holder et al. (2023) analyze how children articulate justice goals during forensic interviews, using 300 transcripts from interviews with children aged 3 to 16. Their study approaches children as "agentic" individuals, capable of expressing desires for validation, acknowledgment of harm, and protection for themselves and potential victims. These justice goals are often expressed spontaneously, highlighting children's capacity to claim moral and legal recourse despite their developmental stage. Holder et al. (2023) stress the need for specialized forensic interviewing techniques that honor children's agency, enabling effective participation in criminal justice processes. Successful interviews not only advance prosecutions but also support children's health rehabilitation and safety, underscoring the importance of empowering children as active participants in legal proceedings.

The evolving legal landscape reflects a shift toward recognizing children's agency, driven by interdisciplinary insights and human rights frameworks. However, significant challenges remain, including inconsistent application of principles like Gillick competency, reliance on age-based rules, and gaps in domestic implementation of international norms. The scholarship in this special issue proposes transformative reforms, such as legislative presumptions of capacity, alignment of criminal and health law with developmental science, and enhanced mechanisms for children's participation in protection and forensic contexts. By integrating human rights, developmental evidence, and bioethical principles, legal systems can better support children's autonomy while ensuring their protection, fostering a more equitable and just approach to decision-making.

6. CONCLUSIONS

The evolving legal landscape surrounding children's decision-making reflects a dynamic interplay between protection and empowerment, shaped by developmental science, human rights, and ethical considerations. The *Law and Children's Decision-Making Special Issue* of *Laws* highlights the urgent need for legal reforms to address inconsistencies in how children's agency is recognized across various domains. By integrating interdisciplinary insights, the issue proposes frameworks that balance safeguarding vulnerable children with respecting their evolving capacities. A central challenge is the tension between universal age-based rules and individualized assessments, such as the Gillick competency principle, which acknowledges a child's maturity and understanding (*Gillick v. West Norfolk and Wisbech Area Health Authority*, 1986). This principle, while pivotal, is inconsistently applied, particularly in complex cases like gender-affirming care, where courts often prioritize parental or judicial oversight over a child's autonomy (Smith, 2023).

The United Nations Convention on the Rights of the Child (UNCRC) provides a robust foundation for recognizing children as rights-holders, emphasizing their right to

participate in decisions affecting them (United Nations, 1989, art. 12). However, domestic legal systems often fall short of fully implementing these principles, leading to gaps in areas such as child protection, criminal justice, and healthcare. For instance, while adolescents may be denied autonomy in medical decisions due to perceived immaturity, they can face criminal accountability at younger ages, revealing contradictions in legal standards (Moritz, 2023). Developmental science underscores that adolescents possess significant cognitive maturity in deliberative contexts, supporting their capacity for informed decision-making in areas like research consent or civic participation (Steinberg & Icenogle, 2019). Yet, rigid age-based thresholds often override these capacities, limiting children's ability to contribute meaningfully.

Ethical principles, including autonomy, beneficence, non-maleficence, and justice, further complicate the legal landscape. These principles demand that children's voices be respected while ensuring decisions promote their well-being and avoid harm (Beauchamp & Childress, 2018). The scholarship in this issue advocates for reforms that align legal frameworks with these interdisciplinary insights, such as legislative presumptions of capacity for adolescents and enhanced participation mechanisms in child protection proceedings (Jowett et al., 2022; Cashmore et al., 2023). By fostering trust and clarity in legal processes, these reforms aim to empower children while addressing their vulnerabilities.

Ultimately, the special issue calls for a nuanced approach to children's decision-making, moving beyond paternalistic models toward rights-based frameworks. This shift requires policymakers, legislators, and the judiciary to integrate developmental evidence, human rights, and bioethical principles to create equitable systems. Such systems should honor children's agency, ensure their protection, and promote their participation across diverse contexts, from healthcare to criminal justice. By addressing these challenges, the law can better support children as active rights-holders, fostering a more just and inclusive legal landscape.

1. Children's Rights of Participation and Decision-Making

The legal framework governing children's participation and decision-making is intricate, spanning multiple areas of law and intersecting with various disciplines and jurisdictions. As societal challenges evolve and new scientific evidence emerges, the law must continually adapt to address the complexities of involving children in decisions that impact their lives. Crafting legal strategies that promote children's contributions to decision-making requires integrating insights from diverse fields, including psychology, ethics, and developmental science. This interdisciplinary approach is crucial to ensuring that legal developments align with the best interests of children while respecting their evolving capacities. A key feature of this *Law and Children's Decision-Making Special Issue* of *Laws* is its emphasis on interdisciplinary perspectives, which provide essential context for understanding the nuances of children's agency in legal settings (Bridgeman, 2007).

Children's development is highly individualized, with each child progressing at a unique pace through cognitive, emotional, and social stages. This variability poses significant challenges for policymakers tasked with designing frameworks that enable meaningful participation in decisions affecting children. Developmental research, particularly in cognitive, psychosocial, and neurobiological domains, indicates that adolescents at certain developmental stages possess the capacity for informed decision-making, especially in contexts that allow for deliberate, unhurried reflection (Steinberg & Icenogle, 2019). However, legal systems often struggle to accommodate this diversity, frequently relying on standardized age-based thresholds to determine decision-making capacity. These "bright line" rules prioritize administrative efficiency but may fail to account for individual differences in maturity, potentially undermining both justice and developmental accuracy (Bridgeman, 2007).

Children's rights serve as a critical lens for navigating the evolving landscape of decision-making law. International instruments, such as the United Nations Convention on the Rights of the Child (UNCRC), explicitly recognize children as rights-holders with inherent entitlements (United Nations, 1989). The UNCRC outlines specific rights relevant to decision-making, including the right to freedom of expression (Article 13), dignity (Article 23), and parental guidance that evolves in accordance with a child's developing capacities (Article 5). Central to the UNCRC is the right to participation, articulated in Article 12(1), which mandates that states ensure children capable of forming their own views have the opportunity to express them freely in all matters affecting them. These views must be given due weight based on the child's age and maturity. This principle underscores the importance of involving children in decisions, both individually and collectively, and emphasizes their visibility as active participants in legal processes (Goldhagen et al., 2020; Mauras, 2011).

Despite the UNCRC's clear directives, the implementation of children's rights in domestic legal systems often falls short. International norms provide a universal benchmark for how governments should legislate on issues concerning children, but these norms are not automatically binding at the domestic level without specific incorporation into national laws. In Australia, for instance, the absence of enforceable human rights legislation limits the practical application of UNCRC principles, leading to inconsistencies across jurisdictions (Kirby, 2011). This gap is particularly evident in areas such as the minimum age of criminal responsibility. The UN Committee on the Rights of the Child (2007) recommends a minimum age of at least 12, preferably 14–16, to account for children's emotional, mental, and intellectual maturity. Yet, countries like Australia and England hold children criminally accountable at younger ages, often as low as 10, which conflicts with developmental evidence and international standards (Davis, 2022; Crofts, 2018). This discrepancy highlights a broader issue: the failure to align legal frameworks with developmental science can result in policies that neither protect nor empower children effectively.

The recognition of children as independent rights-holders marks a significant departure from historical common law perspectives, which often treated children as extensions of their parents or as property (Polonko et al., 2016). The UNCRC has played a pivotal role in reframing children as autonomous entities with their own rights, distinct from those of their parents or carers. However, parental influence remains a significant factor in children's decision-making. Adults, by virtue of legal and social structures, often retain significant control over the extent of autonomy children are granted (Cherney et al., 2008). Bridgeman (2007) cautions that rights-based approaches to decision-making can sometimes be applied abstractly, detached from the lived realities of children and their families. Thus, while children's rights provide a framework for inclusion, they must be considered alongside interdisciplinary perspectives to ensure that legal strategies are grounded in practical and developmental realities.

Scholarship on children's involvement in decision-making identifies three key dimensions: expressing views, active participation, and full agency (Kosher, 2018). These dimensions represent a continuum of engagement, each with distinct implications for children's autonomy. Expressing views allows children to communicate their perspectives, which is a fundamental right under the UNCRC (Article 12). Even very young children can articulate their views, with the level of sophistication depending on their age and maturity. Research by Alderson et al. (2022) demonstrates that children as young as six, particularly those with significant medical experiences such as congenital heart surgery, can provide informed and meaningful input into health decisions. This suggests that age alone is not a reliable indicator of a child's ability to contribute to decisions. However, expressing views does not guarantee that these perspectives will influence outcomes, as adult decision-makers may not always act on or prioritize children's input. This limitation underscores the distinction between expressing views and achieving true participation.

Participation goes beyond merely voicing opinions; it involves active engagement in the decision-making process, where children can influence outcomes by persuading decision-makers. The UNCRC emphasizes participation as a foundational principle, with no minimum age for involvement in decisions affecting children (Inter-Agency Working Group on Children's Participation, 2007; Lansdown et al., 2014). Participation represents a middle ground on the protection-empowerment continuum, as it allows children to contribute meaningfully without granting full decision-making authority. However, the extent to which children's participation is meaningful depends on the mechanisms in place to facilitate it and the willingness of adults to incorporate children's perspectives. For example, in child protection proceedings, the integrity of the process—built on trust in caseworkers, advocates, and judicial systems—is critical to ensuring that children's voices are heard and respected (Cashmore et al., 2023).

Full agency, in contrast, occurs when children are granted the authority to make decisions independently, irrespective of parental or carer input. This level of autonomy

typically requires a legal or policy framework that recognizes a child's capacity to provide informed consent. To achieve this, a child must demonstrate the ability to understand relevant information, retain it, weigh it to make reasoned choices, and act voluntarily (Alderson, 2007). In some jurisdictions, such as South Australia, adolescents aged 16 and older are granted full decision-making authority in medical contexts, equivalent to that of adults (Consent to Medical Treatment and Palliative Care Act, 1995). However, such progressive policies are exceptions rather than the norm. Even when children demonstrate the requisite cognitive capacity, legal systems often hesitate to confer full agency, particularly in high-stakes decisions like medical treatment refusal or participation in social policy (Smith, 2023).

A critical area where the absence of full agency is particularly evident is suffrage. In many countries, adolescents under 18 are denied the right to vote, despite their stake in shaping social and political policies that affect their future. Issues such as climate change, economic policy, and social justice are of profound relevance to youth, yet their exclusion from electoral processes limits their ability to influence these domains (Loughran et al., 2022; Oosterhoff et al., 2022). Recent debates and legislative changes in some jurisdictions, such as lowering the voting age to 16, reflect growing recognition of adolescents' capacity for civic engagement. These developments align with developmental evidence suggesting that adolescents possess sufficient cognitive maturity for deliberative decision-making in "cold" contexts, where decisions are made without emotional pressure (Steinberg & Icenogle, 2019).

The application of legal principles like Gillick competency further illustrates the complexities of children's decision-making. Originating from *Gillick v. West Norfolk and Wisbech Area Health Authority* (1986) and adopted in Australia through *Marion's Case* (1992), Gillick competency allows children with sufficient understanding and maturity to consent to medical treatment independently. This principle acknowledges developmental variability, avoiding rigid age-based criteria. However, its application is inconsistent, particularly in cases involving gender-affirming care, where courts have sometimes prioritized parental involvement or best interests over a child's autonomy, even when Gillick competency is established (Smith, 2023). Such inconsistencies highlight the tension between empowering children and protecting them from potentially irreversible decisions.

In conclusion, children's rights to participation and decision-making require legal frameworks that integrate developmental science, ethical considerations, and human rights principles. The UNCRC provides a robust foundation for recognizing children as rights-holders, but domestic implementation remains uneven. The spectrum of engagement—from expressing views to active participation to full agency—offers a framework for understanding how children can be involved in decisions. However, achieving meaningful participation requires overcoming systemic barriers, such as reliance on age-based rules and inconsistent application of principles like Gillick competency. By addressing these challenges, legal systems can better balance

protection and empowerment, ensuring that children's voices are heard and their autonomy respected in accordance with their evolving capacities.

2. Ethical Considerations

The legal frameworks governing children's decision-making must be informed by ethical principles to ensure fairness and respect for their evolving capacities. Inconsistencies in how decision-making authority is assigned based on age or attributes can violate core ethical principles, particularly those of bioethics: autonomy, beneficence, non-maleficence, and justice (Beauchamp & Childress, 2018). These principles, collectively known as principlism, offer critical insights into the legitimacy of restricting or enabling children's participation, consent, and decision-making authority. Autonomy emphasizes an individual's right to control decisions affecting their body and life. For children, this principle supports their involvement in decisions, yet participation alone does not equate to full autonomy, as final decision-making power often remains with adults. Recognizing children's autonomy requires safeguarding their rights to express views and, where appropriate, make independent choices (Bridgeman, 2007).

Beneficence mandates that decisions, particularly in medical contexts, should promote the well-being of the child. The "best interests of the child" standard, deeply embedded in legal systems like Australia's *Family Law Act* (1975), reflects this principle by prioritizing outcomes that benefit the child, especially when they lack the capacity to decide for themselves. However, this standard can conflict with autonomy, particularly when a child refuses potentially beneficial medical treatment. For example, courts may override a child's refusal of treatment to prioritize their best interests, as seen in cases like *Mercy Hospitals Victoria v D1 and Anor* (2018), where a 17-year-old's decision was overruled due to concerns about life-threatening consequences (Moritz & Ebbs, 2021). This tension highlights the challenge of balancing beneficence with respect for a child's developing autonomy.

Non-maleficence, the principle of avoiding harm, aligns closely with beneficence in ensuring that decisions minimize negative outcomes for children. Research suggests that non-maleficence is often prioritized in decision-making, particularly when it conflicts with other principles (Page, 2012. Excluding children from decisions about themselves can inadvertently cause harm, as it may disregard their perspectives or undermine their sense of agency. For instance, denying children a voice in medical or legal matters can lead to emotional or psychological distress, contradicting the goal of harm avoidance.

Justice requires fair and equitable treatment in decision-making processes, balancing individual needs with societal considerations, such as non-discrimination and resource allocation (Cookson, 2015). In urgent situations, justice may take precedence to ensure fairness, particularly when children's rights to participation are at stake (Lindridge, 2017). In medical settings, these ethical principles provide a framework for healthcare professionals to make decisions independent of personal biases, ensuring that

children's rights are upheld (Beauchamp & Childress, 2018). Beyond healthcare, these principles can guide broader decision-making contexts, such as child protection or criminal justice, where fairness and respect for children's agency are equally critical.

The interplay between ethical principles and children's rights underscores the need for legal frameworks to move beyond paternalistic approaches. While the best interests standard and harm avoidance are essential for protecting vulnerable children, they must be balanced with respect for autonomy and justice to empower children as rights-holders. This balance is particularly crucial in high-stakes decisions, such as medical treatment or participation in social policy, where children's voices are often sidelined. By integrating ethical considerations, legal systems can better support children's participation and decision-making, fostering outcomes that respect both their vulnerability and their capacity for agency.

3. Developmental Perspective and Consequences

The developmental perspective is a cornerstone in understanding how children and adolescents make decisions and how legal frameworks should respond to their evolving capacities. Legal systems often define decision-making authority based on age or specific attributes, typically through age-of-majority legislation that sets a general threshold for adulthood, applied across contexts like voting or medical consent. However, many jurisdictions also establish specific ages of consent for particular purposes, which may differ from the general age of majority. In areas where legislation does not explicitly define a child's capacity to consent, such as in certain medical or social policy contexts, the principle of Gillick competency—originating from *Gillick v. West Norfolk and Wisbech Area Health Authority* (1986) and adopted in Australia via *Marion's Case* (1992)—is often applied. This principle assesses a child's maturity and understanding to determine their ability to consent to specific decisions, particularly in healthcare. However, in non-legislated domains, a lack of clear legal guidance creates uncertainty, leading to inconsistent approaches driven by administrative convenience, parental authority, or institutional biases. This can result in the exclusion of children from decisions about themselves, potentially undermining their autonomy and leading to unjust outcomes (Mathews & Smith, 2023).

Developmental factors significantly influence how children respond to situations and make decisions, often differing from adult responses due to variations in cognitive, emotional, and psychosocial maturity. Children develop at different rates, influenced by factors such as age, upbringing, education, and individual temperament (*Marion's Case*, 1992). This variability complicates the application of uniform age-based rules, as developmental stages cannot be precisely tied to specific ages. International human rights frameworks, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (United Nations, 1985), emphasize the importance of considering emotional, mental, and intellectual maturity when determining legal thresholds, such as the age of criminal responsibility. Similarly, the United Nations Convention on the Rights of the Child (UNCRC) mandates that children capable of

forming views should have the right to express them, with due weight given based on their age and maturity (United Nations, 1989, art. 12). These developmental considerations are critical for crafting legal frameworks that balance protection and empowerment, ensuring children are neither unduly restricted nor held accountable beyond their capacities.

Children's cognitive development shapes their decision-making processes, affecting their ability to assess risks, benefits, and consequences. Research highlights that cognitive capacities, such as logical reasoning and problem-solving, continue to develop through adolescence, with younger children often struggling to fully evaluate the implications of their choices (Lamb & Sim, 2013). Psychosocial factors further complicate decision-making, as children are highly susceptible to external influences, such as peer pressure, and tend to prioritize short-term rewards over long-term consequences (Steinberg, 2009). Adolescents, in particular, exhibit heightened vulnerability to risk-taking behaviors due to the asynchronous development of the brain's reward and control systems. The reward system matures earlier, driving impulsive decisions, while the prefrontal cortex, responsible for impulse control and long-term planning, develops later, often into early adulthood (Grootens-Wiegers et al., 2017). This developmental gap can lead to decisions that appear irrational or harmful, particularly in emotionally charged or high-pressure situations.

Steinberg and Icenogle (2019) distinguish between "cold" and "hot" decision-making contexts to explain how developmental factors influence adolescent behavior. Cold contexts involve unhurried deliberation without emotional arousal, allowing adolescents to leverage mature cognitive abilities, such as working memory, response inhibition, and logical reasoning, which are typically developed by age 16. In these settings, adolescents can make informed decisions, such as consenting to medical treatment or participating in research (Steinberg & Icenogle, 2019). Hot contexts, conversely, involve immediate decisions under emotional or social pressure, where adolescents' underdeveloped psychosocial traits—such as impulse control and resistance to peer influence—can lead to risky or reactive choices (Blakemore & Robbins, 2012; Steinberg & Icenogle, 2019). This distinction is critical for legal systems, as it suggests that adolescents may be competent in deliberative settings but less so in situations requiring rapid responses.

The susceptibility of children to external influences, particularly peer pressure, is a significant developmental factor. During adolescence, children shift from seeking parental approval to valuing peer validation, which can shape their behavior in both positive and negative ways (Crone & Dahl, 2012). Positive peer influences can promote social adjustment, but negative influences may lead to risky or criminal behavior, especially in the absence of supportive family structures (Telzer et al., 2018; Monahan et al., 2009). Adolescents' tendency to minimize consequences and their limited ability to self-regulate further exacerbate these risks, particularly in hot contexts where emotional regulation is challenging (Mathews, 2023). For example, peer-influenced

decisions may contribute to juvenile offending, as adolescents are more likely to engage in impulsive or antisocial behavior when swayed by peers (Leverso et al., 2015).

The legal system's response to children's developmental capacities often reflects a tension between protection and accountability. In healthcare, courts frequently override children's decisions when the consequences are deemed significant, prioritizing the child's best interests over autonomy. For instance, in *Mercy Hospitals Victoria v D1 and Anor* (2018), a 17-year-old's refusal of treatment was overruled because the court doubted her ability to fully comprehend the life-threatening implications of her decision (*Re W*, 1992). This protective approach contrasts sharply with criminal law, where children as young as 10 in Australia can be held criminally responsible, despite developmental evidence suggesting limited capacity for reasoned decision-making in emotionally charged situations (Davis, 2022; Crofts, 2018). This discrepancy highlights a broader inconsistency: children are often denied autonomy in contexts where they demonstrate competence, yet held accountable in others where their developmental limitations are evident.

Gillick competency offers a framework for addressing these developmental nuances, particularly in healthcare. By assessing a child's understanding and maturity, rather than relying on age, Gillick competency allows for individualized evaluations of decision-making capacity (*Gillick v. West Norfolk and Wisbech Area Health Authority*, 1986; *Marion's Case*, 1992). This principle acknowledges that some younger children may possess sufficient maturity to consent to treatment, while some older adolescents may not. However, its application is inconsistent, particularly in complex cases like gender-affirming care, where courts may prioritize parental input or best interests over a child's autonomy, even when Gillick competency is established (Smith, 2023). This variability underscores the challenge of aligning legal standards with developmental realities.

The consequences of children's developmental stage extend beyond individual decisions to broader social and legal outcomes. Adolescents' limited ability to future-orient or resist external pressures can lead to behaviors with significant legal ramifications, such as criminal activity or refusal of medical treatment. Legal systems must account for these developmental differences to avoid punishing children for decisions influenced by their immaturity. For example, holding a child criminally accountable in a hot context, where emotional and social pressures dominate, fails to consider their psychosocial limitations (Steinberg & Icenogle, 2019). Conversely, denying adolescents the right to participate in cold contexts, such as voting or research consent, overlooks their cognitive maturity and undermines their potential contributions to society (Mathews, 2023).

The developmental perspective also has implications for children's rights under international frameworks. The UNCRC emphasizes that children's views should be given due weight based on their age and maturity, recognizing that developmental stages influence decision-making capacity (United Nations, 1989). This principle

supports empowering children in deliberative settings while protecting them from the consequences of decisions made under pressure. However, domestic legal systems often fail to fully integrate these developmental insights, resulting in policies that either overprotect or unduly penalize children. For instance, while adolescents may be denied voting rights due to perceived immaturity, they face criminal accountability at younger ages, revealing a lack of coherence in how capacity is assessed across domains (Loughran et al., 2022; Oosterhoff et al., 2022).

To address these challenges, legal frameworks must incorporate developmental science to create more equitable and effective policies. Steinberg and Icenogle (2019) suggest that setting an age boundary around 16 for decisions in cold contexts, such as medical consent or research participation, is reasonable, given the maturity of cognitive abilities by this age. However, they note that some adolescents may reach this capacity earlier, highlighting the need for individualized assessments like Gillick competency. In criminal law, aligning accountability with developmental maturity could reduce the punitive treatment of children in hot contexts, where their decisions are driven by psychosocial immaturity (Moritz, 2023). By integrating these insights, legal systems can better balance protection and empowerment, ensuring that children's developmental capacities are respected while safeguarding their well-being.

In conclusion, the developmental perspective underscores the need for legal frameworks to adapt to the unique and evolving capacities of children and adolescents. By recognizing the differences between cold and hot decision-making contexts, and incorporating principles like Gillick competency, the law can better support children's autonomy while protecting them from the consequences of immature decisions. Addressing these developmental nuances is essential for creating just and equitable legal systems that respect children's rights and capacities.

4. The Evolving Legal Landscape

The legal landscape governing children's decision-making is undergoing significant transformation, driven by new insights from developmental science, human rights principles, and bioethical frameworks. This *Law and Children's Decision-Making Special Issue* of *Laws* aims to synthesize emerging perspectives on how children engage with legal systems, focusing on their participation, consent, and decision-making authority. By inviting cross-disciplinary contributions, the issue explores reforms across diverse domains, including criminal law, child protection, healthcare, forensic interviewing, and sexual consent. A recurring theme is the critical role of human rights, developmental evidence, and bioethics in shaping legal approaches to children's agency. However, the law frequently fails to fully integrate these perspectives, leading to inconsistent and sometimes inequitable outcomes. The scholarship in this issue proposes significant reforms to address these gaps, emphasizing the need for legal systems to balance protection with empowerment (Mathews, 2023; Tobin, 2023).

One of the most pressing challenges in children's decision-making law is the uncertainty surrounding healthcare decisions, particularly for transgender and gender-diverse youth. The common law principle of Gillick competency, which allows mature minors to consent to medical treatment based on their understanding and maturity, has been inconsistently applied, creating volatility for children, families, and healthcare providers (*Gillick v. West Norfolk and Wisbech Area Health Authority*, 1986; *Marion's Case*, 1992). Jowett et al. (2022) highlight the harms caused by court interventions in gender-affirming care, including negative impacts on health, well-being, and financial stability. Their analysis reveals widespread concern among legal professionals, judges, and healthcare practitioners about the current legal framework's inadequacy. To address this, Jowett et al. (2022) propose legislative reforms, such as establishing a statutory presumption of capacity at age 16 for medical decisions, replacing the common law mature minor principle with a legislative test, or creating specific provisions for gender-affirming care. These proposals shift away from welfare-based approaches toward rights-based frameworks, prioritizing children's autonomy in appropriate contexts.

Similarly, Smith (2023) critiques the inconsistent application of Gillick competency in gender-affirming care cases. Despite the principle's clear mandate that minors with sufficient capacity can consent to treatment, courts have increasingly favored a best interests approach, often requiring parental involvement even when a child is deemed Gillick competent. This departure undermines the foundational logic of the Gillick decision, which emphasizes a child's right to self-determination (Smith, 2023). The reliance on parental consent can be particularly problematic when families do not support a child's decision, as is often the case for trans and gender-diverse youth. Such practices violate the mature minor principle and highlight the need for clearer legal standards to ensure children's autonomy is respected. These challenges underscore the broader difficulty of supporting children's decision-making while protecting them from significant consequences, particularly in medical contexts where outcomes may be irreversible (*X v. Sydney Children's Hospital Network*, 2013).

The consequences of decisions play a pivotal role in determining the level of autonomy granted to children. Courts in Australia and the UK are notably cautious about allowing children to refuse treatment when the decision could lead to severe or permanent harm. This protective stance often overrides a child's autonomy, prioritizing their best interests as seen in cases like *Mercy Hospitals Victoria v D1 and Anor* (2018). Moritz (2023) examines this tension across health and criminal law, revealing conflicting approaches. In health law, children's vulnerability is prioritized, limiting their autonomy to ensure decisions align with their best interests. In contrast, criminal law assumes children are fully accountable at certain ages, despite developmental evidence indicating limited capacity in emotionally reactive situations (Steinberg & Icenogle, 2019). Moritz (2023) advocates for aligning criminal law with healthcare principles, proposing that developmental immaturity be considered to avoid holding children accountable for decisions made in "hot" contexts, where emotional and social

pressures dominate. Such reforms would better protect children from the consequences of their developmental limitations while fostering consistency across legal domains.

Developmental science provides compelling evidence that adolescents over 16 possess sufficient cognitive maturity for certain decisions, particularly in deliberative settings. Mathews (2023) conducts a multidisciplinary review of developmental, legal, ethical, and human rights perspectives on adolescents' capacity to consent to research participation. The analysis reveals gaps in existing legal principles and national ethics guidelines, which often fail to recognize adolescents' decision-making abilities. Mathews (2023) proposes legislative reforms to grant independent consent authority to those aged 16 for social, humanities, and health-related research, supported by evidence that adolescents at this age have mature cognitive capacities for unhurried decisions (Steinberg & Icenogle, 2019). These reforms would enhance adolescents' participation in knowledge generation and public policy, addressing urgent societal needs while respecting their rights. Additionally, Mathews recommends updating national ethics guidelines to support such participation, ensuring alignment with developmental and human rights principles.

The conceptualization of children's decision-making varies across legal frameworks, as explored by Tobin (2023). Tobin compares three models shaping the law's approach to children's involvement: the property/instrumentalist model, which views children as parental extensions; the welfare model, prioritizing protection; and the rights-based model, emphasizing autonomy and participation. Through a rights-based lens, Tobin (2023) critiques contemporary practices, including rigid age-based standards and the interplay between Gillick competency and courts' parens patriae jurisdiction. A rights-based approach tolerates minimum age rules under specific conditions but aligns closely with Gillick competency, offering a nuanced framework for supporting children's decision-making across childhood. Tobin (2023) suggests that courts' parens patriae powers can evolve to better protect children's rights and autonomy, providing deeper insights into how legal systems can balance protection and empowerment.

Children's participation in child protection and care proceedings is another critical area requiring reform. Cashmore et al. (2023) (2023) evaluate the mechanisms designed to involve children in these processes, assessing whether they meet the UNCRC's requirement to give children's views due weight based on age and maturity (United Nations, 2023). Their analysis of Australian law, policy, and practice in New South Wales highlights significant shortcomings. Children often lack access to clear information about court processes, and there is a scarcity of trusted advocates to facilitate their participation. Cultural backgrounds and trust in caseworkers and decision-makers are essential but frequently overlooked factors in ensuring meaningful involvement. Cashmore et al. (2023) (2023) emphasize that trust in the process is crucial for empowering children, yet current mechanisms often fail to provide clarity on how children's views are interpreted or weighted. Globally, much work remains to

align child protection systems with Article 12 of the UNCRC, ensuring children's voices are heard in decisions that shape their safety and well-being.

Empowering children, even at young ages, is equally vital in forensic contexts, particularly when they are victims of sexual abuse. Holder et al. (2023) analyze how children articulate justice goals during forensic interviews, using 300 transcripts from interviews with children aged 3 to 16. Their study approaches children as "agentic" individuals, capable of expressing desires for validation, acknowledgment of harm, and protection for themselves and potential victims. These justice goals are often expressed spontaneously, highlighting children's capacity to claim moral and legal recourse despite their developmental stage. Holder et al. (2023) stress the need for specialized forensic interviewing techniques that honor children's agency, enabling effective participation in criminal justice processes. Successful interviews not only advance prosecutions but also support children's health rehabilitation and safety, underscoring the importance of empowering children as active participants in legal proceedings.

The evolving legal landscape reflects a shift toward recognizing children's agency, driven by interdisciplinary insights and human rights frameworks. However, significant challenges remain, including inconsistent application of principles like Gillick competency, reliance on age-based rules, and gaps in domestic implementation of international norms. The scholarship in this special issue proposes transformative reforms, such as legislative presumptions of capacity, alignment of criminal and health law with developmental science, and enhanced mechanisms for children's participation in protection and forensic contexts. By integrating human rights, developmental evidence, and bioethical principles, legal systems can better support children's autonomy while ensuring their protection, fostering a more equitable and just approach to decision-making.

6. CONCLUSIONS

The evolving legal landscape surrounding children's decision-making reflects a dynamic interplay between protection and empowerment, shaped by developmental science, human rights, and ethical considerations. The *Law and Children's Decision-Making Special Issue* of *Laws* highlights the urgent need for legal reforms to address inconsistencies in how children's agency is recognized across various domains. By integrating interdisciplinary insights, the issue proposes frameworks that balance safeguarding vulnerable children with respecting their evolving capacities. A central challenge is the tension between universal age-based rules and individualized assessments, such as the Gillick competency principle, which acknowledges a child's maturity and understanding. This principle, while pivotal, is inconsistently applied, particularly in complex cases like gender-affirming care, where courts often prioritize parental or judicial oversight over a child's autonomy.

The United Nations Convention on the Rights of the Child (UNCRC) provides a robust foundation for recognizing children as rights-holders, emphasizing their right to participate in decisions affecting them. However, domestic legal systems often fall

short of fully implementing these principles, leading to gaps in areas such as child protection, criminal justice, and healthcare. For instance, while adolescents may be denied autonomy in medical decisions due to perceived immaturity, they can face criminal accountability at younger ages, revealing contradictions in legal standards. Developmental science underscores that adolescents possess significant cognitive maturity in deliberative contexts, supporting their capacity for informed decision-making in areas like research consent or civic participation. Yet, rigid age-based thresholds often override these capacities, limiting children's ability to contribute meaningfully.

Ethical principles, including autonomy, beneficence, non-maleficence, and justice, further complicate the legal landscape. These principles demand that children's voices be respected while ensuring decisions promote their well-being and avoid harm. The scholarship in this issue advocates for reforms that align legal frameworks with these interdisciplinary insights, such as legislative presumptions of capacity for adolescents and enhanced participation mechanisms in child protection proceedings. By fostering trust and clarity in legal processes, these reforms aim to empower children while addressing their vulnerabilities.

Ultimately, the special issue calls for a nuanced approach to children's decision-making, moving beyond paternalistic models toward rights-based frameworks. This shift requires policymakers, legislators, and the judiciary to integrate developmental evidence, human rights, and bioethical principles to create equitable systems. Such systems should honor children's agency, ensure their protection, and promote their participation across diverse contexts, from healthcare to criminal justice. By addressing these challenges, the law can better support children as active rights-holders, fostering a more just and inclusive legal landscape.

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