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The Complex Notion of the Capacity of a Child: Exploring the Term Capacity to Support the Meaningful Participation of Children in Family Law Proceedings

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Abstract: This article aims to explore the concept of capacity as necessitated by provisions within the UNCRC such as articles 12 and 5, which emphasize participation, and the evolving capacities of children. In family law proceedings when children are involved, age and capacity are considered in order to assess if the meaningful participation of that child is accessible. There is limited literature to indicate how the capacity of a child is determined, especially for children who are younger than twelve. Rather than relying on age to gauge capacity levels, this paper provides a unique, interdisciplinary evaluation of capacity through a combination of both legal and child development perspectives. This article aims to use a critical lens and rights-based approach to analyze the current literature regarding the capacities of children and proposes that a deeper understanding of what capacity entails is required in order to ensure the meaningful participation of children.

Keywords: interdisciplinary; capacity; participation; children's rights; family law

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1. Introduction

Including the voices of children in family law proceedings is imperative for participation and is frequently discussed within the literature related to children's rights. Extensive research, in regard to critical discussions on provisions within the United Nations Convention on the Rights of the Child (United Nations Convention on the Rights of the Child 1989), and the actualization of such provisions, can be found throughout the literature. When considering the UNCRC and specific articles within, one article in particular has been frequently studied and occasionally criticized. Part 1 in Article 12 of the UNCRC states:

"1. State Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child."

This article has been discussed frequently in the literature, and accordingly, Article 12 has become one of the most controversial provisions of the UNCRC (Lundy 2007). The tension that will be reviewed in this article pertains to this provision and the dependence of voice in relation to maturity it presents. In this case, the provision basically states children will be given a voice, but that voice is dependent on how mature or capable they present themselves to be (Daly 2018; Lansdown 2005; Tisdall 2016). There is no indication or definition embedded within article 12 on how to measure a child's capacity level or maturity or what it entails (Tisdall 2018). Within custody dispute cases, in Canada or The Netherlands for example, the significance a judge attaches to the child's views and preferences increases with the child's age, which is why children twelve and older are more common participants in family law proceedings (Bala et al. 2005; Smith et al. 2003). Though throughout the literature, there does not seem to be a tangible answer for why the age is

set to twelve, most professionals agree children are substantially more capable from the age of twelve onward to speak on matters that affect their lives (Coenraad 2014; Parkinson and Cashmore 2008; Van Rooyen et al. 2015). It appears that age presents as an indicator of either including or excluding a child from a family law proceeding without much further indication or justification required (Tisdall 2018; Rap 2016). This is a problematic exclusion of participation, as many children under the age of twelve are extremely capable of participating (Tisdall 2016). Age alone is an unsuitable indicator of a child's capacity to participate meaningfully as development differs considerably between individuals (Rap 2016). As children develop and acquire capacity, they should become entitled to higher levels of responsibility in areas that affect their lives (UNCRC General Comment No. 12 2009, para. 85). This is also explicitly outlined within the UNCRC in article 5 which states:

"States Parties shall respect the responsibilities, rights, and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention."

As furthered by Lansdown (2005), more action is required in law and policy, while a shift is required in ideologies surrounding childhood so that the participation of children and the capacities they hold are recognized. The notion of capacity and what it entails is noticeably absent in the literature. Capacity itself is relatively under-researched but frequently discussed in legal settings that involve children (Lansdown 2005; Tisdall 2018). Though guidance exists within a legal perspective in terms of civil procedure rules or practice directions, which are required of judges when making decisions, there is limited literature that aims to assess how mature or capable a child is, which is problematic, as this determination has a direct correlation with a child's participation opportunities (Campbell 2013). As Tisdall (2018) notes when the term capacity arises in literature, it is often left "undefined" and "unexpanded". This ambiguity is an issue for any jurisdiction that either implicitly or explicitly depends on a determination of capacity in family law proceedings (Daly 2020).

Allowing children to participate and have their voices heard is embedded within their rights. According to the UNCRC, decisions should always be made with the best interests of children in mind; however, depending on the age or assumed maturity of the child, those interests are ultimately determined by adult figures (Daly 2018; Le Borgne and Tisdall 2017; Smith et al. 2003). The UNCRC's provision regarding a child's "right to be heard" is ambiguous and insufficient, as Daly (2018) also notes a shift must occur that instead focuses on children's autonomy, capacity, and the children's perspectives even if they do not necessarily align with adults' opinions. Campbell (2013) suggests if the age of a child can be ignored, it may open the potential to think of children in unique frameworks as social actors or agents with autonomy who should actively participate in their environment. Within this framework, children are presented as experts of their own lives, capable of partaking in all matters (Campbell 2013; Mason and Danby 2011; Smart 2002). Despite the importance and consistency of the term being embedded within the UNCRC and within family law proceedings, there is a gap in research in terms of what capacity consists of or how to define it. This article aims to:

- Begin to define and consider the multifaceted notion of a child's capacity.
- Consider a unique, interdisciplinary perspective and approach to children's capacities.
- Provide a review of the literature to examine the term capacity from both a legal perspective and a developmental psychology perspective in an attempt to bridge theory and practice.
- Include a comprehensive view of the relevant domains and elements that pertain to the complex capacities of children.

2. Approach to Defining and Exploring the Notion of Capacity: Methodology

To conceptualize capacity in an innovative way, the current literature was extensively reviewed in order to comprehend the current understandings of the capacities of children in family law proceedings. Thus, a narrative literature review was conducted by gathering research related to children's capacities. As there is considerably limited literature relating directly to assessing or defining capacity, the article expanded the search scope. The search was expanded to any literature using the search terms capacity, children's rights, participation, voices, and best interests. This process was purposive as it aimed to include terms that surround the notion of capacity as a means to collect and analyze relevant definitions included in the literature. This methodology was employed in order to initially provide a comprehensive background in regard to the notion of capacity from various perspectives, and from there began to build a novel conceptualization of the term itself. By using a narrative literature review, the researchers addressed abstract questions and concepts gathered through relevant peer-reviewed articles (Rumrill and Fitzgerald 2001). The authors performed a literature search of the aforementioned terms using the Scopus database. Literature from the year 2010 onwards was favored within the article when describing relevant advances to the consideration of capacity; however, older literature was also included in order to show the evolution of capacity in both the legal and developmental psychology fields. Literature that included indications of the capacity of children in any setting was considered for inclusion.

The article aimed to compile what capacity means in the literature and unpack the concept in a way that relates specifically to children's capacity and participation in family law settings. The literature included supported the creation of an innovative conceptualization of the intricate elements that compose a child's unique capacity developed from extensive research regarding four main determined categories: Psychical, cognitive, emotional, and social-relational factors.

An embedded children's rights-based approach supported the best interests of children throughout the article and provided the theoretical underpinnings within the literature search. As outlined in Daly's (2020) critical work, capacity should be understood and considered through a process that is 'explicitly rights-based' (p. 472). This research aimed to ensure that the findings would be informed by relevant literary evidence (specifically from child development and legal perspectives), and additionally, the outcomes of the research would further the actualization of children's rights (Collins 2016; Lundy and McEvoy 2009). Research that occurs from a rights-based approach aims to reflect the ways in which children are currently considered and positioned within society. Further, it involves placing the UNCRC in the center of a child's perspective and at the core of the research structure and outcomes (Collins 2016). Most importantly, such an approach ensured that the rights of children guided the process and intention of this article.

The legal setting used as a practical framework throughout this article was family law, more specifically, custody and access proceedings. Though the participation of children is a relevant topic in several settings, family law proceedings were selected, more specifically, custody and access proceedings with similar family law practices such as Canada and The Netherlands. In these settings, often the voices of children are sought, in various ways or in varying instances, again depending on age, maturity, and capacity.

3. Defining the Complex Concept of Capacity: Legal and Child Development Perspectives

Within specific articles within the United Nations Convention on the Rights of the Child (1989), it is clear that there is frequent uncertainty surrounding the term capacity. It remains a difficult concept to assess with certainty, especially in the case of children (Gibson et al. 2011; Tisdall 2018). This is concerning considering how frequently this term is used or eluded to in matters that pertain to the participation or rights of children (Tisdall 2018). In order to establish a comprehensive connection between a child's capacity, participation, and rights, the concept of capacity itself must be explored in detail. Perhaps an explicit

definition of capacity is not as critical as the multitude of factors it entails. The subsequent sections will examine the term capacity from both legal and development psychology perspectives. In doing so, the article aims to show where the term fits into each discipline and how both fields have developed their knowledge regarding capacity thus far. When considering the capacity of children in family law proceedings, these are two fields that are ultimately involved. In order for children, especially those under the age of twelve, to participate in family law proceedings, inevitably, legal professionals and child psychology professionals will be involved (Coenraad 2014). Including and considering both main perspectives, as well as touching upon other disciplines (e.g., the capacity to consent in medical procedures) throughout this article was necessitated, as the true description of the capacity of children does not currently belong to one single discipline. Therefore, in order to gather an in-depth, thorough, and complete view of children's capacity, it must be considered from various disciplines. It is important to understand and examine views, definitions, and current positions regarding the capacity of children in order for children to meaningfully participate.

4. Capacity from a Legal Perspective

There is limited research that describes legal viewpoints involving the capacity to participate in family law proceedings (Tisdall 2018). Specific legislation and guidance evidently vary within jurisdictions based upon case law and other factors. However, this article aims to inform understandings of the various ways in which the term capacity may be understood within a legal context rather than within specific jurisdictions. There are also areas outside of family law in which the term capacity is embedded in legal proceedings that are pertinent to overview. For example, the 'capacity to contract' entails the concept that the individual entering into a contract must be of sound mind and understand the implications of entering the legal agreement (Buchanan 2004). This can include assessing adults with drug problems, mental health issues, or developmental delays to ensure they are capable of understanding their actions (Buchanan 2004).

Another common example from the legal perspective is the capacity of witnesses to provide evidence, and in some cases, this involves a child witness (Lyon 2011). In this case, the court usually has three criteria expected of the child being: The ability to recall and describe occurrences reliably, determine truth and fiction, and understand their obligation to tell the truth (Lyon 2011). These can be broadly referred to as "basic competency" and fit within these three categories: Perception, memory, and narration (Lyon 2011). It is important to mention the terms competence and capacity are used within articles interchangeably as the terms may differ slightly but both terms infer comparable concepts (Hein et al. 2015). However, in these cases, oftentimes expert consultation of a child professional such as a developmental psychologist is also sought out (Lyon 2011). Many legal professionals outsource to gain insight into children's capacities as they are not well versed on developmental trajectories or the behavior of children (Birnbaum and Saini 2012; Coenraad 2014). According to Ruhlen (2006) and supported by the UNCRC, case law maintains that the views of children will be heard in proceedings that affect their lives, but one of the main factors that influence the weight of a child's voice in court proceedings is seemingly their capacity level. Within legal settings, children's capacity is often considered as either present or not, meaning the child either has the capacity to make a sound decision or they do not (Parkinson and Cashmore 2008). When referring to children's capacity, it can be considered in relevance to children's participation or capacity to make decisions. Participatory capacity would refer to a child's ability to 'engage with other people around issues that concern their individual and collective life conditions' (Malone and Hartung 2009). Decisional capacity refers to the ability of an individual to make their own decisions; this could be regarding medical decisions, the ability to stand trial in a court of law, or make decisions relating to personal care (Dunn et al. 2006). Before a child can participate or make decisions, the definition and consideration of the notion of capacity must first be addressed. Though there is a difference between participatory capacity and decisional

capacity, the emphasis on age and developmental stage remains considerably stagnant (Boyd et al. 2018). This binary view of a child's capacity is contradictory to advancements in developmental psychology research, which maintains that children's capacities gradually develop overtime; as there is age- and stage-related expectations of development and cognition, assumed incompetence is no longer acceptable in legal settings (Boyd et al. 2018; Parkinson and Cashmore 2008).

Within legal settings and the topic of capacity, it is critical to review the significant decision Gillick v West Norfolk Area Health Authority, as it highlighted a new legal approach to recognize minors as capable rights-holders (Cave 2014). This case was fundamental to the modern understanding of how law can include considerations of the capacities of children and has had a massive influence on efforts to establish what this may look like in practice. Gillick has also evolved to a standard for questions regarding children's capacity across various legal proceedings such as family law proceedings (Daly 2020). Though the Gillick standard is one that aims to hold children as capable agents within their own lives, there is still a lack of consistency regarding the application (Daly 2020). This is apparent in all areas in which the Gillick competence may be assessed, such as medical, legal, or relating to child protection. Though according to Cave (2014) the Gillick competence test is 'not perfect' and 'under-researched' (p. 121), such a standard necessitates and commences an in-depth look into the potential capacities of children who might not otherwise be considered.

Essentially, a deeper understanding is required from the developmental psychology perspective in order to inform legal knowledge surrounding the capacities of children. This article maintains that assessing the capacity of a child in family law proceedings must be considered with an interdisciplinary approach between legal and developmental psychology professionals. The bridge between a child's participation in a legal setting and involvement with behavioral sciences is crucial for their actualized participation.

5. Capacity from a Developmental Psychology Perspective

Within modern advancements in developmental psychology research and practice, a shift has emerged, from considering a child as an entity who is assigned an assumed developmental stage to a more dynamic being that requires much more detail to understand (Parkinson and Cashmore 2008). As the literature surrounding the capacities of children, and the notion of childhood itself, becomes more researched, new ways of thinking have emerged. The notion of children's capacity and autonomy contained in the past ideological frameworks is beginning to shift and allow for new considerations of childhood (King 2007; Woodhead 1999). Most importantly, considering capacity from a developmental psychology perspective allows us to address and resolve current issues. The inclusion of this perspective was necessitated for the purpose of reviewing the evolution of children's capacity and to demand a shift in ideology. This section does not aim to display the effectiveness of developmental psychology in defining or exploring the capacity of children but rather aims to provide relevant literary findings and identify limitations.

Advancements in developmental psychology have begun to shift the ideologies of children being incapable or as 'becoming' (Hanson 2017). In most recent literature, it is now more profoundly understood that children are complex beings with many layers that are constantly changing alongside their development (Hanson 2017). Thus, moving from an objective view of determining a child's capacity to a more complicated and multifaceted view is required and emerging. This may include considering all domains of development, being physical, cognitive, social, and emotional (Boyd et al. 2018).

For example, a child's age could represent one component of their capacity level, intelligence level could be considered as a cognitive element, their relationship with each parent as a social determinant, and explaining their personality to assess their emotional capacity. With all elements considered, the complexities of children's capacity are apparent. A shift in ideologic considerations of children's development is required in order for a new way of thinking to occur.

With the definition and understanding of capacity being so ambiguous, it is malleable and therefore possible to reconstruct. An initial shift in thinking must first address what Hinton (2008) refers to as "competence bias", which involves adults focusing primarily on the developmental stages and expectations of children. Past ideologies have considered that children possess a lesser capacity than adults and as a result of that thinking, participation is thereby limited (Hinton 2008; Tisdall 2018). As Daly (2020) maintains, the understanding of the construction of childhood has allowed for children's ability to practice agency in their own lives to be underestimated. Alderson and Montgomery (1996) note that one of the most prominent hindrances to children's capacity stems from prejudices and embedded ideologies regarding the assumed incompetence of children (as cited in Daly 2020).

The developmental expectations of children combined with competence bias detract from children's participation or focusing on what capacity truly means. In more current understandings, it can be concluded that children's capacities are not lesser than adults, but rather different (Tisdall 2018).

Capacity as a concept involves various factors unique to the individual child, such as age, maturation, intelligence, experiences, and the social environment (Campbell 2013; Smith et al. 2003). A child's capacity is also dictated by multiple complex and interconnected developmental elements, including cognitive maturity, social-emotional functioning, and familial factors (Kinniburgh et al. 2017). Alderson (1992) notes that competence should not be seen as a fixed trait, but rather a fluid and evolving response to various situations. The framework embedded in child psychology involving age and developmental stage must be reworked. This ideology continues to have a strong hold in regards to expectations of capacity and ultimately a child's ability to participate. There is an abundance of literature involving children's rights or participation, which contends that a child's capacity should be first presumed as present, rather than absent, in family law proceedings (Tisdall 2018). The consideration of children as active, meaningful, and relevant participants must undergo an increase if there is to be permanence in the shift of thinking, practice, and research. Therefore, as this article explores in subsequent sections, there is a pertinent need for additional literature and research before considerations of a child's capacity can evolve from refuted to primarily assumed. Extensively exploring all elements that comprise a child's capacity is an effective starting point. This will exemplify that a child's capacity cannot be either held or not, and there is much more involved in such a complex concept. As adult agents who support the participation of young people, it is directly aligned with their rights to research such complexities. Thus, both the legal and developmental psychology fields must fill this gap in research and practice by considering the multifaceted factors that collectively incarnate a child's capacity.

6. Domains and Elements: Exploring the Capacity of a Child

In order to encourage a new conceptualization of the term capacity, this article suggests and presents a unique approach to defining or rather deeply understanding the concept of a child's capacity. Across the literature, central concepts of capacity include understanding, independence, assessing and appreciating risk, possessing values, and expressing choice (Appelbaum 2007; Dunn et al. 2006; Grisso and Appelbaum 1988; Lansdown 2005). Daly (2020), for example, aims to review capacity in relation to the rights of children, and considers the capacity of children in medical settings. There are also literary pieces from previous years that aim to begin the movement of considering children as capable, rights-bearing individuals. Mlyniec (1995), for example, aims to discuss Piaget's theories of development in relation to a judge's consideration including the voices and choices of children. Though there is literature regarding the capacity of children, there is considerably limited literature specifically outlining the elements involved in assessing or understanding children's capacities from a rights-based approach. Therefore, some concepts from adult-focused literature are included and altered to better align with the capacities of children. Generally speaking, capacity involves a basic level of understanding and communication, consideration of alternatives, expression of preferences, and providing

concerns and questions. When referring to the decisional capacity of a child specifically, the individual must be able to think and express choice with a certain degree of independence, free of manipulation from adults (Dunn et al. 2006). Understanding, appreciation, reasoning, and self-expression are four critical elements of capacity highlighted in the literature (Appelbaum 2007; Dunn et al. 2006; Van Rooyen et al. 2015). Understanding what is being discussed, appreciating the situation at hand, reasoning to form views and thoughts, and communicating those views are all important elements. Researchers also note that an ability to consider the benefits, risks, and consequences is critical. When developing opinions, thinking of alternatives as well as considering the positive factors and negative factors of each thought is critical to display that the thought was contemplated to its fullest. The literature provides numerous practical, operational elements that must be present in order for a child to be capable; however, there are much more personalized, internal factors that are difficult to measure but critical to include. For example, a 'capable' child must possess a stable set of core values (Appelbaum 2007; Dunn et al. 2006; Grisso and Appelbaum 1988; Lansdown 2005). Strong personal values add to the independence of a child, as they have their own grounded belief system that can help to initiate and guide a child's thoughts and perspectives. Values are often taught, instilled, and practiced in social contexts such as in the child's home or during their school hours. The values of children can include positive character traits such as honesty, humility, forgiveness, patience, empathy, and other traits that a child either possesses or is perhaps still developing within themselves (Appelbaum 2007). These values, in consideration of a multitude of other factors, comprise a child's capacity but are often not considered in current models of capacity assessment.

According to Van Rooyen et al. (2015), capacity is not solely linked to age or developmental expectation, but rather is dynamic, fluid, and constantly changing. It should not be considered a trait, but rather an assortment of various attributes all as key contributors to a whole picture of capacity (Tisdall 2018). It relies upon each child's unique characteristics, personality, social relationships, and surrounding environmental contexts (Van Rooyen et al. 2015). Though it is not a simple concept or determination, this article places importance on developing a more informed approach to defining and exploring a child's capacity.

When considering the interconnected elements, it is evident that each child possesses the unique potential for vastly differing capacities, but this is not a notion that can be determined quickly or based upon expected development. Rather, it must be carefully explored within the context of each individual child. As previously stated, the capacity of a child consists of understanding situations; social connections and support; parental support; communication skills; individual values; and the consideration of consequences (Van Rooyen et al. 2015). A visual representation is important in order to comprehensively conceptualize a child's capacity. The domains explored above and their relation to the complex capacity of a child are represented in Figure 1.

This visual application attempts to conceptualize the various elements and factors that contribute to a child's unique capacity. The structure of the model also aims to be visually appealing and relatively easy for children to conceptualize if explained in detail. Aligned with the rights-based approach embedded within this research, the figure aims to be child-friendly. When assessing what a child's capacity is comprised of, each child should have the right to understand which components are being considered. The model is divided into four broad categories: Physical, cognitive, emotional, and social/relational. Within each of these domains, there are specific elements that should be considered in more detail, and these can be seen in Table 1.

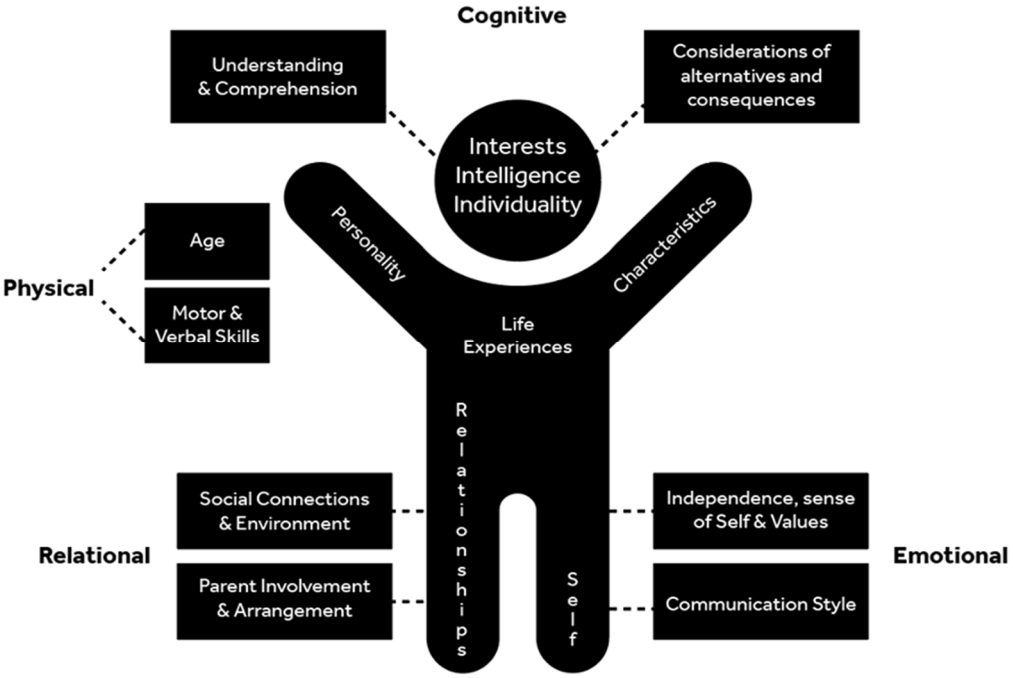


Figure 1. A visual comprehension of the complex capacity of a child.

Table 1. Main domains and elements of children's capacity.

Domains	Embedded Elements
Physical	Age, motor development, and verbal communication
Cognitive	Understanding, intelligence, and comprehension. Consideration of alternatives and consequences.
Relational	Social connections and environment. Parental involvement and attachment: Sense of others
Emotional	Independence: Sense of self and set of core values and beliefs. Communication style and delivery of voice, views, and preferences.

7. Physical Elements Relating to the Capacities of Children

When considering the capacity of a child, age is a critical initial consideration. Though adamantly mentioned, age is not the only basis of a child's capacity level but is nonetheless an important factor. There is large variations in the age at which a child should be deemed capable, with much of the literature involving family law maintaining that the age of twelve is the necessary standard of considering children's voices (Bala et al. 2005). In contrast, other studies in the developmental psychology field note that children as young as three possess the capacity to give insight into their thoughts and views (Einarsdottir et al. 2009; Smart 2002). The discrepancy within the literature highlights that age cannot be the sole consideration of capacity. However, the age of the child can provide information about the developmental stages in that child's life. For example, if you wish to speak to a child who is six and gain insight into their capacity, it may be helpful to know they are in what Piaget (1962) considered the preoperational stage, and in this stage, children are beginning to see things from the perspective of others. Though these stages may not always match the child's physical age, this information is a sufficient starting point. Other physical considerations of a child may include their ability to verbalize and their motor skills. These are important initial considerations before divulging into the more in-depth elements. The verbal and motor abilities relevant to assessing a child's capacity may include

contemplations such as language or accents, speech production, the use of physical voice, articulation, and pronunciation. The verbal abilities of a child are critical to consider for their active participation. Children may lack the necessary vocabulary to describe their thoughts and perspectives though they possess a deep understanding (Einarsdottir et al. 2009) This presents a requirement of the time and materials needed in order to adequately meet children at their verbal level and provide means for them to express their thoughts. An example of this could be providing a child with drawing materials as an alternative way to express themselves. As mentioned, the motor skills of a child are not necessarily relevant to their capacity level but are simply another layer of the child's abilities and experiences, which can provide insight into a child's basic composition. One example could be if the child can hold a writing instrument or not, as this will indicate what they may be capable of in a potential assessment or when participating in a proceeding. If a child does have a physical disability, for example, they will need appropriate methods of accessibility in order to display their capacities in other ways. These can be determined in conjunction with the child, by asking them about their strengths and preferences. Such elements are primary considerations that should be assessed before diving into more intricate factors such as the cognitive, emotional, social, and relational elements.

8. Cognitive Elements Relating to the Capacities of Children

8.1. Understanding and Comprehension

This domain is evident as, prior to any type of assessment or analysis of capacity, a child must first possess basic understanding and comprehension. Essentially, the child must achieve a basic understanding, comprehension, and intelligence level that enables the child to completely understand what is happening around them (Alderson and Goodwin 1993). As outlined by Brown et al. (2020), the development and behavior of children are deeply connected and associated, and children who are developmentally 'typical' often follow basic patterns. Though children may represent their understanding differently than adults, allowing the child to display their understanding is critical (Tisdall 2018). Further, understanding refers to the level at which an individual can "grasp the fundamental meaning of the information communicated" (Chenneville et al. 2010). The ability to understand a concept is not always connected to the ability to verbally articulate that understanding. Essentially, the child may effectively comprehend a subject, but may not be able to explain or support their understanding in the expected verbal method. This is important for professionals to consider, especially when evaluating the capacity of a child who may lack the verbal communication skills needed to express their understanding despite having adequate awareness and understanding of the situation (Appelbaum 2007; Grover 2004). It is valuable to mention that the capacity of children with any developmental delay should be conceptualized in accordance with their specific development (Brown et al. 2020). After gathering more information surrounding that child's development level, or atypical patterns of development, that child's capacity level can be understood. Ultimately, understanding and comprehension appear to be simple but crucial elements that contribute to the capacity of a child.

8.2. Consideration of Alternatives and Consequences

In any situation that will significantly impact a young person's life, such as a custody proceeding, it is imperative to identify all potential outcomes, alternatives, and consequences. These should be identified and discussed during the participation of the child, which is referred to as consequential thinking in the literature (Grisso et al. 1997). Consequential thinking involves having the child develop ideas and identify potential outcomes of each, which they then contemplate and compare. Comparing alternative options to any other preferences is also crucial, and is known as comparative thinking (Grisso et al. 1997). Both comparative and consequential thinking are important skills needed to form informed perspectives. A 'capable' child will be able to formulate a perspective that is followed by a logical explanation of alternatives and consequences in order to convey

comprehensive reasoning for the preference (Grisso et al. 1997). Rather than just stating their views, thoughts must also include consequences to show alternatives were considered and the thinking process was thorough.

9. Social and Relational Elements Relating to the Capacities of Children

9.1. Social Connections and Environment

It is also critical to understand a child's social connections and surrounding environment and how that contributes to their capacity. As outlined by Daly (2020), a child's capacity cannot be primarily understood as within the individual or not, it is also dependent on the environment that child is developing within. A child's capacity is extremely affected by their relationships with important figures in their lives and their understanding of those social interactions (Parkinson and Cashmore 2008). When discussing the interconnected social contexts in which children develop, Bronfenbrenner's Ecological Systems Theory is critical to consider. The theory advocates for the various contexts that surround children and how these directly or indirectly impact a child's development. Bronfenbrenner's theory views children within the multiple, complex, interconnected, and layered contexts in which they live (Bronfenbrenner 1986). These layers are similar to those presented in Figure 1 as they must be considered either contextually as individual factors or interconnected. Though these layers are described in more detail in Bronfenbrenner's ecological systems theory, the importance here is the evident relation between children's environments, social connections, and development. As an example, a child's worldviews, communication style, behaviors, core values, and independence are very much connected to their social context (Alderson and Goodwin 1993; Thomas et al. 2017). These elements are formed by the social connections around the child, which can include friends, family members, or teachers. It is important to recognize the importance of the cultural and social context of each child as these considerations ultimately shape a child's development and worldview. A child's unique cultural practices within their family system will ultimately shape their beliefs, worldviews, and other elements relating directly to their capacity. These interactions and connections among family members impact the development of children in all domains of their lives such as behavioral, social, as well as physiological (Thomas et al. 2017). Though the family is merely one context a child will experience throughout their development, the multifaceted nature of a child's social world is evident.

Elements of a child's social environment, such as family dynamics, caregivers, and educational experiences further shape, model, and influence one's capacity. Parents or teachers who support the development of autonomy and capacity are those who provide the appropriate freedom to children and offer them meaningful choices. This allows children to recognize themselves as their own unique person with their own unique thoughts, needs, and wishes (Boyd et al. 2018). It is through these supports and contexts that children develop the potential to become active agents who demonstrate participation and autonomy in their own lives (Smith et al. 2003). The possibilities of child participation become vast when we begin to recognize children as social agents, collaborative learners, and individuals with agency (Campbell 2013).

9.2. Parental Involvement and Attachment: Sense of Other

The capacity of a child is formed, evolved, and advanced within some sort of family system. When assessing the capacity of a child, a large factor that should be evaluated is the consideration of parental involvement and the child's relationship with their parents. A child's family may consist of guardians, foster children, adopted siblings, half siblings, or any of these elements, but it is irrefutable that when children are young, they grow up in a family system, which affects their capacity development. When two parents separate or divorce, the family that child has is shaken and immediately altered. Family relations and transitions, such as the ending of a marriage, ultimately shape and influence the wellbeing of children (Thomas et al. 2017).

Attachment to parental figures is another important element when considering a child's capacity level. A secure and healthy attachment is critical in order for a child to have the support they need to develop a strong capacity (Fidler and Bala 2010). Though much is known about attachment patterns of children, the relation of attachment type to a child's capacity development is somewhat understudied within the literature. Though there is extensive literature that investigates children of divorced parents and their attachment, few studies exist that aim to connect a child's attachment pattern and their capacities. Though it is known that a secure and healthy connection allows a child to feel secure and confident in sharing their ideas, thoughts, preferences, and wishes (Fidler and Bala 2010), research has consistently shown that those children with secure attachments are more likely to have a developed sense of autonomy and increased social skills, both of which are critical to forming a strong sense of capacity and competence (Knight 2005). Alternatively, if a child experiences adverse attachment issues or difficulties in their attachment style, their capacities will evidently be affected and shaped by it (Knight 2005). Though the attachment style of a child should not have an impact on their ability to participate, it is a critical factor when considering the capacity of a child to gather an inclusive view of the child as a whole.

10. Emotional and Individual Elements Relating to the Capacities of Children

10.1. Independence and Values: Sense of Self

It is also important to gauge the child's sense of independence and their core values. Essentially, core values refer to basic beliefs that guide feelings, actions, or thoughts. For instance, if a child has stability in their own values and beliefs, then it is more likely that child will have stability when voicing their preferences (Lansdown 2005). It is important these values are relatively stable in order to create a base in which to voice their preference or display their decisional capacity (Lansdown 2005). Children can acquire lasting values from very early ages and these values will be unique and distinct for each child (Alderson 1992; Fidler and Bala 2010). These values are often embedded in a family's cultural beliefs and practices, hence the importance of considering and remaining mindful of each child's unique family structure. Fundamentally, it is apparent that a certain degree of autonomy is needed if a child is to be capable enough to voice their preferences in a meaningful way. This includes the ability to form and advocate for a preference with a degree of independence free from the influence or manipulation of adult figures (Dunn et al. 2006). Essentially, a child's sense of self is important to consider in order to gather insight into their values. This sense of self highlights the individuality within each child, which is relevant to their capacity.

10.2. Communication Style: Delivery of Voice, Views, and Preferences

Consideration of a child's unique communication style is critical in order to gain an accurate analysis of the other elements noted in the model (Figure 1), such as their competence, understanding, and values. Further, it is critical to maintain the children's right to be provided with the appropriate space, voice, audience, and influence, to have their voice heard as aligned with Lundy's (2007) model of participation. Simply allowing the child to communicate is only one layer of their participation and capacity. Although the verbal communication of a child may not be as eloquent or advanced as an adult, there are various ways of expression and communication a child can utilize to have their voice heard (Grover 2004). A child must be given tailored methods to display their understanding; an example could include drawing or using dolls to show their understanding (Coad 2007). The communication style of a child can be emotive, exaggerated, and less structured than that of an adult; however, it can be informative of their lived experiences (Grover 2004). Though verbal communication may not be fully developed at a young age, a child can express themselves effectively in other ways, such as through art or narrative creation (Christensen 2004; Coad 2007). No two communication styles will be alike but taking the time to unpack what a child is trying to express is necessary for ensuring their voice is able to reflect their true level of capacity.

It is important to mention that this approach and the consideration of the aforementioned elements does not aim to omit the voices of children who may have low intelligence, a disability, learning difficulties, or poor relational/attachment with parental figures. Rather, it aims to emphasize that these children will be included and considered as primarily capable as well, but their participation must be altered to meet their capacity level. This also obliges professionals to require training in the area of capacity support for individuals with disabilities or lower intelligence levels (Daly 2020; Lansdown 2005). Aligned with the rights of children, each child must be given ample opportunity to display their abilities, in whichever manner works most efficiently for them. Though unpacking a child's thoughts, experiences, perspectives, and insights will not be an easy or quick process, it intends to prioritize the voice and rights of any child involved in a family law proceeding.

11. Summary of Capacity Model: The Whole Child

These elements and their corresponding domains essentially make a child who they are, and thus, consequently compose their capacity. According to the model provided in Figure 1 and the elements discussed in detail, in order to fully understand a child's capacity, one must acknowledge each of these contributing elements. The model also demonstrates how all elements are constantly evolving, which indicates a child's capacity is not fixed but rather fluid. Thus, in order to effectively assess a child's capacity, one must consider the child's emotional and developmental status, along with their unique and evolving personalities and life experiences (Appelbaum 2007; Dunn et al. 2006; Lansdown 2005). This is in addition to considering a child's social and moral comprehension, as well as their cognitive capability, which are key indicators of their ability to understand the context. Developmental psychology supports the idea that each child possesses a set of social and moral attributes, and even if they cannot verbally identify them, they are important to consider when looking at the whole child (Burman 2016). With current considerations of capacity being relatively ambiguous, a shift must occur in developmental psychology and the legal field to consider the term as multifaceted and layered rather than an ability that is either held or not.

As Woodhead (1999) mentions, the universal nature of the research regarding children's development must be pushed further to account for further-reaching elements. These elements that are difficult to concretely "measure", such as the child's sense of self and sense of others, must be deeply analyzed as well. When assessing all of these elements, individuals must consider the child's religious, cultural, racial, economic, community, familial contexts, and the interplay of these elements too (Kinniburgh et al. 2017). In this case, when considering more developed jurisdictions in Western countries, the opportunities children have to develop and explore their capacities differ greatly from other jurisdictions in which the rights of children are still at a more basic level. This is an example of considering a child's capacity in relation to their culture or community. Though these elements may not be at the forefront when considering an intellectual measurement of a child's capacity, they are all critical to include when considering the whole child, which is displayed in Figure 1.

12. The Call for a New Standard Using Child-Friendly Methods of Capacity Assessment: Filling the Gaps for Future Research

The capacity of a child is an extremely complex notion that must be carefully deconstructed and assessed when the participation of a child is involved. It is important to note that there are tools that exist in legal or behavioral science fields that aim to assess capacity, which maintains that measuring capacity is not out of reach. For example, there are assessments that measure the capacity of caregivers, which attempt to evaluate the complexity of parenting styles and competent parenting behaviors. These assessments exist in both legal and social welfare settings and can influence the supervision, placement, visitation, and custody situations for a child (Pezzot-Pearce and Pearce 2004; Platt and Riches 2016). Other examples of pre-existing capacity assessments are those used within medical settings, with one of these being the MacArthur Competence Assessment Tool for

Treatment (MacCAT-T) (1997). This instrument aims to assess patients' capacity to make decisions surrounding treatment by assessing four areas of the patients' understanding: Information about their condition and recommended treatment, the potential risks and benefits of treatment options, the nature of their situation and consequences, and their ability to express a choice (Grisso et al. 1997). The tool employs both quantitative and qualitative elements to gather insight into a patient's capacity to make medical decisions, which is why it has been adapted and extended to children in more recent research (Appelbaum 2007; Chenneville et al. 2010). Participation in medical settings for children is being constantly researched in order to meet the rights of children and the evolving capacities of children. In family law settings, there is no such assessment or tool that aims to assess if a child is capable of meaningfully participating. Similar efforts must be made to include children in legal settings because, as made evident, assessing the capacity of children is plausible.

The lack of literature and concerns regarding current practices informing the capacity of children also indicates the need for a comprehensive assessment standard in custody and access proceedings. According to Burman (2016), developmental psychology often demands the production of quantitative, validated tools of measurement. Measurements can be effective, but when applying these to children, the method in which they are applied must be further studied and tailored to fit the rights of children. Due to the demand for measurements, philosophical and abstract ways of considering the development of children have been minimized throughout developmental psychology research. Child-friendly methods of assessments must be applied to the development of a new standard to allow children to display their capacities through the language of childhood (James and James 2012). Information should not only be quantitatively gathered, but rather focus on methods such as play, narratives, and art mediums.

It is an evidently difficult endeavor to assess the capacity of children in a way that supports their rights and consider their voices as meaningful. When examining current assessment models for custody and access proceedings, there is a consistent theme involving the need for further research. This research must aim to further developmental psychology in a way that supports the legal rights of children while assessing their capacity levels. Embedded within this is the interdisciplinary necessity of legal and child development experts collaborating to actively consider the complex elements that comprise a child's capacity to ensure the meaningful participation of children.

This article aimed to examine the notion of the capacity of children in order to comprehend what the complex term entails. Developing a comprehensive multidimensional standard inclusive of all previously outlined elements (physical, cognitive, emotional, and social/relational) would make it possible to appropriately assess the varying dimensions of capacity (Coad 2007). Such a standard would not aim to perpetuate the dichotomy of a child being either 'capable' or 'incapable' or recommend a child is able or unable to participate (Tisdall 2018). Rather, the standard would aim to expand upon and explore a child's capacity level in a contextual and meaningful way. This article suggests a starting point for the capacity of children to be further considered through an interdisciplinary approach. Developing an assessment standard that ensures a child's capacity is adequately evaluated in family law settings is highly feasible and ensures their voices, perspectives, and participation are placed at the forefront of all proceedings.

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