

# The Right to Matter

Carter Dillard  
Kirsten Stade  
Timothy D Ray

## Abstract

This paper assesses what it means for the people to matter and demonstrates that mattering – in the best sense of playing an influential role in the democratic self-rule of a legality – first depends upon the norms that determine our creation. The paper argues that mattering, as commonly invoked today, is physically impossible without first changing the norms that dominate the way we now create people. The paper emphasises that, to make us matter, the creation norms would have to ensure some minimum levels of welfare at birth and equal opportunities in life, sustainable or even regenerative natural ecologies, and an influential role in the political and legal systems that control our lives. The paper recommends changing the near universal norm that wrongly treats the act of having kids as a matter of parental self-determination and calls for orienting the norm as a collective process that gives all children an eco-social fair start in life – a ground of basic social and environmental well-being that lays a foundation for influential democratic participation. There is a need to build constitutional systems bottom-up through smaller families investing more in each child so that they will matter and be included.

## Introduction

What does it mean for someone to matter? This paper explores a few possible meanings, before tracing the ideal to law, and to practical reforms designed to make people matter that would have an exponentially greater impact on the crises we face today, from climate change to inequity, than currently considered reforms (Hamity et al, 2019). The paper argues that it is physically impossible for us to matter without reconstructing universally accepted notions of the right to have children, and the family law and policies that flow from that right (Conly, 2016). The best reading of what it means to matter begins with the influential role that one has at the podium of their democracy (Tsai, 2014; Bennett, 2020). If, in the most basic form of mattering, each person has the right to speak as part of a group of free and equal people deciding the rules under which to live, mattering will depend on the number of people present, as well as their dispositions, equity, and their relation to natural ecologies that support their lives. In other words, mattering by people depends, first, on their creation.

However, right now, most of us live in nations created by and under God-like icons in which power flows top-down in a pyramidal or representative fashion from concentrations of power, presidents and prime ministers included, and other patriarchal forms relative to whom we do not matter.

Contrast this vision with other forms of mattering. In the current social-justice and political climate, “mattering” has become synonymous with the Black Lives Matter movement. What has been acknowledged by scholars is the implied word “too,” or Black Lives Matter [too], to emphasise the push for true equity in addition to racial recognition and valuation (Farmer-Hilton, 2017). And yet when the United States Supreme Court grappled with racial equity in education in *Fisher v University of Texas at Austin* (597 US 297, 2013), the significance of a students’ race and familial backgrounds in predetermining their potential to “do well” seemed to evade the consideration of some on the court (Kopan, 2015). The illusion that we do matter irrespective of our creation and development, and how our creation and development position us relative to others and our ecology, is a “just so” argument with no logical basis, but one furthered by most theories of personal and political autonomy, which ignore the dominant role our creation plays in the process (Anderson, 2013).

But it is not the post-hoc reference to litigants and comparable scenarios in cases like *Obergefell v. Hodges* (576 US 644, 2015) that determines whether we will matter – fundamentally in terms of being empowered as part of a democratic group of people – as described above. It is the first, ex-ante and tacit reference to persons in the constitutional system (“We the People”) that controls that case, and all cases, which through placing people in the social contract determines how and whether people matter. Mattering must happen in creation, in the way we structure relations between persons that will then impact each person’s ability to influence the systems in which they live, which depends on things like the number of persons, and the civic quality of each in the system in question (Bartlett, 2000).

How can changing the way we are created make us matter? This change entails limiting the total quantum of human power, or influence, and decentralizing it (Landau et al, 2020). We will show using the specific family planning modelling that it is feasible to move towards a preindustrial-like state of nature and ecosystem balance that may be termed as existential justice. This is a state of 1) political justice because voices in smaller democracies are empowered; 2) environmental justice as we are not subjected against our will to the climate crisis and other environmental calamities; and 3) economic justice because wealth has been redistributed to ensure true equality of opportunity for those born into the system.

It appears that all prior systems of population ethics, including the one suggested by Rawls (Schramme, 2006), to the extent that it can be treated as such, have failed to do this antecedent work of positioning persons to fundamentally matter via the creation through family planning of small and eco-centric democracies comprising of persons enjoying equal opportunities in life. Given that we are before we do, determining optimal population ranges is inescapably the antecedent question, but that

itself implies the need to determine the nature of the right to have children, which – if we value liberalism and self-determination and recognize the moral significance of future generations – must first involve limiting and decentralizing the power we hold over one another.

We can analogize this process, this change, to free speech. A necessary condition of freedom is the right to express yourself, which at a bare minimum means limiting others' rights of expression so they do not always speak over you. The same applies to the right to have children, but the comparable work defining it has never been done.

Neoliberal economic policies riding on this failure – and where humans are statistical inputs in a model of unsustainable growth (Simon, 2019) – are making it worse. These policies drive a particular flow: the creation of more people, in whom we have invested less, with no regard to their positioning relative to others or their impacts on the nonhuman environment, or (4) their fundamental ability in terms of group size and other qualities to influence the systems of governance that control their lives. This flow exacerbates the climate crisis, which represents the harmful power of other persons forced upon us and our children, against our will.

This paper provides a pathway to change this sad situation. It advocates reversing the flow through the idea of an eco-social fair start in life as a peremptory norm that overrides property and other rights, so that we can distribute that wealth and power as a family planning incentive/entitlement that will result in the correct relative empowerment of future generations – or qualitatively optimal populations.

This discussion need not be abstract. It is simply an argument to choose population policies that move us towards the current and future Japan, for example, over the current and future China, with a test for optimality that treats the capacity for self-determination as inverse to growth, such that each person is empowered equally relative to a neutral position like the nonhuman world. We can move towards that dynamic optimality through the simple use of significant family planning incentives, geared to promote delayed parenting, smaller families, and economic equity in the context of fertility and development. In other words, we can treat all policies as illegitimate – including property assignments - unless they are to begin with promoting and addressing the rights of the child as articulated in the Convention on the Rights of Children (Lundy, 2012)

It is also important to discuss at what level of priority should we pursue such policies? We assume that things akin to written constitutions are peremptory or overriding. We, however, argue that norms, whatever type of they may be, should determine our creation and, therefore, should of course come first. This would be as fair as we expect constitutions to be. Unless we assume that it is an unfair God that creates the norms, there seems little reason not to make the creation rule fair. In other words, we are before we do, and the creation norm determines who we are in a unique way – making it the true *grundnorm* (Spaak, 2020).

The issues that we highlight in this paper, have not been seriously addressed to date. They lie somewhere at the intersection of Foucauldian biopolitics (which is simply the idea that the state controls power by controlling the bodies of its citizens, often to physically grow its base); theories of political obligation and constitutional identity; theories of personal and political autonomy; deontological procreative and population ethics – especially the work of Feinberg on children’s right to an open future (Conly, 2016; Feinberg, 1974), the study of intergenerational justice (Meyer, 2017) proposals for parental licensing (LaFollette, 2010); and the practical realm of family law and reproductive rights (Fox, 2019).

## Mattering, Relative to What?

If we take lessons from recent events in the United States, mattering could mean that we should be valued by others in ways that – at the very least – will protect our lives from the deadly violence by the state. In the parlance of the United States constitutional doctrine, and if we focus on the events surrounding the killing of George Floyd (Dreyer et al, 2020), the narrow meaning of mattering would involve bodily autonomy and equity interests inherent in the Fourth Amendment privacy protections against unreasonable seizure (*Graham v. Connor*, 490 US 386, 1989).

More broadly, and if *Graham v. Connor* were wrongly decided, mattering would include the broader autonomy and equity interests inherent in the fused equal protection and substantive due process doctrine of *Obergefell v. Hodges*. There, being valued by others should enable us to act as they do, in marriage for example, or entitle us to some level of education (957 F.3d 616, 2020), or to being enfranchised as voters (Somin, 2016). The broadening could keep going to the point of living in police defunded zones where law need not be coerced (Jacobs et al, 2021), towards being free from the worst ravages of the climate crisis (Mank, 2020). Mattering, in substantive due process, could mean a lot.

From narrow to broad, to matter seems to mean for persons to do carry around themselves some zone of Hohfeldian empowerment (Hohfeld, 1913), or secured value (Froomkin and Colangelo, 2020) – which we might see alternatively as equity, liberty, self-determination, etc. – and which triggers duties on others to do and not do certain things (Pettit, 2011). Yet this is a myopic, and dangerous misconception of what it could mean to matter. How do persons arrive in the scenarios of interaction with others in the first place and in relative positions where they are prevented from mattering? If we wish to matter, we will have to assess how these people came to be situated where they are (Mahoney, 2004). In this assessment, we may not matter because our representatives behind the Rawlsian veil of ignorance failed in some way to negotiate rules that ensured we were fundamentally positioned relative to others and our ecology in ways that would empower us (Kunc, 1992).

But even this hypothetical conception begs questions about how the negotiators arrived in their position, and what preceded their gathering. It would be preferable if we could be included in the process that effectively determines our actual relations with others, and proactively situates us to matter, rather than playing reactive whack-a-mole to all the variety of ways failure to do that antecedent work makes us not - as in the case of race-based state violence in the United States - matter.

Social self-determination in this sense, at the podium of a democracy where all are equal influencers, could be prerequisite states of affairs for true self-actualization rather than the misguided self-absorption that we currently misconstrue as self-actualization.

Such an inclusive and reflective creation norm would be the opposite of the media zeitgeist today that pushes increased population growth, irrespective of values like nature, equity, and democracy where every voice matters or is heard, in response to a “baby bust” crisis (Longman, 2004). Such a norm would create people for town halls where they matter, not create people for shopping malls where they do not.

That ex-ante approach would be preferable to even the most comprehensive downstream solutions that attempt, post-hoc, to correct for the nature of the relations. For example, rather than just prohibiting police misconduct we could first eliminate the birth inequity and exclusion of many from the democratic processes that have led to police misconduct (Simonson, 2021). Similarly, we might see that downstream and post-hoc efforts to make us matter, like education reforms untethered to the family planning and early child development phases that matter most of all (Hansen and Reich, 2015), cannot suffice, and by offering a decoy may make things worse. So do dozens of other downstream approaches that do not include physically constituting ourselves in ways that matter.

This process of “mattering through creation” would exceed historical and document-based attempts at constituting, because the physical and dynamic constituting of people themselves (Tsai, 2014) creates outcomes – like mitigation of the climate crisis and others described below - that even the most well thought out post-hoc creation systems for a constitutional right to self-government, based on the United States’ assembly clause, for example, do not (Bowie, 2020).

Without such a baseline for creation (Marshall, 1987), we arguably remain in states of pre-constitutionality, in the sense of not having been empowered in functional democracies. Even the ideal “We” in the United States Constitution is an exclusive “we;” intentionally de-constituting or under-constituting Americans of colour as less than “we.” As Justice Marshall stated, “[t]he original intent of the phrase, “We the People,” was far too clear for any ameliorating construction.”

This all may sound obscure, but I lay out a test for such an assessment of mattering, empowerment, and legitimacy in the following pages, for any polity/legality and its norms, using reflective equilibrium (Posner, 1998) that can be initiated with Justice Kennedy’s existential claim in *Planned Parenthood v. Case* (505 U.S. 833, 1992)

(Rabkin, 2003). The test, which could be implemented through emerging technologies, assesses whether we are physically constituting or de-constituting, in terms of whether we matter or are empowered relative to others, and hence whether the political groups (states/nations/charters) in question are legitimate, or in relative states of pre-constitutionality.

## The Mistake

What does it mean to be free in a world beset by others' harmful influence – like climate emissions, from which we cannot escape, and over which we have no individualized control, or a deadly pandemic against which others refuse to take basic precautions?

The key to this essay is a simple point: the dominant creation norm under which we live, which is the universal right to have children as universally upheld by governments and international bodies, never limits the right to have children in such a way as to protect the rights of those very children, once they are born, or the collective rights of the communities they would comprise. In other words, while we recognize certain living conditions, including climate changes, as violating the Children's Convention, we do not use the Convention as a limit in family planning, requiring ourselves to collectively plan so that all children are born into Convention-compliant conditions (Dillard, 2010).

We do not do that limiting now, in large part, because of historical power relations that made familial privacy something akin to the sacred. These power relations include resistance on the part of elites to give up the wealth that would be necessary to level the playing field for all children. Treating the interpersonal act of having children as personal conveniently shielded this wealth, while simple technological impracticalities - lack of birth control, health care access, systems to reduce child mortality - made fundamental reform of family planning systems impossible. Moreover, even if we wanted to regulate procreation to ensure democracy, the human brain is not inclined to think that far ahead (Dillard, 2021). Skipping this step and failing to connect creation to justifiable organization means we do not account for the simple fact that every member of a democracy dilutes others' vote (Stephanopoulos, 2021).

Addressing this reality requires revisiting a line of cases in the United States – focused on *Skinner v. Oklahoma* (316 U.S. 535, 1942), and the cases that subsequently misinterpreted it – that could be the key in moving towards the ideal of a physical legality in which people matter (Stone, 2022). *Skinner* is a case, the analytical modelling of which in some way prefigured *Obergefell*, which focused on the literal addition of parties to the social contract. Envisioning the social contract in this physical way shows a particular alignment: between welfare and autonomy: by requiring high levels of birth, development, and educational conditions for all that help create trustworthy citizens, high levels of social cohesion, and equal opportunities for all in smaller democracies

where participation matters, each person is empowered as a relatively self-determining agent, freed from the power of others that is represented by vast economic inequity, dysfunctional democracies, massive educational differences, and ecological degradation (Dillard, 2021).

The change model proposed is fairly simple: interpret Article 16 of the Universal Declaration of Human Rights, and all related authority and precedent, like *Skinner*, to orient around a child-centric (Press et al, 2012) focus that ensures an ecological and social fair start for all children (comparable to what the Children's Rights Convention requires). This can be defined by a specific threshold which can be applied in a variety of systems and cultures as a uniquely peremptory norm (Chilton et al, 2020). That child-centric standard is also the test for whether we are sufficiently self-regarding to constitute because it takes regard of the countless future entities at stake, over the whims of extant would-be parents.

The proposed change has implications for other aspects of United States law, for example, moving the ordered liberty test of *Washington v. Glucksberg* (521 US 702, 1997), to an *oriented* liberty test using the concepts discussed herein, tethered to physical power in the world. It asks abortion jurisprudence to assess why the state, as a legality of self-determining persons, would have any interest in future citizens whose mothers did not want to have them. It also challenges property claims. If we have no property rights until we have paid taxes to the state settling our public rights and obligations vis-à-vis the system that created the property (Murphy and Nagel, 2002), is that property first subject to fair start resources distributions so that there can be a legitimate state to assess the taxes?

## The Solution

The *grundnorm* described herein (the constituting norm /existential justice) may be comprised of four interdependent evaluative requirements to minimize the loss of political autonomy in a human-rights-based democracy, and hence to maximize consent, integration, and justified political obligation that is necessary in the logical Rawlsian ordering: 1) each new entrant must be of a minimum constitutive quality or capable of constituting with others; 2) there must be a maximum number of members constituting the human-rights-based democracy; 3) they enter relative to each other so that they exclude equally; and 4) they are capable, given their quality, quantity, and relativity, of reconstituting their legalities relative to (or approaching) some level of non-polity or biodiverse nature, that represents their capacity to convert power into law.

The existence of these four variables is inevitable in the act of procreating. The *grundnorm* thus necessitates backdating the standards, e.g., requiring conditions of entry that ensure constitutive quality and emancipation, rather than ignoring entry and subsequently excluding persons as insufficient in some way.

Where is the parents' interest or right in all of this? Rather than the contradiction in terms of procreative autonomy, the right or interest is aligned with the above, and focused on continuing the parents' life genetically or through rearing by having one or two children, consistent with the conditions above. This is not about people as numbers, or population. It is about making people matter, politically, and freeing them from the power – or physical influence from disparate inherited wealth to ecological impacts – of others so that they may consent or become self-determining. The closest analogy to this, in our current lexicon, is the freedom to associate.

The actual thresholds above can be set using existing legal standards we claim to already adhere to, like basic parental fitness, Children's Rights Convention, biodiversity and wilderness restoration targets, education benchmarks, federalism, and representative ratios (Michener, 2021), redistribution policies that attempt to create equality of opportunity, etc. The model will show that, by our own standards existing in law today, we are not who we should be or who we claim to be, but the product of a truly original sin of not ensuring people matter.

The model above represents the implied and justified antecedent "we" in any normative claim, assuming the fundamental value of self-determination, or grouping of persons from which the claimant is operating and in which they matter. At its base, democracy involves the capacity to influence, which, in turn, begins with the existence of the person. If we take democracy seriously, we must focus on the creation of individuals and thereby unravel the age-old legal conundrums of balancing community and autonomy, unified independence, and ordered liberty.

We can think about this in more familiar terms of state, or collective, interest in procreation. Assuming that the state is a human rights-based democracy, its interest is in ensuring all children a fair start in life and thus the creation and eventual emancipation of persons with the mutual, self-determining capacity.

To ensure that capacity we would have to start at the state of nature or absence of human influence and maintain that position (e.g., a world environment not ubiquitously beset by the climate crisis or sequestered to 280 ppm of atmospheric carbon) so that as any group of persons grows, the capacity for self-determination is directly inverse to the capacity for determination by others. Knowing and acting according to that inversion is the proof that people are free and equal, or that they matter politically, because their capacity to equally self and other determine is recognized. Without this change, the act of having children becomes capable of subjugating people.

For example, we would need to change family planning policies to minimize the impact that climate-related changes may have on infants and young children and their self-determination. We would have to ensure smaller families creating less emissions, in which each child had health care sufficient to mitigate the harm - perhaps by targeting those responsible for the crisis to pay for family planning incentives and health care.



The simplest analogy for such groups of truly self-determining people would be the notion of functional constitutional conventions whose numbers are pegged to historic representative ratios that allow voices to matter. This vision reflects the fact that the ultimate orders of human power are not lines on a map, but bodies and their influence. If people, in Rawls original position, operate free from the power of others so that they could devise rules to determine the regulation of that power (Kukathas and Pettit, 1990), and each had a turn at the podium to make their case in the negotiations, it would have had to look something like this.

Not limiting the right to have children to account for this interest, or the interests of the future child, is like a room full of people where not all are permitted to speak, or some are drowned out by eternal background noise. Those speaking feel free to do what they like, but the total quantity of autonomy is reduced.

There are no obligations that precede the obligation to maintain this neutral position - the obligation to ensure all children eco-social fair start in life. A system is fair and obligatory when it fully accounts for its power and without this step it cannot require that we adhere to obligations like honouring government issued property rights to wealth. The owners of that wealth orient from a system whose people are incapable of setting the rules that set market costs and benefits as they never fully accounted for the power of the system in which they live (Posner, 1998).

Several objections to the model exist, but in the context of mattering, one common theme is that the modelling is already accounted for because our existing systems create systems of various sub-forms, like corporations, clubs, and families that allow for self-determination. This argument is like arguments that our participation in law making evinces consent, and the agreement behind the laws we pass contravenes arguments for the need to constitute.

All these claims fail for three reasons, at least. First, they make the naturalistic fallacy mistake of assuming that we are constituents of consensual and legitimate democracies capable of properly legislating. We are not, for the reasons given herein. Second, even if one instance of truly democratic legislating occurs (delegating authority to representatives, for example), self-determining constituents need to be correctly situated for the next instance, or to repeal what they have done. They always must return to the baseline. Third, we cannot foist our insufficient semblances of democracy on future generations. They deserve to constitute properly. Contra Rawls, people cannot agree away the need to be properly situated.

Finally, to sharpen the point, we can apply what might be called the lesser power asymmetry: many people make claims that are based on an assumption about the legitimacy of their underlying political system, e.g., their nation. They will make that assumption based on abstract measures - like the right to vote, or speak freely, rather than assessing the actual people who comprise that system. If we ask the people making the claims about legitimacy to identify groups of people would trust with what might be called "lesser powers," being given access to our property and homes, the

claimants will end up rejecting many people in their nation, whom they do not know and would not trust with such powers. And yet such powers are lesser powers that are included in the greater powers each citizen holds - in a democracy - as the ultimate source of government. The government's considerable power over property and homes derives from the collective citizens' power over the same. Yes, representative government filters this in some respects, through officials, judges, police, and others with expertise. But the underlying authority derives from the people and through law-making they can exercise it, especially were the nation to engage in a constitutional convention or other fundamental change. If we trust people so little with lesser powers, why do we trust them with these greater powers? Why not live in societies in which we trust the people, to whom we are ultimately subjected, not just via the political system but in our day to day lives? The answer, of course, has to do with family models that do not focus on building trust and social cohesion, as discussed herein, though they could. We can determine optimal populations for legalities (Dasgupta, 2005), in a political/qualitative sense, by employing reflective equilibrium around these questions, sifting through our reasons for a lack of trust and applying those – as the thresholds in the model above – prospectively.

No body of rules for any system of social organization can get around the insufficiency of the people who comprise the system, and the oppression their presence creates.

Without a norm to ensure relative self-determination through the act of physically constituting just legalities, we find ourselves determined by others against our will – in many ways incapable of mattering. This is the state of the world today – multiple ecological crises, massive inequity, children born into foreseeable torture and abuse, and a political system where it is irrational for most to even participate (Somin, 2016). All of these are beyond everyone's control and maintained through the threat of violence, and all set-in motion through the self-contradictory concept of procreative autonomy.

As discussed above, it was a mistake to use a creation norm that focuses on the self-contradiction of the parents' procreative autonomy over the self-determination of the child. The latter would have been centred around the objective values like welfare – perhaps consistent with the Children's Convention (Dillard, 2008), birth equity relative to others in one's generation, ensuring an influential voice in one's democracy, and regenerative environmental standards of living. The costs of that mistake - and the population growth it enabled - are child poverty, inequity, disempowerment, and ecocide that could have all been avoided had the population growth curve been pushed down with child-centric family planning reforms.

But there is a more subtle cost as well, in terms of the structure of our normative systems. Founding the right to have children on human subjectivity, e.g., parental desire, those rights - like rights to a healthy environment, children's rights to high levels of welfare, or our having an effective role in our democracies, etc. - come

into conflict with the subjective desire of parents to procreate (Marmor, 2001). If human rights are meant to be objective norms, they should not be limited and undone by human subjectivity, at the most basic level.

This mistake in how we structure our norms breaks the process by which objectivity enables true subjectivity, e.g., the freedom to operate as a relatively self-determining agent in a functional democracy and the alignment of autonomies discussed below. What does it mean for me to be self-determining in a world beset by anthropogenic climate change, where the influence of others has eroded the physical liberty, I have from them? What does it mean that those contributing to the crisis defend their actions under the sense of personal autonomy ensured by the mistake?

Alternatively, moving towards constituting through existential justice modelling restores the framework of objective values that enable true subjectivity. For example, the autonomy that the would-be parents gain through self-development and by meeting a standard of readiness to parent, aligns with objective, constitutive and naturalistic reasons for having children and the quality–quantity trade-off of a smaller family. The greater investment in and education of each person aligns with emancipation, self-actualization, and becoming capable of reasonable behaviour and social self-determination. These things align with the autonomy of a highly developed child and the morally valuable options and equality of opportunities they will have, which further aligns with the autonomy created by gender equity, cooperativeness within groups like townhalls, a level of inherent security in groups that avoids the need for top-down limitations on autonomy, and fluidity among groups. The resulting smaller populations and high levels of development align with having a meaningful voice in public affairs and the rules under which one must live.

This participatory agency aligns with the autonomy created by fulfilling one's need for meaningful group membership, which in turn aligns with reduced consumption and property. Imagine setting one's baseline for consumption around systems that maintain natural ecosystems, rather than around the impact daily advertising has on us (Tye et al, 1987). Which is more reflective of self-determination versus being determined by others? This re-orientation supports the decentralization of concentrations of power into future generations, discussed below. All of these align with a healthy and safe environment and the freedom—or autonomy—from others that is only possible through interaction with the nonhuman world. This in turn aligns with the autonomy advocated by the animal liberation movement. This alignment also spans many types of freedom, from communitarian to libertarian, which might be seen as conflicting. This alignment is absent if we live under the myth of procreative autonomy. The mistake in how we structure our norms, and our failing to cabin or limit human subjective decision-making with objective norms that we can all value - like a right to have children that respects all of the interests and values at stake, has practical ramifications. Rather than breaking into impromptu constitutional conventions and suspending political processes (Tsai, 2014) because insufficient rights to speak freely require doing so, the nature of our populaces has historically required that these

processes – including their appointment of process-based courts – override any invocation of human rights as supreme natural law. The cost of our returning to states of nature and/or anarchy long enough to revisit how to become a legality would have been too high. This tension is well represented, regardless of our opinion of the Second Amendment, in the recent standoffs over the supreme nature of gun rights (Fields, 2020).

## Conclusion

To reiterate, the tension here must be – fundamentally – traced back to the glaring contradiction between jurisprudential doctrines regarding the uber-compelling interest nations have in the development of future generations into people capable of self-rule, and doctrine that treats the creation of these generations as a matter reserved to the whims of would-be procreators.

The democratic dilemma, or the need to be right and popular at the same time, has been exacerbated by our current parent-subjective creation norm, rather than being resolved by making relatively fewer people in whom we had invested much more to create in them the common core that democracy requires. Instead, we are trending towards mass subjectivism because we are excluded from the process of really determining and applying right and wrong in ways that actually matter, i.e., the systems that control us (Somin, 2016).

The model outlined above, and its praxis of using a duty to ensure a fair start combined with a right to nature to reverse the process of de-constituting, implies a litmus test for the emergence of systems in which people matter. To what degree are new democracies seceding and beginning to operate? If Catalan, Hong Kong, and the state of Jefferson are indicators, the world has a long way to go (Lecours and Dupré, 2020).

Is there any test for democratizing, physically? We, being the free and equal persons, should, logically, involve whether we first treat the capacity for the self-determination of every person as directly inverse to the population growth and relative to a neutral baseline such as the nonhuman world. Free people will always act to preserve their equal role, their mattering politically, in the process. In such a dynamic scenario, every person is politically empowered, and empowered equally, such that all groups are arcing down towards optimal and eco-centric population size. If people are empowered equally and thus matter politically this direct inversion, relative to neutral position that makes the concept of self-determination coherent, is inevitable. This inversion is crucial, and consistent with the need to invest equitably in every child so that children are empowered parts of functional democracies. Thus, the first reason that people would be obligated to follow laws is that the legal system intentionally includes, and reflects the will, of its constituents. This test determines whether systems are doing that.

How would we ensure birth and development conditions consistent with the spectrum? Because doing so is a first obligation that physically enables democracy, that obligation would override downstream state-issued property rights and enable redistribution of wealth as substantial family planning incentives/entitlements that would promote delayed parenting, parental readiness, smaller families, and equitable birth and development conditions that would approach true equality of opportunities in life. Fair Start encourages redistribution to incentivize parental readiness, delayed parenthood, equitable birth and development conditions, and a universal ethic of smaller families that would restore biodiversity and functional democracies. There are concrete standards for each of these areas, including existing standards of parental fitness, the Children's Rights Convention, measures of equality of opportunity, ideal representative ratios, and biodiversity targets. How feasible is it to achieve such a universal norm of better family planning? In other contexts, over the past few centuries, we have seen massive change in cultural norms, from the redistribution of property under socialist revolutions to the sea change in fertility rates that shows many groups of women having less than half the children their forbearers had. Given the massive disparity of wealth today, recognizing wealth at the top as first subject to equitable and sustainable family planning claims and applying the wealth as an incentive/entitlement could easily and quickly bend the arc of growth towards the low United Nations variants, and allow unprecedented levels of child welfare and sustainable development.

In the end to matter is to be included in systems of social organization where one is self-determining, or free and equal, and this situation is first contingent upon the norms that account for our creation. There is a pathway to future generations mattering, but it requires revising our current approach, from the International Bill of Human Rights to reforming family law and policy to bending the cultural influences that shape our everyday choices. The idea of a right to matter may appear abstract, or politically infeasible at this stage, despite the alignment of things like 1) massive economic inequity and 2) effectiveness of family planning incentives, as serendipitously convenient co-levers to effectuate change. However, the change is indeed afoot. The recent United Nations dialogue on the future of population growth has placed the much-needed focus on family planning and reproductive choices as some of the behaviours that will determine the future of our planet, our climate, our civilisation. Since the long-run impact of population growth and the associated resource demands on the environment is exponential, population increase/environment degradation has been identified as the biggest threat to the humanity by a group of Nobel Laureates. Consequently, the Sustainable Planet Alliance, a growing coalition of fifteen global organizations in population, economy and consumption, human well-being, media, environment, and women's leadership has openly petitioned the United Nations to consider pathways to change in positions on population and consumption issues (Barnard, 2022). The petition argues that climate crisis may prove to be the sort of existential change necessary to change something as fundamental as family planning, as the best chance to protect and make resilient the future generations who outweigh

those alive today in number and will suffer for what we have done. The petition emphasises that instead of treating demographics or population and consumption as separate issues generating separate issues, they must be treated as unified as it is impossible to separate the existence of the people from the environmental effects they generate. The petition recognises that ignoring the need for family planning and related development policy reforms has only exacerbated the climate crisis and greatly impeded the progress towards sustainable development goals. The petition recommends that a child centric approach should be adopted that prioritises equitable and sustainable development and the goals of the United Nations Convention on the Rights of the Child (United Nations, 1989). The petition argues that family planning and demographic issues are not solely about limiting human impacts. They can also help determining the resilience of future generations and the capacity of those generations to engage in collective, creative, and democratic solutions that planet needs. We are living in perilous times. Every one of the nearly eighty million new humans every year tips our planet closure to a dangerously destabilised planet, climate, and civilisation. These children - and those who are yet unborn – do not deserve this.

## References

- Anderson J (2013) Autonomy. In H LaFollette (Ed) *International Encyclopaedia of Ethics*. New York, John Wiley and Sons.
- Barbard P (2022) Open letter to Mr Liu Zhenmin, Under-Secretary-General for Economic and Social Affairs, United Nations Department of Economic and Social Affairs (UN-DESA). [UN\\_DESA - People matter - UN\\_DESA - People matter.pdf](https://stableplanetalliance.org/UN_DESA_-_People_matter_-_UN_DESA_-_People_matter.pdf) ([stableplanetalliance.org](https://stableplanetalliance.org))
- Bartlett AA (2000) Democracy cannot survive overpopulation. *Population and Environment* 22(1): 63-71.
- Bennett M (2020) An epistemic argument for an egalitarian public sphere. *Episteme*: 1-18.
- Bexell S, Dillard C, Hamity M, Ikizler D (2020) How subsidizing delayed parenthood will let children lead the way to a fairer world. *Loyola University Chicago Law Journal* 51: 11-41.
- Bowie N (2020) The constitutional right of self-government. *The Yale Law Journal* 130(7): 1652-1951.
- Chilton A, Cope KL, Crabtree C, Versteeg M (2000) The normative force of constitutions: experimental evidence from the pandemic. <http://dx.doi.org/10.2139/ssrn.3591270>.
- Conly S (2016) *One Child: Do We Have a Right to More?* New York, Oxford University Press.

- Dagan H (2020) Autonomy and property. In Dagan H, Zipursky B (Eds) *Research Handbook on Private Law Theory*. Edward Elgar Publishing.
- Dasgupta P, Geoffrey H (2017) The optimal depletion of exhaustible resources. In JCV Pezzey, MA Toman (Eds) *The Economics of Sustainability*. New York, Routledge: 3-28.
- Dillard C (2008) Rethinking the procreative right. *Yale Human Rights and Development Law Journal* 10: 1-63.
- Dillard C (2010) Prospective parents and the Children's Rights Convention. *American University International Law Review* 25: 485-529.
- Dillard C (2021) Constituting over constitutions. *University of Bologna Law Review* 6(1): 48-75.
- Dreyer BP, Trent M, Anderson AT, Askew GL, Boyd R, Coker TR, Coyne-Beasley T, Fuentes-Afflick E, Johnson T, Mendoza F, Montoya-Williams D (2020) The death of George Floyd: bending the arc of history toward justice for generations of children. *Pediatrics* 146(3).
- Farmer-Hinton R (2017) Going to college: why black lives matter too. *Journal of Educational Controversy* 12(1): Article 9.
- Feinberg J (1974) The rights of animals and unborn generations. In WT Blackstone (Ed) *Philosophy and Environmental Crises*. Athens, GA, University of Georgia Press: 43-68.
- Fields SE (2020) Second amendment sanctuaries. *Northwestern University Law Review* 115 (2): 437-501.
- Fox D (2019) *Birth Rights and Wrongs: How Medicine and Technology Are Remaking Reproduction and the Law*. New York, Oxford University Press.
- Froomkin AM, Colangelo Z (2020) Privacy as safety. *Washington Law Review* 95(1): 141-203.
- Hamity M, Dillard C, Bexell SM, Graff-Hughey C (2019) A human rights approach to planning families. *Social Change* 49(3): 469-492.
- Hansen JD, Reich J (2015) Democratizing education? Examining access and usage patterns in massive open online courses. *Science* 350(6265):1245-1248.
- Hohfeld WN (1913) Some fundamental legal conceptions as applied in judicial reasoning. *Yale Law Journal* 23(1): 16-59.
- Jacobs LA, Kim ME, Whitfield DL, Gartner RE, Panichelli M, Kattari SK, Downey MM, McQueen SS, Mountz SE (2021) Defund the police: moving towards an anti-carceral social work. *Journal of Progressive Human Services* 32(1): 37-62.

DILLARD, STADE, RAY; IJPD 2(1): 25-42

- Kopan T (2015) Scalia questions place of some Black students in elite colleges. Retrieved December 1, 2016, from <http://www.cnn.com/2015/12/09/politics/scalia-black-scientistsscotus>
- Kukathas C, Pettit P (1990) *Rawls: A Theory of Justice and its Critics*. Cambridge, Polity Press.
- Kunc N (1992) The need to belong: rediscovering Maslow's hierarchy of needs. In RA Villa, S Thousand, JW Stainback, S Stainback (Eds) *Restructuring for Caring and Effective Education. An Administrative Guide to Creating Heterogenous Schools*. Baltimore, Paul H Brookes: 25-39.
- LaFollette H (2010) Licensing parents revisited. *Journal of Applied Philosophy* 27(4): 327-343.
- Landau D, Wiseman HJ, Wiseman S (2020) Federalism, democracy, and the 2020 election. *Texas Law Review Online* 99: 96-121.
- Lecours A, Dupré JF (2020) The emergence and transformation of self-determination claims in Hong Kong and Catalonia: a historical institutionalist perspective. *Ethnicities* 20(1): 3-23.
- Longman P (2004) The global baby bust. *Foreign Affairs* 83(3): 64-79.
- Lundy L (2012) Children's rights and educational policy in Europe: the implementation of the United Nations Convention on the Rights of the Child. *Oxford Review of Education* 38(4): 393-411.
- Mahoney Jon (2004) Objectivity, interpretation, and rights: a critique of Dworkin. *Law and Philosophy* 23(2): 187-222.
- Mank BC (2020) Can judges use due process concepts in obergefell to impose judicial regulation of greenhouse gases and climate change? The crucial case of Juliana v. United States. *Belmont Law Review* 7: 277-307.
- Marmor A (2001) *Positive Law and Objective Values*. New York, Oxford University Press.
- Marshall T (1987) The Constitution's bicentennial: commemorating the wrong document? *Vanderbilt Law Review* 40(6): 1337-1342.
- Meyer LH (2017) *Intergenerational Justice*. New York, Routledge.
- Michener G, Octavio AO, Civitarese J (2021) The remoteness of democratic representation. *Party Politics*. doi:10.1177/13540688211049545
- Murphy L, Nagel T (2002) *The Myth of Ownership: Taxes and Justice*. New York, Oxford University Press.
- Paden R (1997) Rawls's just savings principle and the sense of justice. *Social Theory and Practice* 23(1): 27-51.



- Pettit P (2011) The instability of freedom as noninterference: the case of Isaiah Berlin. *Ethics* 121(4): 693-716.
- Posner RA (1998) The problematics of moral and legal theory. *Harvard Law Review* 111(7): 1637-1717.
- Press F, Wong S, Sumsion J (2012) Child-centred, family-centred, decentred: positioning children as rights-holders in early childhood program collaborations. *Global Studies of Childhood* 2(1): 26-37.
- Rabkin R (2003) From Kierkegaard to Kennedy: existentialist philosophy in the Supreme Court's decision in *Planned Parenthood v. Casey* and its effect on the right to privacy. *Hastings Constitutional Law Quarterly* 31(4): 611-636.
- Schramme T (2006) Is Rawlsian justice bad for the environment? *Analyse & Kritik* 28(2):146-57.
- Simon JL (2019) *The Economics of Population Growth*. Princeton, Princeton University Press.
- Somin I (2016) *Democracy and Political Ignorance: Why Smaller Government is Smarter*. Stanford University Press.
- Simonson J (2021) Police reform through a power lens. *Yale Law Journal* 130(4): 778-1049.
- Spaak T (2005) Kelsen and Hart on the normativity of law. In P Wahlgren (Ed) *Perspectives on Jurisprudence: Essays in Honour of Jes Bjarup*. Stockholm, Stockholm University. Stockholm Institute for Scandinavian Law: 397-414.
- Stephanopoulos N (2021) The new vote dilution. *New York University Law Review* 1179.
- Stone R (2022) The circumstances of civil recourse. *Law and Philosophy* 41(1): 39-62.
- Tsai RL (2014) *America's Forgotten Constitutions*. Harvard. Harvard University Press
- Tye JB, Warner KE, Glantz SA (1987) Tobacco advertising and consumption: evidence of a causal relationship. *Journal of Public Health Policy* 8(4): 492-508.
- United Nations (1989) *Convention on the Rights of the Child*. New York, United Nations.

DILLARD, STADE, RAY; IJPD 2(1): 25-42