

This project will challenge false assumptions about the atomistic liberal subject,¹ tracing those assumptions and the disembedding of the legal subject back to decades old reproductive rights regimes.

The project will begin with an examination of the “primacy of child equity,” the prioritization of birth and developmental positionality in matters of morality, ethics, justice, and law, and the impossibility of freedom / self-determination and other basic values without interventions to ensure that prioritization. It will include the history of the subversion of child equity in Twentieth Century human rights regimes, leading to the linguistic elimination of future children from systems of morality, ethics, justice, and law, causing a disconnection between political obligation and actual political empowerment, ensuring some children to become wildly enriched and deadly cost to others. The project will include solutions to these problems like a new constitutive discourse founded in a truth and reconciliation process, equity and impact fraud litigation, and corporate challenges to illegal discount rates.²

The project will be based largely on the existing literature in vulnerability theory, in particular *Vulnerability Theory and the Trinity Lectures, Institutionalizing the Individual*,³ and with a focus on establishing, through strategic interventions like some of the litigation discussed below involving collective family planning, **that the individual is best served through protection of a comprehensive and inclusive collective**. The project launches from the embodiment and embeddedness of future children, the prioritization of the universal and inclusive task of ensuring a threshold of birth and development conditions for all children as the first obligation of social justice, the assumption of collective interventions to avoid the indifference and injury of children born beneath such thresholds, and accepting the inequality inherent in the human condition even with such thresholds.⁴

The project narrows in on applying vulnerability theory, as summarized in the book, in the context of international reproductive rights reforms being made inevitable by the climate crisis. Cataclysmic shifts in worldwide ecologies and technological political systems offer opportunities to accelerate intergenerational justice because they highlight—as temperatures rise and power imbalances increase—how the liberal legal subject model fails to ensure even the thin

¹ See Hickey, Jennifer, ed. *The Foundations of Vulnerability Theory: Feminism, Family, and Fineman*. Taylor & Francis, 2023.

² See <https://markets.businessinsider.com/news/stocks/fair-start-movement-urges-california-attorney-general-to-recognize-full-justice-standard-as-preemptive-of-fraud-claims-1035104323>; also see <https://thehill.com/opinion/judiciary/3542987-state-abortion-bans-create-new-governmental-obligations-for-children/>.

³ See Fineman, Martha Albertson. "Vulnerability Theory and the Trinity Lectures: Institutionalizing the Individual." *Vulnerability Theory and the Trinity Lectures*. Bristol University Press, 2025.

⁴ See *id.* at. 1-8

self-determination for all that it promised. We are not atomistic selves but rather deeply embedded selves reliant on shared legal and social institutions to thrive.

The now evident failure of the atomistic liberal subject paradigm offers an opportunity to quickly displace it.⁵ The project seeks to operationalize vulnerability theory in several ways that could – through fundamental and universal legal reforms – save millions of lives⁶ as the climate and related crises accelerate:

I propose ensuring further recognition, through concrete legal change, that vulnerability is actually the basis of political obligation. This entails recognizing that because humans and nonhumans are vulnerable, they must – in the act of creation – be collectively and deliberately among the empowered. This understanding better ensures that state will be truly representative rather than inclined to exploit vulnerability to ensure growth-based wealth for a few and catastrophic costs for many.⁷

The literature on political equity highlights the unique approach taken here because most researchers look at political equity downstream, assuming that there's a legitimate constitution at play. Whereas our argument is that we have to look at one's level of equity in the society itself in terms of birth and development, as if that society were to break into a constitutional convention. That approach contrasts a lot of values relative [to ideals like Dasgupta's optimality](#). This approach is in fact a much more demanding form of political equity, a preemptive or existential one.

Recognizing vulnerability as the basis of political obligation has three parts: understanding (1) the primacy of birth and developmental positionality and thresholds,⁸ as well as the role of guaranteed resources (and the absence of certain adverse factors) in early childhood development as rights-based necessity to develop resilience,⁹ (2) the preemptive nature of the critical moment/nexus of birth-creation, in normative ethics, human rights, and constitutional law, and (3) the importance of collective family planning systems (already being piloted) to ensure

⁵ See Raz, Joseph. *The Morality of Freedom*. Oxford University Press, 1986 (demonstrating autonomy as achievable only through collective goods, but doing so at an abstract level that ignores the critical role of vulnerability in achieving those goods).

⁶ See Bexell, Sarah, et al. "How Subsidizing Delayed Parenthood Will Let Children Lead the Way to a Fairer World." *Loyola University Chicago Law Journal* 51. Online (2020): 12-37; Data point: sustainability policies save lives (and the planet), April 3, 2022 (<https://impact.economist.com/sustainability/social-sustainability/data-point-sustainability-policies-save-lives-and-the-planet>)

⁷ See Dillard, Carter. *Justice as a Fair Start in Life: Understanding the Right to Have Children*. Eliva, 2021; Dillard, Carter. "Future children as property." *Duke J. Gender L. & Pol'y* 17 (2010): 47.

⁸ See Meyer, Lukas H., ed. *Intergenerational justice*. Routledge, 2017.

⁹ See Koh, Katherine A., and Ann Elizabeth Montgomery. "Adverse childhood experiences and homelessness: advances and aspirations." *The Lancet Public Health* 6.11 (2021): e787-e788.

accurately obligatory / constitutive communications that capture what we owe future children and animals.

For example, as part of this project:

- FSM activists would seek to publish in conjunction with [Fair Start Movement](#) an academically rigorous book with popular appeal and influence that would fill a gap in the literature. The popularity of books like *Caste: The Origins of Our Discontents*¹⁰ and *The Message*¹¹ highlight that our systems of social organization and tools for reform are failing at a fundamental level. However, they do not capture how that failure stems from systemically seeing ourselves as atomistic, versus embedded. The proposed book would focus in part on the historical development of international human rights and reproductive rights systems between 1948 and 1968, a period that witnessed expanding power by elites who assumed various political authorities and entitlements rather than legitimating them through the rights-based birth-creation of power relations designed to actually enfranchise, rather than exploit, constituents/subjects.

In other words, having children would become subject to the duties within children's rights regimes, as a means of improving their birth and development conditions and equity in their birth-positioning determined relations to others, and fundable towards equity as a matter of primary state responsibility. One means of ensuring this is through a discourse that captures our primary obligations to constitute truly legal relations through child rights-based family planning.¹²

- FSM will also like to develop a detailed proposal for a vulnerability clinic docketing various legal interventions (investigations, litigation, legislation, enforcement advocacy, regulations, etc.) and designed to displace the liberal subject model, including 1) challenges to climate damage assessments that use the same system of evaluation that caused the climate and related political crises, devaluing measures like infant health in favor of measures of economic growth, employing high discount rates, allowing equity washing by for-profit and non-profit entities alike, etc., 2) litigation that could ensure new legal conceptions of macro animal personhood and liberation that treat both humans and nonhumans as inherently vulnerable, rather simply relying on a failed conception of animal liberation that focuses on nonhuman identities and characteristics. As our

¹⁰ See Wilkerson, Isabel. *Caste: The Origins of Our Discontents*. Random House, 2020.

¹¹ See Coates, Ta-Nehisi. *The Message*. First edition. One World, 2024

¹² See Bix, Brian. *Law, language, and legal determinacy*. Oxford University Press, 1995 (the theories fail to capture how language should form, by capturing our primary obligations, inclusive and empowering legal relations in birth and development); <https://www.marketwatch.com/press-release/coalition-files-landmark-petition-to-african-commission-demanding-climate-reparations-and-justice-for-future-generations-9731e2de>

preference for some animals and exploitation of others shows, nonhumans need liberation more because of their vulnerability than their species.¹³

- FSM engage in what is developing as a Fundamental Truth and Reconciliation discourse, recently initiated at the African Commission on Human and People's Rights. The discourse encourages those making value and impact claims— including academics—to admit those claims often hide benefits made at deadly cost to others in systems designed to exploit rather than respond to our universal vulnerability. This discourse avoids equity approaches that focus on identity and differences, rather than universal vulnerability, because such approaches have been easily manipulated by elites to exacerbate inequity. Vulnerability theory shows that we all depend on each other, so laws should focus on shared responsibility, not just individual independence and the discourse can show that any realizable conception of the latter is physically impossible without certain reforms.

¹³ See *Animals as Vulnerable Subjects: Beyond Interest-Convergence, Hierarchy, and Property*, in *The Vulnerability Thesis: Rethinking The Legal Subject* (Martha A. Fineman & Anna Gear eds., Ashgate 2013)