

Hastings Environmental Law Journal

Volume 27
Number 2 *Summer 2021*

Article 3

Summer 2021

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Recommended Citation

Jessica Rizzo, *The Children's Hour: Climate Change, Law, and the Family*, 27 *Hastings Env'tl L.J.* 79 (2021)
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The Children’s Hour: Climate Change, Law, and the Family

*Jessica Rizzo**

ABSTRACT

U.S. family law has historically been regarded as “exceptional,” or insulated from the geopolitical forces that shape laws governing public life. Climate change, however, is putting new and terrible pressures on families and family law—the earth may be verging on the uninhabitable by the time a child born today comes of age. While U.S. family law is presently organized around ensuring “stability” for children, the family law of the future must follow the lead of kinship innovators finding creative and sustainable ways to respond to the instability introduced by climate change.

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I. INTRODUCTION

In an article calling for a new field of climate change law, J.B. Ruhl and James Salzman write that “the difficult challenges” posed by climate change “will be at the system level and will invoke the need for a new procedural field far more than a new substantive field.”¹ They argue that while climate change will touch most areas of life and law in the coming years, much of our substantive doctrine and the basic assumptions undergirding individual fields will remain constant.² The task of climate change law will be to structure the interaction of our existing bodies of doctrine as the ice caps melt and priorities change.³ They note that different fields of law will be impacted to varying degrees, but single out family law as a field that seems especially unlikely to undergo a dramatic transformation due to climate change.⁴ “The foundations of family law,” they write, “are neither built directly or indirectly on assumptions about the biophysical impacts of sea level or the timing of snowmelt, nor are they built on the related social and economic impacts of those biophysical phenomena.”⁵

Embedded in this assessment are two critical misunderstandings, one about the core functions of family law and the other about the nature of climate change. First, Ruhl and Salzman conceive of “families” as nuclear units that exist independent of the communities and ecosystems in which they are situated.⁶ For them, family law is how we negotiate and give effect to “the responsibility of the state to protect minors” by determining “when children should be removed from the home.”⁷ This is a reasonably accurate description of some of American family law’s organizing concerns as the field exists today. While this model is much-criticized for privileging marital families, being insufficiently accommodating of nontraditional families,⁸ and for an overemphasis on state intervention and family separation when it comes to low-income families of color,⁹ much of American family law currently focuses on identifying and securing what

1. J.B. Ruhl & James Salzman, *Climate Change Meets the Law of the Horse*, DUKE L.J. 975, 1019 (2013).

2. Ruhl & Salzman, *supra* note 1, at 984.

3. *Id.* at 985.

4. *Id.* at 993–94.

5. *Id.* at 994.

6. *Id.* at 993.

7. *Id.*

8. See Serena Mayeri, *Marriage (In)equality and the Historical Legacies of Feminism*, 6 CAL. L.R. 126 (2015).

9. See generally Dorothy Roberts, *Child Welfare’s Paradox*, 49 WM. & MARY L. REV. 881 (2007).

serves “the best interests of the child.”¹⁰ This “best interests of the child” standard is an exceedingly individualistic one—possible alternatives might be securing what is determined to be in the best interest of the family, for example, or what is in the best interest of the neighborhood, nation, or planet. What Ruhl and Salzman fail to take into account is that such an individualistic standard is likely to be rendered unsupportable by climate change.

In setting out the factors to be used in determining what constitutes the best interest of a child, courts and state legislatures emphasize children’s need for “stability.”¹¹ Does the child have a regular routine? Does she have a room or at least a bed of her own to which she can retire to each night confident that she will find it waiting for her empty, clean, and safe? Has she lived in one place for an extended period of time rather than having to constantly move around? Is she able to attend the same school long enough to make friends and forge connections with teachers? As climate change accelerates, however, even the most privileged, most traditional, and most devoted parents will likely find themselves unable to provide this type of stability for their children. This fundamental assumption of family law must be transformed or family law will cease to be useful or relevant. In dismissing family law as somehow immune to a development that promises to be as all-encompassing as climate change, Ruhl and Salzman fall prey to what Janet Halley and Kerry Rittich have identified as a strain of “family law exceptionalism,” which posits that family law is unique because it preserves the private against the public, the traditional against the whims of the political, and the local against the forces of the global.¹² The family and family law were never all that special or all that safe from the vicissitudes of world history, but climate change may require a radical revisioning of them.

Similarly, Ruhl and Salzman underestimate the degree to which climate change will force a reassessment of some of the general fundamental assumptions of American law. Eric Biber has argued that the “the legal changes of the Anthropocene will put pressure on normative commitments at the heart of American law, including the classical liberal paradigm that government intrusion into individual action should be the exception, rather than the norm.”¹³ Because staving off or alleviating the effects of climate change will require national and international coordination, we will likely be confronted with more top-down policy

10. Linda Gordon, *The Perils of Innocence, or What’s Wrong with Putting Children First*, 1 J. HIST. CHILDHOOD & YOUTH 331, 332 (2008).

11. See, e.g., 23 P.A. CODE § 5328(a)(4) (2014).

12. See Janet Halley & Kerry Rittich, *Critical Directions in Comparative Family Law: Genealogies and Contemporary Studies of Family Law Exceptionalism*, 58 AM. J. COMP. L. 753, 754 (2010).

13. See Eric Biber, *Law in the Anthropocene Epoch*, 106 GEO. L.J. 1 (2017).

intervention than many Americans would be comfortable with under normal circumstances.

Compared with other areas of our lives, government intervention in family life makes us especially uncomfortable. A long line of Supreme Court cases rehearse the sentiment that “the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation’s history and tradition.”¹⁴ Modern privacy law also shields family life from much, though by no means all, government regulation.¹⁵ The jealously-guarded right to privacy has made it possible for Americans in all fifty states to enjoy some freedom from government interference in their decisions about birth control,¹⁶ “homosexual conduct,”¹⁷ and to a more limited degree, abortion.¹⁸ These rights have played no small role in making contemporary America a more livable place for women and queer people, and we are rightly loath to trade away such victories. Yet, if we do not compromise on the “sanctity of the family” before climate change reaches its inflection point, consenting to a more outward-looking approach to family organization, we will be forced to watch as climate change wipes out more families altogether. Suspending our distaste for government involvement now may be preferable to being forced to suspend it after the fact if we do nothing, when the state of emergency has been declared, when civilization begins to break down, and when law and policy are no longer tools we have at our disposal.¹⁹

II. THE GREAT DERANGEMENT²⁰

According to a 2018 report issued by the United Nations’ Intergovernmental Panel on Climate Change, without a total and fairly immediate reorganization of the global economy, the earth may well be verging on the uninhabitable by the time a child born today comes of age.²¹ If we allow the atmosphere to warm a mere 1.5 degrees Celsius above pre-industrial levels by 2040, as we are currently on track to do, the report predicts not only melting polar icecaps and rising sea levels, but food shortages, the dispersal of invasive species, the loss of biodiversity, the

14. *Michael H. v. Gerald D.*, 491 U.S. 110, 124 (1989).

15. *See Griswold v. Connecticut*, 381 U.S. 479 (1965).

16. *Id.*

17. *Lawrence v. Texas*, 539 U.S. 558, 558 (2003).

18. *See Roe v. Wade*, 410 U.S. 113, 114–15 (1973).

19. *See generally* NAOMI KLEIN, ON FIRE: THE (BURNING) CASE FOR A GREEN NEW DEAL (2019).

20. *See generally* AMITAV GHOSH, THE GREAT DERANGEMENT: CLIMATE CHANGE AND THE UNTHINKABLE (2017).

21. IPCC, SPECIAL REPORT ON GLOBAL WARMING OF 1.5 °C: SUMMARY FOR POLICYMAKERS (2018), <https://perma.cc/P6QE-PUE8>.

spread of disease, and an increase in isolated extreme weather events.²² There will be more pandemics like the COVID-19 catastrophe.²³ The fires that devastated California in 2018, 2019, and 2020 will become more regular and more deadly as the planet warms and vegetation stays kindling-dry for longer into traditional rainy seasons.²⁴ Hurricanes like Maria and Dorian, which leveled huge swaths of Puerto Rico in 2017 and the Bahamas in 2019, respectively, will become even more common occurrences than they already are.²⁵ If residents haven't abandoned the cities altogether, Manhattan finance executives will be commuting from their Park Avenue apartments down to their jobs on Wall Street via water taxi, and property values atop the hills of San Francisco, the only land that remains unsubmerged, will exceed what even the overlords of Silicon Valley can comfortably afford.

Of course, while the wealthy disproportionately bear responsibility for the acceleration of climate change, it will not be the wealthy who bear the brunt of its effects. As a 2019 Report of the Special Rapporteur on extreme poverty and human rights observed, "People in poverty tend to live in areas more susceptible to climate change and in housing that is less resistant; lose relatively more when affected; have fewer resources to mitigate the effects, and get less support from social safety nets or the financial system to prevent or recover from the impact."²⁶ This is true globally, but the most exaggerated inequality exists between developing and developed countries. While developed countries, which built their powerful economies by industrializing early and polluting heedlessly for generations, may at least provisionally remain insulated from climate change-related catastrophes, it is estimated that developing countries will bear 75 to 80 percent of the costs of climate change.²⁷ Sub-Saharan Africa is the most vulnerable to droughts and low-lying coastal and island nations in southeast Asia the most vulnerable to floods.²⁸ According to one recent study, many atolls in the Pacific and Indian oceans, including the Marshall

22. IPCC, SPECIAL REPORT ON GLOBAL WARMING OF 1.5 °C: SUMMARY FOR POLICYMAKERS (2018), <https://perma.cc/P6QE-PUE8>.

23. Abraham Lustgarten, *How Climate Change Is Contributing to Skyrocketing Rates of Infectious Disease*, PROPUBLICA (May 7, 2020), <https://perma.cc/R93D-6PHC>.

24. Alejandra Borunda, *Climate Change Is Contributing to California's Fires*, NAT. GEO. (Oct. 25, 2019), <https://perma.cc/D428-9DWS>.

25. Karthik Balaguru, Gregory R. Foltz & Ruby Leung, *Increasing Magnitude of Hurricane Rapid Intensification in the Central and Eastern Tropical Atlantic*, 45 GEOPHYSICAL RSCH. LETTERS 4238, 4238–47 (2018).

26. U.N. OFF. HIGH COMM'R HUMAN RTS., CLIMATE CHANGE AND POVERTY: REPORT TO THE SPECIAL RAPPORTEUR ON EXTREME POVERTY AND HUMAN RIGHTS III.B.12 (June 25, 2019).

27. WORLD BANK, WORLD DEVELOPMENT REPORT 2010: DEVELOPMENT AND CLIMATE CHANGE (2010), <https://perma.cc/K9TP-36L7>.

28. *Id.* at 6.

Islands and Maldives, will be uninhabitable by the middle of the twenty-first century as a result of rising sea levels.²⁹

Climate change also disproportionately affects women in ways large and small, and not only because women are generally more likely to live in poverty than men.³⁰ Women and children are fourteen times more likely than men to die in ecological disasters.³¹ In rural areas in developing countries, the task of fetching water for washing, drinking, and food preparation generally falls to women, and with climate change affecting the availability of surface water, woman must travel farther on foot to collect the water, miles and miles farther.³² It has been argued that, in some developing countries, climate change increases the risk of child marriage.³³ Poor families for whom income security is tied to the cultivation of the land are left without recourse, unable to feed all of their children when a natural disaster strikes.³⁴ As climate change progresses and such disasters occur with increasing frequency, families have a greater incentive to “marry their daughters off” earlier than they otherwise would.³⁵ In developed countries like the United States, where industrial agriculture dominates (itself contributing to climate change), women face less extreme risks, but are still not immune to gender-specific harms associated with the warming of the planet. Adverse pregnancy outcomes like premature birth and low birth weight are associated with increasing heat and air pollution, and climate change is associated with higher rates of asthma in adolescent girls, a higher risk of lung cancer and heart disease in middle age, and a higher risk of heart attacks, strokes, and dementia in older women.³⁶

If the forecast looked bleak before the election of President Donald Trump, the horizon has since darkened significantly. Trump ran on a platform of aggressive climate change skepticism, repeatedly calling the phenomenon a hoax.³⁷ He was elected in part by coal-country Americans who were counting on him to spurn renewable energy initiatives and

29. Curt D. Storlazzi et al., *Most Atolls Will Be Uninhabitable by the Mid-21st Century Because of Sea-level Rise Exacerbating Wave-driven Flooding*, 4 SCI. ADVANCES 1, 1 (2019), <https://perma.cc/2EB9-9WUP>.

30. Greta Gaard, *Ecofeminism and Climate Change*, 49 WOMEN’S STUD. INT’L F. 20, 23 (2015).

31. *Id.*

32. Gender-differentiated Impacts of Climate Change, U.N. Food & Agric. Org., <https://perma.cc/59XG-6XRM>.

33. Christie McLeod, Heather Barr & Katharina Rall, *Does Climate Change Increase the Risk of Child Marriage: A Look at What We Know—and What We Don’t—with Lessons from Bangladesh and Mozambique*, 38 COLUM. J. GENDER & L. 96, 116 (2019).

34. *Id.* at 97.

35. *Id.*

36. *How is Climate Change Affecting Women?*, CLIMATE REALITY PROJECT (Mar. 14, 2018, 10:41 AM), <https://perma.cc/U25H-8H4U>.

37. Jeremy Schulman, *Every Insane Thing Donald Trump Has Said About Global Warming*, MOTHER JONES (Dec. 12, 2018), <https://perma.cc/32RZ-7YJF>.

instead bring back the only jobs they knew.³⁸ While Trump was not able to rewrite the entire post-industrial narrative to flatter the fancies of his base, he took other major steps to make it easier for corporate interests to accelerate climate change. Early in his tenure, he withdrew the United States from the Paris Agreement, an accord memorializing the commitment of its more than 180 ratifying countries to “strengthen[ing] the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty.”³⁹

Domestically, the Trump Administration rolled back or reversed dozens of rules designed to protect the environment. Water pollution regulations for fracking on federal and Indian lands were rescinded and the rightly-maligned Dakota Access pipeline was approved by his administration.⁴⁰ Offshore drilling safety regulations implemented in the wake of the 2010 Deepwater Horizon explosion and oil spill were loosened.⁴¹ The way the Endangered Species Act is applied was changed to make it more difficult to protect wildlife from the longer-term threats posed by climate change.⁴² At precisely the moment when we ought to have been doing everything we could to lead the world away from the precipice, we turned and broke into a suicide run. As the single-largest carbon polluter in history, even the most ambitious plans to stall climate change quixotically undertaken by the rest of the world will not suffice without our participation.⁴³ Capitalism depends on the fantasy of infinite economic growth, while what we need now is a program of “managed de-growth.”⁴⁴ While President Biden began his first term by taking important steps to undo some of the damage Trump did, it is difficult to imagine that we will manage to effect the necessary changes to the world’s economic order before it is too late.⁴⁵

38. *Id.*

39. Paris Agreement to the United Nations Framework Convention on Climate Change art 2.1, Dec. 12, 2015, T.I.A.S. No. 16-1104, <https://perma.cc/AQ7L-QGP4>.

40. Nadja Popovich et al., *The Trump Administration Rolled Back More Than 100 Environmental Rules. Here’s the Full List*, N.Y. TIMES (Jan. 20, 2021), <https://perma.cc/9C25-JMSX>.

41. *Id.*

42. *Id.*

43. Justin Gillis & Nadja Popovich, *The U.S. is the Biggest Carbon Polluter in History. It Just Walked Away from the Paris Climate Deal*, N.Y. TIMES (June 1, 2017), <https://perma.cc/R4XC-8QR6>.

44. NAOMI KLEIN, THIS CHANGES EVERYTHING: CAPITALISM VS. THE CLIMATE 89 (2014).

45. See, e.g., Exec. Order No. 14008, 86 Fed. Reg. 7619 (Jan. 27, 2021).

III. FAMILY LIFE IN THE END TIMES

Despite the fact that climate change was largely brought about by a masculinist ideology of domination and expansion, women have often been sidelined in high-level international conversations about how to address the looming crisis.⁴⁶ While women's caregiving responsibilities and "essential closeness to nature" are frequently cited as features of a transcendent femininity that endow women with "special knowledge" that may be of use in devising strategies to fight climate change, their agency as decisionmakers and actors is not always appreciated.⁴⁷ In what, depending on the cast of light, looks like either great courage or great despair, women—mainly wealthier, educated women with access to birth control—have begun responding to this dire situation by taking fairly drastic measures on their own. They are deciding not to have any more children.

A recent survey of American women conducted by the *New York Times* reported that a full third of women who said they expected to have fewer children than they considered ideal cited fears about climate change as a motivating concern.⁴⁸ Congresswoman Alexandria Ocasio-Cortez raised the issue in February of 2019, reflecting that "[i]t is basically a scientific consensus that the lives of our children are going to be very difficult, and it does lead young people to have a legitimate question: is it OK to still have children?"⁴⁹ Grassroots networks of likeminded women have sprung up, joining forces and drafting mission statements to amplify the message they hope to convey by choosing not to procreate. The women of BirthStrike, an international group that welcomes people of all genders, seek to raise awareness about the danger climate change poses to all children by making publicly known their decision not to contribute any of their own.⁵⁰ Conceivable Future is a women-led group of Americans who argue that "[t]he climate crisis is a reproductive justice crisis" and feel that it is impossible for them to become parents, considering the kind of world their hypothetical children presently stand to inherit.⁵¹

This growing chorus differs from previous generations of activists who have touted population control as a remedy for ecological problems. This new generation is studiously nonjudgmental and non-evangelistic. They do not say that *everyone* has an ethical obligation to refrain from

46. Gaard, *supra* note 30, at 20.

47. *Id.* at 22–23.

48. Claire Cain Miller, *Americans Are Having Fewer Babies. They Told Us Why*, N.Y. TIMES (July 5, 2018), <https://perma.cc/K7AC-5H55>.

49. Matthew Taylor, *Is Alexandria Ocasio-Cortez Right to Ask if the Climate Means We Should Have Fewer Children?*, GUARDIAN (Feb. 27, 2019), <https://perma.cc/95LK-GVTA>.

50. See Elle Hunt, *BirthStrikers: meet the women who refuse to have children until climate change ends*, GUARDIAN (Mar. 12, 2019), <https://perma.cc/M5VB-UXUD>.

51. Mission, CONCEIVABLE FUTURE, <https://perma.cc/V6QU-2323>.

bringing children into the world, only that they personally cannot bear the thought of being responsible for doing so.⁵² They do not argue that the government should play a role in making this decision on anyone's behalf, but rather that governments should take the climate crisis seriously and deliver the women of the world a less desolate future so that the choice whether or not to have a child can become a meaningful one again.⁵³

Concerns about overpopulation have been around since at least 1798, when in *An Essay on the Principle of Population* Thomas Malthus observed that during periods of abundance, populations tend to grow until the abundance runs out and the lower classes begin to suffer.⁵⁴ Rather than squandering their good fortune by bringing more resource-consuming people into the world, Malthus argued, prosperous societies should focus on raising the standard of living for all, as resources would eventually run out.⁵⁵ In the United States, concerns about overpopulation and mass starvation took root in the 1950s and '60s, climaxing with the 1968 publication of Paul and Anne Ehrlich's *The Population Bomb*, in which the authors predicted with alarming—and, it turned out, misplaced—certainty that, of the world's poor, mainly in developing countries, “a *minimum* of ten million people, most of them children, will starve to death during each year of the 1970s.”⁵⁶ There were too many people and too little food, the Ehrlichs argued, and the only way to defuse the “bomb” was for governments to pursue an aggressive population control agenda, using whatever means necessary, including compulsory birth control, sterilization, and sex-selective abortion if need be.⁵⁷

The Nixon Administration listened, and in 1974, the Department of Health, Education, and Welfare issued a regulation providing, *inter alia*, that personal consent was not required for “[t]he sterilization of mental incompetents of all ages.”⁵⁸ This policy, courts found, was more often implemented by the states “for eugenic rather than family planning purposes.”⁵⁹ Gruesome cases of women, sometimes minors, of color being sterilized against their will, without their consent, and even without their knowledge under this government program may have permanently tainted any state-sponsored attempt to prevent women from having children in the

52. THOMAS MALTHUS, AN ESSAY ON THE PRINCIPLE OF POPULATION 58 (1983).

53. See, e.g., Caitlin Stall-Paquet, *The Women Pledging Not to Have Kids Until Meaningful Action on Climate Change is Made*, ELLE CANADA (Mar. 9, 2020), <https://perma.cc/C4BU-UTTJ>.

54. MALTHUS, *supra* note 52.

55. See generally THOMAS MALTHUS, AN ESSAY ON THE PRINCIPLE OF POPULATION (1983).

56. See PAUL R. EHRLICH, THE POPULATION BOMB 3 (1968).

57. *Id.*

58. *Relf v. Weinberger*, 372 F.Supp. 1196, 1200 (D.D.C. 1974), *vacated*, 565 F.2d 722 (D.C. Cir. 1977).

59. *Id.* at 1202 n. 7.

United States.⁶⁰ This remains the case today, even as social and religious conservatives are making tremendous strides towards converting the youth of America into “the pro-life generation” thoroughly comfortable with state-sponsored attempts to compel women to bear unwanted children.⁶¹

As the climate crisis has grown more acute, there has been a contemporary revival of interest in the idea of population control as a cure for (much of) what ails us.⁶² For example, in his 2013 book *Countdown: Our Last, Best Hope for a Future on Earth?*, Alan Weisman reports on the effects of overpopulation in over twenty countries—overproduction, overconsumption, overcrowding, pollution, resource depletion—concluding that bringing the number of the planet’s consumers down will alleviate both our ecological problems and many of our social problems, including global gender inequality. Weisman rejects the notion of the family as an immutable, untouchable entity, even finding an unexpected silver lining to the dreaded Chinese one-child policy. Meeting with students in Guangzhou, Weisman recalls:

At one point, a thought struck me. “Is every one of them an only child?”

I asked my translator.

“Of course,” she replied. “We all are.”

“You’re one of the most animated and intelligent groups of students I’ve ever met,” I told them. “You don’t seem psychologically warped. Don’t you miss having brothers and sisters?”

They acknowledged that they did, but they understood why reproductive restraint was necessary, and they’d adjusted. “Our cousins and closest friends have become our siblings,” the student moderator explained to me.

“We’ve kind of reinvented the family,” said another young woman.⁶³

Families may be infinitely resilient and reinvent-able, but the potential for discrimination still makes any form of population control unpalatable as a state-mandated policy. In the United States, it was poor women of color being forcibly sterilized, and in China, wealthy women who wanted to have more than one child were able to circumvent the prohibition by

60. See DOROTHY ROBERTS, *The Dark Side of Birth Control*, in KILLING THE BLACK BODY: RACE, REPRODUCTION, AND THE MEANING OF LIBERTY 56 (2017).

61. Jeanne Mancini, *This Is the Pro-Life Generation*, REALCLEAR POL. (May 2, 2018), <https://perma.cc/69V6-ZZBP>.

62. See generally ALAN WEISMAN, *COUNTDOWN: OUR LAST, BEST HOPE FOR A FUTURE ON EARTH?* (2013).

63. *Id.* at 419.

flying to Hong Kong to give birth or simply paying the hefty fine leveled by the government for having an unauthorized second child.⁶⁴

Some leading feminists now call for the outright rejection of population as a concept for thinking about human lives. As Donna Haraway has written, “population as a concept is enmeshed in the very infrastructures and logics that have produced ubiquitous environmental violence.”⁶⁵ In the twentieth century, Haraway notes, population became “a calculative concept used to govern the stock of people in a nation-state for the sake of economic productivity.”⁶⁶ The term “designated the working class as an undifferentiated mass” in nineteenth-century Britain and “named the totality of people in a prison” beginning in the mid-twentieth-century United States.⁶⁷ The concept of population creates “distance and abstraction,” which allows the person or entity doing the tallying to anonymize the lives at stake into “deletable data points.”⁶⁸ Our globalized capitalist infrastructure, Haraway argues, at once “produces the molecular material ‘waste’ of emissions as outside of the calculation of value” and “designates poor people as forms of human ‘waste,’ better for the world to be without, and hence correspondingly open to abuse, abandonment, and elimination.”⁶⁹

The racial implications of any population-control policy are especially distasteful when examined in an international context—in developed, majority-white countries where women are more likely to be educated, birthrates are already tumbling.⁷⁰ Any attempt to bring birthrates down globally, then, would be akin to the wealthy white countries of the world attempting to sterilize the poor brown countries of the world. Even if a method of population control could be devised that would somehow avoid these pitfalls, placing the onus on individual women to respond to climate change by putting their reproductive lives on the line may seem grotesquely unfair, given that it is the fossil fuel industry and the politicians they have purchased that are to blame for the climate crisis.⁷¹ While individual women will no doubt increasingly choose to forgo having

64. Ma Jian, *China's Brutal One-Child Policy*, N.Y. TIMES (May 21, 2013), <https://www.nytimes.com/2013/05/22/opinion/chinas-brutal-one-child-policy.html>.

65. Michelle Murphy, *Against Population, Towards Alterlife*, in MAKING KIN NOT POPULATION 101, 106 (Adele Clarke & Donna Haraway eds., 2018), <https://perma.cc/MZ6R-W4NL>.

66. *Id.* at 103.

67. *Id.*

68. *Id.*

69. *Id.* at 106.

70. Christine Tamir, *G7 nations stand out for their low birth rates, aging populations*, PEW RESEARCH CENTER (Aug. 23, 2019), <https://www.pewresearch.org/fact-tank/2019/08/23/g7-nations-stand-out-for-their-low-birth-rates-aging-populations/>.

71. See generally CHRISTOPHER LEONARD, KOCHLAND: THE SECRET HISTORY OF KOCH INDUSTRIES AND CORPORATE POWER IN AMERICA (2019).

children of their own in response to climate change, the state should not play a role in making such a decision for them. The state, rather, must follow the lead of kinship innovators finding creative and sustainable ways to respond to the instability introduced by climate change. Family law must cease to treat all forms of instability as disqualifying for state-recognized kinship relations such as parenthood. The children of the future, after all, will need caregivers nimble enough to adapt to a world where islands are being subsumed by the seas and increasing numbers of climate refugees are seeking out shelter in unfamiliar places with unfamiliar ways of life.

IV. THE FAMILY AS A SITE OF SUSTAINABILITY

How, then, might the family and family law be reimagined to respond to the climate crisis in ways that make the family part of the solution rather than a source of the problem? Family life has historically been organized around the home as a site of production. Prior to industrialization and continuing into the early twentieth century, it was not uncommon for all members of an American household to work, whether helping to run the farm or taking in sewing and other piece work.⁷² However, advances in technology and other factors gradually led to a transformation of families from sites of production into sites of consumption. Notwithstanding the gig-ification and work-from-home-freelance-ifying of the economy, production now typically occurs outside the domicile, with the surplus value of one's labor being extracted in exchange for a salary. The home is for recreation, for spending the salary. Since overconsumption is a driving cause of the climate crisis, the family may be a promising, underexplored locus for resistance to climate change, a place where it becomes possible to effect meaningful shifts in habits of consumption.⁷³

This could simply mean families collaborating to teach and reinforce habits that add up to a more sustainable lifestyle within the context of our current model. Canadian researchers have found that people are far more likely to do things like carry reusable shopping bags, turn off the lights, pack waste-free lunches, or ride a bicycle instead of driving a car when they live as part of a family that shares environmentalist values, collective competency, and collaborative family dynamics.⁷⁴ Unfortunately, we have passed the point where simply turning off the tap while brushing one's teeth

72. Tamara K. Hareven, *The Home and the Family in Historical Perspective* 58.1 SOCIAL RESEARCH 253 (1991).

73. MATTHIAS SCHMELZER, *THE HEGEMONY OF GROWTH: THE OECD AND THE MAKING OF THE ECONOMIC GROWTH PARADIGM* 4-5 (2016).

74. Michel T. Léger, *Changing Family Habits: A Study into the Process of Adopting Climate Change Mitigation Behaviours*, 2 INT'L ELECTRONIC J. ENVTL. EDUC. 77, 82-83 (2012).

is going to make a significant difference.⁷⁵ Slavoj Žizek reads the popularity of recycling household waste among liberals as the enactment of a fantasy of restitution, the idea that we can cleanse ourselves of guilt and regain innocence by creating a self-enclosed circle in which “nothing gets lost, all trash is re-used.”⁷⁶ Our comfortably excessive habits of consumption need not change if everything we buy, use, break, and discard can be magically transfigured into something useful for someone else. “What lies at the end of this road,” Žizek suggests further, “is the ecological utopia of humanity in its entirety repaying its debt to Nature for all its past exploitation.”⁷⁷ Such a fantasy can never become reality. The damage has been done, and it was hypertrophied individualism that did it. Individual actions cannot save us now.⁷⁸ The only way we might approach making some form of reparations is by learning from our past mistakes and collectively changing the way we live our lives.

While human activities on the scale of burning coal for electricity, air travel, and raising cattle for beef are the largest contributors to climate change, the architecture of family life as it has evolved in developed countries such as the United States is also highly unsustainable.⁷⁹ The density of urban living and the ubiquity of mass transit means a relatively light individual carbon footprint for those who live in proper cities, but after World War II, it began to become more convenient and more attractive for many to live outside the city where one worked. Inexpensive, government-backed mortgages gave millions of returning G.I.s the ability to become first-time homeowners.⁸⁰ The Federal-Aid Highway Act of 1956 authorized the construction of 41,000 miles of interstate highways.⁸¹ Automobiles became so affordable that at last Henry Ford’s dream of a car that any man with a good job would be able to afford became a reality. Race played a significant role in what would come to be known as the “white flight” from the cities to the suburbs during this period. The suburbs became known as the place where “white, middle-class Americans could isolate themselves from perceived urban ills,” Amanda Kolson Hurley writes, “in a static and regulated environment where private space, property

75. Diana Stuart, Ryan Gunderson & Brian Petersen, *Overconsumption as Ideology*, 15.2 NATURE AND CULTURE 199 (2020).

76. SLAVOJ ŽIZEK, *LIVING IN THE END TIMES* 35 (2011).

77. *Id.*

78. Stuart, Gunderson & Peterson, *supra* note 75.

79. Will Imbrie-Moore, *How Urbanism Will Help Solve Climate Change*, HARV. POL. REV. (Mar. 31, 2020), <https://harvardpolitics.com/urbanism-climate-change/>.

80. Daniel K. Fetter, *How Do Mortgage Subsidies Affect Home Ownership? Evidence from the Mid-Century GI Bills*, 5.2 AMERICAN ECONOMIC JOURNAL 111 (2013).

81. Nathaniel Baum-Snow, *Did Highways Cause Suburbanization?*, 122.2 Quart. J. of Econ. 775 (2007).

ownership, racial homogeneity, and the nuclear family were the dominant values.”⁸²

Today, most Americans live in the suburbs.⁸³ People who start out in urban areas often move to the suburbs when they have children.⁸⁴ The suburbs have excellent public schools because they have the wealthy people to pay the property taxes that fund the schools.⁸⁵ The suburbs are safe for one’s children, because the children are either at home, in one’s car with the door locked, or at the excellent public school. Still, one tells oneself that the suburbs are the place to raise a family because there is more outdoor space where the children can run around. Suburban houses also have ample indoor space where the beloved toys of the beloved children can pile up. The large indoor spaces are not particularly energy-efficient to heat in the winters or air-condition in the summers. It takes an awful lot of water to water the suburban lawn that the children never actually run around in because they are too busy inside playing Minecraft. The closest grocery store is three miles away, so one ends up getting in the car to run even the smallest errand. Sometimes one forgets the grocery list and ends up making the same trip in the hulking SUV three separate times in one day. Even if one wanted to walk to the grocery store, or somewhere, even if one wanted to walk nowhere, just to go for a walk, one might find that one’s neighborhood had no sidewalks, making walking feel unwelcome, impractical, or even dangerous. The car might be a hulking SUV that gets terrible gas mileage, but one drives it because it is safer, and one has little children, after all. If one were to get into an accident with one’s children in the car, and one’s children were hurt while the children of the other driver emerged unscathed, one would never forgive oneself.

Putting children first is generally seen as “an aspect of modernism, advanced capitalism, and heightened individualism.”⁸⁶ Children have gone from being “workers to objects of sentimentality,” and our sense of what they “need” to emerge from childhood well-adjusted and prepared to succeed in life has only swollen since the 1950s.⁸⁷ The amount of space the American child “needs” to be comfortable has been growing steadily for decades. In 2016, when the size of the average American household was measured at just 2.58 people, a Census Bureau survey of American

82. AMANDA KOLSON HURLEY, *RADICAL SUBURBS: EXPERIMENTAL LIVING ON THE FRINGES OF THE AMERICAN CITY* 14 (2019).

83. Jed Kolko, *America Really Is a Nation of Suburbs*, CITYLAB (Nov. 14, 2018), <https://perma.cc/ZZ7E-MKKL>.

84. Patrick Sisson, *Why do young parents move away? Our cities aren’t designed for kids*, CURBED (June 19, 2018), <https://archive.curbed.com/2018/6/19/17479222/children-parks-cities-transit-urbanism> (last visited Apr. 15, 2021).

85. Alana Semuels, *Good School, Rich School; Bad School Poor School*, THE ATLANTIC (Aug. 25, 2016), <https://perma.cc/XUD8-CPC5>.

86. Gordon, *supra* note 10, at 331.

87. *Id.*

housing reflected that 47 percent of new homes being built had four or more bedrooms and three or more bathrooms.⁸⁸ The average size of a newly built home was measured at 2,687 square feet.⁸⁹ Calculating the carbon footprint of family life in such a dwelling should also take into account the constant car trips to soccer practice, piano lessons, to the PSAT tutor, to the SAT tutor, to the ever-expanding array of enrichment activities that the child needs to get into Harvard so that the child is not at risk of coming out a loser in an increasingly unforgiving, increasingly unequal economic system.⁹⁰ Ruthless individualism can feel compulsory in a society that is rapidly dismantling the social safety net.

The single-family home is a relatively recent phenomenon. For most of human history, most people lived with multiple generations of family, with grandparents helping to care for young children and children helping to care for aging parents.⁹¹ More extended, fluid, and elaborate models of kinship care have flourished around the world as well.⁹² Templates for “family” that privilege care, support, and creative connection over the limits of biology have many advantages. The strict nuclear family model is static, a kind of proprietary model of the family. These children are my responsibility because they are *mine*. I have passed along my genetic material to them. Their successes in life will reflect well on me. Their failures will bring me shame. If I manage to launch them into the world well-equipped to dominate the competition, then I will have proven myself to be a *good mother* or, in a less high-stakes tournament, a *good father*. My child’s success shores up that piece of my individual identity.

Caring for the elderly, by contrast, carries the promise of no such reward. If I devote myself to the care of my dying mother, keeping her with me at home, making sure that she is comfortable, making sure that when she finally expires she is surrounded by familiar faces, people telling her they love her, rather than by impatient nurses who may or may not know her favorite flavor of Jello or her name, it may in some abstract sense make me a *good daughter* or *good son*. In the U.S., however, when we give out awards in those categories, we do it during the untelevised portion of the ceremony. The children always come first. Once the elderly have exceeded their “use-time,” once they are no longer productive as agents or instrumentalities, our culture treats them as waste.⁹³ Our relationship to the

88. Damon Darlin, *Houses Keep Getting Bigger, Even as Families Get Smaller*, N.Y. TIMES (June 3, 2016), <https://perma.cc/XW95-XXJT>.

89. *Id.*

90. Sam Pizzigati, *Helicopter Parenting Linked to Economic Inequality?*, INST. POL’Y STUD. (Feb. 22, 2019), <https://perma.cc/GWA7-VNB4>.

91. David Brooks, *The Nuclear Family Was a Mistake*, THE ATLANTIC (Mar. 2020), <https://perma.cc/39TF-LCT5>.

92. SOPHIE LEWIS, FULL SURROGACY NOW: FEMINISM AGAINST FAMILY 148 (2019).

93. WILLIAM VINEY, WASTE: A PHILOSOPHICAL HISTORY OF THINGS 21 (2014).

elderly is primarily one of waste-management. Nursing homes function as waste-management facilities, where the decomposing bodies of our loved ones can be shielded from view. Developing robots to handle elder care is generating tremendous interest in developed nations, especially in countries with rapidly aging populations.⁹⁴ While we have begun to acknowledge that childcare is labor, even though it may also be rewarding, ennobling, and meaningful, we see the labor of elder care as bare, meaningless, burdensome labor, the kind that ought to be automated once the technological solution is within reach. Revising the architecture of family life and the structure of caregiving will be crucial if we wish to meet and manage the challenges posed by climate change. As an ancillary effect, however, ecological living may tutor us in more egalitarian ways of relating to one another as well as to the planet.

V. LESSONS FROM HISTORY

The pressures of bringing up a family in industrial and postindustrial capitalist societies have driven people to seek out alternative ways of ordering domestic life in the past. Even before climate change was a phenomenon we had the scientific vocabulary to describe, more communitarian—and theoretically more sustainable—ways of raising children have attracted interest for the ways in which they stand to benefit women in particular and communities and society as a whole.

A. SOVIET DETDOMA

Shortly after the Russian Revolution of 1917, the Marxist-feminist revolutionary Alexandra Kollontai imagined the ways in which the bourgeois family could be remade in the image of communism, liberating the women of the working classes from lives of unmitigated toil. “Capitalism has placed a crushing burden on woman’s shoulders: it has made her a wage-worker without having reduced her cares as housekeeper or mother,” she wrote. “Woman staggers beneath the weight of this triple load. She suffers, her face is always wet with tears.”⁹⁵ Kollontai called for communal housekeeping—there would be men and women whose job it was to make the rounds in the morning cleaning rooms, rather than each individual woman bearing the responsibility for cleaning her own home on top of working for pay outside the home.⁹⁶ The wives of the rich already benefited from such services because they were able to pay for it, and Kollontai thought that a communist society should provide such a benefit

94. Malcolm Foster, *Aging Japan: Robots May Have Role in Future of Elder Care*, REUTERS (Mar. 27, 2018), <https://perma.cc/5LSY-QM5D>.

95. ALEXANDRA KOLLONTAI, *SELECTED WRITINGS OF ALEXANDRA KOLLONTAI* 252 (1980).

96. *Id.* at 252.

to all women. There would be central laundries and mending centers where a woman could drop off her family's clothes rather than spending her evenings bent over a washtub or ruining her eyes darning stockings.

Similarly, Kollontai called for communal kitchens and dining halls.⁹⁷ If the rich wanted to, they could go to a restaurant, whereas working women were never relieved of the obligation to prepare meals for their families. Under communism, people would share the labor of preparing food, and a working woman could occasionally nourish herself with food prepared by her comrades.

In the most dramatic upending of capitalist conventions, Kollontai called for the communist state to assume responsibility for the upbringing of all children. This would both alleviate the burden of individual women and awaken the collective conscience of the Russian people. Kollontai wrote:

The woman who takes up the struggle for the liberation of the working class must learn to understand that there is no more room for the old proprietary attitude which says: 'These are my children, I owe them all my maternal solicitude and affection; those are your children, they are no concern of mine and I don't care if they go hungry and cold—I have no time for other children.'⁹⁸ The worker-mother must learn not to differentiate between yours and mine; she must remember that there are only our children, the children of Russia's communist workers."⁹⁹

State childrearing would change the way one related to one's fellow human beings. Narcissistic regard for the individual would be subsumed by concern for the collective.

A version of such a childcare program was attempted. The People's Commissariat of Enlightenment created a network of *detdoma* (children's homes) catering to children of various age groups. The *detdoma* were to offer room and board, a standard education, and activities including music, drama, and sports.¹⁰⁰ They Commissariat's model charter urged the *detdoma* to implement a program of self-governance, according to which the children would take on daily chores and contribute to administrative decision-making.¹⁰¹ "In so doing, the expectation ran, they would acquire a sense of control over their lives and an instinct for collective ventures," writes Alan Ball.¹⁰² The *detdoma* were also to have large workshops and gardens, which would be operated and maintained by the children. "The

97. KOLLONTAI, *supra* note 95, at 255.

98. *Id.* at 259.

99. *Id.*

100. Alan Ball, *Soviet Russia's Besprizornye and the New Socialist Generation*, 52 *RUSSIAN REV.* 228, 230 (1993).

101. *Id.*

102. *Id.*

labor training foreseen in these settings amounted to the heart and soul of [the Commisariat's] program," Ball says, "an attempt to nurture good work habits and a respect for manual toil essential in preparing adolescents to join the proletariat."¹⁰³

Like other nobly-conceived Soviet projects, the *detdoma* foundered on the shoals of reality, with widespread famine destabilizing the nation before the project had a chance to become well-established.¹⁰⁴ We can imagine, however, that a successful version of such an endeavor might be both beneficial to the environment and conducive to the cultivation of ecological awareness, with young people coming into regular contact with the land and the rhythms of the natural world while learning to share resources and work together towards a common goal.

B. WOMYN'S LAND

In the 1960s and '70s in the U.S., women went looking for spaces where they could, if only temporarily, exist outside of patriarchy. They found them in the intentional communities they built themselves. The "womyn's land movement," as it came to be called, encompassed heterogenous groups of women with heterogenous motives for fleeing mainstream society, but all sought a different way of living, and a different way of relating to the earth and to one another. Some were attracted to womyn's land because they needed a literal safe space to recover from years of sexual violence and abusive relationships. Some needed a space to explore burgeoning same-sex desires that could not have found full expression in the towns these women came from. Some wanted to make art. Some wanted to abandon the traditional roles of wife and mother, which they had assumed before it occurred to them that they had any choice in the matter. Some were motivated by dreams of a socialist utopia. Some were trying to figure out what feminism was and how it was going to impact the rest of their lives. Some simply wanted to focus on themselves for the first time, to find out who they were after years of putting others' needs before their own.

Sustainable living and environmentalism became a hallmark of such communities. "We honor our mother earth through organic gardening, erosion control and protecting a sustainable ecology," reported Jan Griesinger, who cofounded one such community in 1979 and continued to live there into the twenty-first century.¹⁰⁵ In keeping with their commitment to dismantling hierarchies, the women of these collectives felt an affinity for the earth as a fellow victim of male exploitation. They lived a "deep ecology," the Norwegian philosopher Arne Naess's term for an

103. Ball, *supra* note 100, at 230.

104. *Id.* at 232.

105. Jan Griesinger, *Reflections on Women's Land*, OFF OUR BACKS 42, 42 (May 2003).

environmental philosophy rooted in the belief that nature has an intrinsic value apart from its instrumental value to humans,¹⁰⁶ and they embodied the values of what would later be labeled “ecofeminism,” which connects violence against nature to the inherent violence of patriarchal capitalism.¹⁰⁷ They saw that the distinction between nature and the human was an artificial and damaging one. A world in which nothing and no one was seen as existing solely for the sake of serving someone else’s needs was their motivating ideal.

While the women who built these communities were predominantly lesbian, many communities welcomed heterosexual women, and some even welcomed male allies. Dozens of these communities continue to exist today, and each sets its own rules regarding who is allowed on the premises. The Huntington Open Women’s Land (HOWL) community in Vermont, for example, notes on its “Visitor Guidelines” page that “Girls of all ages and boys up to and including the age of 10 are welcome.”¹⁰⁸ Others, like the Susan B. Anthony Memorial Unrest Home in Athens County, Ohio, welcomes everyone, provided that visitors respect the land.¹⁰⁹

Different communities have different relationships to money and property. While early groups were eager to do away with the concept of ownership altogether, many subsequently found that legally acquiring title to their land was the only way to protect it and their way of life from encroaching development.¹¹⁰ To varying degrees, they also shared money.¹¹¹ Attempting to create refuges from a capitalist system that poisons all human relationships with competition and fear, some communities include visitors in their “sharing” economies as well.¹¹² While some communities charge for the use of campgrounds, they may also have policies stating that no one will be turned away for lack of funds, and that work projects can be arranged as a substitute for payment.¹¹³ Some explicitly say things like “we are not a business but are rural women and LGBTQ folk inviting other women and LGBTQ people to share the land.”¹¹⁴

106. Arne Naess, *The Shallow and the Deep, Long-Range Ecology Movement: A Summary*, 16 *INQUIRY* 95 (1973).

107. Margarita Estévez-Saá & María Jesús Lorenzo-Modia, *The Ethics and Aesthetics of Eco-caring: Contemporary Debates on Ecofeminism(s)*, 47.2 *WOMEN’S STUDIES* 123 (2018).

108. HOWL: A VERMONT WOMEN’S LAND TRUST, VISIT HOWL, <https://perma.cc/GVS7-VQJT>.

109. SUBAMUH, <https://subamuh.wordpress.com/> (last visited Mar. 14, 2021).

110. See Heather Jo Burmeister, *Rural Revolution: Documenting the Lesbian Land Communities of Southern Oregon* (May 12, 2013) (Ph.D. dissertation, Portland State University) (on file with author).

111. *Id.*

112. *Id.*

113. SUBAMUH, CAMPING/ RECREATION, <https://perma.cc/8F9L-APXK>.

114. *Id.*

Different communities have also differed on the question of what to do about children. While little procreating takes place within the confines of the womyn's lands, some women have brought children from previous unions when they come to stay.¹¹⁵ Some communities assume collective responsibility for childcare, sharing those duties the way they share any other chore. Other communities question whether there is a place for children in their communities at all.¹¹⁶

Unlike the Soviet experiment in communal living, womyn's lands may be failing in part because of the project's success. These women sought to create a space outside of the dominant, patriarchal culture, which was hostile to lesbians, but by empowering lesbians, the womyn's land experiment may have helped weaken the hostility that drove them out into the woods in the first place. Many communities are now home to only a few aging members, with little expectation that the sites will be maintained after the founders pass on. "I don't have a fantasy that young lesbians will want to come here," says Barbara Lieu, the septuagenarian property manager of Alapine, a community in Alabama, "They have enough freedoms in the world that we never had. And they're transitioning in all kinds of ways."¹¹⁷ A new generation of queer feminists is also increasingly resistant to anything perceived to be trans-exclusionary and racially homogenous. Since many womyn's lands at least historically excluded anyone but "women-born-women" and were mostly founded by white women, the younger generation may see them as not progressive enough.¹¹⁸

C. CO-LIVING™

In the early twentieth century, facing growing populations in the slums, reformers in European cities looked to new kinds of communal housing to improve living conditions for the working classes. In Berlin, there were the *Siedlungen*, modernist housing estates designed by the likes of Bauhaus architect Walter Gropius.¹¹⁹ The promise of Bauhaus-style modern architecture and design was the possibility of inexpensively mass-producing homes for low-income people that were both functional and beautiful. In London, the architect Max Fry and housing consultant Elizabeth Denby were enlisted to design Kensal House, a modernist workers' housing development commissioned in 1933 by the Gas, Light &

115. Burmeister, *supra* note 110.

116. Griesinger, *supra* note 105, at 43.

117. Rina Raphael, *Why Doesn't Anyone Want to Live in This Perfect Place?*, N. Y. TIMES (Aug. 28, 2019), <https://perma.cc/XN8B-45PS>.

118. *Id.*

119. Katharina Borsi, *Hans Scharoun's 'Dwelling Cells' and the autonomy of architecture*, 23 J. OF ARCHITECTURE 1104 (2018).

Coke Company.¹²⁰ While the project was initially conceived of as a model estate that would allow this large public utility company to demonstrate the cost-effectiveness of gas, Fry and Denby had more ambitious plans. They saw Kensal House as an opportunity to create “a didactic setting in which new forms, new technology, and progressive discourse together would create modern citizens able to participate fully in contemporary life.”¹²¹ Whereas similar efficiency-oriented developments in continental Europe were designed “as a means to (re)domesticate working-class women and create a generation of ‘professional’ housewives and mothers” who were meant to stay inside their new, tricked-out homes, separated from the public sphere, Kensal House was imagined as a place where a radical reconfiguration of the domestic interior would free women up to develop into full-fledged citizens through participation in conversations about politics and policy. For the first time, they could directly contribute their insights as housewives and mothers, and these insights could steer social discourse and further innovation. Every woman could now become “a citizen as well as a housewife.”¹²²

At Kensal House, labor-saving devices and efficient design—smaller private spaces and larger common areas—alleviated the housewife’s domestic burden. Children were also occupied at school from eight o’clock in the morning until five o’clock in the evening.¹²³ During the day, women retired to one of several social clubs on the premises. Rather than staying inside her private family flat, “the woman’s presence in the club would form part of a process that would remind her that she was a member of both her own family and the community of Kensal House.”¹²⁴ There were practical educational opportunities, metalworking, woodworking, and sewing classes, and robust cultural programming in the evenings.¹²⁵ The community was self-managed, and women participated fully in all democratic decision-making processes.¹²⁶

Twentieth-century modernist co-living didn’t last, but the ideal has been resuscitated, denatured, and commodified for twenty-first century consumers. London-based “The Collective” is just one prominent example of luxury capitalist co-living that seeks to appeal to sustainably-minded

120. Elizabeth Darling, *A Citizen as Well as a Housewife in New Spaces of Domesticity in 1930s London*, in *NEGOTIATING DOMESTICITY: SPATIAL PRODUCTIONS OF GENDER IN MODERN ARCHITECTURE* 53 (Hilde Heynen & Gülsüm Baydar eds., 2005).

121. *Id.*

122. Ernest Simon, *The Role of Organized Services Outside the Home in Relation to Scientific Management in the Home*, in *SIXTH INTERNATIONAL CONGRESS FOR SCIENTIFIC MANAGEMENT* 155 (July 17, 1935).

123. Darling, *supra* note 120.

124. *Id.* at 61.

125. Matthew Stewart, *The Collective is Not a New Way of Living—It’s an Old One, Commodified*, *FAILED ARCHITECTURE* (Dec. 2, 2016), <https://perma.cc/7SP2-WXDQ>.

126. Darling, *supra* note 120, at 54.

individuals who wish to convert even their private lives into networking opportunities.¹²⁷ With several locations in affordable-housing-strapped London and one in New York, The Collective offers a “curated community” in which those willing to pay the £330 per week for the tiny “standard” room can partake of an array of trendy “curated experiences.” Young people today, says The Collective CEO Reza Merchant, are “far more willing to invest in experiences versus material possessions.”¹²⁸ Rooftop yoga. Sushi-making workshops. Self-care Sundays. Rather than democratic self-governance, The Collective emphasizes that everything is taken care of for residents. Their only responsibility is consumption. The rhetoric of such enterprises emphasizes sustainability, but the only reducing, reusing, or recycling happening in such communities is a recycling of old utopian ideas while reducing their ability to promote active citizenship.

VI. CONCLUSION

Capitalist co-living may be the only kind of intentional community likely to survive in an era of curated lifestyles and commodified experiences, but the utopian impulses of the past suggest that there are both state-facilitated and grassroots models for sustainable families that are worth adapting for the needs of our time and exploring today. From communal child rearing on Israeli kibbutzim to community and environmental healing practiced on some Indian ashrams, there are examples to be found in every corner of the world. Family law in the time of climate change must evolve to allow such experiments in sustainable living to become mainstream. Great transformation is coming regardless—we would do well to be active and not passive participants in that transformation.

127. THE COLLECTIVE, <https://perma.cc/UX6J-Q4EP>.

128. Stewart, *supra* note 125.
