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# Law and Population Classification Plan

by Morris L. Cohen



Law and Population Programme  
**THE FLETCHER SCHOOL OF LAW AND DIPLOMACY**  
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Medford, Massachusetts 02155

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- 1/ *Population and Law*, Luke T. Lee and Arthur Larson (eds.), (Durham, North Carolina: Duke of Law Press; Leyden: A. W. Sijthoff), 1971.
- 2/ *International Migration Law*, Richard O. Flander, (Leyden: A. W. Sijthoff), in the press, February 1972.
- 3/ *Population in the UN System: Developing the Legal Capacity and Programs of UN Agencies*, Daniel G. Partan, (Durham, North Carolina: Duke of Law Press; Leyden: A. W. Sijthoff), in the press, October 1972.
- 4/ *World Population Crisis: The United States Response*, Phyllis Tibson Plotrow, (New York, New York: Praeger), 1972.

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- 5/ *Law and Population Classification Plan*, by Morris L. Cohen.
- 6/ *Law, Human Rights and Population: A Strategy for Action*, by Luke T. Lee.

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**LAW AND POPULATION CLASSIFICATION PLAN**

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## **Law and Population Classification Plan**

### **INTRODUCTION**

Since the adoption of the United Nations Declaration on Human Rights at Teheran in 1968 and the General Assembly Declaration on Social Progress and Development adopted in October 1969, there has been increasing recognition that family planning must now be considered to be a human right. It is being realized around the world that these documents make family planning a matter of law as well as of sociology, economics and demography. The Secretary General, in his suggestions on preparation for the United Nations Population Year in 1974, has suggested that countries study their own legislation as it affects fertility.

Accordingly, projects are being undertaken in a number of countries under various auspices on the effect on population growth of legislation, decisions, regulations and customs having the effect of law. These studies are seeking out the laws that indirectly affect fertility as well as the more obvious laws which have a direct effect. It is hoped that these studies will give rise to a realistic approach to the problem of making family planning a human right in fact as well as in name in all countries.

The Law and Population Programme of the Fletcher School of Law and Diplomacy has been instrumental in organizing most of these projects. Pursuant to the instructions of its International Advisory Committee, it has requested the Librarian of the Harvard Law School to prepare a classification plan which would:

1. suggest the various types of law which might affect fertility in any given country, and which should therefore be scrutinized by researchers, and;
2. provide a pattern or format for the compiling and reporting which would, hopefully, be adopted generally and thus result in full comparability among reports.

Comparability of reports will in turn make it easier for some central authority (hopefully the United Nations itself) eventually to set up a World Population Law Center providing, among other things, a standing legislative series on law as it affects population.

Because we feel that the Classification Plan is in itself interesting to anyone active in the field, and because we wish it to achieve general adoption as a reporting format, we have decided to publish this plan as a part of our Law and Population Programme Monograph Series.

## PART I

### EXPLANATION OF CLASSIFICATION PLAN

The following is a classification plan which has been prepared to assist in the compilation of the laws, decisions, regulations, etc., affecting fertility in each country. It is intended both to suggest areas of law which might be worth considering in the research, and to provide a standard form for the compilation which will make reports from the various countries comparable.

In using this classification plan, the following suggestions are offered:

- 1) The plan is patterned on a key number system under which an agreed number is always used to identify and locate a legal provision on one given subject. Thus, for example, any law or other material dealing with the age at which sterilization is permitted would always be listed, in any compilation, under the number "111.2". Consequently, researchers looking for material on age for permitted sterilization could look under number 111.2 and know they had seen all the existing material on the subject and that there would be no need to search elsewhere for information.
- 2) Only those laws, regulations, decisions, etc., should be included which the researchers and compilers believe to have a significant effect on fertility patterns. Thus, there is no need to report on all the laws on divorce (§ 221) or protection of children (§ 320) or sexuality (§ 410). It is hoped to cover only those provisions of law which, in the opinion of the compilers, may actually have an appreciable effect on the number of children born.
- 3) Most countries will not have laws covering all of the fields listed. However, it is necessary to list them here in order both to suggest the fields which should be considered by the researcher, and to provide a category for reporting if, in fact, something significant is found in these fields.
- 4) Terminology will vary from country to country, and it is impossible to choose terms which will be applicable for all conditions. It is requested, however, that reporters stay as close to the terms suggested as possible in light of the desirability of keeping the reports comparable.

- 5) There are a lot of "open" or "unused" numbers in the series for material which does not fall under any named category. Similarly, the "miscellaneous" category under 900 should provide space for material which does not fall logically into any of the eight main general categories.
- 6) In the case of a federal state, it may not be feasible to collect all the significant laws of each component political sub-division. In such cases, the laws of the central government should be covered, plus those of major representative sub-divisions.
- 7) In many cases, a law might be considered as falling appropriately in more than one category. In such cases, the law should be reported in one category and a cross-reference put in the category where it is not listed.
- 8) The last sheet of the classification plan (Part III) suggests various sources of material which might be considered. It can not, however, be complete, and it is hoped that researchers will consider any other appropriate sources which have not been foreseen at the Law and Population Programme headquarters.
- 9) We would appreciate some indication as to whether a certain law is, in fact, enforced, or the degree to which it is enforced.

**PART II**

**OUTLINE FOR COMPILATION AND REPORTING PURPOSES**

**General Categories:**

- 100 Fertility Regulation
- 200 Family Law
- 300 Children and Child Welfare
- 400 Criminal Offenses and Penology
- 500 Public Welfare
- 600 Public Health
- 700 Education
- 800 Property and Economic Factors
- 900 Miscellaneous

**Specific Divisions of General Categories**

**100 FERTILITY REGULATION**

**110 Sterilization**

110.1 Inducement and Assistance Generally

110.2 Restrictions and Prohibitions Generally

**111 Regulation of Act**

111.1 Consent Requirements (e.g. spouse, parent, outside agency, etc.)

111.2 Age Requirements.

111.3 Regulation of Individuals or Agencies Performing Act

111.4 Regulation of Place or Circumstances of Performance

111.5 Procedural Requirements

111.6 Malpractice

OUTLINE - Continued

- 112 Advertising
- 113 Official Eugenic Programs
  - 113.1 Mental Incompetents
  - 113.2 Epileptics
  - 113.3 Sex Offenders
  - 113.4 Habitual Criminals
- 114 Control of Fees and Costs
- 115 Financial Aid
- 120 Contraception
  - 120.1 Inducement and Assistance Generally
  - 120.2 Restrictions and Prohibitions Generally
- 121 Regulation
  - 121.1 Domestic Production of Contraceptive Products
  - 121.2 Importation
  - 121.3 Transportation
  - 121.4 Sale
  - 121.5 Instruction in Use\*
  - 121.6 Quality Controls
- 122 Advertising
- 123 Official Distribution
- 124 Control of Fees and Costs
- 125 Financial Aid

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\* 121.5 This item deals only with instruction on use of a particular device or medication. For education generally, see §700.

OUTLINE - Continued

130 Abortion

130.1 Inducement and Assistance Generally

130.2 Restrictions and Prohibitions Generally

131 Regulation

131.1 Nature of Conception (e.g. rape, under age, married woman, etc.)

131.2 Nature of Abortion (e.g. therapeutic, induced, etc.)

131.3 Consent Requirements (e.g. spouse, parent, outside agency, etc.)

131.4 Age Requirements

131.5 Requirements as to Length of Pregnancy

131.6 Regulation of Individuals or Agencies Performing Act

131.7 Regulation of Place or Circumstances of Performance

131.8 Procedural Requirements

131.9 Malpractice

132 Advertising

133 Official Services

134 Control of Fees and Costs

135 Financial Aid

200 FAMILY STATUS AND WELFARE

210 Marriage

210.1 Inducement and Assistance Generally

210.2 Restrictions and Prohibitions Generally

211 Regulation of Entry into Marriage

211.1 Age Restrictions

OUTLINE - Continued

- 211.2 Prohibited Relationships
- 211.3 Consent Requirements
- 211.4 Waiting Periods and Public Notice
- 211.5 Registration
- 211.6 Individual or Agency Performing Marriage
- 211.7 Fees and Costs
- 212 Polygamy
- 213 Polyandry
- 214 Financial Aid
- 220 Termination of Marriage
  - 220.1 Inducement and Assistance Generally
  - 220.2 Restrictions and Prohibitions Generally
- 221 Divorce
  - 221.1 Grounds
  - 221.2 Time Limitations
  - 221.3 Procedural Requirements
  - 221.4 Fees and Costs
- 222 Separation
  - 222.1 Grounds
  - 222.2 Time Limitations
  - 222.3 Procedural Requirements
  - 222.4 Fees and Costs
- 223 Annulment
  - 223.1 Grounds
  - 223.2 Time Limitations

OUTLINE - Continued

223.3 Procedural Requirements

223.4 Fees and Costs

224 Alimony and Support

225 Remarriage after Termination

230 Extended Family Obligations\*

300 CHILDREN AND CHILD WELFARE

310 Support of Children Generally

311 Parental Obligation

312 Obligation of Other Relatives

313 Government Obligations

320 Protection of Children

321 Cruelty and Abuse

322 Child Labor Laws (see also 560)

323 Care of Orphans

324 Care of Physically or Mentally Defective Children

325 Public Guardians

326 Abandonment of Children

330 Artificial Insemination

340 Legitimacy of Children (Bastardy)

341 What Constitutes Illegitimacy

342 Rights of Inheritance of Illegitimate Offspring

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\* 230 Refers to the extended family custom prevalent in many countries. It has been suggested that a custom making the entire family responsible for the support of all children may discourage family planning. See also § 312.

OUTLINE - Continued

- 343 Limitations on Support Obligations
- 344 Special Registration or Identification
- 345 Other Legal Disabilities

400 CRIMINAL OFFENSES AND PENOLOGY

- 410 Criminal Law Treatment of Sexual Activity
  - 411 Rape
  - 412 Concubinage
  - 413 Prostitution
    - 413.1 Regulation of Legal Prohibition Generally
    - 413.2 Inspection of Prostitutes and Brothels
    - 413.3 Licensing of Prostitutes and Brothels
  - 414 Incest
  - 415 Fornication
  - 416 Homosexuality
- 420 Penology (as affecting ability of prisoners to continue family relations)

500 PUBLIC WELFARE

- 510 Family Allowances Generally (including aid to dependent children)
- 520 Housing Assistance Programs\*
- 530 Maternity Leaves and Benefits
- 540 Old-Age and Retirement Benefits
- 550 Death Benefits to Survivors

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\* 520 The size of the housing made available may have a direct effect on fertility.

OUTLINE - Continued

- 560 Labor Protection and Employment Standards (including factory laws, wage and hours, etc.; see also 322)
- 570 Personal Status and Integrity
  - 571 Civil and Human Rights\*
  - 572 Equality of Sexes\*\*
  - 573 Naturalization and Citizenship
  - 574 Protection of Privacy
  - 575 Legal and Customary Provisions Regarding Male Offspring
- 580 Personal Mobility
  - 581 Freedom of Emigration
  - 582 Immigration Restrictions
  - 583 Internal Physical Movement
  - 584 Employment Mobility

600 PUBLIC HEALTH

- 610 Health Insurance and Medical Assistance
- 620 Hospitalization Insurance and Public Clinics (including nursing services)
- 630 Control of Medical Facilities
  - 631 Public Control
  - 632 Religious Control

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\* 571 Any law or decision indicating the acceptance of family planning as a human right is important.

\*\* 572 United Nations experience has shown that improvements in the status of women, economically, socially, or otherwise, may have a direct effect on fertility.

OUTLINE - Continued

- 633 Private Management
- 634 Public Inspection and Standards
- 640 Medical Profession
  - 641 Education Facilities
  - 642 Licensing of Physicians and Surgeons
  - 643 Regulation of Other Personnel (nurses, midwives, etc.)\*
  - 644 Malpractice Regulation
- 650 Drugs and Pharmaceuticals
  - 651 Control of Production (purity and quality)
  - 652 Free or Subsidized Distribution
  - 653 Licensing of Distributors
  - 654 Labeling Requirements
  - 655 Prescription and Other Distribution Controls
  - 656 Importation Restrictions
  - 657 Regulation of Cosmetics (including quality control, labeling, etc.)
- 660 Disease Control Programs
  - 661 Venereal Diseases
  - 662 Epidemic and Disease Controls
  - 663 Vaccination and Innoculation
  - 664 Compulsory Medical Examinations
  - 665 Other Public Health Programs Affecting Procreation and Infant Mortality\*\*

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\* 643 This factor includes permission, or prohibition, to paramedical personnel to offer family planning services.

\*\* 655 Decreases in Infant Mortality may, after a while, lead to a drop in fertility.

OUTLINE - Continued

670 Food Distribution and Control

671 Minimum Nutritional Standards

672 Food Distribution Programs

680 Environmental Protection Programs\*

700 EDUCATION

710 Compulsory Elementary Education

720 Compulsory Secondary Education

730 Literacy Programs

740 Adult Education Programs (including occupational training)

750 Financial Assistance to Education

751 Elementary Education

752 Secondary Education

753 Higher Education

760 Educational Opportunities for Women\*\*

770 Education Affecting Population Directly

771 Health Education

772 Sex Education

773 Marriage Counseling

774 Education on Conception Restraints

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\* 680 This refers, inter alia, to efforts to control population growth as a means of protecting the environment.

\*\* 760 Improvements in female education may have a direct effect on fertility.

775 Population Education\*

800 PROPERTY AND ECONOMIC FACTORS

810 Income Distribution Measures Generally

820 Taxation

821 Income and Wage Taxes (including exemptions for dependents)

822 Personal Property Taxes

823 Real Property Taxes

824 Estate and Inheritance Taxes

825 Sales and Excise

826 Housing and Occupancy Taxes

827 Customs Duties on Contraceptive Materials

830 Land Tenure and Land Improvement Programs as Possibly Affecting Size of Families

840 Distribution of Decedent's Property as Possibly Affecting Size of Families

850 Employment Guarantee and Public Work Programs

860 Guaranteed Wage and Income Subsidies

900 MISCELLANEOUS

910 Military Service as Affecting Procreation

920 Religious Law Encouraging Procreation Generally

930 Other Miscellaneous Provisions Affecting Procreation

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\* 775 "Population Education" means inclusion in regular school curricula of materials designed to make the student aware of the population problem and how it affects his welfare.

SUGGESTED SOURCE MATERIALS

Primary Sources

1. Constitutional Provisions
2. Collections of Laws (including Codes)
3. Separate Laws and Ordinances
4. Judicial Decisions
5. Legislative Documents (including Legislative Reports, Debates, Hearings, etc.)
6. Administrative Regulations (including Rules and Orders, Instructions, etc.)
7. Administrative Decisions, Rulings and Opinions
8. Local Law (of governmental units smaller than national and state entities)
9. Treaties, Covenants and Other International Agreements
10. Resolutions, Reports and Declarations of International Organizations
11. Customary Law

Secondary Sources

1. Commentaries and Treatises
2. Encyclopedia Articles
3. Texts and Manuals
4. Loose-leaf Services
5. Periodical and Festschriften Articles
6. Conference Proceedings

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