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Bertram L. Raisbeck

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LAW AND POPULATION GROWTH IN THE UNITED KINGDOM

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LAW AND POPULATION GROWTH IN THE UNITED KINGDOM

TABLE OF CONTENTS

I. INTRODUCTION 1

A. Character of the Population Problem 1

B. Social, Religious, Cultural and Ideological Elements 3

C. Brief History of Government Policies and Actions 4

II. LAWS DEALING DIRECTLY WITH BIRTH AND ON FAMILY PLANNING EDUCATION AND SERVICES 9

A. Birth Control 9

B. Abortion 14

C. Sterilization 18

III. LAW ON IMMIGRATION AND EMIGRATION 25

IV. FAMILY LAW AFFECTING POPULATION 29

A. Minimum Marriage Age 29

B. Polygamy 29

C. General Marriage and Divorce Laws 30

V. LAW ON ECONOMIC FACTORS RELATED TO THE FAMILY 39

A. Maternity Benefits 39

B. Family and Child Allowances 39

C. Laws on Descent and Distribution of Property 41

VI. GENERAL OBSERVATIONS 43

VII. POSSIBLE IMPROVEMENTS IN LAWS AFFECTING POPULATION 47

LAW AND POPULATION GROWTH IN THE UNITED KINGDOM

I. INTRODUCTION

A. Character of the Population Problem

The United Kingdom of Great Britain and Northern Ireland is divided for administrative purposes into three: England and Wales, Scotland and Northern Ireland, each having its own law and legal system, though the Parliament at Westminister can, and frequently does, legislate for all. The first national census was carried out in 1901 and since then a census has been conducted every ten years with the exception of 1941.

Population 1841-1971
United Kingdom, Isle of Man and Channel Islands
(Taken from Census 1971 (England and Wales) Preliminary Report)

1841	20,307,317	1921	44 177,710
1861	24,668,418	1931	46,180,870
1881	31,156,008	1951	50,383,283
1901	38,387,268	1961	52,867,716
1911	42,230,842	1971	55,521,534

Numbers of population have continually increased, though the rate of growth has varied at different times. In 1944, for example, toward the end of the Second World War, a Royal Commission on Population was set up by the Government because a decline in population was feared. By the time the Commission reported, in 1949,[1] a post-war "baby boom" was in progress,[2] but the Commission considered this a temporary phenomenon. They predicted that the population would continue to grow but that "the further addition to the population which can be expected is not large." They based their calculations on the low rate of natural increase in the 1930's, which we can now see was due to the economic depression of that period, and forecast a population of about 54 million by the end of the century.

A number of factors have combined to contribute toward a more rapid growth than was predicted by the Royal Commission. There has been an increase in the number of marriages, and people are marrying much younger than before.[3] Though the average family in the United

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[1]Cmnd. 7695.

[2]In 1947, there were 1,025,000 live births.

[3]Whereas 81% of women past child-bearing age were married or had at some time been married in 1911, in 1968 the corresponding figure was 92%. In 1911 the average age of first marriage was 25 for women and 27 for men; in 1968 it was 22 for women and 24 for men. cf. First Report from the Select Committee on Science and Technology. H.C.379 (1970-71) H.M.S.O.

Kingdom includes 2.4 children, as compared with 6.1 in the mid-nineteenth century period, and the birth-rate is still falling (in 1969 live births were about 3% lower than in 1968 and in 1970 about 2% lower than in 1969),[4] the benefits of medical and social care have greatly increased each child's chances of survival to become a parent in his or her turn. In addition, the number of illegitimate births has become a serious social problem, though the Abortion Act, 1967, has had some effect.[5]

Births in the U.K. (thousands), taken from the First Report from the Select Committee on Science and Technology (1971)

	1951	1956	1961	1966	1969
Total	797	825	944	980	921
Legitimate	758	787	891	906	845
Illegitimate	38	39	53	74	76
% of Total	(4.8)	(4.7)	(5.5)	(7.6)	(8.3)

If the population continues to grow at the present rate, the total population of the United Kingdom in the year 2001 is expected to be 66,488,000.[6] This is a particularly serious problem for a group of small islands. The population density of England and Wales is one of the highest in the world - 324 persons per square kilometre - and even taken as a whole the United Kingdom has a density of 228 persons per square kilometre.[7]

In recent years the general public has become increasingly aware of the dangers of overpopulation in the context of pollution of the environment. In January 1972, a statement by eminent members of the medical profession was published in Lancet and the British Medical Journal which included this sentence: "many regard overpopulation as the supreme dilemma of our age, taking the view that unless the present reproductive bonanza is brought to a halt there can be no tolerable

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[4]Population Projections 1970-2010. (1971), H.M.S.O. Figures published in August 1972 show a continuing decline in fertility rates. There was a sharp fall in the number of births in the first few months of 1972. Registrar General's Quarterly Return for England and Wales No. 493 (1972).

[5]In 1970, illegitimate births were down to 8.2% of the total number of live births, but numbered 80,000. Social Trends No. 2 (1971), H.M.S.O.; Family Planning in Britain (1972), Office of Health Economics. In England and Wales alone the effect of the Act has been more marked. Numbers of illegitimate births have fallen from 69,928 in 1967 to 64,744 in 1970.

[6]Population Projections 1970-2010 op.cit.

[7]U.N. Demographic Yearbook (1970).

existence for future generations on this planet."

B. Social, Religious, Cultural and Ideological Elements

It is only in recent years that the people of the United Kingdom have become at all aware of a population problem at home, and the public as a whole is still ignorant of the facts. It would certainly surprise the average Englishman to be told, for example, that population density in England and Wales is much greater than in India. However, every member of the society has become aware of the consequences of overcrowding: shortage of housing, large classes in schools, traffic jams, pollution and so on. The British people are traditionally jealous of individual freedom and resentful of Government interference. Any attempt by a Government to impose population limitation by other than persuasive means would be deeply resented.[8] On the other hand, the existence and universal acceptance of a National Health Service within a Welfare State leads the people to look to the Government for leadership.

The whole area of population control is a sensitive one because it is concerned with sex and the family. Though society is much more outspoken in sexual matters than before, and intercourse outside marriage is becoming more socially acceptable, the revolution has been so recent that official bodies obviously feel that they must proceed with caution. It was only in 1967, for instance, that the Family Planning Association of Great Britain began openly to give advice on contraception to unmarried women. The idea that freely available contraception encourages promiscuity is still widespread, though illegitimate children are now better tolerated by the community and the law.

Religion has also played a part. The majority of the population is nominally Protestant, though active Church membership is confined to a smaller number, certainly less than 50%. There are about six million Roman Catholics.[9] The Protestant churches originally opposed artificial contraception until, after years of debate, the Lambeth Conference of the Church of England in 1958 proclaimed a duty of responsible parenthood which might require the use of contraception. Opinion was deeply divided on abortion, but the majority of Protestants were in favour of legal abortion in some cases.[10] The Roman Catholic Church is totally opposed to artificial contraception and to abortion and sterilization. In the case of contraception, the attitudes of the leaders of the Church are probably not shared by the laity; the Papal encyclical of 1968 caused great controversy within the Church and it is likely that many Roman Catholics in the U.K. are defying the Church's teaching on this

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[8] cf. Parsons J., Population versus Liberty (1971).

[9] Britain 1972, An Official Handbook.

[10] Hindell K. and Simms M., Abortion Law Reformed (1971), Ch.4.

matter. On the issue of abortion the Roman Catholic Church has been very influential and is still bringing pressure to bear. The Abortion Act, 1967 does not apply in Northern Ireland, where about 40% of the people are Catholics.

A movement gaining impetus is that of Women's Liberation. Though the average woman regards the statements and actions of the American organization as exaggerated, there is a feeling that discrimination must now be swept away, and there is some evidence of Government support. Younger women, at least, no longer think of themselves as designed for a mainly domestic role. Already about half of all women of working age are in employment. The new freedom which is claimed includes for many women the opportunity to determine whether or not to give birth to a child.

C. Brief History of Government Policies and Actions

No British Government has as yet been prepared to take active steps toward an overall population policy. The Labour Government in 1970 asked the Select Committee of the House of Commons on Science and Technology to investigate the consequences of population growth in the United Kingdom. The Committee heard evidence but was dissolved with Parliament at the time of the General Election in June 1970, when a Conservative Government was returned. A new Committee was instituted in November 1970 and reported in May 1971. The Report concluded that the Government must act "to prevent the consequences of population growth becoming intolerable for the every day conditions of life." It recommended that a Special Office be set up as an integral and permanent part of the machinery of government, directly responsible to the Prime Minister.[11] The Government observed in July 1971[12] that it did not at this juncture consider that the addition of a new piece of permanent official machinery of Government would be the best way of tackling the problem.

> The question of whether or not the Government should have a population policy or policies is

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[11] H.C. 379 (1970-71). The Royal Commission on Population recommended in 1949 that the Lord President of the Council should be made responsible for a continuous watch over population movements and their bearing on national policies. This was never implemented. In July, 1972 a Fifth Report of the Select Committee criticized the Government for failing to implement its previous proposals: "We consider that the Government are adopting a leisurely and disinterested attitude to the question of population growth." H.C. 335 (1971-72).

[12] Cmnd. 4748.

> complex and controversial....What is required... is an assessment of the available evidence about the significance of population trends in this country at present and in prospect....The Government will then be in a better position to determine what further action is necessary.

The Government has therefore appointed a small mixed panel of experts to advise it. It has also created a new Office of Population Census and Surveys to take responsibility for population facts and figures.

In spite of this failure to deal with population growth as a problem demanding a policy, successive Governments have little by little given support to the provision of a nationwide birth control service, though they have always followed changes in public opinion rather than assuming the pioneering role, which has been left to private charitable bodies like the Family Planning Association of Great Britain. There has never been a law in the United Kingdom specifically forbidding the provision or use of artificial contraceptives. In 1930, the Government officially gave permission to local authorities to provide contraceptive advice, but on medical grounds only. In practice, local authorities chose to carry this into effect by giving assistance to the F.P.A. to set up clinics throughout the country, financed mainly by charitable gifts and patients' contributions. Some local authorities were more generous than others. Even when a National Health Service was introduced after the Second World War providing free medical treatment to all and financed by the Central Government, birth control clinics remained outside the system. There have been two important recent developments: the authorization by statute of the provision of a contraceptive service by local authorities on social as well as medical grounds,[13] and a growing demand in the community that the central Government undertake the responsibility of providing a free national birth control service within the N.H.S.[14]

There are indications that politicians are coming round to this view. In 1969, for example, the Labour Government for the first time gave a grant (£20,000 a year for five years) to the Family Planning Association, and in 1972, £50,000 was given by the Conservative Government to a project run by the Association to provide experimentally a comprehensive free family planning service in two towns. The British Government helps to finance the International Planned Parenthood Federation, of which the Family Planning Association of Great Britain is a member. In 1971, it was announced in Parliament that the Govern-

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[13]National Health Service (Family Planning) Act, 1967 (England and Wales); Health Services and Public Health Act, 1968 (Scotland); Health Services (Amendment) Act (N. Ireland), 1969.

[14]cf. A Birth Control Plan for Britain (published by the Birth Control Campaign) (1972).

ment intends to encourage the growth of family planning services and that the rate support grant (the subsidy paid by central Government to local government authorities) would be increased in England, Wales and Scotland to allow for expenditure to treble by 1972-73. As part of a major reorganization of the National Health Service, local authorities will relinquish their health powers to area health authorities responsible to the central Government on April 1, 1974,[15] and it is likely that family planning services will be included in this transfer.[16]

One indication of the reluctance of politicians to act as leaders in this field is the fact that important statutes have been introduced into and steered through Parliament by private members, unsupported by the Government.[17] The National Health Service (Family Planning) Act, 1967, and the Abortion Act, 1967, were both Private Member's Bills, as is the National Health Service (Family Planning) Bill 1972, which seeks to allow local authorities to provide voluntary vasectomies on non-medical grounds.

In only one area has the Executive been active: immigration. Political pressures have been very great, not so much because of fears of population increase but because of the existence of strong colour prejudice and racial intolerance, particularly in those towns where immigrants chose to congregate. That it was this that motivated the demand for stricter controls is demonstrated by the fact that the anti-immigration movement was directed against "new Commonwealth" (coloured) immigrants, although a substantial proportion of immigrants into the U.K. came from Eire and other alien countries and from the "old Commonwealth" (predominantly white).

The net loss by migration from Britain between 1871-1931 was four million, but between 1931 and 1966 the balance was inward, when refugees from Germany and other European countries in the 1930's, and later immigrants from the Commonwealth, helped to increase the population of the U.K. by about half a million. The policy of British Governments in the 1960's was to reduce the flow of immigrants while imposing legal controls within the U.K. to prevent racial discrimination against those already resident here. The first of these aims has been achieved: the

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[15]April 1973 in N. Ireland.

[16]Section 8 of the National Health Service (Scotland) Act 1972 makes it the duty of the Central Governments to provide a family planning service in Scotland.

[17]The Government regarded these measures with benevolent neutrality and in the later stages did give assistance e.g., with drafting. Of course, no Bill can become law in the U.K. if it is actively opposed by the Government.

flow of migration to and from the U.K. is now outward.[18]

Rising unemployment may lead to an increase in emigration. There were 1,014,511 unemployed (4.3%) in March 1972, and the number of people inquiring at the offices of, for example, the Australian Immigration Department, has substantially increased, particularly in "depressed" areas like Northeast England and Northern Ireland. The proposed entry of the U.K. into the European Economic Community will give rise to greater mobility of labour, but it is too soon to predict the effects on population numbers. The net outflow of migration may be balanced to some extent by the likelihood of slightly higher fertility among the immigrant population, who are generally of a younger age group.[19]

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[18]Legislation controlling immigration was passed in 1962 (Commonwealth Immigrants Act), 1968 (Commonwealth Immigrants Act) and 1971 (Immigration Act). Statutes aimed against racial discrimination were passed in 1965 and 1968 (Race Relations Acts).
The latter do not extend to N. Ireland.

[19]Population Projections 1970-2010, op.cit., note 4.

II. LAWS DEALING DIRECTLY WITH BIRTH AND ON FAMILY PLANNING EDUCATION AND SERVICES

A. Birth Control

Use, Manufacture, Sale and Advertisement of Contraceptives Dissemination of Birth Control Information

There have never been any laws in the U.K. directed specifically against the use or provision of artificial contraceptives. However, in the nineteenth century the Obscenity Law (LC) was used to prosecute reputable medical publications describing contraceptive techniques,[20] and in 1885 a doctor was struck off the medical register for having published such a book.[21] But people were ahead of the law, and by the 1880's there was widespread adoption of family planning methods.[22]

One of the pioneers of the birth control movement was Dr. Marie Stopes, who was not a qualified doctor but who founded and managed a birth control clinic for poor women in London and published several works. Dr. Halliday Sutherland, a medical practitioner, wrote a book against artificial contraception in 1922 in which he referred to Dr. Stopes as carrying on a monstrous and criminal campaign. Dr. Stopes sued for libel; the jury found that the statement was based on true facts but was not fair comment and awarded her damages. The House of Lords on appeal held that there was no evidence on which the jury could have found that the comment was unfair and gave judgment for Dr. Sutherland. Vicount Finlay said about Dr. Stopes' published work: "These books have a very large circulation, and for my part I cannot doubt that they are calculated to have a most deplorable effect upon the young of both sexes."[23]

The official view began to change in 1930 when the Minister of Health issued a memorandum to local authorities authorizing them to give contraceptive advice to women for whom pregnancy would be dangerous to their health. In the same year the National Birth Control Council, later to become the Family Planning Association (in 1938), was formed. The Association set up clinics throughout the country with the assistance of local authorities. The money to support them came mainly from charitable sources and from the contributions of patients. The work of the Association was completely unsupported by the central Govern-

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[20] R. v. Bradlaugh and Besant. (1878)

[21] cf. "The History of Family Planning in Britain" in Family Planning ed. by Medawar J. and Pyke D. (1971), p.45.

[22] Royal Commission on Population (1949) Cmnd. 7695.

[23] Sutherland v. Stopes (1925) A.C. 47,68.

ment.

In practice, clinics offered their services only to married women, though there was no legal reason for so limiting themselves. It was thought that public opinion against extra-marital intercourse was so great that the extension of advice to the unmarried would harm the Association. In 1964 a separate charity, the Brook Advisory Centre, was registered with the object of educating young persons in sex and contraception and developing a sense of responsibility in regard to sexual behaviour. A clinic was opened in London and others followed in the provinces. Many unmarried people consult the highly qualified doctors of these clinics and are given advice and often prescriptions for contraceptives.[24]

Two revolutions happened in the 1960's. One was scientific: the availability for the first time of a virtually foolproof method of contraception, the contraceptive pill. The pill rapidly became the method of artificial contraception most frequently prescribed, though the condom is still widely used. It is estimated that nearly two million women now take oral contraceptives[25] regularly (about 18% of women at risk).[26] The contraceptive pill is available only on a doctor's prescription in the U.K. and only at a reduced price within the N.H.S. where it is prescribed because it would be medically inadvisable for a woman to conceive. In other cases the woman must pay the cost price, and the doctor is free to charge also for the prescription, though many doctors waive the charge.[27] Recurring reports of possible health risks attached to oral contraceptives have probably reduced the incidence of their use. The evidence is that only about 50% of women at risk use a reasonably efficient method of contraception (the withdrawal and safe period methods are considered unreliable).[28] It has been estimated that there are about 300,000 unwanted pregnancies

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[24]"Brook Advisory Centres" in Family Planning, op.cit., note 21, p. 187.

[25]Estimate by Family Planning Association taken from A Birth Control Plan for Britain, op.cit., note 14.

[26]Family Planning in Britain, op.cit, note 5.

[27](Editor's note) The Times announced March 27, 1973 that as of April first 1974, contraceptives would be placed on the same basis as other drugs under the National Health Service. The maximum cost to the patient would be the prescription charge and mormal arrangements for exemption from the charge would apply. The change will cost the Government an additional 13 million pounds a year.

[28]A Birth Control Plan for Britain, op.cit., note 14.

in Great Britain annually.[29] Recent research has found that the cost to the community of providing health and welfare services for these children outweighs the possible costs to public funds of preventing their conception; in the case of the illegitimate child it is put at 128:1 in 1971-72.[30]

The second revolution was the passing of the National Health Service (Family Planning) Act, 1967. This provided that local authorities might, with the approval of the Secretary of State for Social Services, provide an advisory service to those seeking information about contraception, and also make arrangments for the medical examination of such persons and the supply of contraceptive services and appliances. The Secretary of State has power under the Act to direct local authorities to provide such services, which the authorities would then be legally obliged to do, but the Government has never as yet exercised this power. Persons seeking advice may be charged a fee having regard to their means. The central Government is required to increase the grants made to local authorities to allow for their increased expenditure. Similar provisions were later enacted for Scotland and N. Ireland.[31] It will be noted that nothing is said in the Act about limiting advice to married persons and that the Act, unlike the 1930 memorandum, is not confined to the provision of help on medical grounds only.

After the passing of the Act, the F.P.A. agreed to cooperate with the Brook Advisory Centres and to assist with their administrative costs. It also began to advise unmarried women in its own clinics. Many local authorities set up clinics, often with the assistance of the F.P.A., but the service varied widely from authority to authority. In England, Scotland and Wales at the beginning of 1972, 169 authorities provided a service using the F.P.A. as their agent and 40 were running their own clinics (there are 232 local health authorities). In some towns a comprehensive free service is provided, but in one large city only £41 was spent on family planning in a year.[32] Although the

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[29]cf. Cartwright A., Parents and Family Planning Services (1970); Woollf, M., Family Intentions (1971); Morton Williams J. and Hindell, K., Abortion and Contraception (1972); A Birth Control Plan for Britain, op.cit., note 14.

[30]Laing, W.A., The Costs and Benefits of Family Planning (1972).

[31]Health Services and Public Health Act, 1968, s.15 (Scotland) which came into force in 1970; Health Services (Amendment) Act, (N. Ireland) 1969, s. 16.

[32]Hansard, Jan. 18, 1972, col. 119. In August, 1972, only one local authority in England and Wales was not offering free contraception advice.

Secretary of State has power to direct authorities to provide a service, he has not used it. If family planning is taken over by the central Government it is likely that provision will become more uniform.[33] Some authorities now provide an additional domiciliary service which, though far more expensive than a clinic, reaches the problem families who would not otherwise seek advice.[34]

There are some legal controls on manufacturers of contraceptives which must be divided for this purpose into (i) drugs and chemicals and (ii) appliances. Drugs are now covered by the Medicines Act, 1968, by section 8 of which no person shall manufacture or assemble any medicinal product except in accordance with a licence granted by the Secretary of State for Social Services. "Medicinal product" includes any substance or article (not being an instrument, apparatus or appliance)[35] which is manufactured for a medicinal purpose including contraception (s. 130). The Act applies to the whole of the United Kingdom. A Committee on the Safety of Drugs has been set up under a statutory power to act as a general watchdog (this Committee was originally instituted by the Government in 1964 after the thalidomide tragedy: it was known as the Dunlop Committee after its chairman). In addition, no person shall in the course of business sell, supply, export or import any medicinal product unless he has a "product licence", i.e. all medicinal products must be approved before they reach the consumer (s.7). There is an exemption for medical personnel and registered pharmacists. The Secretary of State for Social Services has power (s.58) to specify that certain medicinal products shall only be available on the prescription of a doctor. Oral contraceptives, because of their possible health dangers, come within this class and are likely to remain there. In 1969 the Committee on the Safety of Drugs reported that a high oestrogen content in a contraceptive pill might be more likely to contribute to thromboembolic disorders. As a result most doctors stopped prescribing high oestrogen drugs.

The Secretary of State can also specify those descriptions and

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[33]The plans for the reorganization of the Health Service announced in August, 1972, make it clear that this is the Government's intention. White Paper on National Health Reorganization, Cmnd. 5055.

[34]On 31 March 1971, some 58 local authorities had established domiciliary services in at least part of their areas. (Written answer in Parliament by Secretary of State, June 11, 1971).

[35]The intra-uterine device is usually regarded as appliance and therefore not covered by the Medicines Act of 1968. However, in 1972, a new type of IUD which is partly made of copper and prevents conception by a chemical process was ultimately classified as coming within the scope of the Act.

classes of medicinal products which can with reasonable safety be sold otherwise than by or under the supervision of a registered pharmacist (general sale list) and also which can be sold by means of automatic machines. All other medicinal products must be sold by retail under the supervision of a registered pharmacist lawfully conducting a retail pharmacy business on premises which are a registered pharmacy (s.52). Spermicidal chemicals can generally be sold by the ordinary retailer, but contraceptive drugs may only be sold by a qualified pharmacist.

There are fewer controls on contraceptive appliances. The British Standards Institution, a Government-sponsored body which prepares specifications for a variety of consumer goods but which cannot itself enforce those specifications, exercises some degree of control over condoms: the major manufacturer in the U.K. voluntarily conforms to the relevant British Standard. These articles are distributed mainly by chemists' shops and men's hairdressers, and there are some self-service machines in men's lavatories. Local by-laws often prevent such machines being placed in the streets.

There are no special laws in the U.K. dealing with the advertisement of contraceptives, though the general law of obscenity applies. In practice, discreet advertisements appear in shop windows and in the Press and magazines without fear of prosecution. Books describing sexual techniques and explaining methods of contraception are now freely available and openly sold by reputable booksellers. The Pharmaceutical Society has a voluntary code of practice which controls advertising by its members of family planning devices. Of course, these advertisements deal exclusively with condoms and spermicidal chemicals because other forms of artificial contraception like the pill are only available on a doctor's prescription, or like the intra-uterine device can only be used under medical supervision.

The Unsolicited Goods and Services Act, 1971,[36] s.4, provides that it shall be a criminal offense to send[37] to another person any book, magazine or leaflet (or advertising material for any such publication) which he knows or ought reasonably to know is unsolicited and which describes or illustrates human sexual techniques. This section was opposed by family planning bodies and somewhat restricts their freedom to send out information about their services. It did not, however, prevent voluntary workers from distributing free contraceptives and leaflets about family planning facilities in the streets of London in 1972.[38] One London borough has announced its intention

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[36]This Act does not apply to N. Ireland.

[37]"Send" includes "deliver" so that street distribution would be covered, though not visual advertisement, e.g. on television (s.6)

[38]The Sunday Times and The Observer, Feb. 6, 1972.

to advertise its free family planning service on television.[39] London Transport, however, has banned advertisments for contraceptives from the London Underground.[40]

In 1969, the Government-sponsored Health Education Council set up an Advisory Panel on Sex Education to consider the problem of educating the public in contraception and to advise on the training of workers to carry out this task. There is at present very little organized education on contraception in schools, and public opinion is very sensitive to the whole subject of sex education in schools. It was announced in Parliament in February 1972 that the Health Education Council is considering the possibility of mounting a limited and experimental campaign using television and other media to draw attention to the availability of family planning services in a selected area of the country.

B. Abortion

It is certainly true that to the majority of people of the U.K. the idea of abortion as a method of population control is distasteful, though there is a growing feeling that, in a country already so overcrowded, to force a woman to bear an unwanted child is against common sense. Abortion is seen by those who favour it as a way of releasing a woman, married or unmarried, from an unwanted pregnancy.[41] There is a division between those who believe that a legal abortion should be available only where there is a "good reason" for termination and those who advocate that it is the right of each individual woman to demand an abortion if she wishes it. A further problem in the U.K. is whether and on what grounds an abortion should be provided free within the N.H.S. In the background to the debate is the undeniable fact that many women unable to obtain legal abortions have found some means of terminating the pregnancy, often causing themselves great

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[39]The Independent Broadcasting Authority which controls commercial television has up to now, banned the direct advertisement of contraception on television, though it allows the advertising of official or officially sponsored family planning services. The ban is contained in the authority's Code of Advertising Standards and Practice, which has no direct legal effect.

[40]The Times, April 17, 1972.

[41]cf. Morton Williams J. and Hindell K., Abortion and Contraception, (1972), op.cit., note 29.

suffering in the process.[42]

In English common law it was not murder to kill a child in the womb, though it was a criminal misdemeanour to do so after it quickened. In 1861, section 58 of the Offences against the Person Act provided that it was a criminal offense punishable by imprisonment for life for any pregnant woman unlawfully to procure or attempt to procure her own miscarriage and for any other person to do any similar act with similar intent. The statute made no provision for an exemption from criminal liability even if the abortion was necessary to save the mother's life. In 1929, the Infant Life (Preservation) Act, section 1, provided that it was the crime of child destruction to kill a viable fetus (28 weeks or more in the womb) unless the act which caused the death of the child was done in good faith for the purpose only of preserving the life of the mother. A similar defense was read by the judge into the 1861 Act in the case of R. v. Bourne.[43] Macnaghten J. was faced with a case where an obstetrical surgeon in a London teaching hospital deliberately and openly performed an abortion in the hospital on a girl who when she was only 14 had been violently raped and was pregnant as a result. The judge directed the jury that the use of the word "unlawfully" in section 58 implied that an abortion performed with the object of preserving the life or health of the mother was not criminal. He further stretched the law to decide that health in these circumstances meant physical and mental health and that Dr. Bourne could not therefore be convicted of the crime.[44]

Although this decision made abortion legal in cases where the mother's physical or mental health was threatened by the continuation of the pregnancy, it did not automatically cover cases where there was a risk of deformity in the child. Medical men were in practice reluctant to risk their freedom and livelihood on the decision of a court rather than legislation. However, where an independent doctor or psychiatrist was prepared to certify that the woman's health was in

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[42]The Abortion Law Reform Association estimated that there were at least 100,000 criminal abortions annually in England and Wales before 1967. (Hindell and Simms op.cit., note 10). W. James put the figure at 60,000; Population Studies (July 1971), p. 327. Recent legal abortion figures seem to support the higher rate. cf. also Simms M., "The Abortion Act after Three Years", Political Quarterly, Vol. 42 (1971), p. 269.

[43](1939) 1 K.B. 687.

[44]It is possible that Parliament would have provided for this exception in the 1961 Act had an operation for therapeutic abortion been developed as an established medical procedure at the time. cf. Havard, "Therapeutic Abortion" (1958) Criminal Law Review, 600.

danger, surgeons were prepared to perform the operation. It was notorious that this was much easier to obtain in the case of private paying patients.[45]

Neither the Offences against the Person Act, 1961 nor the Infant Life (Preservation) Act, 1929 applied to Scotland. Although abortion was a criminal offence by Scottish common law, prosecutions were not brought where the operation had been performed for "reputable medical reasons", a concept which was never officially or judicially defined. Scottish doctors were not deterred by the doubtful state of the law and operated a liberal abortion policy even in National Health Service hospitals.[46] In Northern Ireland the law was the same as in England and Wales until 1968.

In 1967 an Abortion Act was passed which came into force on April 27, 1968. It applies to England, Wales and Scotland, but not to N. Ireland. The Act provides that a person shall not be guilty of an offense when a pregnancy is terminated by a registered medical practitioner if two registered medical practitioners are of the opinion, formed in good faith:

(a) that the continuance of the pregnancy would involve risk to the life of the pregnant woman, or of injury to the physical and mental health of the pregnant woman or any existing children of her family, greater than if the pregnancy were terminated: or

(b) that there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped.

The pregnant woman's actual or reasonably foreseeable enviornment may be taken into account in determining whether a pregnancy if continued would involve risk of injury to health. Legal abortions must be performed before the fetus becomes viable, because after 28 weeks the Infant Life (Preservation) Act, 1929 protects the child unless the life of the mother is endangered.

The consent of two practitioners is not necessary if a doctor terminates a pregnancy in the honest opinion that the termination is immediately necessary to save the life or health of the mother. Except in cases of emergency, any treatment for the termination of pregnancy must be carried out in a N.H.S. hospital or at a place licensed by the Secretary of State for the Social Services to perform abortions. All terminations must be notified to the Secretary of State. Thus, for the first time, reliable statistics are available for legal abortions. In 1970, 86,565 abortions were performed in

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[45]Jenkins A., Law for the Rich (1961).

[46]Hindell and Simms, op.cit., note 10, p. 15.

England and Wales alone, compared with 54,819 in 1969.[47] The provisional figure for England and Wales in 1971 is 126,000 -- 57% of which were performed in places other than N.H.S. hospitals.[48] In 1970, just under half of those who were aborted were married women living with their husbands. Illegitimate births have declined only slightly; it is suggested by the abortion lobby that this is because women who would formerly have had an illegal abortion are now having it legally.[49]

There are substantial regional variations in the figures. The Abortion Act provides that no person shall be under any duty, except in an emergency, to participate in any treatment authorized by the Act to which he has a conscientious objection. In some areas gynaecologists in the N.H.S. are notoriously unwilling to perform abortions. Even those who have no moral objection may be reluctant to spend a large part of their time terminating pregnancies when the hospital has a long waiting list of women needing less immediately urgent treatment. In some areas (e.g. Birmingham) charitable organizations have been set up providing a pregnancy advisory service, which may lead to an abortion at a reasonable fee in a hospital run by the organization (sometimes the fee may be waived). It seems that the most deserving cases obtain abortions "on the National Health" but that there are a number of women who are legally entitled to an abortion within the Act, but can only obtain it by paying a fee. The conduct of some private hospitals has caused public disquiet and it is thought that a few are charging excessively high prices, particularly in London. Several licenses have been withdrawn. There have been scandals about taxi-drivers at London Airport demanding a fee for taking foreign girls to a private nursing home where they can obtain an abortion. Because the new English law is more liberal than those in other European countries,[50] a number of foreign women have come to England to obtain an abortion. Critics of the Act say that London has become "the abortion capital of Europe".[51]

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[47]Registrar-General's Statistical Review of England and Wales for 1970, Supplement on Abortion (1972), H.M.S.O.

[48]Registrar-General's provisional figures for 1971.

[49]And cf. Simms M., "The Abortion Act After Three Years", Political Quarterly, Vol. 42 (1971), p. 279.

[50]This may change soon as both W. Germany and Holland are likely to liberalize their abortion laws.

[51]In 1971, 30,134 abortions of women whose normal place of residence was given as abroad were notified for England and Wales. Figures given in Parliament, April 18, 1972.

As a result of these problems, given wide publicity in the Press and by the opponents of the Act, the Government has set up (in February 1971) a Committee of Inquiry to investigate the workings of the Abortion Act, under the chairmanship of a woman High Court judge, Mrs. Justice Lane. The Lane Committee is not expected to report until early 1973. Its terms of reference are limited to an investigation of the operation of the Act and it is not empowered to make any recommendations about changes in the grounds for abortion. It is unlikely that Parliament will repeal the Abortion Act, but it is possible that greater legal controls of the private hospitals will be introduced.

Experiments are now taking place within the National Health Service using the vacuum aspiration method of abortion which is much simpler than the older methods. It is possible to perform this treatment before the doctor is sure that the woman is pregnant (i.e. within 14 days of a missed period). However, the doctor still runs the risk of prosecution for illegal abortion because section 58, Offences against the Person Act, 1861, covers the unlawful use on any woman of any instrument with intent to procure a miscarriage whether or not the woman is with child (though the woman who performs an abortion on herself can only be convicted under the Act if she was in fact pregnant). It is also criminal to supply any instrument knowing that the same is to be used with intent to procure a miscarriage, whether the woman be or be not with child (section 59).

There may also be the possibility of an "abortion pill". If this can be perfected, it may lead to abortion virtually on demand within the N.H.S., for it is likely that it will then always be more dangerous to the physical health of a woman to allow the pregnancy to go to term.[52]

C. Sterilization

Compulsory sterilization of defectives or criminals is unknwon in the United Kingdom and is unlikely ever to be introduced.[53] Voluntary sterilization is permitted by English and Scottish law where there is medical necessity, but there has for a long time been doubt in medical and legal circles about the lawfulness of the operation where it is performed for purely contraceptive reasons. Does the consent of the person sterilized exclude any possibility of criminal responsibility? In Bravery v. Bravery[54] a husband was voluntarily sterilized

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[52]Hindell and Simms, op.cit., note 10, p. 213.

[53]Report of Departmental Committee on Sterilization (Brock Committee) Cmnd. 4485 (1934).

[54](1954) 3 All E.R. 59 (C.A.).

allegedly without his wife's consent. The wife petitioned for divorce on the grounds that the husband's conduct amounted to cruelty. It was held on the facts that the wife had failed to establish a case of cruelty against her husband, though the judges would have been willing to grant a divorce on that ground had the wife been able to prove that the operation had been without her consent and had caused her injury to health. The main interest in the case, however, lies in this passage in the dissenting judgment of Denning L.J. (which was rejected by the other two judges): "An ordinary surgical operation, which is done for the sake of a man's health, with his consent, is, of course, perfectly lawful because there is just cause for it. If, however, there is no just cause or excuse for an operation, it is unlawful even though the man consents to it....Take a case where a sterilization operation is done so as to enable a man to have the pleasure of sexual intercourse without shouldering the responsibilities attaching to it. The operation then is plainly injurious to the public interest....It is illegal, even though the man consents to it...."

Lord Denning's view has not achieved general acceptance.[55] In 1960,[56] the English and Scottish Medical Defence Unions, which are insurance companies undertaking liability insurance for many doctors and are therefore very influential in the medical world, took legal advice on the basis of which they stated publicly that there was no legal objection to the performance of non-therapeutic sterilization operations as long as the consent of the patient was obtained. This advice has been universally accepted, even though neither Act of Parliament nor judicial decision has confirmed that it is the law. After 1960, charitable bodies like the Simon Population Trust and later the Family Planning Association started schemes to provide information to men seeking vasectomy and to assist in arranging private operations. The demand is very great; in March 1972 the F.P.A. alone had 4,000 men on the waiting list.[57]

The sterilization of a woman is a far more difficult and dangerous surgical procedure and because of this is usually performed in hospital. There were approximately 20,800 female sterilizations in 1969 in N.H.S. hospitals (11,000 following abortions).[58] In contrast, there were only about 2,000 vasectomies performed within the Health

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[55]Devlin P., Samples of Lawmaking (1962); Meyers, D., The Human Body and the Law (1970). Williams, G., "Consent and Public Policy" (1962) Criminal Law Review, 154.

[56]British Medical Journal, November 19,1960.

[57]The Sunday Times, March 5, 1972.

[58]Figures supplied by the Government in 1972 and quoted in A Birth Control Plan for Britain, op. cit., note 14.

Service in the same year. The reason is that it has been decided that vasectomy can be carried out within the N.H.S. only where there is risk to the health of either husband or wife.[59] A case was reported in The Times of January 15, 1972, of a man whose wife had had eight children, one miscarriage and one stillborn child and who was refused a vasectomy operation in a N.H.S. hospital, though his wife was offered sterilization. Eventually the man was sterilized in a private clinic run by a charitable organization which waived the usual charge. It seems that the rules are not as strict in the case of female sterilizations and that in fact women are more often sterilized for social than purely medical reasons.[60]

Because of these anomalies, a private member introduced a Bill into Parliament in 1972, the National Health Service (Family Planning) Amendment Bill, to authorize the provision of voluntary vasectomy services by local health authorities in England and Wales on the same basis as the contraception services provided under section 1 of the 1967 Act. In theory, the operation will be available to all males of sixteen or over, but it is unlikely on present practice that men under thirty or single men will obtain sterilization unless there is a medical reason for it. The Government has accepted that the Bill fulfills a need and has not opposed it, so that it is likely to become law in the summer of 1972.[61]

It should be noted that nothing is said in the Bill about the necessity of obtaining the consent of the spouse of the applicant, though the practice is always to obtain this consent for both male and female sterilization, except in an emergency. A similar problem arises with abortion and certain forms of contraception. Though it was held by the House of Lords in Baxter v. Baxter[62] that the use of contraceptives does not prevent the consummation of a marriage, there is little doubt that the persistent use of contraceptives by either spouse, when the other reasonably desires a child, or the abortion or sterilization of either spouse without the other's consent would constitute cruelty in the legal sense, sufficient when coupled with the breakdown of the marriage to entitle the other spouse to a divorce.[63] In modern society, it might be a ground for divorce for either spouse to refuse

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[59]Circular issued by Secretary of State for Social Services in 1970.

[60]Black, C.P. and Peel, Sir J., "Sterilization of Women", in British Medical Journal, March 1, 1969.

[61]The Bill finally became law in October, 1972.

[62](1948) A.C. 274.

[63]Ward v Ward (1958) 1 W.L.R. 693; Bravery v. Bravery (1954),3 All E.R. 59 C.A.

to use contraceptive measures where the health of the other would be threatened if a child were conceived.[64]

Another question is this: Can the spouse of the consenting person who undergoes medical treatment sue the doctor who performs it without the spouse's consent? This question is of practical importance because few doctors will risk an action for damages if they are advised that it is a possibility. The English Medical Defence Union advised its members in 1966 that a sterilization operation on a wife on non-therapeutic grounds, or the insertion of an intra-uterine device without the consent of the patient's husband, might lay the doctor open to a civil action for damages by the husband for loss of consortium (loss of services).[65] This opinion can be challenged on two grounds. The first is that neither sterilization nor contraception deprive a husband of his wife's services (as a sexual partner and housekeeper). They only deprive him of the opportunity of having children by her, and this has never been recognized by English courts as a right which should be legally protected by an action for damages. Secondly, the technical legal rule is that an action by H, a husband, against X, a defendant, for damages for loss of H's wife's services depends on H being able to prove that X also committed a tort (a legal wrong) against H's wife. If a wife consents to medical treatment, no tort has been committed against her[66] and her husband cannot, therefore, sue the doctor who performed it even if the treatment deprived the husband of his wife's consortium. There has never been an action in an English court by a husband against a doctor on the ground that the doctor by performing an abortion has deprived the husband of his unborn child without his consent and such an action would be very unlikely to succeed.

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[64]In Archard v. Archard (April 20, 1972, The Times) a wife was refused a divorce on the grounds of cruelty in that her husband refused to have intercourse with her while she used artificial contraceptives even though she had been medically advised that she should not conceive. However, both partners had been devout Roman Catholics at the time of the marriage, and the husband had remained convinced by the teaching of the Church. The petition was brought under section 2 (1) (b) of the Divorce Reform Act 1969: "that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent."

[65]This would be impossible in Scotland because there is no action there for loss of the services of a wife.

[66]The wife does not have any action for loss of consortium of her husband: Best v. Samuel Fox (1952), A.C.716.

Doctors are also in doubt about the giving of advice to young persons. The Family Law Reform Act, 1969[67] (which does not apply to N. Ireland), section 8, provides that the consent of a minor who has attained the age of 16 years to any surgical,medical or dental treatment shall be as effective as it would be if he were of full age; and where a minor has by virtue of this section given an effective consent to any treatment it shall not be necessary to obtain any consent for it from his parent or guardian. It is clear, therefore, that a girl of 16 can give a valid consent to an abortion without even her parents' knowledge, and this is true also of contraception and sterilization (unlikely at so young an age without strong medical necessity). In 1971, a doctor was brought before the General Medical Council Disciplinary Committee accused of serious professional misconduct because he had disclosed to the father of a girl of 16 the fact that she was taking contraceptive pills. The girl had obtained the prescription from a Brook Advisory Centre which had passed on the information to her doctor in case it might become relevant to any treatment in the future. The doctor made his disclosure in good faith believing that he acted in the interests of his patient without obtaining the consent of either the Brook Advisory Centre or his patient. The case against him was brought by the Centre. He was exonerated because of the circumstances of the case, but the British Medical Association later advised its members not to disclose such secrets.[68]

It is a criminal offense under the Sexual Offences Act, 1956 for a man to have unlawful sexual intercourse with a girl under the age of sixteen (the consent of the girl is not generally a defence). In 1971, the Attorney-General was asked in Parliament to prosecute a gynaecologist who had prescribed contraceptive pills to a girl of 12 who had had an abortion. The girl's parents had consented. It was suggested that the gynaecologist and the girl's parents were guilty of aiding and abetting or counselling and procuring unlawful sexual intercourse. The Attorney-General replied that he thought that no crime had been established and this is probably correct. The mere provision of contraceptive protection in case the girl should again have intercourse does not amount to advising or helping her do so.[69] Equally, it would not constitute a criminal offense if advice on contraception were given to a male who was having intercourse with a girl under 16.

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[67]The age of majority for most purposes is now 18.

[68]Local authorities were advised by the Government in 1967 not to give advice to persons under sixteen in their clinics without the consent of parents.

[69]Owen A.S., "Sexual Offences and Secondary Parties," (1971), Criminal Law Review 580.

It may still be possible for the parents of a minor (under 18) to give valid consent to treatment if their child is incapable of acting rationally and refuses it, because (for instance) he is a drug addict. Section 8 (3) of the 1969 Act provides that nothing shall be construed as making ineffective any consent which would have been effective if the section had not been enacted. However, it is difficult to assess the effect of section 8 (3) because there is no firm statment in English or Scots law of the power of the parent to consent to medical treatment against the wishes of his child. Although it is generally assumed that a dentist is legally entitled to extract a tooth from a protesting child's mouth with the authority of the parent, it could be argued that the dentist's justification is medical necessity, rather than parental consent. Can parents force an abortion on a unwilling daughter of 15?[70] It is submitted that the doctor must act in the best interests of his patient, rather than of her parents, and that he would be protected in law if he did so.[71] Where parents refuse an abortion for their daughter and it is medically advisable, the child can be taken into care of the local authority by order of court.[72] The local authority then has the powers of the parent or guardian.

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[70]The problem of pregnant school children is a growing one In 1970, 1,822 abortions were notified as having been performed on girls of under 16.

[71]This was the advice of the English Medical Defence Union in 1971.

[72]Children and Young Persons Act, 1969.

III. LAW ON IMMIGRATION AND EMIGRATION

The United Kingdom is part of the British Commonwealth which is now composed mainly of independent States, though a few small colonies remain to be administered. The bond which binds the Commonwealth nations together is allegiance to the Crown. Commonwealth citizens therefore have dual citizenship - of the Commonwealth itself and of their own nation. The United Kingdom and its colonies, with the Channel Islands and the Isle of Man, form a single citizenship unit. A person can acquire citizenship of the U.K. and Colonies by being born there, by having a father who is a citizen at the time of birth, by naturalization or by registration (e.g. a non-citizen woman marrying a citizen is entitled to immediate registration). Before 1962 all Commonwealth citizens were free to migrate to the U.K., as were all citizens of the Republic of Ireland. Aliens were admitted at the discretion of the Government.

Because of a rapid rise in the numbers of coloured immigrants to the U.K. in the 1950's and a nationwide upsurge of prejudice against non-whites, the Commonwealth Immigrants Act, 1962 was passed imposing for the first time restrictions on the entry of Commonwealth citizens (it also in theory applied to citizens of Eire, though in practice it has proved impossible to apply entry controls to such near neighbours). Henceforward, only citizens of the U.K. and Colonies who were born in the U.K. or held passports issued by the U.K. Government were to be allowed in without hindrance, though wives and children under 16 of U.K. residents, holders of employment vouchers, students and short-term visitors were still to be allowed in freely. The number of employment vouchers was fixed in 1965 at 8,500. They were of two types: those issued to an employer (Category A) and those to an immigrant seeking employment (Category B) who had to show qualifications to obtain it.[73]

Even holders of U.K. passports were not immune. Many Asians living in Kenya had chosen to keep their U.K. citizenship when Kenya became independent in 1963 and held passports issued by the British High Commission in Kenya. When the Kenyan Government began to discriminate against them many decided to emigrate to the U.K. So numerous did these immigrants become, that the U.K. Government passed the Commonwealth Immigrants Act, 1968 as a panic measure to provide that holders of U.K. passports issued outside the U.K. were only to be entitled to admission if they or their parents or grandparents had acquired citizenship inside the U.K. Otherwise, the provisions of the 1962 Act were to apply.

The effects of the 1962 and 1968 Acts on the immigration statistics were immediate and obvious. 1963 was the first year

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[73]See generally de Smith, S.A., Constitutional and Adminsitrative Law (1971).

after 1957 to show a return to outward balances in migration to and from the U.K., and the trend outwards has continued.[74]

Estimated Net Gain (+) or Loss (-) of Population by Civilian Migration to and From the U.K., 1960-1970
(thousands)

Year ended 30 June	
1960	+87
1961	+138
1962	+167
1963	-13
1964	-13
1965	-29
1966	-50
1967	-63
1968	-19
1969	-43
1970	-63

Source: Taken from Population Projections 1970-2010, op.cit.

The prospect is that the inflow of citizens from the Commonwealth will continue to diminish. By far the majority of immigrants admitted in recent years were dependants of those already admitted. Also, the full number of employment vouchers has never yet been taken up.[75]

In 1971 an Immigration Act[76] was passed consolidating and replacing previous legislation. The policy of the Government was to impose the same legal controls over aliens and Commonwealth citizens, to limit subsequent coloured immigration and to restrict further large concentrations of coloured immigrants in particular areas. The Act nowhere refers to race or colour or restricts immigration on these grounds. Only "patrials" are to have the right of abode in the U.K. They are:

(i) Citizens of the U.K. and Colonies who have acquired their citizenship in the U.K. or who are the children or grandchildren

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[74]The Government of Uganda in 1972 expelled many British citizens of Asian descent. The British Government accepted responsibility for those who were unable to find any other country which would take them. The numbers expelled to settle in Britain, originally estimated at 50,000, are now not expected to exceed 25,000. Hansard, October 18th, 1972.

[75]Kelsall, R.K., Population (revised edition 1970).

[76]The Act came into force on January 1st, 1973.

of any person who acquired citizenship in the U.K.;

(ii) Citizens of the U.K. and Colonies who have at any time settled in the U.K. for at least five years;

(iii) Other Commonwealth citizens who are the children of persons born in the U.K.

In practice, white Commonwealth citizens (from Canada, Australia, New Zealand, Rhodesia and so on) are more likely to come within the definition than black.

Other persons (non-patrials) will be subject to entry controls, though it is not intended in practice to enforce these against citizens of the Republic of Ireland.[77] Non-patrials coming to work in the U.K. will only be admitted with a work permit in respect of a specific employer and a specific job, with the exception of certain exempted types of employment, e.g. doctors and nurses, of which there is a shortage of qualified patrials. Work permits will carry a time limit, though a person who has had his permit extended to four years may then be allowed to settle in the U.K.[78]

It is likely that the United Kingdom will in 1973 join the European Economic Community. This will mean that the U.K. will have to comply with the freedom of movement provisions of the E.E.C. Treaty which provides that all Member States must allow nationals of all other Member States to enter and remain within their territory for the purpose of seeking and undertaking employment without discrimination.[79] In the future, therefore, it is likely that European aliens will be in a more favourable position with regard to entry to the U.K. than many citizens of the Commonwealth. Of course, many U.K. residents may decide to move to other Community countries, particularly if unemployment in the U.K. continues at its present high level, and it is therefore unlikely that E.E.C. entry will give rise to increased net inflow.

There are no bars to emigration in the law of the United Kingdom: legal controls which affect it are found in the laws of other countries. Emigration of highly qualified engineers and scientists to the United States was much reduced by the United States Immigration Act of 1965. Australia and New Zealand encourage immigration from Britain and offer

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[77]Cmnd. 4606.

[78]Cmnd. 4610.

[79]Art. 48, Rome Treaty (1957). Nationality for this purpose is broadly equal to patriality within the Immigration Act 1971; Treaty concerning the accession of the U.K. (and others) to the E.E.C. (1972) Cmnd. 4862-I.

assisted passages to approved persons and their families.[80] It may be that one answer to the population problem of the United Kingdom is for the British Government also to offer incentives to emigration, though the present policy of neutrality is probably dictated by the fear that only the young and highly qualified will leave, so that the burden of supporting an aging population will fall on too small a group. The Immigration Act, 1971 allows the Home Secretary to make payments to assist non-patrials and their families to leave the U.K. for a country or territory where they intend to reside permanently.

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[80]Figures published in August, 1972, show that the numbers of U.K. citizens emigrating to Australia in 1971 dropped from 57,000 to 38,000 and to Canada from 13,000 to below 2,000. This was due to cuts in the Australian immigration program and to unemployment in Canada: Registrar-General's Quarterly Return No. 493, (1972) op.cit. note 4.

IV. FAMILY LAW AFFECTING POPULATION

A. Minimum Marriage Age

Section 2 of the Marriage Act, 1949, stipulates that a valid marriage cannot be contracted in England and Wales unless both parties have attained the age of 16. If either party is under 16 then the marriage is void.[81] Wherever the marriage is celebrated, this rule applies if one of the parties is domiciled in this country at the time of the marriage.[82] If both parties are domiciled abroad at the time of the marriage, and the law of that country permits marriage below the age of sixteen, then such a marriage may be recognized by the law of the United Kingdom if the parties later obtain domicile there, even though one of the parties is still below the age of 16 when the validity of the marriage is in issue.

B. Polygamy

Section 57 of the Offences Against the Person Act, 1861, provides a maximum punishment of seven years imprisonment for bigamy. The offense is committed by "whosoever, being married shall marry any other person during the life of the former husband or wife, whether the second marriage shall have taken place in England or Ireland or elsewhere." Although seven years continual absence of one's spouse, or a reason-

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[81] Nullity of Marriage Act, 1971, s.1.

[82] Pugh v. Pugh (1951) 2 All E.R. 680.

[83] Mohamed v. Knott (1968) 2 All E.R. 563.

able belief in one's freedom to marry,[84] will be a defense to a charge of bigamy, the second marriage is nevertheless void.[85]

Polygamous marriages celebrated by parties domiciled in countries where polygamy is permitted may be recognized in the United Kingdom for certain purposes: social security benefits are payable to the parties and their issue, provided the marriage has at all times been monogamous in fact.[86] The Law Commission has recommended wider recognition of polygamous marriages (de facto and de jure), for most purposes, including matrimonial relief and social security benefits.[87]

C. General Marriage and Divorce Laws

(i) Consent to Marriage

Section 1 of the Family Law Reform Act, 1969, reduced the age of majority from 21 to 18 with effect from 1 January, 1970. Any person over the age of 16, but below the age of 18, requires consent to marry from his parent or guardian (or from that person to whom custody has been granted by a Court Order).[88] In Scotland any minor over the age of 16 may contract a valid marriage without the consent of his parent or guardian.

If parental consent is withheld, or if it is impossible to obtain such consent, then the minor may apply for the consent of the Court; but a marriage contracted by minors of the age of 16 is valid even though such consent has not been obtained, though the minor will be liable to criminal prosecution.

It is doubtful whether the reduction of the age of majority to 18 will have any effect on the mean age at marriage: the only direct effect can be on the number of marriages in the 18 to 21 year age group where parental or judicial consent would have been withheld before 1970. The mean age is gradually falling, but this general trend will be governed more by economic and other factors than by the legal ability to

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[84] R. v. Gould (1968) 1 All E.R. 849.

[85] Nullity of Marriage Act, 1971.

[86] National Insurance Act, 1965, s.113(1); Family Allowances Act 1965, s.17(9); National Insurance (Industrial Injuries) Act, 1965, s.17(9).

[87] Law Commission No. 42, Report on Polygamous Marriages.

[88] Marriage Act, 1949, Second Schedule.

marry earlier without consent.

(ii) Formalities of Marriage

The present law is unwieldy and complex. There are two main forms of solemnization of marriage - civil and religious. The former is relatively straightforward, although there are various types of preliminaries; in the case of ecclesiastical marriages there is a complex admixture of civil and religious administration. The problem is exacerbated by the fact that failure to comply with the legal rules has diverse consequences; in some cases there may be a criminal penalty but the marriage may be valid. In other cases the marriage may be void.[89] The Law Commission has recently undertaken a review of the situation, and published its Working Paper for comment and criticism on 28 June 1971.[90]

(iii) Prohibited Degrees of Relationship

Sexual intercourse between persons known to be collateral or close lineal relatives is a criminal offence punishable by imprisonment.[91] The prohibited degrees of kindred and affinity, within which any marriage is void, are far more extensive, tracing relationships through both lineage and marriage, through both the whole blood and the half blood.[92]

For the purpose of consanguinity an adopted child is treated as the natural child of his adoptive parents;[93] but as regards his capacity to marry he is also restricted by the genetic relationships arising from his natural parentage.

The removal of the crime of incest from the Statute Book and the curtailment of the limits of consanguinity, would have little effect on population size, but reform might well be indicated in this sphere should one attempt to find a rationale for both aspects of the present law.[94]

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[89] Bromley's Family Law, 4th Ed. (1971), pp.33-42; 72-74.

[90] Law Commission Published Working Paper No. 35, (1971), "Solemnisation of Marriage in England and Wales".

[91] Sexual Offences Act, 1956, ss. 10 and 11.

[92] Marriage Act, 1959, First Schedule; Marriage (Enabling Act), 1960.

[93] Adoption Act, 1958, s. 13(3).

[94] Westermarck, The History of Human Marriage: Fox, R., Kinship and Marriage.

(iv) Annulment of Marriage

The Nullity of Marriage Act, 1971 consolidated and amended the law on annulment of marriage. Under section 1 a marriage will be void if:

(a) The parties are within the prohibited degrees of relationship;

(b) either party is under 16;

(c) certain requirements as to the formalities are disregarded;

(d) one or both of the parties is already validly married;

(e) the parties are not respectively male and female.

Under section 2 of the Act a marriage will be voidable if one of the following grounds exists:

(a) incapacity to consummate;

(b) willful refusal to consummate;

(c) absence of valid consent by either party, in consequence of duress, mistake, unsoundness of mind, or otherwise ('otherwise' would include drunkenness, drugs, etc.);

(d) mental disorder;

(e) venereal disease at the time of the marriage;

(f) pregnancy by another party at the time of the marriage.

In the case of (c), (d), (e) and (f), the petition for annulment must be presented within three years of the marriage.[95] In the case of (e) and (f) the petitioner must have been ignorant of the respondent's disease or pregnancy at the time of the marriage.[96] Reconciliation is encouraged, in that sexual intercourse after the discovery of the other party's mental disorder, venereal disease or pregnancy per alium will not of of itself amount to approbation of the marriage but a peti-

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[95] s.3 (2).

[96] s.3 (3).

tioner may be barred if with knowledge of grounds for avoidance of the marriage he conducts himself in such a way as to lead the respondent reasonably to believe that he would not seek annulment and if it would be unjust to the respondent to grant a decree of annulment.[97]

It was contended prior to the passing of the Act that the grounds listed in section 2 should be grounds for divorce rather than annulment. However, the Act states[98] that a voidable marriage is to be treated for all purposes as valid up and until the decree of annulment, so that in fact there is now no difference between annulment of a voidable marriage and dissolution by divorce in this respect - the difference is one of nomenclature only, and the same orders as to financial provision and children can be made whether the decree be one of annulment or dissolution.

(v) Divorce

Of the decrees of divorce and annulment, approximately 2% are of annulment -

	1958	1963	1969
Dissolution	22,195	31,405	50,581
Annulment	459	647	729

Of the decrees of dissolution made absolute in 1969, over half (27,429) were on the grounds of adultery; approximately 11,000 were in respect of desertion, and 10,000 cruelty.[99]

The divorce rates per 1,000 married population were 1.9 in 1958, 2.7 in 1963 and 4.1 in 1969 - but a sharper increase has occurred in the case of those aged below 30 at the time of divorce, where the rate has tripled over the same period. Of the 101,000 spouses involved in divorce actions in 1969 where decrees absolute were granted, 54,000 were under the age of 35, of whom 33,000 were under 30 years.

In 1970 the grounds on which divorce could be obtained in the United Kingdom were basically adultery, cruelty, desertion for three years, incurable insanity, and, in the case of a wife petitioner, rape, sodomy or bestiality on the part

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[97] s.3 (1)

[98] s.5.

[99] Of the remainder, 1,948 petitions were based on a combination of adultery, cruelty and desertion.

of the respondent husband.[100]

From the early 1950s until 1967 the law of divorce in England and Wales, and in Scotland, was subjected to scrutiny by various interested bodies,[101] the outcome being the Divorce Reform Act, 1969, which became law in England and Wales (but not in Scotland and Northern Ireland where it remained basically as stated in the preceding paragraph) on 1 January 1971.

The Divorce Reform Act, 1969 stipulates that the sole ground for divorce shall be that the marriage has irretrievably broken down.[102] But irretrievable breakdown can only be proved by establishing one or more of the facts set out in the Act, i.e.:

(a) that the respondent has committed adultery, and the petitioner finds it intolerable to live with the respondent,[103]

(b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent,[104]

(c) that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition,[105]

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[100]England and Wales: Matrimonial Causes Act, 1965. Scotland: Divorce (Scotland) Act, 1938; Northern Ireland: Matrimonial Causes Act (Northern Ireland), 1939.

[101]Royal Commission on Marriage and Divorce (Cmnd.9678): the Morton Commission (1956); Putting Asunder: Report of the Archbishop of Canterbury's Group (1966); Report of the Law Commission (Cmnd.3123)(1966): Reform of the Ground of Divorce - The Field of Choice; Scottish Law Commission: Divorce, The Grounds Considered, (Cmnd. 3256) (1967).

[102]s.1.

[103]s.2 (1) (a). The intolerability need not be occasioned by the act of adultery (Goodrich v. Goodrich (1971), 2 All E.R. 1340).

[104]s.2 (1) (b). The word 'reasonably' suggests an objective test (Passingham, The Divorce Reform Act, 1969. But the court will take into account the characteristics, fortitude, etc. of the parties, and their religious persuasion (Archard v. Archard, The Times, 20 Apr. 1972). For the test to be applied, and the effect of cohabitation after the conduct alleged, see Katz v. Katz (1972) 3 All E.R. 219.

[105]s.2 (1) (c).

(d) that the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition and the respondent consents to the decree being granted,[106]

(e) that the parties to the marriage have lived apart for a continuous period of at least five years immediately preceding the presentation of the petition.[107]

The Act preserves the pre-existing rule[108] that no petition can, in general, be presented within three years of the marriage.[109] It encourages attempts at reconciliation, in particular by its provisions that the parties may live together for periods not exceeding six months in aggregate without prejudice to the right to petition for divorce on any ground should any such attempts to settle differences fail.[110] The most controversial provision of the new Act is that of permitting divorce, without the consent of the respondent, after five years' living apart.

The Law Commission estimated that there were by 1966 some 180,000 illegitimate children, born into stable unions, who could be legitimated were the parents able to free themselves of the empty shell of an existing marriage; but as the law then stood they were unable to obtain their freedom to marry, since their spouses had committed no matrimonial offence and were unwilling to petition for divorce.[111] As total birth figures decreased, illegitimate births rose, and the Commission accepted evidence that some 40% of illegitimate children were born into stable unions.[112]

The provisions for divorce by consent after two years' living apart, and after five years' living apart regardless of consent, were in

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[106] s.2 (1) (d). The separation must have been the result of some breakdown in marital relations, Santos v. Santos, (1972) 2 All E.R. 246.

[107] s.2 (1) (e).

[108] Matrimonial Causes Act, 1965, s.a.

[109] There has never been any such rule in Scotland, where, in 1964 only 8% of marriages dissolved by divorce had lasted less than three years.

[110] s.3.

[111] Cmnd. 3123, para. 36.

[112] cf. Wimperis, V., The Unmarried Mother and Her Child. This evidence is disputed by Marsden, Mother Alone (1969).

accordance with the Law Commission's general view that the aims of a good divorce law are 'to buttress, rather than undermine, the stability of marriage; and when, regrettably, a marriage has irretrievably broken down, to enable the empty legal shell to be destroyed with the maximum fairness and the minimum bitterness, distress and humiliation.'[113]

A greater facility to obtain a divorce does not detract from the sanctity of marriage as an institution, nor does it necessarily occasion any lowering of moral standards or raising of birthrates; an increase in the number of divorce petitions does not necessarily mean that more marriages are breaking down, but may merely evidence the fact that the law is allowing legal recognition of an existing factual situation.[114]

It is as yet too early to evaluate the effect of the 1969 Act; although its immediate effect has been an increase in the number of decrees absolute, a substantial number of petitions are based on the five-year separation provision,[115] and this may evidence merely a desire to regularise existing relationships and legitimise children born out of wedlock. The divorce rate rose during the early 1960s, not as the result of any change in the divorce laws as such, but as a result of the Legitimacy Act, 1959, which permitted the legitimation of children whose parents were already married when the child was born as the result of an extramarital relationship.[116]

Marital breakdown is now recognized in England and Wales as the sole ground for divorce, but the availability of divorce is not in itself likely to occasion the breakdown. The change in emphasis in the law is from the concept of matrimonial offense to that of irretrievable break-

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[113]Cmnd.3123.

[114]Fletcher, R., The Family and Marriage in Britain (1966).

[115]Proceedings commenced in Somerset House Divorce Registry between 1 January 1971 and 17 September 1971 numbered 11,824, as compared with 8,018 in the corresponding period of 1970. (Of the 1971 petitions, 4,017 involved the five year separation provision.)

[116]Birth re-registrations had remained steady around 2,600 until the 1959 Act was passed; the figures for 1960, 1961 and 1962 were 6,506, 8,513 and 8,540 respectively - (Registrar-General's Statistical Review of England and Wales (1964)). Subsequent legitimation is not possible in Scotland unless the parents were free to marry at the time of the birth. The law in Northern Ireland is the same as in England (Legitimacy Act (Northern Ireland), 1961).

down [117] and on ways to prevent it. The amount of financial help to voluntary marriage guidance councils is about £100,000 annually, whereas the cost of legal aid in matrimonial cases is over £5,000,000. Easier divorce is legally and socially acceptable where a marriage has broken down, but greater financial aid to advisory services might reduce the incidence of breakdown, and consequently the number of extramarital conceptions, assuming that breakdown precedes adultery.

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[117] Useful statistics are available in Rountree, G., "Some Aspects of Marriage Breakdown in Britain", Population Studies xviii, 147 (1964-65), and in Fletcher, R. The Family and Marriage in Britain (1966), op.cit. note 114.

V. LAW ON ECONOMIC FACTORS RELATED TO THE FAMILY

A. Maternity Benefits

(i) Maternity grant

There is a lump sum payment of £25.00 payable in respect of a child who lives for at least 12 hours after birth. The grant is payable on satisfaction of the National Insurance contribution conditions by either the mother or her husband. Where the National Insurance conditions have not been satisfied, then financial assistance may still be given in cases of need, although the amount of such assistance will vary in individual cases according to the means of the family or the unmarried mother.

(ii) Maternity Allowance

The payment of this allowance is subject to the mother's satisfying the insurance conditions - the insurance contributions of the husband are irrelevant, the allowance being to encourage the mother to cease her employment during the later stages of pregnancy. The standard rate of the allowance, payable in addition to the maternity grant, and irrespective of need, is £6.00 per week for a period of eighteen weeks commencing eleven weeks before the expected week of confinement. If it is to her financial advantage an expectant mother may elect to draw sickness benefit, including an earnings-related supplement, for a period commencing six weeks before the expected confinement to a day two weeks after the baby is born.

No law prevents an expectant mother from working at any time before the birth of her child, but no allowance is payable during any period of employment.

B. Family and Child Allowances

(i) Family Allowances

Family allowances have been paid, irrespective of any National Insurance contribution and regardless of income, since 1946. No allowance is payable in respect of the first child of the family; the weekly rate is 90p in respect of the second child and £1.00 in respect of each subsequent child. The allowance is payable until such time as the child ceases to receive full-time education or instruction in a school, college or university, or until his 19th birthday, whichever occurs first.

This allowance, as opposed to maternity benefits, is classed as taxable income.

(ii) Family Income Supplement

Under the Family Income Supplements Act, 1970, a weekly supplement is payable to families whose normal gross weekly income is below a prescribed amount.[118] For the supplement to be payable there must be at least one child of the family; in the case of a one-child family the prescribed weekly amount is £18. The weekly supplement payable is half the difference between the family's gross income and the prescribed amount, rising to a maximum weekly payment of £4.00.

Families in receipt of the family income supplement are automatically entitled to various social security benefits, including free school meals for all children of the family, and free welfare milk and foods for any children under the age of five.

(iii) Income Tax

The following allowances against income tax are made in respect of dependent children:

Ages 11 or under	£155 per annum
Ages 16 or under	£180 per annum
Over 16, but receiving full-time education	£205 per annum

As the benefit of these child allowances is not obtained by the lower-paid worker, especially those in greatest need who are not liable to income tax, the whole structure of the taxation system is at present under review. The proposal outlined by the Government in March 1972 is for a system of negative taxation, whereby those under a certain income limit will receive direct payments in respect of dependents. The result of the implementation of these proposals will be weekly cash payments to the lower-paid groups in respect of all their dependent children. This negative taxation system will result in the abolition of the family income supplement.

(iv) Local Authority Provision

In addition to the financial provisions made by the central Government, there is provision for financial assistance to parents at local government level. Local authorities may make grants to cover the cost of school uniform, or footwear and clothing, in cases of need; maintenance grants may be made to parents of children who remain at school after the

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[118]The parent (or in the case of a married couple, the male partner) must be in full-time work (30 hours per week or more) before the allowance is payable.

age of compulsory education.[119]

Assistance in cash or kind may be given as considered necessary to obviate the taking of children into the care of the local authority.[120]

Education in state schools and in colleges and universities is free; subject to parental income, grants are made to dependent students at colleges and universities. There is no system of loans to university or college students.

C. Laws on Descent and Distribution of Property

(i) Intestate Succession

If a person dies intestate, the distribution of his property is governed in the main by the Administration of Estates Act, 1925 and the Family Provision Act, 1966. The surviving spouse is entitled to all the personal chattels, and to an additional interest dependent on whether issue or remoter relatives survive the intestate.

If there is issue, the spouse takes £15,000[121] free of death duties and a life interest in half the residue. If there is no issue, but there is a parent or sibling or issue of such sibling, then the spouse takes £40,000 and an absolute interest in half the residue. If none of the above relations survive the intestate, the spouse takes the whole of the residue absolutely.

If the intestate has no surviving spouse, then his issue inherit the whole of the residue on trust.

An adopted child is treated as though he were the legitimate child of the intestate, and illegitimate issue now share in the intestacy as though they were legitimate.[122]

If a decree of judicial separation is in force at the time of death, then the intestate's property devolves as though the

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[119]Education Act,1944; Education (Miscellaneous Provisions) Act, 1953. The school-leaving age will be raised from 15 to 16 in 1972.

[120]Children and Young Persons Act, 1963.

[121]Family Provision (Intestate Succession) Order, 1972, Effective 1st July, 1972.

[122]Adoption Act, 1958, s.16(1); Family Law Reform Act, 1969, s.14.

spouse were dead.[123]

(ii) Testate Succession

In general the testator is free to dispose of his property as he wishes. Any gift made to a person's children will include his illegitimate children, unless they are expressly excluded.[124]

A gift to the testator's issue will not lapse if the issue should predecease the testator, provided that the beneficiaries themselves leave issue, and for this purpose illegitimate issue are equated with legitimate issue.[125]

(iii) Family Provision

Although in general a person may leave his property by will to whomsoever he wishes, dependents may make application to the courts for reasonable provision from the estate of both the intestate and the testator who they consider has not sufficiently provided for them.[126] Reasonable provision may also be ordered from the estate in respect of a former spouse who has not remarried.[127]

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[123]Matrimonial Proceedings and Property Act, 1970, s.40.

[124]Family Law Reform Act, 1969, s.15.

[125]Wills Act, 1837, s.33; Family Law Reform Act, 1969, s.16.

[126]Inheritance (Family Provision) Act,1938; Intestates' Estates Act, 1952.

[127]Matrimonial Causes Act, 1965; Matrimonial Proceedings and Property Act, 1970.

VI. GENERAL OBSERVATIONS

Although during the past few years there has been an increasing awareness of the population problem in the United Kingdom, the British Government has no general population policy as such. The Secretary of State for the Environment stated recently that there is some evidence that the demographic curves for the country are now turning down.[128] However, on current trends the population by the end of the twentieth century will have passed the 66 million mark in a country which already has one of the highest population densities in the world.

The existence of the Welfare State means that there is some softening of the economic hardship consequent on the birth of a child. No one would suggest that the amounts involved are so great that there is a real financial incentive to bear as many children as possible. Only in the very poorest families might this be true. The author has heard one poor woman say of another that her latest child was conceived for the sake of the additional weekly family allowance, but the statement was made and received jokingly. Such families would in any case probably be receiving welfare payments over and above the regular allowances and would not benefit from income tax concessions because they would not pay tax on a low income. However, it may be true that in some cases the lack of financial disincentives leads parents to contemplate having another child. A young couple with heavy mortgage commitments might be unable to afford a third child were it not for the consequent reduction in income tax. Conservative-minded persons have suggested that parents of large families should be penalized. This has not achieved general acceptance because it is recognized that it is the children, not the parents, who would suffer. In the case of unmarried mothers, it may be that the existence of welfare provisions allows some mothers who would otherwise have had an abortion to keep the child, but the numbers involved cannot be great. Most parents know that the expenses of a child as it grows up will far exceed any benefits conferred by the State. All in all, it is probable that financial benefits are not often of the first importance in determining family size, though they must of course play a part and may create a psychological impression that child-bearing has the approval of the State. The desire to have at least one child of each sex is probably a more important factor in many parents' minds when they decide to conceive a third or a fourth child.[129]

Indirectly, certain other economic and sociological factors may affect the current trend in population. The Equal Pay Act, 1970 becomes fully effective on 29 December 1975 (although not extending to Northern Ireland). This Act requires the pay of women to be equated with that of

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[128] The Times, 12 April 1972.

[129] cf. "Epilogue: Does Help to Families Affect the Birth-Rate," Wynn M., Family Policy (1970).

their male counterparts in like occupations. In theory this raising of the incomes of a substantial number of females and, in consequence, greater financial commitments of the family, should bring with it a strong disincentive to embark on motherhood or at least to bear large families. But this pre-supposes full employment, and an absence of sexual discrimination in employment. Though there are few legal controls on sexual discrimination at the present time, the Government has in 1972 stated its intention to consider legislation to prevent it in the employment field, and a Select Committee of the House of Lords has been set up to review the whole matter.

Socially, there is now less pressure on the mother of young children to remain at home, though it remains the general custom for a woman to give up full-time employment until her children start school. Local Education Authorities are gradually responding to demands for more nursery school places and child-minders and play-groups are increasingly available, though there is still a great shortage of nursery schools. Whatever the psychological pressures within the marriage of combining a career with motherhood, it is becoming more acceptable for a woman to take leave for the period of her confinement and then continue with her employment. Married women generally in the United Kingdom want families of a size larger than that considered acceptable for population stabilization,[130] and the availability of lucrative employment is not of itself going to prevent the fulfillment of their desires.

The illegitimate birth rate remains high despite a relaxation of the abortion law. Help by voluntary agencies and by the State for unmarried mothers, and changes in legal and social attitudes to bastards, have reduced at least the financial problems of the mother of an illegitimate child.

The law, in piecemeal fashion, presents certain economic obstacles to remarriage after divorce: the cessation of maintenance to first spouse on his or her remarriage, the requirement that adequate provision must be made for the children of the first marriage before a divorce decree is granted and the rule that a divorce must be refused despite five years' separation and breakdown of the marriage unless the petitioning spouse can obviate any grave financial hardship to the respondent. However, in practice, where one marriage has broken down, the spouses are likely to form other relationships, divorce or no divorce, and to want children from their new partnerships.

The Abortion Act, 1967 has aroused considerable controversy. Although it has extended the grounds on which a legal abortion can be obtained, it is still true that those who can afford the fees charged in private clinics can obtain an abortion more easily than those whose needs may be greater but who have to rely on the National Health

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[130] Woolf, M., Family Intentions (1971), H.M.S.O.

Service. Pressure groups, such as the Society for the Protection of the Unborn Child, are militant in their campaign for more stringent controls over abortion or a return to the law before 1967. The Women's Liberation Movement on the other hand, considers that abortion on demand is the right of every woman. There is evidence to support the argument that the Abortion Act has not in fact increased the number of abortions performed, but has merely permitted women to obtain a legal abortion rather than be forced to subject themselves to the dangers of illegal back-street abortionists. But whatever the arguments for and against abortion,[131] the demand for abortions and the number of abortions performed annually is evidence of a failure of education in sexual responsibility.

The only subject which the law compels schools to provide in their curriculm is religion. There is a substantial body of public opinion against sex education, and especially contraceptive education, in schools; many parents believe that it will encourage promiscuity. But the provision of sex education in schools is gaining acceptance and must be preferred to total ignorance or misconceived ideas about sex which may lead to unwanted pregnancies.

Beyond school, the responsibility for sex education, and particularly the dissemination of information on family planning, rests largely with voluntary bodies. More money has recently been made available by the Government to the Family Planning Association, and to local authorities, to assist in the provision of family planning services. But the amount involved is minimal when compared with the cost to the State of keeping in the care of local authorities many of the children who enter the world as the result of irresponsible sexual intercourse. The average cost to the community of keeping a child in care is approximately £20 per week. Over 3,000 of the illegitimate children born in 1967 were placed in care. Of the total number of children in care in 1967, more than half were legitimate; it is safe to assume that a substantial proportion of these legitimate children were the result of unplanned and unwanted pregnancies.[132]

These figures put into perspective the additional £50,000 recently granted by the Government to the Family Planning Association, and even the £2-1/4 million increase, spread over five years, to those local authorities who wish to exercise their power to provide family planning services. It has been estimated that for every £ spent on family planning, £100 or more could be saved on health and welfare

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[131]The Royal College of Obstetricians and Gynaecologists in a report published in 1972 have expressed dissatisfaction with the 1967 Act; they believe, inter alia, that the present law is being abused and that too much responsibility is placed in the hands of the general practitioner.

[132]Family Planning in Britain, op. cit., note 5.

services.[133]

Research is now needed into the reasons why contraception is still not universally acceptable to those members of the community whose religious beliefs do not deny to them the use of contraceptive devices. If contraception is in fact generally acceptable, then the reasons why it is not conscientiously applied must be discovered.[134] Above all, pressure to reduce family size must come in the shape of the acceptance of a new morality. Just as industrialists and private individuals are being made increasingly aware of the dangers of environmental pollution and wastage of natural resources, so must the community be properly educated in the sphere of human pollution, to the point of general acceptance of a new ethic that the size of one's family is not to be determined solely by the size of one's income coupled with State provision. The new morality must be to consider the needs of society as a whole in planning the size of one's family.

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[133] Laing, W.A., The Costs and Benefits of Family Planning, op. cit., note 30.

[134] Morton Williams, J. and Hindell, K., Abortion and Contraception, op. cit., note 29. They show that there are many factors prohibiting effective contraception: failure to plan ahead, fear of health risks involved with the contraceptive pill, ignorance about the likelihood of conception, even a romantic feeling that intercourse without contraception is more "natural".

VII. POSSIBLE IMPROVEMENTS IN LAWS AFFECTING POPULATION

Substantial legislative changes have been made during the past few years, although many of these have not as yet been applied to Scotland and Northern Ireland. In particular, the wider availability of contraceptive advice and legal abortion and the impending legislation regarding sterilization should tend towards a stabilization, if not a reduction, in total birth figures.

Yet more remains to be done. Abortions on demand, though it has its protagonists, would not be an acceptable measure unless compelling evidence of the immediate and drastic consequences of over-population were available to prove its necessity. Public opinion is probably still opposed to free abortion without any legal controls. A need for yet greater liberalization in abortion legislation would be evidence of failure in the field of contraceptive education. Local authorities have power to operate domiciliary family planning services and give full contraceptive services, but they are free to choose whether they exercise this power. A more effective policy could be implemented through direct central government intervention, with a free, comprehensive family planning service available to all, administered within the National Health Service. Although voluntary agencies have played, and will continue to play, a vital part in family planning, it is now time for the Government to take the lead in this sphere. Training of social workers, hospital staffs and general practitioners is vital, as is wide dissemination of information by modern advertising methods. The moral argument that free contraception encourages promiscuity now seems to be declining as people become more aware of the social evils of unwanted pregnancy. Better to proffer the pill to the unmarried girl than to permit her the suffering and dangers of abortion, and better to permit indiscriminate publicity than to off-load large numbers of unwanted children on to community resources.

The problem is for the nation's elected representatives: to alter the attitudes and motivations of the community.[135] Legislation alone cannot do this, but with adequate expenditure on publicity, training and contraceptive services, the necessary change in the demographic curve can be achieved.

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[135] The panel of experts appointed by the Prime Minister in May, 1971, as a result of the report of the Select Committee referred to on page 4, has yet to publish its findings or recommendations.

International Advisory Committee on Population and Law

The Programme is under the general supervision of an International Advisory Committee on Population and Law meeting annually in different regions of the world. Its members are:

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