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by Gerardo Cornejo
Alan Keller
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Leandro Azuara



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LAW AND POPULATION IN MEXICO

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FOREWORD

The possibility of establishing that a relationship exists between certain areas of our legislation and certain phenomena associated with population growth and movement has for several years stimulated curiosity among the professional members of the Fundación para Estudios de la Población, A.C. (FEPAC) and other member institutions of the Asociación Mexicana de Población. Because of the limited resources that FEPAC was able to assign to organized research regarding this subject, the curiosity was not converted into concrete, investigative activity. It was not until the beginning of 1972 that those who were interested in the subject were able to find the necessary resources to carry out the research. Along the way they sought the collaboration of El Colegio de México and the Law Faculty of the Universidad Nacional Autónoma de México for the purpose of planning a project that would lead to conclusions that would be more or less in keeping with the premise which had initially captured their interest.

This task required the participation of several professionals who from the start were aware of the importance that the project could have as a beginning for other, more intense investigations in this field, and who at the same time were aware that the conclusions they might reach would not necessarily be definitive but would lead us toward a more concrete understanding of each area studied. This knowledge will be useful as we begin the complex task of endowing our country with a legislation which accords with the needs of modern times, and which allows for the implementation of a rational population policy like the one that has been recently expounded by the Government.

Any attempt to assess the nature and extent of the relationship between law and population raises several initial questions. What are the laws that affect the rate of population growth? How can these effects be characterized? Does the population take law into account when determining family size and, if it does, to what degree does law truly influence fertility? We have not supplied the answers to those questions in this study. Of that we are aware. To be sure, this study is a beginning. But we do think we have entered onto the road that leads to the answers, for we have clearly identified the areas that need further investigation.

It is clear that the restlessness which arose to investigate this field is not of mere academic prefabrication. Through it we pursue concrete and useful ends. It is certain that the search for knowledge about population growth and movement need not seek justification in its practical application, but it is also certain that, at present, it is more desirable than ever to discover answers as to how law affects population because we are presently living in that time of transition during which our country is transforming its population policy. The implementation of this new policy will depend to a certain degree on the use of the legal structure which rules us and must be based on knowledge of the relationship between law and population as generated by a serious study of the subject.

The first chapter is devoted to briefly sketching population trends in Mexico, some of the factors which have created these trends and their relationship to present-day, socio-economic development. If one accepts the premise that the demographic situation of Mexico has been to a great extent the result of its own development, one cannot deny that prevailing legislation has been one of the factors in that development, even though laws are frequently enacted after the social changes have occurred. It is here that there arises an undeniable relationship between the legal element and the policies that are adopted, whether it is purely on the economic plane or in the formation of population distribution and growth. There is no doubt that the adoption of policies which equated economic development with population growth has had great influence on the demographic evolution of the country.

It was the lack of adequate and well-directed research which accounts for much of the legislation still in force.

In an attempt to explore and describe Mexican legislation from the perspective of population, the laws which regulate contraception, abortion and sterilization were examined first, and commentaries were made to supplement the content of the laws. As a result of this study, we detect a favorable attitude on the part of legislators toward contraception, for the possibility of the use of contraceptive devices and their control by medical and para-medical personnel is left relatively open. This facilitates the work of the family planning programs. Nevertheless, there still exist some regulations that may act as impediments and that could dampen the effectiveness of official and private family planning programs. With respect to abortion, the study attempts to establish the degree to which the articles of the penal code which classify it as a crime are enforced. We find that enforcement is almost nil, and that when we speak of abortion we are faced with more than a legal problem. Abortion is a serious social and public health problem in Mexico in which family planning can act as an effective means of preventive medicine. It is also patently apparent that the imposition of criminal sanctions has not succeeded in preventing the practice. It may well be that the incidence of abortion may decrease notably when an effective family planning program makes it unnecessary because the means for contraception are available to all. Such an approach would be in agreement with the accepted principles of criminology which focus on preventing the need to resort to a criminal act rather than concentrating on punishment after its commission.

With regard to the laws controlling family relationships, the study analyzes the institution of marriage as well as the termination of that bond. It is clear that in this matter one must take into account the fact that custom is the most important factor; custom prevails with much greater force than the law. Again, the penalties (although there are only responsibilities of a civil nature involved here) which can be incurred for the non-fulfillment of marital obligations can only serve as a threat, and are somewhat ineffective at that, since if they are applied they make it impossible for the person penalized to fulfill his obligations.

It is also of interest to note that there are some precepts of family relations law that discriminate against women and that in theory favor fertility. For example, there is tension between a woman's marital obligations and her freedom to work because her husband can legally oppose her taking work outside the home if he can prove that she has not fulfilled her primary obligation--duties which relate to the care of her family. However, the possible pro-natalist effect of such laws may be compensated for by the increasing participation of women in the diverse areas of the labor force. This tends to reduce fertility somewhat.

The study has also endeavored to discover the effect the law may have on the behavior of population groups of younger ages and has examined a series of laws and regulations that refer to juvenile and child welfare. Under this heading are analyzed the obligations of the parents to provide support for their children and the extension of this obligation to direct and to collateral relatives. Reference is also made to the sanctions which may be imposed for non-fulfillment of these obligations and the protection that this is supposed to give to minors.

It is important to mention here that it seems highly unlikely that parents consciously take the law into account when they exercise their reproductive prerogatives. Neither is it very likely that a child's rights to subsistence and education are taken into account by the class of parents who form the vast majority in our country, where the common denominator is the exercise of the most absolute parental authority. But can the law preserve child and adolescent rights through repression? It is evident that it cannot. But it was also observed in the course of this study that there seems to be a favorable response in some cases where information on the means available for exercising parental rights in a rational manner was reinforced with information on the child's rights and on the provisions of the law against their violation. We do not know which of these three points of information generate that response. We may only suppose that we should attribute to all three types of information taken together, those results which one type alone probably could not have produced. Or it may be that the law with its own restraining force cannot be effective if it is not accompanied by a good dose of education and persuasion.

In the area of penal matter, it appears that the laws have greater power of intimidation in regard to certain types of crimes, like sexual crimes, although the absolute observance of these norms does not seem to have any effect on population phenomena. What does indeed seem to have an effect on population is the kind of relationships, like concubinage, which lacks any penal consequence when the participants are single. If they are not single, the relationship is subject to the prohibitions of the criminal law. The former is freely exercised in Mexico. There is little doubt that most of the births which arise from this type of relationship are considered illegitimate. The most surprising thing is that

neither interest nor the necessity for economic protection seem to influence the partners, since those who are living in this type of relationship accept it knowing that their own rights are lessened and that the situation could be remedied merely by making the union legitimate. Here again, one could conclude that knowledge of the sanctions issuing from the law, as well as knowledge of the rights that the law establishes, cannot generate by themselves a different attitude with respect to the reproductive customs of our people if such knowledge is not accompanied by adequate information and education.

In another area of law, is it possible to assert that the legislator's efforts are counteracted by other state agencies to a certain degree through social loans that may stimulate what the law tries to prevent? Much analysis is needed in this area in order to be able to determine the degree to which these two forces counteract each other. As a beginning, the study undertook to research a great variety of ordinances which have been lumped together under the general heading, "Public Welfare."

Here one can observe that although the State does not supply economic incentives to families based on the number of children they may have procreated, these exist within some private enterprises, especially in the banking and finance sectors, like certain special benefits available to their workers which are based on the number of dependent children. This activity is naturally sanctioned by the State in its zeal to attain better conditions for workers, which makes it an indirect participant in this fertility-related incentive although its primary intention is entirely different.

On the other hand, the Government participates in several activities directed toward improving general welfare where it does not take into account the number of members that compose each one of the beneficiary families. It is probable that in taking this position, the Government has already had in mind the need not to encourage large families. This can be said of the programs worked out within CONASUPO (National People's Food Company) and other official institutions. But there are others like the Instituto del Fondo Nacional Vivienda para los Trabajadores (INFONAVIT) (Institute of the National Fund for Workers Housing) where the number of children is indeed taken into account to measure benefits and allocations. In addition, certain loans given by the Instituto Mexicano del Seguro Social (IMSS) (Mexican Institute for Social Security) operate as fertility stimuli, as in the case of the premarital dowry. It is also possible that some tax deductions may have positive effects on fertility, at least for those who do not pay attention to the comparison of real costs for child rearing and tax benefits.

In the area of public health, the effects of law are too well known. But we also know that we have dealt to date with only one of the population variables: mortality. Nevertheless, much will depend on these services for any planned operation which tries to attain results on other

important population variables like the birth rate. We have to agree, of course, that in spite of the effects that programs such as the utilization of medical and para-medical personnel, the control of food quality, the fight against contamination, and the vigilance over the quality of medicine have had on the demographic growth, they still have to be improved and encouraged. But it seems to us that the behavior of the birth rate variable, which still remains high, will also be affected by the development of appropriately designed programs.

No commentary on this study could be considered complete without mentioning the enormous importance that education has on this subject. It seems that any other possible influence on population factors has very little likelihood of attaining any lasting effect if it is not accompanied by educational activities. We have already seen that the application of some laws is ineffective without collateral educational action. That is why the education element cannot be left out of any population program which hopes for positive results.

We are agreed that what we attained in this study did not succeed in being definitive in any of the areas studied, but we sustain the hope that the contributions others make can complement this effort and, above all, that the reader will be made aware that there exists an immediate need to investigate this subject in greater depth.

In the final analysis, if we wish our law to be positive and up-to-date, we must gain the attention of the legislature, for a cohesive population policy depends in large measure on the types of laws which are put into force. It is their responsibility to stay abreast of social change; it is our duty to keep them informed.

This study is developed in the following manner. In the first section, the demographic and socio-economic situation of the country is described, and emphasis is placed anew on the importance of understanding the existing interrelationships between the law and these conditions. Sections II to VI contain the reviews of laws which can potentially influence fertility and population movement.

Each one of these sections covers a broad area of law. In these sections the various types of laws which are related to the category are explained in detail. We have generally used as a model the contents of those that are in force in the Federal District and Territories; reference is made to state laws only when they differ notably. After the description of the contents of the applicable laws, each section concludes with an evaluation of the laws, as well as an analysis of the potential impact that they produce. One will notice that although the study succeeds in identifying the contents of law with probable impact on population dynamics, limitations of time, financial resources and data, in many cases, prevented us from arriving at firm conclusions on the exact nature of the impact.

This study ends with:(1) an attempt to review those problems which impeded reaching a definitive conclusion on the nature of these relationships; (2) a summary of those areas of the law that have the greatest probability of having a relationship to population dynamics; (3) a note as to the need for further research into the nature of these relationships.

Gerardo Cornejo
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de la Población, A.C.

Editor's Note:

In January 1975, after this monograph was completed, a new Article 4 of the Mexican Constitution went into effect. The document is of great significance and assistance to the promotion of family planning. It reads as follows:

The man and the woman are equal before the law. The law shall protect the organization and development of the family.

Every person has the right to decide in a free, responsible and informed manner as to the number and spacing of his or her children.

LAW AND POPULATION IN MEXICO

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I. INTRODUCTION

A. Character of the Population Problem

Mexico is presently undergoing what has been termed in some quarters "a demographic revolution." Whole segments of social and economic policy are being revised to conform with the present demands for orderly development. Issues which are linked to population growth and movement have been seen for the first time as having profound effects on the country's overall development pattern. But while it has been recognized that attempts to "rationally regulate and stabilize" the rate of population growth are of great contemporary importance to Mexico's total welfare, it has been noted that the mere reduction of the birth rate cannot be accepted as a "substitute for the complicated process of development."¹

At the present time Mexico has a population that numbers some 56 million inhabitants. The annual rate of population growth has climbed to 3.5 per cent, one of the highest in the world. At that rate the population will double within twenty years. Historically, Mexico's population growth rate has not always been high. At the beginning of the twentieth century, the population was approximately 15 million, with an annual growth rate of but 1 per cent. After the Revolution, the rate fell to one-half of 1 per cent. Because of this, it was necessary to encourage the growth rate in an effort to populate and develop the vast territories within the country. A pronatalist policy was, during those early years, essential. By the 1940s the population numbered 20 million and the growth rate had accelerated to 1.7 per cent annually. In 1950 there were 26 million Mexicans, by 1960 35 million, and in 1970 48 million. It has been predicted that if recently adopted policies are successful in bringing about a decrease in the population growth rate between now and the year 2000, Mexico's population will reach 135 million. If no restraints are placed on the rate the number will be nearer 155 million.

1

Statement of President Luís Echeverría Alvarez in his Third Report of the Government (1973), cited in *La Revolución Demográfica*, p. 11 (Mexico City: Consejo Nacional de Población, 1974).

1. Population Trends and Socio-Economic Development

These persistently high rates of increase in the population have had and will continue to have severe repercussions for Mexico's social and economic development. For example, it has been shown that in order for a population which grows at the rate of 1 per cent annually to simply maintain the same standard of living, it is necessary to increase its social and economic investment by at least 4 per cent each year. Given Mexico's rate of growth this means that investment must increase by 14 per cent annually. The sum of the required new investment is equal to between 16 and 20 per cent of Mexico's gross national product.² From another point of view, at present rates of growth it is necessary to create at least half a million new jobs annually if current percentage rates of employment are to be held constant.³

To a degree it is ironic that the demographic situation of the country has partially resulted from Mexico's own process of development--a process characterized by high indices of economic growth, rapid industrialization and, in general, a kind of development that in reality has benefited only a minority of the population, while the majority still struggles to meet their minimum needs. In order to understand the population dynamics presently at work in Mexico, one must analyze them in relationship to the process of development, that is, as a manifestation of the kinds of development that the country has undergone on both the national and regional levels. It has been argued with some effectiveness recently that development--which tends to create new sources of labor, increase credit and investment, and attain a better distribution of income--affects and influences population in two ways: First, it involves the population in the national development process; second, it creates conditions which at first cause a decline in mortality with an accompanying rise in fertility, but later on reach a point where fertility begins to decline as economic, educational and cultural levels increase. This has been the experience of the highly industrialized societies. Mexico has yet to see the results of the secondary effects.⁴

Mexico still finds itself in an intermediate stage of economic and social development. This fact, when coupled with population factors,

2

La Revolución Demográfica, p. 38.

3

Ibid., p. 40.

4

Ibid., p. 41.

presents a picture of perplexing disparities. The average per capita income is about one-sixth of what is found in more developed countries; 30 per cent of the population is considered economically active, with female participation being less than 17 per cent; more than half of the population is dedicated to "primary" economic activities generating but 17 per cent of the national product; the bulk of the income is concentrated in the hands of a minority, 65 per cent of the families receive only 25 per cent of the total family income;⁵ the average educational level of the inhabitants of the country is but 2.9 years, and 24 per cent of the population over 6 years of age are illiterate.⁶ On the regional level, the disparities are equally apparent: one observes a concentration of land, agricultural, industrial, and service operations in a few regions, while slow economic growth rates and indications of severe under-development are the rule for the rest of the country. This over-simplified panorama of the development has had great influence on demographic behavior in Mexico.

2. Principal Demographic Factors: Mortality, Fertility and Migration

The causes of the demographic trends observed in Mexico in the last thirty years can be synthesized as follows: There has been an important decrease in mortality levels, principally in urban areas, while at the same time fertility levels have remained high; and there has been a strong internal migratory current toward the principal cities of the country from the rural areas. The behavior of these demographic variables has exerted important influences on the volume and the rate of growth of the total population of the country. Among these are a general rejuvenation of the population (fully 46 per cent of the population are below the age of 15 years) and an unequal distribution of the population, most of which is concentrated in the urban centers (of the 97,000 towns in Mexico, 81,000 had less than 1,000 inhabitants comprising only 30% of the population).⁷

Over the years one of the more noticeable demographic characteristics of Mexico has been the drastic decrease in the rate of mortality. While the rate was 23 deaths per thousand inhabitants in 1939-1941, by 1969-1971

5

Study completed by the Banco de Mexico (1968).

6

Census data (1970).

7

Census data cited in La Revolución Demográfica, pp. 20, 80.

8

Ibid., p. 29.

it had fallen to 9.2 deaths per thousand: life expectancy at birth in 1940 was 41 years; by 1970 it had increased to 62.1 years.⁹ These variations have come about because of a combination of factors related to the expansion of medical services, the introduction of new techniques in the field of preventive and curative medicine, and, in lesser measure, to the decrease in the average age of the population, due to the mortality decline being relatively greatest for the youngest age groups, especially infants.

Despite these improvements, powerful contrasts exist in the mortality levels that have been attained. Though the level of infant mortality (deaths for those under one year of age) fell from 124.6 per thousand live births in 1960, it was still at the high level of 67.4 in 1970. Moreover, differences in the life expectancy among residents of the various states is still as much as 10 to 15 years. This is a partial reflection of the disparity in development and the varying quality of life.

In the face of the declines in mortality, it is interesting to note that fertility behavior has remained nearly constant. Over a thirty year period the birth rate has decreased only slightly--from 44.1 births per thousand inhabitants in 1940 to 43.3 in 1970. This demonstrates the extent to which socio-economic and cultural changes in Mexico have failed to motivate change in the reproductive behavior of the majority of the population.

Nevertheless, the scanty information available concerning the relationship between fertility and some of the socio-economic variables tends to indicate that signs of important changes can be expected as development progresses. Women beyond the reproductive age living in the rural areas have, on the average, given birth to 5.7 children. In comparison, women of a similar class in the urban zones have 4.4 children. According to a study made in 1964 among women in Mexico City, women without formal education had on the average 4.4 children, women with higher education, 1.5 children. Working women have had an average of 2.4 children, in comparison to 3.7 children for those who do not work. Thus, it has been found that there is a demonstrable link between fertility and such factors as zone of residence, educational level and employment.

Another important aspect of the population problem in Mexico is the distribution of population. The situation may be characterized as one which evidenced a strong pattern of internal population movements, particularly between 1950 and 1970. In the present context, internal migrations should be viewed as a phenomenon which results from the widespread process of change in a society. Aside from being a mechanism for special population redistribution, migration can be an answer to regional inequalities

9

Ibid.

within the economic system of the country. The internal migrations in Mexico, as in other countries, are from the rural areas to the urban centers and are largely motivated by the desire for a better life.

In the last decade, it is estimated that more than 50 per cent of the total migration within the country moved toward the metropolitan area of Mexico City.

Another important proportion has gone to the cities of Monterrey and Guadalajara. Moreover, there exist many other cities of intermediate size whose rates of immigration have resulted in their population being doubled every ten years. As a result of migration and natural increase, the urban population (45 per cent of the inhabitants of the country reside in places with a population of 10,000 or more according to data from the 1970 census) grew at the high rate of 5.4 per cent annually from 1960-1971. On the other hand, the rural population is widely dispersed. One of the immediate effects of the severe migratory patterns is that the population tends to outstrip the supply of housing and services which in turn affect the quality of life in the urban centers.¹⁰

If indeed the present demographic situation in Mexico is partially the result of disequilibrium in the process of socio-economic development, population dynamics are in turn making their influence felt in the process of development, present and future. The size of the Mexican population, its rate of growth, its age structure and its distribution presently have an effect on the welfare of the population which make the search for strategies directed toward raising the standard of living of the population more difficult. The pressures exerted by population can be observed in education, nutrition, health, housing, in the creation of jobs, and in the use of natural resources. In this sense, the accelerated population growth, as mentioned above, requires greater investments whose sole object is to maintain the status quo.

There is a natural delay before the actual effects of any attempt to reduce fertility levels are felt. For this reason the changes that may occur in the basic demographic variables will only have a significant effect over intermediate and long-range periods of time. The projections for population growth for 1980, and its effects, cannot be altered in a significant way without great difficulty. After that year, demographic

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This dilemma was summarized rather succinctly by the Secretary of the Interior, Mario Moya Palencia, when he stated during his presentation of the proposal to reform the General Population Law, that if the cities were not able to bring a measure of prosperity to the rural areas, then the rural areas would continue to bring their miseries to the cities.
Ibid., p. 85.

changes will perhaps depend to a great extent on the policies that are adopted from this moment regarding the role of population in development. Mexico has come to realize that in order to achieve its full measure of development, the population growth rate must be reduced.

B. Religious and Cultural Elements of the Population Problem

There are two other elements of Mexico's population dynamics which merit brief discussion here: the influence of the Catholic Church on the population question and the role which "machismo" plays on the issue of the status of women within the Mexican society.

11

According to the Church, the procreation of offspring is viewed as one of the primary goals of the conjugal relationship. Corollary to this is the concept of "responsible parenthood," which has also come to be firmly supported by the Church. Yet there is some debate as to what means may be used to limit or plan the number of children born to a couple. Despite the language of Humanae Vitae which eschews the use of methods of family planning that are "unnatural,"¹² the Mexican Bishops, in December of 1972, rendered their interpretation of that document and endorsed the government family planning program which had begun earlier that year. Recent studies have been made among women who practice Catholicism concerning their views on family planning. A high percentage of those questioned indicated that they had adopted some form of family planning and that their religious beliefs had not been an obstacle to their participation in the practice. The issue to be resolved in the future is whether Catholic doctrine will affect the rates of acceptance of contraceptive means other than rhythm. Past experience seems to show that it will not, but the potential influence of religious factors on such practices is not to be ignored.

The implications of the concept of "machismo"--a vestige of the days of the conquistadors which emphasizes male dominance without the assumption of the appropriate responsibility for acts--in certain measure lie at the heart of the population problem. Machismo affects the multiplicity of issues which are related to the status of women and their role in Mexican society.

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It should be pointed out that Mexican law denies the Church the power to impose any doctrine on its parishioners, through its educational institutions or through worship, that would have a bearing on their reproductive behavior. The influence that the Church maintains in this area is retained by virtue of its right to advance its beliefs before voluntary audiences attending religious services. This makes its influence on the attitude of the many Catholics in the nation apparent.

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Among those methods which are viewed as "unnatural" are the pill, condoms, IUDs, vaginal foams and douches.

Perhaps the statement which best characterizes machismo philosophy takes the form of a popular saying (dicho): "The Mexican woman, like a rifle, should be kept loaded (pregnant) and in the corner." Such a view has had profound repercussions, both as it relates to population growth and the opportunities which are open to women for education, work and equal treatment. The enactment of the new Ley General de Población, which will be discussed more fully below, was a step toward eliminating the negative effects of machismo. The Congress is presently considering a constitutional amendment which guarantees the equality of women with men. So, much is being done to mitigate the effects of machismo in contemporary life.

C. A Brief History of Government Policies and Actions

As we have mentioned above, until very recently the policies of the Government favored population growth. The roots of this pro-natalist position can be found to extend back to the period immediately following the Revolution. It was during that period that the conditions were ripe for the attitudes which were pro-natalist in nature to flourish. There was a vast territory to occupy and little population to accomplish the task. Under the circumstances, a pro-natalist policy was indispensable to the development of the country. In essence, the policy adopted reflected to a degree what the Argentine Alberdi had stated years before that "to govern is to populate." But the desire to increase the population did not focus solely on increasing the birth rate. Many of the problems which were undertaken were designed to protect the new life by constructing roads and drainage systems, bringing potable water to the towns and providing clinics and dispensaries. Methods were sought to improve the health of the population. Out of these efforts came decreases in the rates of mortality and maternal/infant death and, as shown previously, life expectancy was increased.

The foregoing somewhat explains the premises upon which the enactment of the first Ley General de Población (1947) was based. It is essentially a pro-natalist document. It grants to the Secretary of the Interior the power to take the steps necessary to resolve national demographic problems. Listed among the types of demographic problems requiring solution is that of the desire to bring about an "increase in the population." Article 5 of the law indicates that the natural growth of the population should be promoted by adopting "measures to encourage marriage and increase the birth rate."

The departure from this growth-oriented policy has been recent and sudden. As late as 1969 President Echeverría was heard to say during his campaign for office:

I do not know whether Mexican mothers understand the effectiveness of the contraceptive pill. What I do know is that we need to populate our country.... We do not want to control our population....¹³

Within three years the Ministry of Health announced the initiation of a family planning program in ten states, and the Instituto Mexicano de Seguro Social (IMSS) decided to undertake similar programs. In February 1973 a new Sanitary Code was adopted. Among its provisions is one authorizing the presentation of family planning information and education through the public health channels.¹⁴ Later in 1973, the Instituto de Seguro y Servicios Sociales para los Trabajadores del Estado (ISSSTE) began to make family planning services available to its members.¹⁵ Thus, it has been acknowledged that family planning is an inalienable right to be exercised by the parents, who are free to determine the number and spacing of the children they wish to have. The duty of the Government lies in making the necessary information and means available to the Mexican families who wish to practice family planning.

In the light of these developments, it was inevitable that the 1947 General Law on Population would have to be revised. In September of 1973, President Echeverría submitted to the Congress an initiative proposing dramatic alterations in the law. It had become ever more apparent that the philosophy of the earlier law was sorely outdated and that Mexico needed a demographic policy which corresponded with the country's contemporary development needs, that is, one which was designed to rationally regulate and stabilize population growth so as to make the best use of Mexico's human and natural resources.

13

Cited in José Cornejo, "The Law and Population Study in Mexico," Population and the Role of Law in the Americas, pp. 43-45 (Law and Population Monograph No. 18, 1974).

14

Código Sanitario de 26 Febrero 1973, Arts. 34-37, Diario Oficial, March 13, 1973.

15

For more detailed accounts of the Government agencies' statements on family planning, see J. Cornejo, note 13 above, pp. 45-46.

The new General Law on Population became law in January, 1974. Among the more important changes brought about by the law is the creation of a National Population Council which will serve to coordinate and implement decisions taken on the subject of demographic planning. Broad powers are also given to the Secretary of the Interior, among these being:

- to adjust programs of economic and social development to the needs created by population structure, distribution and dynamics;
- to institute family planning programs through the education and public health services of the public sector, and to supervise these programs, and others in the private sector, to the end that they fulfill the goals of the legislation;
- to influence population dynamics through education, public health, professional and technical training and child welfare centers, and to obtain the participation of all in the solution of problems;
- to ensure the planning of urban population centers and the acquisition of effective public services for them.¹⁷

In this manner the foundation has been laid upon which the structure of the "demographic revolution" will be placed.

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Diario Oficial, January 7, 1974.

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For the complete text of Chapter 1 of the Law see Appendix B.

II. LAWS DIRECTLY AFFECTING FERTILITY¹⁸

A. Contraception

1. Use, Manufacture, Sale or Advertisement of Contraceptives

The laws affecting contraceptives are undergoing a process of reform. At the beginning of 1973, a new Sanitary Code was enacted.¹⁹ More liberal than the former one, its legal significance, at least in regard to some of its provisions, has not been defined. This is particularly true for the provisions regulating contraceptive practice.

At present there are no legal prohibitions against the manufacture of contraceptive devices. Until a short time ago such production was only permitted under the classification of menstrual cycle regulators (oral contraceptives) and disease preventatives (condoms). A few years ago foreign pharmaceutical companies were permitted to compete freely with domestic companies in the production of contraceptives. But now foreign businesses that want to operate in Mexico must meet the requirements of foreign investment schemes which arise in part out of a desire to promote and protect domestic industry. Among the stipulations to be complied with is that at least 51 per cent of the capital invested be Mexican and that the number of foreign technicians employed by the business not exceed 10 per cent of the establishment's personnel.

Incentives to encourage local manufacture of contraceptives have been established which grant import tariff exemptions on materials used in the manufacturing process to those businesses which in turn export a high percentage of their products.

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At the beginning of these sections describing the laws relating to population, it is perhaps wise to briefly explain the nature of the Mexican legal system. In short, the Mexican system differs somewhat from the Common Law systems which are based on precedent. Within the system of the law, an act which is not performed according to the legal requirements has no legal force. That which is not expressly prohibited is permitted; in the case where interests conflict it is necessary to seek a judicial interpretation. The Mexican Constitution establishes a federal system, which is governed by three distinct branches, the executive, the legislative and the judiciary. The various States are obligated to execute federal laws, to respect the civil acts performed in other States, and to assist the other jurisdictions in criminal matters. States are free to legislate on civil, penal and fiscal matters which do not encroach on federal interests. And they generally lend assistance in carrying out federal programs, such as those which deal with public health and education. Before a piece of legislation can become law, it must course through five stages: the initiative (proposal), debate, legislative approval, executive approval, and official publication.

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See note 14 above.

Production and quality requirements are controlled by the Ministry of Health, and imported products must also meet the standards demanded by that agency.

Although the importation of contraceptives is not forbidden, the high tariffs and the complicated lengthy administrative procedures which must be suffered in order to secure a permit gradually contribute to making the importation of contraceptives an unattractive practice.

At the present time the process of acquiring an import permit is two-tiered. Permission must be gotten from the Ministry of Health and Welfare and the Ministry of Industry and Commerce. The latter has the power to block the importation of contraceptives on the grounds that it threatens domestic industry. Recent experiences have shown that this "permit" procedure can last as long as six months. Presumably, if the Ministry of Health and Welfare should want to import contraceptives for use in its own program as a means of satisfying the needs that would be created by a national campaign to promote their use, the delays would be few and easily overcome because the Executive Power would actively expedite the matter.

Once the proper permission has been obtained and the product has reached customs, a tariff is applied as follows: condoms--50 pesos plus 100 per cent ad valorem (which must amount to a minimum of 97 pesos per kilo) plus 10 per cent; intrauterine devices--110 per cent ad valorem. To these tariffs are added, of course, the fees for the customs agencies and other expenses implicit in the process of importation. (The tariffs and procedures mentioned above are applied to all manufactured products entering the country.) This tends to make contraceptives costly to the consumer. In some cases, raw materials can be imported, under lower tariffs, for the manufacture of the final product locally. In such events, the cost is much less than that of the finished contraceptives imported into the country.

The Ministry of Industry and Commerce determines the maximum price for sale of contraceptives to the public, taking into account the profit margin for the producer, the distributor, the salesman, etc. Maximum sale prices authorized at the present time are 1 peso for a condom, 15 to 30 pesos per cycle for the various brands of birth control pills, and 12.50 pesos for intrauterine devices (the price for a new IUD inserter may run as high as 78 pesos).²⁰

Oral and injectable contraceptives are considered dangerous drugs and are theoretically to be sold only under a doctor's prescription. In fact, however, they can be freely bought, even without a prescription, in almost all pharmacies. Several experts in the Ministry of Health and Welfare have

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Twelve pesos are the equivalent of one U.S. dollar.

announced that they are prepared to undertake pilot programs in which para-medical personnel will be trained to furnish these contraceptives under medical supervision.

Intrauterine devices have to be inserted by personnel with gynecological-obstetrical experience, but there is no regulation that limits insertion only to titled doctors. Indeed, under the recently enacted Sanitary Code, para-medical personnel are to be trained to insert IUDs.

Condoms and foams do not require a prescription, but according to the personnel of the Department of Drug Control of the Ministry of Health and Welfare, these contraceptives must be registered with the Department if they contain lubricants or spermaticidal substances. Once these contraceptives are approved, their sale is not legally restricted to pharmacies, as is the case with the methods that require a doctor's prescription.

The shipment of contraceptives by mail to distributors and doctors is allowed. But the shipment of samples of oral contraceptives, IUDs and condoms by mail to potential consumers is totally prohibited.

Advertising or announcements relating to oral or injectable contraceptives, IUDs and other "potentially dangerous" contraceptives is allowed only when addressed to doctors and when the contents have been approved by the authorized department. Hence, this type of advertising cannot be directed to the public in general. Information on the use, contra-indications and side effects of contraceptives must be included with the product or advertisement. Until a short time ago, this prohibition encompassed condoms, foams, and other types of contraceptives which are locally applied. During the time when this study was being completed, the first advertisement of a contraceptive foam product was made in the daily newspapers in Mexico City. This seems to indicate that the authorities are now eliminating the restrictions on publicity and contraceptive methods which do not require a prescription.

Since there are no regulations pertaining to the display of contraceptives, it is not uncommon to find them exhibited on counters in specialty stores or in pharmacies.

In 1972 the attitude of the Mexican Government changed from seemingly tolerant indifference to active participation when it completed and put into effect plans for diverse referral services through the health centers and government hospitals belonging to different government agencies, such as the Mexican Institute of Social Security (IMSS), the Social Security and Services Institute for Government Employees (ISSSTE) and the Ministry of Health and Welfare (SSA).

The IMSS planned to incorporate a program of family planning services into all of its centers by the end of 1974, offering such services to 20 per cent of the population who came under the jurisdiction of the Institute.

By 1976 it is hoped that the percentage of the population reached through this program will increase to 30 per cent. Under the scheme, IUDs, pills, condoms and other forms of contraception will be supplied to eligible persons in accordance with the judgment and diagnosis of a doctor. The ISSSTE has outlined a similar program designed to offer similar services to an additional 4 per cent of the population. Finally, the Ministry of Health and Welfare, which together with private institutions constitutes the main source of family planning services for approximately 61 per cent of the population, is in the throes of preparing to make family planning a component of the program in all of its health centers.

Medical examinations and contraceptives will be supplied at a total cost of 5 pesos per person, with exceptions for those who cannot afford this amount. It is estimated that family planning services through public health channels will reach 12 per cent of the national population. Therefore, it is possible that through the efforts of the SSA, IMSS, ISSSTE and private institutions, upwards of 50 per cent of the inhabitants of the country will have access to family planning services in the immediate future.

2. Dissemination of Family Planning Information

Publications on population problems are now freely disseminated. The establishment of a system of education relating to family planning and population has recently been made one of the goals of the Government. Both the new General Law on Population and the Sanitary Code contain provisions designed to achieve this end. Prior to the enactment of the new legislation no courses regarding sex education were taught in the primary and secondary schools. Under the scheme established by the new laws, particularly the Sanitary Code, the Ministry of Health and Welfare and the Ministry of Public Education are to work together to design a basic course on family planning for use in the schools.

It will essentially be the responsibility of the newly established National Population Council to conduct a broad informational campaign. But because the policy shift has been so recent, many of the programs are still in the planning stages.

B. Abortion

Except when performed under the circumstances described below, the practice of abortion is proscribed by the laws both at the state and federal levels. This proscription is based in large measure on value which Mexican jurisprudence has placed on protecting the "product of conception."²¹ According to the Federal Civil Code, the embryo is given legal protection from the moment of conception. Because of this provision,

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Código Civil del Distrito y Territorios Federales, Art. 23. (Hereinafter Código Civil).

the human embryo is vested with a legal personality prior to birth. While this particular Code provision is, in a strict sense, only applicable to the legal possibility of the fetus inheriting or receiving legacies and gifts once born, its import is made clear when read in conjunction with the Penal Code which defines abortion as any act which causes "the death of the product of conception at any time during pregnancy."²² Thus, the law elevates the rights of the fetus over the rights of a person to use one's body as one deems necessary.²³

The Federal Penal Code sets out varying degrees of punishment for the practice of abortion: one to three years imprisonment for anyone who performs an abortion with the consent of the woman; three to six years imprisonment in cases where the woman's consent is lacking; six to eight years imprisonment if the abortion is brought about by physical or moral violence;²⁴ six months to a year's imprisonment for a woman who performs or consents to abortion, if there are mitigating circumstances (honoris causa) or one to five years if any of the mitigating circumstances are absent.²⁵ The conditions which constitute honoris causa are if the woman does not have a bad reputation, if she has hidden the pregnancy, or if the pregnancy is "illegitimate."

Punishment is more severe if the person who performs the abortion is a doctor, surgeon or midwife. In such an event, the person is also suspended from the practice of his profession for a period of 2 to 5 years.²⁶

Most of the State laws make the same types of distinctions for the purposes of punishment. They distinguish between women of good and bad reputation and between hidden pregnancies and those that are socially acknowledged. Minimum sentences for women vary from three days to three months' imprisonment in Jalisco to from 1 to 6 years in Veracruz and Sonora. It is interesting to note that in the State of Chiapas the fact that a woman is poor and has many children (socio-economic indications) may be taken into account in levying the lower penalty.

22

Código Penal de 2 Enero, 1931, Art. 329 (Hereinafter Código Penal); emphasis supplied.

23

Código Civil, Art. 24.

24

Código Penal, Art. 330.

25

Ibid., Art. 332.

26

Ibid., Art. 331.

The practice of abortion is permitted in two instances: (1) when the pregnancy is the result of rape (violacion);²⁷ and, (2) when the diagnoses of at least two doctors concur in the fact that continuation of the pregnancy represents a threat to the woman's life.²⁸ In the latter case, the doctors must also find that it is possible to perform the abortion and that the procedure will not endanger the patient.²⁹ If the abortion is the result of unintentional carelessness on the part of the woman, i.e., when the product of conception is lost as a consequence of an accident, no penalty is incurred. With but a few deviations, the state laws on abortion follow the pattern set by the federal code. An exception, for example, may be found in Chiapas, where it is permissible for only one doctor to determine that an abortion is necessary to protect the life of the mother. It is necessary to stress that in the related Article in the Penal Code for the Federal District and Territories concerning therapeutic abortion (Article 334), the doctor who attends to the patient must secure the concurring opinion of another doctor before performing an abortion provided that this were possible and would not pose a threat to the patient's life--under the theory of the state of necessity.

Therapeutic abortion requires the consent of the interested party, and under certain instances (minors, etc.), that of her spouse, parents or guardians.

It should be noted that Mexican law leaves the final decision on therapeutic abortion to the only person capable of making it--the doctor, for, as Carranca y Trujillo point out, the law itself punishes members of the family who oppose and prevent the abortion when danger to the woman results from their act.³⁰

Lastly, abortion is not considered to be a part of any of the official family planning programs. The new programs are theoretically designed to avoid the necessity of women seeking abortions. The new Sanitary Code prohibits any announcement or advertising relating to the practice of abortion.

27

Ibid., Art. 333.

28

Ibid., Art. 334.

29

Carranca y Trujillo, *Código Penal Anotado*, p. 757 (1966).

30

Ibid.

C. Sterilization

No specific reference is made to sterilization of either males or females in the Penal Code of the Federal District and Territories, nor is there any found in the State Codes. Though there is a provision in the Federal Penal Code³¹ relating to the intentional infliction of bodily injury and impairment of the function of bodily organs, under the Constitution³² criminal laws must be interpreted strictly. Since there is no specific law which prohibits sterilization, it is not illegal. One of the bases for establishing the legality of sterilization is found in Article 24 of the Civil Code which establishes the precept that adults have the right "freely to dispose of their bodies and possessions," except under circumstances which would cause injuries to third parties or when the act is prohibited by some other ordinance. In view of this, only those laws and regulations which refer to surgery in general are applicable to cases where voluntary sterilization is performed. The operation may be legally performed by any practicing surgeon in any hospital, sanitarium or clinic authorized by the Ministry of Health and Welfare to attend to patients, make diagnoses and practice the various branches of medicine.

In order for the operation to be performed, the consent of the patient is required, or, in the case of a minor, that of his parent or guardian. But if an emergency requires that immediate action be taken, the consent requirement may be dispensed with. Given the fact that sterilization may affect the rights of both parties to the marriage, in the case of married persons the doctor is well advised to obtain the approval of both spouses prior to the operation, thereby ensuring that he is legally protected.

Through its regulations, the Ministry of Health and Welfare prohibits any type of publicity in support of voluntary sterilization outside of the official family planning programs.

Sterilization is clearly illegal if it is performed without the consent of the interested party when it is carried out by physical or moral violence or by deception.

D. Interpretive Conclusions

Initially, two questions arise: What impact have the laws on contraception, abortion and sterilization had to date? And, what are the implications of the present situation?

31

Codigo Penal, Art. 292, para. 2.

32

Title I, Chapter 1, Art. 14.

Contraception.

At the present time the official attitude towards the use of contraceptives is extremely favorable. Recent legislation has foreseen the need for an official family planning program and has provided for the possibility of extensive use of para-medical personnel in the distribution and use of contraceptives. The latter is a necessary precondition to the successful provision of family planning services in a country that has few medical doctors available for such programs. Nevertheless, certain other negative conditions still prevail which could act as impediments in the future. For example, while there is no evidence that local production of contraceptives cannot fill the present national demand, neither is it known whether domestic production of all types of contraceptives would be sufficient to satisfy the resulting demand if a general campaign were begun through mass media and education to stimulate interest in family planning.³³ Since family planning programs will not reach a large segment of the population, particularly those in the rural sector, in the near future, and since many couples will decide to get contraceptives from sources other than official agencies, certain types of contraceptives may have to be imported rapidly and at low cost in order to maintain adequate quantities, especially in the private commercial market. If such be the case, tariffs and present procedures governing importation could constitute a barrier to the success of the family planning campaign.

Even when adequate quantities of contraceptives can be produced locally, their high cost in the private market puts them beyond the reach of many, if not the majority of couples, some of whom do not have easy access to, or prefer not to utilize, public services. For this reason, a policy which allows relatively high prices for contraceptives to exist could constitute an obstacle to generalized acceptance of family planning in the future. Nevertheless, it is recognized that Governments at both the federal and local levels must set new tariffs and prices that will not only satisfy the possibilities for future demand, but also will protect the interests of merchants, manufacturers and distributors. It may be possible to accomplish this either by subsidizing contraceptive production or by granting free contraceptives to certain private sectors in accordance with specifically drawn regulations.

It may be premature to suppose a change in policy has occurred regarding the advertisement of contraceptives merely because of the appearance of newspaper ads concerning them. Nevertheless, it is appropriate to emphasize that a change in policy will depend on the intensity and content of the educational campaigns for family planning that will be established in the future. In order for the use of contraceptives to be generally accepted,

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At the World Population Conference it was made clear that world demand for contraceptives from the large donor agencies has already outstripped the supply.

the existing restrictions on publicity will need to be altered because they impede public access to such means. If informational campaigns stress the need to see a doctor to obtain information on the use of contraceptive methods, even the relatively harmless ones like condoms, foams, and douches, the widespread use of family planning methods could be frustrated since potential acceptors might believe that they must first see a doctor before they can use contraceptives.

Abortion.

According to the opinion of several experts who were interviewed by the authors of this study, abortion for medical reasons is rarely practiced in official institutions. The aversion of medical officials to performing therapeutic abortions in any significant number may exist for several reasons. At least three come readily to mind. First, the prevalent technical opinion among Mexican medical practitioners is that it is less dangerous to continue a pregnancy to termination than to perform an abortion, despite the fact that some negative factors might exist. Second, because Mexican law severely sanctions the practice of abortion, it is difficult to justify it under the narrow grounds afforded within the law. Third, the impact of religious beliefs upon the practice is considerable.

Nevertheless, it must be pointed out that a great number of women, and a great many doctors and midwives, do involve themselves in the process of abortion annually. They are not particularly influenced by the weight of the law. Recourse to illegal abortions in Mexico is substantial. Extrapolated calculations of hospital data show an average of about one illegally induced abortion for every five births,³⁴ while studies based on interviews, which probably underestimate the frequency, show approximately 13 induced abortions for each 100 pregnancies. One can estimate, then, that the number of induced abortions fluctuates between 325,000 and 500,000 per year.³⁵

Ignacio Mendoza Iglesias, prestigious penologist at the Escuela Libre de Derecho, observed in an interview published in Novedades, February 28, 1973, that in his opinion abortion is so frequent in Mexico that if all the crimes of this type were duly investigated, there would not be a sufficient number of tribunals to hear the cases. He also expressed the opinion that in reality abortion should not be proscribed by the penal laws because it is an act which does not disturb the social order and which has no repercussion on others. The participants do not create the

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La Evaluación del Problema del Aborto Criminal en México (Fundación para Estudios de la Población, A.C., 1969).

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Other authorities like Dr. Manuel Mateos Candádo estimate that the number of induced abortions may go as high as 600,000 per year.

same danger for others as in the case of homicide, armed robbery, or aggravated assault and battery. Rather, abortion is limited exclusively to the private individual problem of a pregnant woman. Hence, prosecution for abortion is practically nil. In the Federal District, for example, where it is estimated that more than 20 per cent of the illegal abortions in the country are performed, only 163 persons were accused under the abortion law in 1972. Many of those cases were dismissed for lack of evidence, and others were acquitted. In short, there are neither data nor studies that would give any support to the notion that the present law is enforced to any appreciable extent.

Doubtless, the present-day incidence of abortion is so high that it constitutes a partial restraint on the rate of population growth. An effective legal effort to eliminate abortion would contribute to an increase in the rate of population growth, unless the enforcement of the law were balanced by a supremely successful campaign to promote the use of family planning methods. On the other hand, if abortion were to be made legal, its effects would not be obvious, for it might not result in an increase in the rate of abortion. It is a fact of life that many people who wish to have abortions get them in spite of the laws. Consequently, legislation might not contribute to a substantial decrease in the rate of population growth.

Sterilization.

No case relating to sterilization has been litigated in recent years. The number of sterilizations performed both within and outside of official programs, especially on women, has increased. And vasectomies are presently being performed on men. Several doctors who were interviewed for this study emphasize the need to obtain the spouse's consent in order to avoid the risk of a lawsuit arising from injury to a third party. They also stressed the importance of being able to prove that the patient solicited the sterilization. In conclusion, there are no legal barriers which limit the offering of this operation at the present time.

Additional References

Reglamentos de la Secretaría de Salubridad y Asistencia
Tarifas Sobre la Importación

III. LAWS AFFECTING FAMILY RELATIONSHIPS

A. Prohibition against Marriage

According to Article 156 of the Civil Code the following conditions preclude the possibility of marriage:

1) Failure to meet the minimum age for marriage set by law, in the absence of a waiver; 2) Lack of consent where required, of parents, guardians or the appropriate judges; 3) Relationship of the parties through legal or natural consanguinity from a direct descendant or descendant family line which is not limited in degree; 4) Relationship through the same collateral line (brother and sister, or half-brother and half-sister) or through dissimilar collateral lines (uncle and niece, aunt and nephew); if falling within the third degree of kinship and not specifically exempted 5) Adultery, if legally proven; 6) Attempt against the life of one of the spouses in order to free the other to marry; 7) Consent to a marriage obtained by violence or fear, as in the case of rape, unless the victim freely so chooses after being placed in safety; 8) Habitual drunkenness, morphine addiction, ether addiction, undue and persistent use of enervating drugs, impotence, syphilis, madness or other incurable chronic illnesses that additionally may be contagious or hereditary; 9) Idiocy or imbecility; 10) Pre-existing valid marriage not yet dissolved; 11) Relationship between the adopter and the adopted or the latter's descendants as long as the legal adoption lasts (Article 157); 12) Unfulfilment of a waiting period of 300 days in the case of a divorced woman, unless she should give birth to a child within this period (Article 158); 13) Relationship between a guardian and the person under the guardianship until the accounts of the guardianship have been settled (Article 159).

Of these impediments to marriage, only lack of age and relationship by consanguinity in a dissimilar, collateral line are subject to exemptions.

1. Minimum Age of Marriage

The minimum age required by law for marriage is generally 14 years for a woman and 16 for a man.³⁶ There are some variations, however. In the State of Puebla, for example, the minimum age is set out as 12 years for a woman and 14 for a man. In some instances, the clerks of the civil registry have the power to exempt potential marriage partners from this legal requirement.

36

Código Civil, Art. 148.

Minors must present the permission of those who exercise parental control over them in order to marry. In their absence, permission must be granted by a juvenile judge. Thus, if a person under 18 years of age wants to marry, he must have the consent of both parents or guardians, or, in their absence, the permission of his paternal grandparents, or secondly, that of his maternal grandparents.³⁷ If none of these relatives are available, a competent family relations judge has the power to grant the consent. In the event that the above-named relatives refuse to give their permission, the minor may go before a juvenile judge, the municipal president, or, as a last resort, the Tribunal Superior de Justicia in order to obtain permission to marry.³⁸ Marriage of an individual under 18 years of age results in his legal emancipation, even if the marriage is later dissolved.

2. Bigamy and Concubinage

Bigamy is defined as a crime in penal legislation for the Federal District and Territories, as well as in the Penal Codes of the various States. The punishment for conviction for the first offense is imprisonment up to 5 years and a fine not to exceed 500 pesos.³⁹ In addition, adultery is considered one of the grounds for divorce. No specific law exists which punishes multiple free unions, and, as is shown below, the rights of a woman who is involved in such a union are very limited.

According to the data from the 1970 census, at least 15 per cent of the total couples are living in a common-law marriage situation. This percentage does not include those unions approved of only by the church which have no legal significance. When couples who are married only by religious rites are included, the figure reaches nearly 25 per cent. Still, this figure is probably a conservative estimate of the number of common-law marriages extant in Mexico. Living in a common-law relationship means the denial of certain rights which usually attach to conjugal status. With the exception of five States, the law does not grant the parties the right or obligation to support one another.

A woman living in a common-law marriage must show that she has lived with the man for five years, having publicly acted out a married life during that time or having had children by him, before she can acquire certain legal rights such as to medical attention, pension payments, or inheritances. In certain circumstances, the percentage of the inheritance that corresponds to the concubine is less than that which is normally granted to a wife, and in four States the rights of succession are specifically not acknowledged.

37

Ibid., Arts. 149-150.

38

Ibid., Arts. 151-152.

39

Penal Code, Art. 279.

Finally, a concubine may lose her rights to an inheritance and to the social benefits that certain agencies offer if it is shown that various concubines coexist or if it is made known that the man is legally married to another person. Thus, the law gives little protection to the woman who lives in a free union and affords her but few of the benefits which normally are extended to spouses, at least until the relationship has been maintained for five years or children are born of it.

B. Marriage

It can be generally stated that the official attitude of the Government of Mexico is to encourage marriage. This policy is expressed to a greater or lesser degree by incentives which attempt to promote marriage. The majority of these are analyzed in other sections of this study. The Suprema Corte de Justicia de la Nación has determined that marriage, divorce and other acts that affect the civil status of persons and that are performed in compliance with the law must be recognized in all other States of the country. Marriage, according to the Constitution, is a civil contract, though most theories on the subject point out that because it is a formal act under Mexican law it should be considered an exercise of a private right, rather than an act which creates a contract.

The law requires that persons who want to marry fill out an application in the office of the civil registry in the domicile of the betrothed woman and present the results of prenuptial medical examinations which show that neither of the parties suffers from any of the diseases classified under prohibitions against marriage. Finally, they must present proof of age and, if under age, the consent of their parents or guardians. In appropriate cases, the death certificate of the former spouse or a valid divorce decree is required before the marriage can be performed.⁴⁰

If the documentation is found to meet the requirements of the law, the marriage is legalized by an official of the civil registry and recorded.

The Ley General de Timbre prohibits the imposition of any form of tax on changes of civil status. Thus, marriage in Mexico may be had without cost, as is also the case with the registration of persons who are undergoing changes of status by virtue of divorce, birth, etc. There is, however, a small charge (12 to 15 pesos) levied for the dispatch of copies of the marriage certificate. But the charge is waived where the parties do not have the resources to enable payment. Nevertheless, when couples ask the

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See Articles 97, 98, 102, 103 of the Código Civil.

clerk of the civil registry to come to their home to perform the ceremony outside of the clerk's office, they have to pay a special rate for the moving of the clerk and the registry book.⁴¹

The law assures that the agencies of the Ministry of Health and Welfare will carry out the required medical analyses, issuing certificates without any cost to those people of scant resources who cannot meet these expenses.

C. Marital and Intrafamily Obligations

1. Interspousal Obligations

The obligations which arise as a consequence of marriage are specifically set forth in various articles of the Civil Code.⁴² As defined by law, the obligations include the following:

1) Each spouse is obligated to contribute to the success of the marriage and they are to aid each other;

2) With rare exceptions, the couple is to live together in the conjugal domicile;

3) The wife is responsible for the housework, but she may work outside of the home, if her work does not interfere with her family responsibilities or harm the morale of the children. (A husband may legally oppose his wife's working if he proves that it infringes upon any of the legal duties of the wife);

4) Each of the spouses is obliged to act as legal representative for the other in the event that one is prevented from performing his/her legal duties;

5) The husband must support his wife and family and meet all the costs of maintaining his home; but if the wife has her own property or if she works, she may contribute to family expenses provided that her share does not exceed half the costs. (If her husband is incapacitated, she is then accountable for all the expenses).

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In the Federal District, for example, the charge for performing a marriage outside of the clerk's office is 300 pesos; the charge increases to 500 pesos if the marriage is performed outside of the jurisdiction of the office of the particular clerk of the civil registry. So there is a special charge for marriage for those people who desire that the ceremony be performed with greater family intimacy or because of certain social obligations.

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Código Civil, Arts. 162-177.

Two types of matrimonial systems exist in Mexico: sociedad conyugal⁴³ (all goods are jointly owned by both spouses), and separación de bienes⁴⁴ (each of the partners has absolute control over his or her own property without interference from the other). It is possible to change from one system to the other after the marriage has taken place, provided there is mutual consent, or the spouse who is in charge proves that the other does not manage the property adequately, or if the partner who is managing the property is in danger of bankruptcy.

Any family may set aside property which is exempted from attachment under the law.⁴⁵ This property (patrimonio) may consist of the family dwelling, a piece of land, or other immovable property. The "patrimonio" belongs to the couple and is held for the benefit of those who have the right to receive support, usually their children. The maximum value which this may have is set at 50,000 pesos⁴⁶ in the Federal District and Territories. This amount varies among the States but is generally less. In Jalisco the law allows the value of the "patrimonio" to vary according to the number of members of each family.

2. Obligations Toward Children

Both parents are obligated to support their children during marriage and after its dissolution.⁴⁷ If they cannot, the duty falls on the nearest relatives. This means that they must provide them with the necessary food, clothing, housing, medical attention, and the expenses of primary education.⁴⁸ The substance of the obligation is measured relative to family income and is based on the needs of the children. Generally, unless he is incapacitated, the husband is to furnish the support. The obligation to support is placed on the wife only if she has her own source of income or if the husband is unable to work.

43

Ibid., Arts. 183-206.

44

Ibid., Arts. 207-218.

45

Ibid., Arts. 723-746.

46

Decreto de 27 Diciembre 1954.

47

Código Civil, Art. 303.

48

Ibid., Art. 308.

The obligation to support male offspring runs to age 18. It may run indefinitely if the child is unable to work. As long as they live virtuous lives, have not married, or live in a state of free marriage, and do not have their own income, female offspring have the right to support indefinitely. A child can solicit support at any age if the legal requirements are satisfied. The payment of support is given first priority and the property which guarantees it cannot be attached.

The duty of care of minors who have physical or mental defects is exactly the same, from the juridical point of view, as that of normal minors. Special medical attention for the minor is included in the obligation to support, the responsibility for which rests first on the parents, and if they or the other designated relatives cannot furnish it, the responsibility rests on the State.

Parents cannot be incarcerated for the unlawful acts of their children committed without their consent. But, as a consequence of their existing civil responsibility, they are responsible for "reparation of damages," which may result from the activities of their children. And, parents must act as legal representatives for their children.

Although the right to discipline a minor child is guaranteed, cruelty is prohibited and can give rise to the loss of parental control and to penal punishment. Also, infanticide is specifically classified as homicide.

Either spouse can lose parental control over the children as a consequence of a divorce (divorcio necesario) where the grounds have been proven. In the event of a second marriage, the new spouse does not acquire parental control over the children of the partner.

In the event of a divorce, custody of the children may be determined by either State legislation, the divorce agreement, or the final decree of the court. Generally, the question of custody can be decided in the following ways: 1) By mutual consent of the parents--the decision can be altered later by appearing before the appropriate judge; 2) When the dissolution of the marriage is decreed by a court, the judge will render a decision as to custody according to general principles of law, as applied to the specific facts of the case--usually custody is given to the spouse who is not at fault; 3) When the grounds for the divorce were related to the illness of one of the spouses, custody will be assigned to the healthy spouse; 4) Minors of 4 to 7 years, according to different State statutes, remain with their mother; if she was the guilty spouse, custody is given to the father after they have passed the statutory age.

The obligation of supporting minors, in the event that the natural parents cannot, rests first with the paternal grandparents and, second, with

the maternal grandparents.⁴⁹ If they are not in a position to aid, the parents' own brothers and sisters must furnish support.⁵⁰ The burden of support in extreme cases may fall on relatives up to the fourth degree of kinship. Those who provide support also receive the rights which accompany parental control. However, it is possible in some cases for parents to retain parental control while the obligation to support rests on others, if their disability is strictly economic. Among the most important reasons for which the relatives can be excused from fulfilling both obligations are economic disability, advanced age and bad health.

In the event that a relative appointed by law to assume obligations of support and parental control proves incapable of performance, the State is obligated to provide support, to name a suitable guardian to exercise parental control and to protect the rights and interests of the minor until he or she comes of age or is emancipated.

Abandonment is a punishable crime.⁵¹ Those who abandon a child or a sick person who is unable to care for himself can be faced with from one month to 4 years in prison and the loss of parental control, even when no injury results. The person who without justifiable cause abandons either children or spouse, leaving them without resources to attend to their needs, can be sentenced from one to six months in prison and loss of parental control. Parents who leave their children in an orphanage automatically lose parental control and the right to receive support later in life for themselves from their children. The penalties for crimes related to abandonment vary according to the State and may reach a maximum of 6 years imprisonment (Queretaro).

D. Dissolution of the Marriage Bond

1. Divorce

In comparison to other countries where the Catholic religion predominates, there is rather easy access to divorce in Mexico. A divorce may be obtained by mutual consent any time after a year has passed from the date of marriage. In addition, the law generally permits a divorce if any of the following grounds occur and is proved in court:⁵²

49

Ibid., Art. 303.

50

Ibid., Art. 305.

51

Código Penal, Arts. 335-336.

52

Código Civil, Art. 267.

1) Adultery on the part of one of the spouses (a divorce must be sought within 6 months of the date on which the innocent partner had knowledge of the fact);

2) The birth of a child during the marriage which was illegitimately conceived by another before the marriage;

3) An attempt by the husband to prostitute his wife;

4) Use of violence by a spouse against the other;

5) Immoral acts performed by either spouse with the intent to corrupt their children;

6) When one spouse has syphilis, tuberculosis or any other chronic, incurable infirmity that may also be contagious or hereditary;

7) Incurable impotence which occurs after the consummation of the marriage (sterility or infertility are not grounds);

8) Incurable mental derangement on the part of one spouse;

9) Absence from the conjugal home for more than 6 months without justifiable cause (abandonment);

10) Separation for more than a year for cause sufficient for seeking a divorce in the absence of a corresponding suit being initiated by the spouse who has left home;

11) Legal declaration of absence or presumption of death;

12) Habitual ill treatment, grave threats or injuries by one spouse against the other;

13) Denial of support (but only if the one who so denies is able to offer it);

14) Slanderous accusations by one spouse against the other;

15) When one spouse commits a crime whose penalty exceeds 2 years of imprisonment;

16) Habitual gambling, drunkenness or persistent use of drugs by one spouse; and

17) Commission of a crime against the other spouse which is punishable by more than one year in prison.

When one of the spouses has sued for divorce but does not succeed in proving the grounds charged, the other spouse may seek a divorce within a period of three months on the ground of false accusation.

None of the grounds mentioned above can be sustained if the injured spouse condones or pardons the actions of the other.

In several States, particularly in Chihuahua, incompatibility of personalities and the denial of sexual relations are additional grounds for divorce. In Chihuahua, sterility is also ground for divorce.

Divorce by mutual consent can be obtained through either of two procedures: The first is an administrative procedure. If property is not held jointly or if it has been disposed of and the couple does not have any children, the divorce negotiation may be heard before a clerk of the civil registry, by presenting the petition for divorce directly to him. The clerk is required to summon the two spouses together to attempt a reconciliation within a period of 15 work days. If no reconciliation can be achieved, the clerk may enter the information in the registry book, thereby designating the marriage bond dissolved.⁵³

The second procedure is judicial in nature and falls under the jurisdiction of the civil trial courts. In short, the judge is to summon the two persons together to attempt a reconciliation in a period of 15 days, computed from the start of the divorce proceedings. Once it appears that a reconciliation will not be reached, the judge will render a divorce judgment.⁵⁴

If the judge deems it necessary, he may, for the purpose of separating the spouses and protecting the children, place the wife in the safety of a decent home. He may also order that the husband begin payment of support and alimony and that neither of the spouses interfere with the property of the other. In the event that the woman is pregnant, the judge may take steps to ensure her care.

In cases of divorce by mutual consent, the marriage partners have no right to an alimony allowance, which is defined as food, housing, dress, medical attention and primary education for minors, unless there is a specific provision for such in the divorce agreement. In the case of divorce by judgment (divorcio necesario), if the woman is the innocent partner, she has the right to an alimony allowance as long as she does

53

Ibid., Art. 272.

54

Ibid., Art. 273.

not marry again and as long as she lives chastely; if the husband is the innocent partner, he has the right to an alimony allowance granted by his wife only if he is physically or mentally unable to work and has no other means of economic support.⁵⁵

These rights do not apply to couples who practice free marriage.

According to the various laws, a person divorced by common consent is not free to enter into a new marriage until one year from the date of the divorce. In cases of divorce by judgment, the culpable partner must wait 2 years before marrying again.

A woman has the right to enter into a new marriage 300 days from the dissolution of her previous marriage, if it was terminated for reasons other than divorce, such as annulment.

2. Separation

Legal separation becomes possible when one spouse wants to separate from the other because the latter is suffering from mental disease or some contagious or incurable physical illness. In general, the object of a legal separation is to ensure that leaving the conjugal home will not give the other spouse the grounds of abandonment as a basis for seeking a divorce. There are no legal limits to the separation period. But it will be recalled that absence for more than a year, although it be justified by the behavior or health of the other spouse, gives that spouse grounds to seek a divorce.

If the separation is by mutual agreement and no law suit is filed, the absence of either spouse cannot be considered grounds for divorce.

Legal acknowledgment of a separation is obtained by appearing before a judge competent to hear such matters.

Despite the legal separation, both spouses are under the continuing duty of support as described earlier in this section of the study.

3. Annulment

In general, the grounds which Article 235 of the Civil Code designate as providing bases for legal annulment of marriage are: 1) mistaken identity of the person with whom one contracts marriage, as when a person believes he is marrying one specific person but he ends up marrying another;

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Ibid., Art. 288.

2) if the marriage has taken place against some of the prohibitions against marriage, enumerated in Article 156 of the Civil Code;⁵⁶ 3) if the marriage has taken place without compliance with the articles of the Civil Code which refer to the documents which must be filled out, that is to say, when falsehood exists in the statements of the persons marrying, in the prenuptial examinations or in the application which serves as a basis for filling out the certificates.⁵⁷

The marriage of a female under 14 years of age or of a male under 16 years of age, which has taken place without parental consent or consent of the guardians, ceases to be grounds for annulment if the couple beget children or if, before annulment is sought, the minor reaches the age of majority.⁵⁸ Annulment on this ground can be granted if the parents or guardians request it within 30 days of having found out about the marriage.

Annulment based on coercion by violence exercised against one of the spouses must be requested within 60 days of the marriage.

The annulment of a marriage can only be granted after a trial on the matter before a competent judge.

In the case of legal annulment of the marriage, there are no alimony obligations between the marriage partners but obligations toward the children continue.

E. Other Family Relations Laws

1. Illegitimacy⁵⁹

Because legitimacy attaches to a child born to a couple united in marriage or to a couple who are married after the birth of a child, illegitimacy describes the status of a child born of a union that was never made legitimate. As such, illegitimacy is not determined by judicial decree. What is important from the legal point of view is the acknowledgment of the parents.

56

See conditions enumerated in text on page 26 above.

57

See text accompanying note 40 above.

58

Código Civil, Art. 237.

59

The law governing the subject of illegitimacy is found in Articles 354-389 of the Código Civil.

The acknowledgment of the mother that the child is hers is automatically assumed since she has given birth to it. Acknowledgment by the father can be based on his statements or on judicial decree. Either parent may register the birth in the civil registry, thereby making the acknowledgment legal. It is possible for the child, the authorities and, in some cases, the mother, to initiate legal proceedings directed toward establishing paternity. The law presumes that a child born within 180 days after a marriage is a child of that union, that one born within 300 days after a union is terminated is also a child of that union, and that one born within 300 days but after the first 180 days is a child of the second union. However, these presumptions will not apply if it is shown that sexual relations between the parties could not have taken place during the periods of time in question. Children who are a product of incestuous relationships can be acknowledged without notation being made of that fact. Offspring of 18 or more years of age cannot be acknowledged without their consent. A husband cannot refuse to acknowledge a child unless the pregnancy was hidden from him or unless he has not had sexual relations with his wife during the 10 months prior to the birth. An adult father can acknowledge his illegitimate children, unless they are born to a woman married to another man from whom the pregnancy was not concealed and who agrees to acknowledge them. A woman married to a man who is not the father of her child cannot bring suit against the biological father, unless she has hidden the pregnancy from her husband and he refuses to acknowledge the birth. If he has acknowledged the child, the mother of the child cannot disclaim the father as long as he may live. Finally, it is forbidden for either a man or a woman who has acknowledged an illegitimate child to bring him home without the consent of the other spouse.

A child who is acknowledged has the right to be supported, the right to the use of his parents' name and the right to his parents' inheritance. In short, a child who has been acknowledged has all the rights of a legitimate child. In addition, parents have the right to receive support later in life and to inherit from illegitimate offspring that they have acknowledged provided they acknowledged them during the period when the child still had the right to receive support from them.

The civil registry does not make a distinction between the legitimate and the illegitimate. Nevertheless, in some cases the absence of the father's name makes the status of the child fairly clear. This is of the greatest importance, since under these conditions a child does not have the right to claim support or inheritance from his natural father. The only way to acquire these rights is to file and successfully prove a paternity claim.

2. Adoption⁶⁰

A parent can turn a child over to an orphanage or similar institution and thereby renounce parental control over the child, as well as other family rights. That institution, acting as guardian for the child, can then authorize legal adoption. Information regarding the identity of the biological parents and the adoptive parents is privileged information. In the adoption certificate only the names of the adoptive parents and the institution appear.

In the Federal District and Territories, the right to adopt is granted to any person over 25 years of age, providing that he is at least 17 years older than the person he wants to adopt, that he has sufficient income to meet the expenses of the person adopted, that he can demonstrate that the adoption will benefit the adoptee, and that he, himself, is of good character. For an adoption to be carried out, the consent of the following is required: the person who exercises parental control over the child, the institution in the case of anonymous adoptions, the person who wishes to adopt the child, and the adoptee if over 14 years of age. The adoption can be revoked by the mutual consent of all authorized participants in the adoption, or, if the person adopted is of legal age, by agreement with his guardian. Ingratitude on the part of the person adopted is one of the grounds for revoking an adoption.

Many States of the Republic impose stricter requirements. Several of them insist that the adopter be at least 30 years old; others set the age at 40. Several States also demand as a requisite that those adopting not have any children of their own.

The adopted child has the same rights to support and inheritance from the adoptive parents as would their own children. The adopters exercise parental control over the adoptee and confer their name on him. However, if they did not relinquish the child to an orphanage, the biological parents retain the right to half of his legacy; the other half goes to the adoptive parents.

F. Interpretive Conclusions

Each one of the areas of law explored in this section may have an effect on population dynamics, but knowledge concerning the exact nature and extent of many of these effects will have to be assessed in future studies. We can, however, sketch out some preliminary conclusions.

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The law controlling adoption is found in Articles 390-410 of the Civil Code.

Marriage.

The facility with which one can marry is probably a pro-natalist incentive, particularly for young people. Statistics show that 35,000 births occur annually in Mexico to mothers who are between 12 and 14 years of age, and 640,000 births to mothers between the ages of 15 and 19, although it may be impossible to determine how many of these births issue from legally established unions. This tendency could be decreased by increasing the minimum age required for marrying, though in that event free marriage might be encouraged among young people who are too young for legal marriage.

Of course, other factors as, for example, the measures taken by the Social Security program and others that grant a form of dowry to persons who have been enrolled in the Social Security program for three or more years, tend to encourage marriage for the 25 per cent of the population who are covered. However, this example should be analyzed from another point of view: It could encourage postponing marriage until the three years of seniority has been reached, and thus have an anti-natalist effect. Nevertheless, in order to get this money under the present scheme, it seems that most of the people affected either live in a free marriage until they have fulfilled the three-year term or they marry again after the three-year term is up.

The effect of the popularity of free marriage on the population is still not known. One supposes that this type of union, due to the little stability that it offers, could lead to lower fertility, though it has also been claimed that the desire to have children by each companion with whom an individual lives can lead to a birth increase. Available population data on this point is scant and inconclusive, but what data exist seem to corroborate the second hypothesis.⁶¹ Nevertheless, up to now it has not been possible to definitively confirm the probable population impact that would result from discouraging free unions.

Support.

Legal precepts on the protection of personal property, which through marriage create an inviolable, non-seizable family patrimony coupled with the obligation of support between spouses, can be seen as potential pro-natalist factors since, at least theoretically, they assure a stable economic situation leading to marriage and birth. Nevertheless, whether in reality many couples do take these legal protections into account in making decisions on such intimate subjects, must be studied. And, if these legal guarantees have any meaning, given the economic reality that confronts a large part of the Mexican populace, the subject is ripe for study also.

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See Raul Benítez Zenteno, "La Situación Demografica de América Latina y en Particular la de México" (Facts presented at a Special Meeting of the Mexican Association of Faculties and Schools of Medicine, Tepoztlán, Morelos, 1967).

The opinion exists that participation of women in industry and in the different areas of production tends to reduce fertility. In the case of Mexico, the participation of women in the labor force is relatively low since only 19 per cent of the female population of fertile age and only 15 per cent of married women are working. This low rate of women participation in the labor force is likely due to age-old tradition and lack of job opportunity for women in Mexico.

There are no data on the number of support judgments, but interviews with several judges who deal with family matters lead to the conclusion that these procedures are relatively frequent, especially in cases where the children seek support from their parents, or vice versa. It also appears that among the poorest sectors of the population, it is a common tendency to hand children over to relatives who are in a better condition to maintain, help and educate them, and that these situations are generally resolved without recourse to the law. It is not known, then, what the effect of these laws may be on the population phenomena. It could be supposed that aid received from persons outside the nuclear family, who share in the rearing of children or who cover their expenses, could encourage fertility. However, whether this relationship exists in Mexico, and whether the existence of these laws affects the thinking and reproductive behavior of Mexican couples in an important way, are questions that remain unanswered.

Divorce.

Equally unknown are the population effects of laws that govern divorce in the country. Some demographers have suggested that stability of marital unions brings as a consequence more sexual relations and, therefore, more fertility. It is argued then that in those systems in which divorce is accessible to the population and much utilized, the desire to have children from new unions increases, resulting in higher fertility. But, it is also possible to reach the contrary conclusion: that in those systems in which divorce is extremely difficult to obtain, married couples obliged to live together even when there is no longer any mutual interest would engage in fewer sexual activities, hence lower fertility. It is difficult to foresee which of these hypotheses would be proved true if divorce were more frequent in Mexico. The only certain thing is that in spite of the fact that divorce is now relatively simple, it is not sought often by married couples. To what degree this situation reflects a true stability, and why divorce is not sought more often, still cannot be evaluated because of lack of facts and thorough studies in that area. One of the factors may well be the influence of the Catholic Church.

Finally, of all the laws considered in this chapter, the only ones that appear to be anti-natalist are those that specify the length of time that must transpire before entering into a new marriage after the

termination of the former one. Nevertheless, it is the opinion of several legal experts that not only is its observance, but also actual prosecution in the event of violation, unusual. Furthermore, they are of the opinion that the legislators were only trying to protect the identity of the paternity of the child born after the marriage bond was dissolved and, for this reason, an effective punishment has not been applied.

It is also possible to conclude that many couples under certain circumstances prefer to participate in free marriage in order to avoid legal complications during the time required by the law to formalize their marriage. Thus, the potential anti-natalist effect of these ordinances has not been observed to this date.

Abandonment.

It is unlikely that precepts related to the protection of abandoned persons and physically or mentally disabled persons, as well as those concerning guardianship have any significant effect on fertility or on population increase, unless it be alleged that many of these individuals would die but for such protection. The number of persons covered by these laws is not great, but these precepts are necessary from the humanitarian point of view.

The abandonment of children or marital partners occurs frequently, but in the majority of cases is never reported, and the search for the guilty parties would be a burden that the prosecuting authorities could not easily assume. At any rate, necessary data for judging the effect of the frequency of abandonment on population dynamics do not exist. It could be alleged that it is as much a pro-natalist phenomenon (it is an incentive to the establishment of multiple homes, to have children, and afterwards to abandon them) as an anti-natalist phenomenon (the instability could favor a smaller number of sexual relations and, therefore, fertility would be lower). The true interpretation will have to be obtained from a more detailed investigation.

Illegitimacy.

Laws that protect illegitimate children probably have an effect on the stability of marital unions, and stability, in turn, could have an effect on birth rate. Nevertheless, in the case of Mexico no data exist that can clarify either the degree of the impact of the law on stability or the nature of the effect of stability on fertility.

Adoption:

Finally, adoption laws do not seem to affect fertility in any important way. Adoption is not very common, and experts agree that most of the time

it occurs informally as an arrangement within the family. A great proportion of adoptions are arranged extra-legally by doctors, intermediaries and persons directly involved, in part to avoid paper work and legal transactions, or perhaps for the purpose of hiding the adoption for reasons of convenience, social motives or expediency. Even if some aspects of the law that make legal adoptions difficult were eliminated, it would probably not have much effect on fertility since there are few couples who would choose to adopt a child rather than having one of their own.

Additional References

Constitución Política de los Estados Unidos de México
Código de Procedimientos Civiles para el Distrito Federal y los Territorios
Códigos Civiles de los Estados
Jurisprudencia de la Suprema Corte de la Nación (1917-1965)
Reglamentos internos de los Registros Civiles

IV. LAWS GOVERNING PUBLIC HEALTH, WELFARE AND EDUCATION

A. Public Welfare

Although the Government does not offer economic incentives per se to families based on the number of children they have, certain private enterprises, particularly the banking and finance sectors, use such a criterion in determining an employee's starting salary. An employee may benefit from the fact that he has up to three dependent children; no additional consideration is given for having more than three children. The Government does, however, participate in a number of programs whose aim is to promote the general welfare. Among these are programs to subsidize and control prices of basic commodities. For example, CONASUPO acquires large quantities of basic food articles and sells them to the public at prices which make it possible for the economically deprived sectors of the population to acquire them.

1. Housing

For some time now the labor laws have placed an obligation on owners of industrial operations that have more than 100 employees or are located more than 3 kilometers from urban centers to supply housing for their employees. At the same time the Government was developing various programs for the construction of rural housing. Nevertheless, for several reasons, principally economic in nature, these laws and programs were not effectively carried to fruition. It is estimated that less than 5 per cent of the employers in the country who come within the scope of the law complied with the requirement. Nor were the State programs developed to any great extent.

At the beginning of 1972 these laws were repealed by the law that created the Instituto Fondo Nacional de la Vivienda para los Trabajadores (INFONAVIT), which was based on the provisions of the new Ley Federal del Trabajo. According to this new legislation, the employers of approximately 3,000,000 of the nation's workers are obligated to contribute an amount equal to 5 per cent of the salary of each employee to INFONAVIT. The Institute is to use this fund to offer sufficient credit to those workers who wish to acquire homes and to channel financing for the construction of new housing units at relatively low cost. The employee is free to also apply his credit toward a home which was not built under the INFONAVIT program. The employee assumes possession of the housing unit and liquidates his debt over a long period of time at lower rates of interest than those legally charged by private finance companies. At least 60 per cent of the units constructed by INFONAVIT are destined for lower income workers. Though their price varies little from the cost of units built by the private sector, their quality and the low interest rates will make them attractive to those of scant economic resources.

During the first year of its development, INFONAVIT ambitiously planned to construct 55,000 homes, more homes than the total number constructed the

previous year by both the public and private sector. It is estimated that this institution will succeed in housing 5,000,000 families during the next 25 years. Most of these housing units are planned to accommodate the average Mexican family, which has from 5 to 7 members, with priority given to those families who are presently living in unhealthy conditions.

A complex system has been developed for determining the preference with which the requests of persons with inadequate housing are to be treated. Among other factors, the ages and size of the worker's family enter into the order of priorities. The system tends to favor requests from families which have six members, the model on which most of the units are built.

The Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado (ISSSTE) and other similar institutions that attend to the needs of approximately 650,000 workers also supply mortgage loans to their members, at very low interest rates, for the acquisition of housing. In addition, these programs construct approximately 15,000 housing units per year for sale to their eligible members. We should point out, nevertheless, that when credit is to be granted through these programs, the number in the family is not a relevant factor in the decision, rather it is based on the seniority of the employee.

2. Maternity Benefits

As was stated above, there is no government program that offers direct economic incentives for having more children. However, working mothers are guaranteed maternity benefits. The benefits include medical attention, the legal right not to have to perform heavy or unhealthy work, paid leave of absence for six weeks prior to birth, plus six weeks with pay for rest and care of the newborn child following birth.⁶² This last period may be extended up to sixty additional days at 50 per cent of one's salary, if medically necessary. The law also decrees that a Mexican woman may return to her job after giving birth at any time during a period of one year from the time she has given birth. The employer is obligated to pay the wages during a maternity leave.

During the period she is nursing, a working mother has the right to two daily rest periods of thirty minutes each during work hours for the purpose of feeding her child.⁶³ The Instituto Mexicano del Seguro Social (IMSS) is required to offer day nurseries for children under 4 years of age. All the

62

Constitución Política, Art. 123(A) (V); Ley Federal de Trabajo, Art. 79.

63

Ibid.

female employees of government institutions, non-centralized organizations, and State agencies have the right to place their children in these nurseries. The Ministry of Health and Welfare also offers day nursery service to persons with low economic income, especially to women who are self-employed like market vendors or who render personal services in private homes.

The wives and children of men affiliated with the institutes named above are also granted free medical services, as well as medicine, milk and a small basket containing basic items for each child.⁶⁴ These benefits are supplied independently of the number of children born. The share paid by the worker is proportional to the salary he receives.

3. Social Security

a) Pensions

Several public institutions which grant social benefits provide for old-age insurance. Since the IMSS program serves as a representative example, we shall analyze that program, which grants benefits to eligible members over the age of 65 who have made at least 500 weekly contributions.⁶⁵

The amount of the pension varies according to the salary, and is calculated on a percentage: 35 to 45 per cent of salary plus an additional 1.25 per cent for each year of service beyond the first ten years. The higher percentages are used for those who drew the lower salaries. The law grants an additional increment of 15 per cent in the pension for a spouse or common-law wife⁶⁶ and 10 per cent for each child. In the absence of descendants, there is a possibility of acquiring an increment of 10 per cent for each ascendant relative who is dependent on the employee. The pension plus the increments may not exceed 85 to 100 per cent of total salary, depending on the years of service.⁶⁷ According to Article 75 of the Ley del Seguro Social, the portions of the pension for dependent ascendant relatives continue until their death; those for children continue until they have reached 16 years of age and are able to support themselves or until they are 25 years of age if they are studying, or indefinitely if they are unable to work.

64

Ley del Seguro Social, Art. 56.

65

Ibid., Art. 72.

66

For the requirements of a common-law wife see text at page 28 above.

67

Ley del Seguro Social, Art. 75.

There is also an optional retirement plan for employees who are between 60 and 64 years of age but who have made at least 500 weekly contributions to IMSS. In those cases, the pension varies between 75 per cent (for those who are 60 years old) and 95 per cent (for those who are 64 years old) of the old-age pension which would have corresponded to the insured if he had retired at 65 years of age.

b) Disability Insurance⁶⁸

Disability insurance is designed to cover an insured person who has been partially or totally incapacitated by a non-work related illness or accident, and who has made a minimum of 150 weekly contributions. He has the right to either a temporary or a permanent pension (on the same terms as those that apply to old-age pension), medical assistance, family subsidies and support aid, provided that he did not intentionally cause his disability, that it did not result from the commission of a crime, or that it was not incurred prior to his affiliation with IMSS. Once permanent disability has been ascertained, the amount of the pension is established at between 70 and 80 per cent of the employee's salary, the maximum amount corresponding to the lowest salary levels. Partial disability is computed proportionally to the pension payment for total disability. In cases involving disability through work accidents, the insured will receive 100 per cent of his salary plus the other forms of assistance which were cited above for a period of temporary disability.

In the event of partial or total disability, workers who are not covered by the IMSS scheme may demand from their employers either a salary equal to what they would have received for 1,905 days of work, or their reinstatement in a position which is appropriate to their disability.

c) Life Insurance

Persons affiliated with IMSS who have made at least 150 weekly payments are covered by insurance for their death, if it results from causes other than work. The pension of a surviving spouse equals 50 per cent of the pension the insured would have received for non-work related total disability.⁶⁹ Each child is to receive 20 per cent of what the insured would have received for total disability.⁷⁰ If children become orphaned by both parents they may receive up to 30 per cent. The regulations grant the pension to the widow until she dies or remarries (in which case she receives three pension annuities as a final payment) and to the children

68

Ibid., Arts. 32-66.

69

Ibid., Art. 79.

70

Ibid., Art. 81-82.

as described above.

If the death of the insured results from work, his widow will receive 40 per cent of what IMSS would grant the employee for a total disability pension. Each child is to receive 20 per cent of the disability pension. The total of the pensions paid to each member of the family cannot exceed what the employee would have received as a total disability pension. If neither a spouse nor any descendants exist, ascendant relatives have a right to 20 per cent payments computed in the same way. Limitations for the duration of a pension are the same as those which were previously indicated.

An employer is required to pay two months' salary to cover funeral expenses and to pay 730 days of salary to the family members of a deceased employee who is not affiliated with IMSS who dies as a consequence of his work.

The contributions paid by the insured to IMSS which are counted toward his pension plan are computed independently of any consideration of the number of family members who depend on him. The payments amount to 1.5 per cent of the insured salary, to be paid by the employer. In the event of accident, illness, and death resulting from work, the employer alone is required to pay the premium.

4. Labor Laws

The Constitution guarantees the right to work. The right encompasses the freedom to choose the type of work one wants and its location, as long as the work is legal and does not adversely affect the rights of third parties. This implies that a person does not have to do work he does not wish to do. No one may work in Mexico without receiving just compensation for his efforts, except in special cases where the work is imposed by a court as a punishment for some criminal act. And no one may be deprived of the fruits of his labor except by judicial decree.

(a) General Principles

The maximum work day set by law is eight hours, and the work week is limited to six days per week.⁷¹ A minimum period of half an hour per work day for rest is obligatory. The maximum night shift is seven hours and that of a mixed shift is seven and a half hours. Extra work hours are paid double the normal salary, but must be limited to three hours per week. Working on holidays or on Sunday must be compensated at a rate triple the normal salary.

71

Constitución Política, Art. 123 (A) (II), (IV).

The employer is responsible for furnishing safe and healthy work conditions for his employees, as well as taking adequate measures to prevent accidents. According to the regulations established by Article 132 of the new Ley Federal del Trabajo, an employer who employs more than 100 but less than 1,000 employees must contribute towards sponsoring the technical, industrial or practical education, within the country or in a foreign country, for either one employee or one of their children who has been selected because of his aptitude; if an employer engages more than 1,000 employees he must furnish 3 scholarships. He is also under a duty to organize qualification courses or training courses for his employees.

Salaries are to be paid on the work site directly to the employee during his work hours on work days. Deductions from his salary are prohibited by law except in the following cases: 1) payment of debts contracted with the employer in advance of wages; 2) deductions permitted by employee agreement but never more than 30 per cent of his minimum salary; 3) rent payments for living quarters; 4) payments to cooperative associations and savings accounts; 5) payments of support alimony; and, 6) payment of labor dues.⁷² Debts contracted by an employee with his employer cannot be subject to interest charges. Ninety per cent of all employees in business firms must be Mexican.

A worker who has not been engaged for a specific job or for a specific period of time may not be dismissed from his job without justifiable cause, according to Article 47 of the Labor Law. If an employer unjustifiably dismisses an employee, the latter has the right to appear before a board of arbitration and conciliation and demand either his reinstatement or the severance pay corresponding to his seniority. In the event of bankruptcy, employees are considered preferred priority creditors.

The right of laborers to join unions in order to protect their interests and the right to strike are protected by the law.

The minimum salaries vary according to the cost of living existing in the different areas of the nation.⁷³ The amount of minimum salary is determined by the Comision Nacional de Salarios Minimas. The minimum wage is based on an analysis of the material, social and cultural requirements of the family. In order to fix a minimum salary, which is designed to provide an economic base for the full development of the family from all points of view, the Commission calculates the expenses of a "typical" family composed of two parents and three children under 12 years of age.

72

Ley Federal del Trabajo, Art. 91.

73

Constitución Política, Art. 123(A) (IX).

(b) Labor and Women's Rights

Generally, women enjoy the same rights as men regarding work standards. Nevertheless, the labor laws contain provisions which grant special protections for women in the labor force. For example, they may not engage in dangerous or unsanitary work, or lend their services in night shifts in industrial enterprises.⁷⁴ In addition, they may work only up to 10:00 p.m. in commercial establishments. These limitations do not apply to professionals or those who hold positions of trust in the executive and the technical fields. Women may, however, work in business establishments where dangerous or unsanitary conditions are under effective control. As mentioned above, pregnant women are not required to perform heavy or dangerous labor or to remain standing for long periods of time.

In so far as salaries are concerned, the principle of "equal pay for equal work" controls. Thus, any discrimination because of sex in salaries is forbidden.⁷⁵ The law limits the possibility for women to work overtime. But if they must do so, their employer must pay them triple their normal salary.

The statement of individual guarantees contained in the Constitution extends to all individuals equally, regardless of the sexes. Nevertheless, the law calls for "special protections" for women in the labor force under certain conditions. From the juridical point of view, these may be perceived as just privileges granted to women because of their physical nature and because of the exploitation that working women suffered in colonial times. But, from a sociological point of view, they may be seen as measures which discriminate against women,⁷⁶ as in the case of overtime work.

74

Ibid., Art. 123(A) (II).

75

Ibid., Art. 123(A) (VII).

76

Perhaps the provision of the law which best typifies the problem of discrimination against women is a paragraph in the Civil Code of Puebla, which requires a single woman to remain under the guardianship of her parents until she marries or until she is 30 years of age, unless she obtains her parents' permission to leave home for other reasons. It should also be noted that most of the provisions of the various States specify that household responsibilities are the primary obligation of a married woman.

(c) Minors⁷⁷

The Constitution forbids minors under 14 years of age to work. Fourteen and fifteen year old adolescents can work only if the activity does not interfere with their primary studies. Moreover, they must have their parents' consent and must present a medical certificate proving that they are physically able to work. Minors under 16 years of age cannot work for more than six hours, and they are forbidden to work night shifts or in dangerous or unhealthful jobs. They are not permitted to work overtime. They do, however, have the right to vacations of at least 18 work days per year. In 16 States minors under 18 years of age are forbidden to do work which is associated with public works. Minors under 18 years of age are not allowed to work in bars (cantinas) or in centers of vice, and, except under certain special conditions, are not allowed to work outside of the country. A minor who performs the same work as an adult has the right to equal pay. What a minor earns through his work legally belongs to him.

5. Citizenship and Naturalization

Mexicans acquire citizenship at 18 years of age.⁷⁸ A Mexican is defined as one who is born on national territory, or in a foreign land of Mexican parents, or of a Mexican father or mother, as is also one who is born aboard a ship or plane of Mexican registry, or any foreigner who is naturalized. The rights which citizenship confer include the right to vote and to be elected to public office, the right to form or join a political party, to take up arms in defense of the Republic, and to participate in any type of legitimate enterprise.

Foreigners, including a foreign woman married to a Mexican, who establish their residency in the Republic of Mexico, may seek naturalization according to the requirements designated by law and by renouncing the citizenship held at that time. Two types of naturalization exist: privileged and ordinary. Those eligible for privileged naturalization are foreigners who establish an industry, enterprise or business on national territory which is of profit to the nation; who have legitimate children born in Mexico; who have a Mexican blood relation in the ascending line; who are married to women who are Mexican by birth; who have settled in Mexico in accordance with the laws of land settlement; who had become naturalized Mexicans but have lost their Mexican citizenship after returning to the country of their origin; and who are Indo-Latins or Spaniards residing in the Republic.

77

Constitución Política, Art. 123(A) (II) (III) and (VI).

78

Ibid., Art. 34.

Foreigners who apply for ordinary naturalization must prove that they have resided in the Republic for at least five years without interruption, that they have been law-abiding persons during this time, that they have sources of income in Mexico sufficient for living, that they speak Spanish and that their taxes are paid up to date. The requirements of good conduct and having sources of income are also required for those persons eligible for privileged naturalization. Those who seek to be naturalized on the basis of having children born in Mexico, of being married to Mexican women and of being land settlers, must wait two years in order to be eligible to apply for a change in citizenship.

In all the cases mentioned, the interested party must hold one of the migratory statuses established by law--as described below--so that he is able to work during the waiting period of between two and five years. For this reason, foreigners who are not economically independent do not have the possibility of becoming naturalized citizens.

Generally, the pursuit of naturalization requires the services of a lawyer and the payment of a fee of 3,000 pesos for privileged naturalization and 5,000 pesos for ordinary naturalization.

6. Emigration and Immigration

The freedom of movement within the national territory is guaranteed by the Constitution of the Republic, which grants to all individuals who live in the nation the right to travel within the territory and to change residence without requiring special documents. The only limitation to this liberty is when an individual is subject to criminal or civil sanction.

Freedom to emigrate is also guaranteed by Article 11 of the Constitution. Its precepts are subject to regulation, from which are derived specific laws on emigration and immigration.⁷⁹

In the case of emigration, it should be noted that the law sets forth specific requirements which have given rise to the following policies:

- 1) That the Mexican Government should encourage the repatriation of its citizens by attempting to settle them in places where they may be more useful and have a better chance for self-development (among the measures which are suggested to bring this about are the formation of agricultural settlements, the creation of new population centers, and the granting of all types of benefits to assist in the process of relocation);
- 2) That Mexican laborers who wish to work outside of the national territory must have contracts with their future employers whereby

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Ley General de Poblacion (1947), as amended in 1974.

they are granted a salary sufficient to cover their needs and those of their families while abroad;

3) That collective emigration will only be allowed when it is shown that it benefits the Mexican laborers themselves and does not jeopardize national economy;

4) That workers who emigrate must be guaranteed expenses for their return to Mexico by their employers if they are employed for less than a year;

5) That the requirements mentioned above are particularly applicable to manual laborers, but are not necessarily required in the case of professionals, artists, athletes, etc., or other occupations of considerable cultural or economic consequence, which would permit self-sufficiency while abroad.⁸⁰

Numerous restrictions exist regarding immigration. There are two existing options for immigrating into the country. The first, the status of non-immigrant, means that authorization is granted for a temporary stay only. The non-immigrant cannot receive permission to remain in the country for a long period of time or to carry on any economically gainful activities. In order to change this status one must either obtain naturalization through one of the steps described earlier in this section or change his migratory status in the manner described below. The different categories for non-immigrant are: tourist, in transit, visitor (a migratory status which permits temporary work exclusively), political asylum and student.

The second option is that of immigrant. After holding a migratory status for five years, one may acquire the status of immigrant, which grants to the holder the right to an indefinite stay in the nation and participation in all lawful activities. Among the requirements needed for the status of immigrant are any of the following: 1) having a source of income outside the country which is sufficient to maintain one within the nation--if one is not going to devote himself to profit-making activities; 2) engaging in a profession which is needed in Mexico; 3) fulfilling an administrative post in a Mexican company or in a public institution; 4) develop technical projects necessary for the nation's development; 5) living as an economic dependent of another immigrant or a Mexican; or 6) having married a Mexican or having children born in the country.

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These clauses containing five of the requirements governing emigration do not appear to have been affected in any significant way by the new Ley General de Población.

Authorization to enter the country can be denied to a foreigner if he or she does not have a stable economic position, has committed a crime, is a drug addict, practices prostitution, propounds foreign political systems, or does not know how to read and write if over 15 years old. The Ministry of Interior [la Secretaría de Gobernación] can limit immigration through nationality quotas, migratory classifications, and restriction of economic activities to foreigners. The Ministry can, as well, deny entrance or a change in migratory status in the absence of reciprocity or in the interest of national population balance.

As can be noted, except for the status of visitor, none of the other non-immigrant statuses allow one to work. This makes it difficult for foreigners with little economic means to remain in the country for a prolonged period of time. On the other hand, those who hold visitor or immigrant statuses that permit working can only acquire them when it is shown that the position they wish to fill cannot be filled by a Mexican.

Those who wish to apply for immigrant status because they have children born in Mexico must prove their ability to support them--which they cannot do unless they have either independent sources of income or a contract to work for a domestic company which fulfills a necessary function for the nation.

In summary, there are considerable barriers to immigration into Mexico, especially from the economic point of view. The only other existing possibility to settle in the country, without fulfilling the requirements set out above, is to enter Mexico as an agricultural settler. But no such groups have been admitted in recent years under that scheme.

Another barrier which may tend to discourage immigration is the payment of 1,286.00 pesos per person for the status of immigrant unless the person is a dependent minor or is married to a Mexican, plus 1,000.00 to 2,000.00 pesos each time there is a change of classification in migratory status.⁸¹ To these must be added the professional fees that the interested party has to pay if he requires the services of a lawyer to handle his affairs.

B. Public Health

1. Health Insurance Schemes

Health insurance programs with extensive coverages are offered by the Instituto Mexicano del Seguro Social, the Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado, and through other organizations which cover employees of the oil industry, the Treasury, and the Military.

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These duties have been increased under the terms of the new Ley General de Población, thus giving rise to an even greater obstacle to immigration.

Although the programs vary, the Social Security health program may be used as an example of how the scheme works.⁸² The Institute's medical insurance plan covers all employees who qualify by meeting the requirements set out earlier in this section, and includes the eligible member's wife, concubine, children until they reach age 16 (or age 21 if they are students or indefinitely if they are unable to work), and parents, uncles and aunts who are economically dependent on said employee.

Benefits consist of general and specialized medical services, surgery, medicine and hospitalization up to 52 weeks for the same sickness, with a possibility of a 52-week extension if needed. If the insured cannot work during his convalescence, he is granted a subsidy of 60 per cent of his salary up to 52 weeks. After 52 weeks, the subsidy may be extended for another 26 weeks if it is medically justified. The benefits are financed out of a fund created to which the employee contributes 2.25 per cent of his salary, matched by an amount equivalent to 5.62 per cent of his salary paid by the employer.

As was previously pointed out, the IMSS and other programs of the type cover approximately 25 per cent of the population. While a great percentage of the middle and upper classes turn to private medical care, medical services are offered to some 60 per cent of the population in the rural and lower economic urban sectors, by the sub-agencies of the Ministry of Health and Welfare [la Secretaria de Salubridad y Asistencia]. These health centers offer preventive and curative medicine, hospitalization, surgery and clinical treatment, and medicine at a minimum charge or free of cost if the person seeking medical attention cannot pay for it. But both the service and the available medicine are generally more limited in the public health centers than in those of the IMSS or ISSSTE.

2. Regulation of Health Care Centers

Private health establishments are regulated by the Ministry of Health and Welfare. The Ministry sets the conditions that must be met in order for a license to be issued.

Religious orders have the right to administer hospitals and clinics, and they are subject to the same conditions as other health facilities. They are not required to offer family planning services or sterilization. Neither are they denied this right under the regulations.

Private hospitals, clinics, sanatoriums, and private medical offices generally abound throughout the country, although these establishments and their medical personnel tend to be disproportionately concentrated in the most important urban areas. Private practice is also subject to the official control of the Ministry. Before a private clinic or hospital may be

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Ley del Seguro Social, Arts. 35-66.

opened it must meet the standards set by the Ministry and obtain a license. Personnel must have the necessary training to perform the functions required, and the premises and equipment must comply with health standards. Obtaining the license required to open family planning clinics, in general, has not met with opposition up to this date.

3. Public Health Program

It is the responsibility of the Ministry of Health and Welfare to carry out programs for disease prevention and for the control of epidemics. This task generally takes the form of a public health program which includes the provision of drinking water, inoculations, investigations of the origins of infection, maternal/child health care (to which is being added family planning services), training of hygienists, curative medicine and health education. The Ministry is also in charge of venereal disease control. As part of this, any person who knowingly exposes another person to venereal infection through sexual contact is committing a crime punishable with up to three years in prison and a fine of 3,000 pesos.⁸³

The maternal/child health care programs are a part of all national medical systems. The IMSS and other agencies of the type offer insured workers a supply of milk for a new-born child for a period of up to six months.

Recently, regulations concerning air, water and land pollution have been incorporated into the Sanitary Code. Definitions of intolerable contamination levels are presently being formulated. The Ministry has been empowered to restrict urban growth and to limit the creation of new housing centers, if a risk of pollution or some other public health problem will be created by the growth.

C. Education

Article 3 of the Constitution makes primary education obligatory in the Republic of Mexico. The law imposes upon parents the obligation to provide their children under 15 years of age with this level of education. It is presumed, then, that a minor who completes his primary schooling--the initial six-year period of education--before his fifteenth birthday has satisfied his Constitutional obligation.

Needless to say, secondary education is not obligatory.

Primary education for adults was offered in 175 centers during 1971-1972, and vocational education is offered to adults in certain secondary schools--officially called "Tecnicas Especiales"--as well as in some

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Código Penal, Art. 199.

private schools and other public institutions. In the country, vocational education is offered to beginners through technical training extension programs at schools specially designed for the purpose.

It is the duty of the Ministry of Public Education to coordinate the programs which are designed to combat illiteracy. In the year 1971-1972 approximately 11,000 educational centers operated under the aegis of the literacy program.

Public primary, secondary, vocational and technical education is free to students. In the preparatory schools (bachillerato) and at the Universidad Nacional Autónoma de México, the annual tuition is 200.00 pesos; the fee has been the same for more than 30 years. Textbooks are free in primary schools. Private schools at any level may charge authorized fees according to the services they grant. Private schools enjoy tax exempt status, since they assist the Government with its responsibility for national education. Approximately 65 per cent of the students attend public federal schools which are operated by the Ministry of Public Education, 28 per cent are enrolled in public state schools or local schools, and 7 per cent attend private schools.

The law does not distinguish between the sexes and, therefore, women have the same right and obligation to be educated and to obtain a primary school diploma as do men.

Population studies are generally not a part of the official curriculum, particularly in the primary grades which represent the maximum educational level attained by most students.

The Ministry of Health and Welfare [la Secretaría de Salubridad], coordinating its programs with the Ministry of Public Education, utilize mass communication to conduct programs on hygiene, public health and preventive medicine for the purpose of promoting practical knowledge in these areas. Courses on related subjects are also given in the schools, particularly at the primary level.

It should be noted that neither sex education nor information on family planning methods is offered in the official curriculum of the primary or secondary level. Nevertheless, the new Sanitary Code envisions that the Ministry of Health and Welfare will collaborate with the Ministry of Public Education to outline the basic contents of courses on family planning for use in educational programs, although it does not specify at what level it will begin. For the moment, the Ministry of Health and Welfare has disseminated posters and announcements through various means of communication as a means of encouraging responsible parenthood.

Preparation for marriage in any formal, meaningful way is almost non-existent and is limited by religious and folklore taboos.

D. Interpretive Conclusions

To a large extent the link between population growth and movement and the types of laws just reviewed is tenuous. But some of the laws which affect public welfare and health do have an impact on population. The extent of the impact will be analyzed below.

Price Controls and Subsidies.

The price controls governed by CONASUPO's program simply contribute toward setting lower purchase prices for the public in general. They do not take family size of the purchaser into consideration. It seems unlikely, therefore, that this or other similar programs have any important effect on fertility per se. What they do tend to do is to enhance the general welfare.

Housing.

The recent legislation and administrative regulations for INFONAVIT have authorized programs without precedent in Mexico. In order to attempt to judge the potential impact of these programs on fertility, it is first necessary to summarize the housing situation of the country. Of the existing 8,300,000 housing units in the country, between 37 per cent (those of one-room size) and 66 per cent are in all likelihood sub-standard. This estimate--which includes the number of units needed by newly-married couples annually but does not include housing which was previously acceptable but has now deteriorated or is ruined--increases by a minimum of 250,000 housing units per year. The annual increase in housing is approximately 200,000 to 250,000 units, but most of these are constructed by owners themselves and will be classified as inadequate from the moment of their construction. The present density per room is 5.4 persons, with 5.8 persons per living unit.

According to its blueprint, INFONAVIT's new program will have the capacity for generating up to 200,000 new housing units per year in the near future. This may reduce the annual housing deficit, but the cumulative housing shortage will probably not disappear during the next 25 years. Therefore, the great majority of those presently living in sub-standard housing units, although they may hope for improvements such as the availability of potable water, drainage facility and electricity, will continue to lack adequate housing in the foreseeable future. Eligibility for INFONAVIT, ISSSTE and other programs mentioned above extend to approximately 20 million people (INFONAVIT alone covers 15 million) of the present population of 56 million. But rural population as well as the self-employed and the unemployed are excluded from coverage.

Given these facts, what conclusions may be drawn regarding the effects of housing on fertility? First, if the people who are living in the existing housing units feel that their housing is inadequate,

then there exists a great potential market for new housing. Due to the fact that it is unlikely that the new housing programs will expand to rural areas, the desire to benefit from the programs may act as a magnet drawing the rural population to the large cities, where, with time, fertility will likely decline to a greater degree than in the rural zones.

Though, in reality, those who will acquire the housing units that these new programs will offer in the near future represent a small fraction of the population, the absolute number will be quite large. Existing policies seem to assure that most of the people who will obtain the new homes will have approximately four children per family. As a result, this may provide a stimulus to a four-child family. And, once a housing unit has been acquired, couples will not likely feel constrained in having more children if they have more space.

In summary, the housing programs appear to be potentially pro-natalist because of the probability that a relatively large family would increase one's chances of getting a home. The only element of the housing programs which counteracts this effect is the tendency to attract the rural population towards the large cities, thereby reducing the fertility rate as a secondary effect. This must be weighed against, however, the desirability or undesirability of rural-urban migration in a developing country like Mexico.

Maternity Benefits.

The present-day system of maternity benefits could be viewed as having a potentially pro-natalist effect, since these benefits are granted automatically without taking the number of existing children into account. Other benefits offered by the legislation may be considered anti-natalist in effect. For example, the day care services that are offered to female employees may act as an incentive for greater numbers of women to join the work force. This would provide an alternative role to the domestic and child-rearing role that women normally assume in Mexico. Nevertheless, some women who have both the need and the desire to work may recognize the fact that the day care services do not restrict the number of children per female employee, and therefore they might decide to have larger families than they would normally have if such services were unavailable to them. A more thorough investigation is needed to determine the true effect that day care centres have on fertility. It is also necessary to broaden the study in the area regarding women and work, since only 19 per cent of women over 15 years of age are presently working, and only 15 per cent to 17 per cent of married women are working.⁸⁴

Although there are precepts in Mexican legislation that grant special protection to women, such as limiting their working on night shifts,

⁸⁴
Census (1970)

overtime work, etc., they are not always enforced. And the equal rights with men that Mexican legislation assures to women with regard to work are not always put into practice in the face of economic realities, social custom and traditions.

Social Security.

With regard to social insurances against old age, disability, accident or death, there appears to be agreement that their availability would favor a small-family norm since parents would not need to depend on their children for future support. Nevertheless, there are other aspects of the social security system that may have pro-natalist effects. For example, the fact that an eligible person pays the same salary percentage to the Social Security fund irrespective of how many members there are in his family may encourage fertility. But how and whether people take the social security system into consideration when planning their family is not presently known.

Lastly, one of the drawbacks of these programs for social welfare is that they are restricted in the number of people covered. Only approximately 16 out of 56 million Mexicans are covered by such programs. Although it is expected that the number covered will reach 20 million by the end of 1976, taking the population increase into account, the proportion of the total population covered will not have increased very much. Furthermore, in order to be eligible for retirement and disability pensions, one must satisfy the minimum time requirement set by the various institutions. In actuality, a certain number of workers can never meet the minimum time requirement. For these reasons, it is unlikely that the programs studied will become a reality for more than 20 to 25 per cent of the total population in the near future. Thus, any effect they may have on the population growth will be equally limited.

Labor.

The system adopted for computing the minimum wage to be paid by employers in different areas of the country may have a potentially anti-natalist effect because the basis for arriving at the figure is that of a smaller sized family than what normally obtains in an average Mexican family. On top of this, although the law requires the payment of a minimum wage, the full amount is often not paid to the employee, this despite the fact that the employee has the right to use legal action to force his employer to pay this sum!

As will be analyzed in greater detail in the next section of this study, there is evidence to support the notion that the Mexican populace responds to adverse economic conditions with an increase in fertility. Therefore, such factors as the fixed Social Security payments and the fact that minimum wages are set on the basis of the requirements of a small family may--as illogical as it may seem--possibly have pro-natalist consequences.

It is the general opinion of the judges, social workers and economists who have been interviewed that child labor laws are seldom enforced, except in heavy industry. In small repair shops, stores, super-markets, etc., where contracts do not exist and where work is seasonal, it is common to find children under 14 years of age working or children 16 years of age working shifts longer than 6 hours or working overtime, etc. Due to the fact that inspection of these establishments is minimal, any action against the employer occurs only as a result of a complaint on the part of the minor himself or his relatives--complaints that are not likely to occur due to the scarcity of jobs and the need for income. Innumerable little children work in the country in the agricultural sector; in the city they work as gum vendors, doormen, shoeshine boys--activities which seemingly are not prohibited by the law in force.

The fact that the child labor law is not enforced, thus giving rise to increasing numbers of minors employed in work, may encourage the notion held by some people that children are a source of income. For this reason, non-observance of the law would be pro-natalist in effect. Whether this notion does or does not predominate, and whether income obtained by the children really equals or exceeds the cost of raising them, are questions awaiting a thorough investigation. One thing is certain: a stricter enforcement of the Federal Labor Law, with the secondary purpose of reducing fertility, must be accompanied by the offering of incentives that permit parents to cover the cost of a child's education. Otherwise, the misery among the poorest sectors will continue to increase.

Migration.

Immigration is not an important factor in population growth, no doubt because of the difficulties imposed by immigration regulations, naturalization procedures, taxes and lawyers' fees.⁸⁵ In 1972, for example, few naturalizations were authorized and the number of those who had been naturalized (2389) and those awaiting naturalization (3510) was minimal. According to the 1970 census, the total number of foreigners residing in the country was 216,663, that is, less than 0.5 per cent of the population.

It is estimated that several hundred thousand Mexicans leave the country, legally as well as illegally, each year. Most of the latter are returned by the country they tried to emigrate to. Serious attempts are not made to encourage the return of either the legal or illegal emigrants unless they are fugitives from justice. One may appreciate the importance that emigration has as an escape valve for a country whose economy does not create sufficient employment opportunities.

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The new Ley General de Poblacion indicates that immigration restrictions will be even stricter than those in the 1947 law.

The powers that government institutions possess to promote industrial decentralization, as well as to block urbanization under certain conditions, could potentially produce an impact on population. Giving tax exemptions to industries willing to relocate outside the traditional urban centres has begun to yield results, although a special study is needed to evaluate the degree of success that these programs have had to date. They have undoubtedly contributed to spreading the values of a more limited fertility --a principal effect of the modern industrialized society. The expansion of these programs must in the long run encourage these values, especially in those areas of the country that have thus far not been influenced by modern economy. If projected programs to discourage urbanization do not succeed in improving the economic condition of the vast majority of the farmers or in raising their educational level, the already high rural fertility rate will remain unchanged because the people will be kept in an environment where high fertility is the traditional rule.

Health Insurance.

To summarize, health and hospitalization insurance programs reach approximately 25 per cent of the total population.⁸⁶ Their effects on fertility, if any, are unknown. It may be argued on one hand that this system may discourage having many children due to the economic protection that Social Security offers in cases of emergency. Nevertheless, there are no restrictions placed on the number of children eligible for this service, and, also, the percentage of one's salary which is contributed to the scheme is proportional to salary and not to the number of children that one has. These factors may tend to encourage fertility. It is not known which point of view predominates among couples who have access to these programs.

Health Care.

It is not the purpose of this study to attempt a detailed analysis of all that has been accomplished in health and medicine by different public and private agencies. Nevertheless, impressive attainments in this area are clearly visible: life expectancy has greatly increased in the last decades and the mortality rate is notably declining, particularly infant mortality. But much still remains to be done. The future role of the clinics and hospitals of the Ministry of Health and Welfare is limited for budgetary reasons. There is a scarcity of medical and para-medical personnel, especially in the rural areas. The mortality rates for mothers and infants are still very high in some regions of the country. Nevertheless, these are the programs that to a great extent will determine the future, as they have the present, rate of population growth in Mexico.

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This excludes those of the population covered by the Ministry of Health, whose program is for the general public, not for eligible members who support it with payments.

Demographers indicate that over the past few decades fertility has remained relatively constant while mortality has noticeably decreased, giving rise to the sharp increase in population growth. Yet, even though these programs have had an effect on population, they must be improved if for no other reason than for purely humanitarian reasons.

Until now, very little thought has been given to how the Ministry of Health and Welfare can effectively discharge its role in restricting urban growth. That subject needs to be explored more fully.

Education.

Although primary education is obligatory, it is estimated that between 13 to 18 per cent of the child population do not have an opportunity to attend school, and only 44 per cent of those who begin their primary studies manage to complete them. In many instances, it is impossible to enforce the law, first because the economic conditions of large marginal segments of the population require that children work, and, second, because there are neither enough schools nor teachers. The existing shortages are conservatively estimated to be between 8,000 and 9,000 schools and 38,000 teachers.⁸⁷

Stricter enforcement of the law, both by compelling students to attend school and by providing adequate facilities to accommodate them, could have an anti-natalist effect since it has been demonstrated that parents who finish primary education have fewer children than those who do not. Nevertheless, the magnitude of this effect cannot be predicted with any degree of exactness. To avoid creating more problems for people of little economic means, programs whose aim is to provide more classrooms and to enforce the law will probably have to be accompanied by subsidies to families who have children in school.

At least 14 per cent of the population over 14 years of age neither know how to read or write according to the 1970 Census. And it is thought that functional illiteracy affects 40 per cent of the adult population. The total number of individuals enrolled in the literacy programs during the academic year 1971-1972 was nearly 25,000--a figure which represents but 6 per cent of those who are totally illiterate. Without doubt, many of these individuals enrolled in the programs do not complete them. Moreover, academic programs giving primary education to adults reached only 22,575 people during 1971-1972. It seems unlikely, therefore, that present literacy and adult programs for primary education will succeed in raising the educational level of a great majority of the adult population to the equivalent of primary schooling. Nevertheless, the expansion of similar projects of this type, such as the cultural development projects

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It is possible that this phenomenon is more a matter of poor distribution of teachers rather than non-existence of teachers.

and technical information projects in rural areas (which reached 300,000 persons in 1971-1972), could be considered a factor likely to have an effect on fertility in the long run, especially if instruction on family planning methods were made part of these efforts.

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V. LAWS AFFECTING ECONOMIC FACTORS RELATING TO POPULATION

The constitutional system in Mexico has established a mixed economy. Because of this the state participates in activities where public interest demands that it do so and, in general, attempts to promote a policy of social justice. Many social benefits, like those analyzed in the previous section, are obviously aimed at obtaining a more equitable distribution of income. But none of them approaches this goal as directly as the income tax provisions of the Federal law.

A. Income Tax

The Federal tax on personal income is a graduated tax, and, with one basic difference, provides for many of the types of deductions that are common in other countries. As we shall later see, the deductions which are allowed according to the number of dependent members in the family apply only to a very small portion of those who pay taxes.

People who earn the minimum wage do not pay any tax whatsoever on their income. The tax is levied, according to the scale of regional minimum wages, on earnings in excess of 1,200 to 1,500 pesos per month. The only deductions allowed from income⁸⁸ as high as 62,500 pesos per year are one of 20 per cent (general deduction) and one for proven medical expenses. There are two options for those having an annual income between 62,500 and 125,000 pesos. One can either deduct 20 per cent plus medical expenses, paying tax on what remains, at the lower rates, or one can take the 20 per cent plus medical deduction and deduct 9,000 pesos for oneself, 6,000 pesos for the spouse, and 3,000 pesos for each dependent who earns less than 6,000 pesos annually, paying tax on the remainder at a higher rate. For those with incomes which exceed 125,000 pesos there is but one option: deduct 20 per cent on the first 150,000 pesos (from 150,000 on up the tax base is 100 per cent, plus medical expenses and deductions for the spouse and dependents. The theoretical effects of this system can be evaluated from the chart that follows together with the following facts. Income is estimated in pesos per month and a New Year's gift equal to one month's salary is taken into account.

Percentages reflect the rate of total income (assuming that wages are the only income) which is paid as tax. Option 1 refers to the 20 per cent deduction, plus the deduction for medical expenses, with the tax being levied at a lower rate; Option 2 refers to the 20 per cent deduction, plus the deduction for medical expenditures and deductions for members of the family, the remainder being taxed at a higher level. Verified expenses are not included in these calculations.

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Income here is taken to mean wages. Professionals are allowed other types of deductions that do not affect the general discussion here.

MONTHLY INCOME (in pesos)	single	married no chldrn	married 1 child	married 2chldrn	married 3chldrn	married 4chldrn	married 5chldrn
1,000(No opt'n)	exempt	exempt	exempt	exempt	exempt	exempt	exempt
1,500 "	3.4%	3.4	3.4	3.4	3.4	3.4	3.4
2,000 "	3.9%	3.9	3.9	3.9	3.9	3.9	3.9
3,000 "	5.2%	5.2	5.2	5.2	5.2	5.2	5.2
5,000(Option 1)	7.4%	7.4	7.4	7.4	7.4	7.4	7.4
5,000(Option 2)	10.5%	8.8	8.0	7.2	6.4	5.6	4.8
5,500(Option 1)	7.8%	7.8	7.8	7.8	7.8	7.8	7.8
5,500(Option 2)	10.9%	9.3	8.6	7.8	7.0	6.4	5.7
6,000(Option 1)	8.3%	8.3	8.3	8.3	8.3	8.3	8.3
6,000(Option 2)	11.4%	9.8	9.0	8.4	7.7	7.0	6.3
15,000(No opt'n)	17.6%	16.7	16.3	15.9	15.4	15.0	14.6

In general, one may observe that at income levels under 62,500 pesos per year (less than 5,000 pesos per month) the system is anti-natalist and anti-marriage in the sense that even though a worker keeps having more dependents, he still pays the same percentage of his income for taxes. At the higher income levels where there are two options there is also a negative effect on marriage. Although having two or more dependent children reduces the percentage of income paid in taxes, total reductions (between 1,000 and 2,000 pesos for a wife and between 500 and 1,000 for each child) do not come near the cost of supporting a dependent in that economic strata. The same comment can be made regarding the highest levels of income, for which there is but one option. The examples cited above remain the same when other types of income such as interests, rents and investments are taken into account.

During the course of this study, an attempt was also made to determine if the tax system favors situations where the wife works. It was found that if both spouses have incomes near the minimum wage level, neither pays taxes, and they do have an economic advantage over families that have a single source of income equal to twice the minimum wage. If both earn a total income of 3,000 pesos per month, they pay approximately 47 per cent of the tax that a single worker earning 3,000 a month would pay. The chart below demonstrates various hypothetical examples:

Husband's earnings: 8,000	They pay 61 per cent of what would be paid on an individual income of 12,000 pesos.
Wife's earnings: 4,000	
Husband's earnings: 12,000	They pay 64 per cent of what would be paid on an individual income of 20,000 pesos.
Wife's earnings: 8,000	
Husband's earnings: 20,000	They pay 74 per cent of what would be paid on an individual income of 40,000 pesos.
Wife's earnings: 20,000	

As can be seen, in the higher levels, two always pay less than one, but the ratio varies according to the distribution of incomes between the tax-payers.

At the higher income levels, where there is a deduction option for dependents, the husband can deduct 9,000 pesos for himself and 6,000 for his wife. Nevertheless, if she declares an income at the level which allows deduction, she can choose to deduct 9,000 pesos for herself and her husband only loses the 6,000 pesos deduction. In summary, then, a double income has an advantage over a single income because:

1) The tax structure is graduated, and 2) A larger portion of the income may be deducted when the wife works than if she does not.

B. Property Taxes

The tax paid on rural property is determined by the unit of land, without taking into account the size of the owner's family. These are local and municipal taxes, and they tend to be relatively low.

Urban property is also regulated by the tax systems at the local and municipal levels. The amount of the tax is based solely on the appraisal of the property, regardless of the size of the family. The property tax rates are considered relatively low compared to prevailing rates in other countries.

A stamp tax is charged for transfer of goods which amounts to as much as 5 per cent of the sale price for real property and for personal property above a specified price, such as cars, etc.

There is no inheritance tax nor any tax on legacies in Mexico. When the inheritance consists of property, in some States and in the Federal District and Territories, tax is charged for transfer of ownership and can go as high as 4.6 per cent of the property value.

C. Agrarian Reform

The laws dealing with agrarian matters limit the extent to which one may own property, while the laws on land reform (la Reforma Agraria) support the principle of land to the tiller. A Mexican living in a rural area has the right to receive 10 hectares (a hectare = 2.471 acres) of fertile land, or 20 hectares if the land is not very tillable. These types of land grants are given to those over 16--or to those under 16 years of age if they have children--who do not already own land or capital in excess of 10,000 pesos (20,000 pesos in specified instances). The right to receive land is also extended to city dwellers, either married or single over 21 years of age, who are capable of doing agricultural work.⁸⁹

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Código Agrario, Art. 54 (Diario Oficial, April 27, 1954).

If land is scarce, a priority system has been worked out. Preference is given first to those having the most children; next, to those with fewer children; third, to those over 17 years of age without children; and finally, to those 16 and 17 years of age without children. Women also have the right to receive a grant of land, but each family can receive only one lot. In the event of marriage between two land settlers who respectively have their own lots, they may retain possession of both lots. Progeny intending to live independently of their parents may solicit land. Rights to these lands are lost if the owner fails to work the land over a period of two years.

D. Inheritance⁹⁰

In the event of death, the decedent's estate must first be divided in such a way as to provide for the support of the children and the surviving spouse. Once these obligations have been fulfilled, a share must be given to the parents, then to the concubine (if not married to another person) with whom the decedent had lived five years prior to dying with whom the decedent procreated children (provided that there was only one concubine), then to the brothers and sisters, and finally, to other relatives up to the fourth degree. The right to such support exists only when the person who is to receive it does not have another source of income or other, closer relatives who can grant it.

It is also stipulated that not only must the payment include support, but must also cover medical care, clothing and primary education of minors, and that this obligation continues until the recipient dies, reaches majority, or the need expires.

If the estate is greater than the amount required to make the above payments, the testator may dispose of the remainder and he may bequeath it as he sees fit and to whom he likes. If there is no will, the estate will be divided according to the rules governing intestacy. Accordingly, the law ranks the wife, children, parents, etc., in the same order which was described above as based on a consanguineous relationship--those in the same degree of relationship having equal claim. A concubine has almost the same rights as a wife.

Debts are not inherited and are settled out of the sum of the inheritance before proceeding to final probate.

Real Property which has come into the possession of the decedent as a result of agrarian reform land grant may be bequeathed to only one heir, who must take upon himself the responsibility to support the decedent's descendants until they reach 16 and his widow until she marries again or has the means to support herself. Both men and women may inherit this special type of property.

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Código Civil, Arts. 1281-1294.

E. Interpretive Conclusions

Income Tax

In summary, the income tax structure of the nation seems, at first glance, to be anti-natalist. At a level of income between 1,200 and 5,000 pesos per month, for example, those who receive the same income are taxed the same amount regardless of the number of persons dependent on them. At the higher levels, deductions which take into account the number of dependents are not proportionate to the cost of paying for the support of each person. Nonetheless, if the taxpayer does have more than three dependents and earns a high salary, these deductions tend to benefit him.

Furthermore, a tax exclusively based on individual income favors the family which has two or more incomes and so encourages the wife to work. As has been shown in other countries, this can have a negative effect on fertility.

However, it is unlikely that the net effect of the income tax structure on national fertility is of great significance because the incomes of 70 per cent of the Mexican families are so low that they are exempt from paying such tax.⁹¹ Only 2.6 per cent of the families have incomes over 5,000 pesos per month and, therefore, have the option of utilizing the exemptions for each family dependent. But it is interesting to note that the families that fall in this category tend to be the smallest ones in the country.

With respect to the impact of the tax system and the effect it has on people who have difficulty obtaining goods, another question is posed: What is the response in terms of fertility to the economic difficulties that are brought about by the tax structure and the general conditions of life? Although any seemingly "rational" consideration of the economic phenomena would appear to indicate that having more children only aggravates the poor economic conditions, the solution which many of these families arrive at is to beget more children. To what degree this "solution" can be attributed to the opinion that having more children generates more economic advantages (income potential) than disadvantages (cost of support) has yet to be determined satisfactorily.

Inheritance

None of the laws referring to legitimate succession seem to have profound effects on fertility. One possible exception is the fact that land obtained through agrarian reform can only be inherited by one person. At first glance, this requirement may seem anti-natalist, but the degree and the manner in which it affects the decisions of the rural population regarding fertility is not known. What is indeed a certainty is the fact that fertility among this sector of society remains quite high. For, in reality, the

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This according to the 1970 Census.

agrarian reform laws are not generally applied due to the scarcity of land to be distributed. Much of the land which could be granted is found in barren, sparsely populated regions anyway. Given these circumstances, it is not surprising that a high percentage of rural families either do not have land that can be developed or if they do have it, it is insufficient to support an entire family. Without a significant change in national policy regarding this matter, it is quite unlikely that the exodus from rural areas to urban centres will be appreciably affected. Nevertheless, population statistics in Mexico, as in other countries, would indicate that this internal migration will be reflected in a lower birth rate in the future.

Finally, in the present day and age, the nation is not able to provide either adequate work or income to a large sector of the population. It is estimated that 7.5 per cent of the heads of families are not employed and another 19 per cent work less than ten months of each year. In addition, some 4,000,000 rural people only have work during certain months of the year.⁹² It is also estimated that each year only 325,000 new jobs are created whereas 425,000 such jobs are needed.⁹³

As was previously noted, the effects of these circumstances have not been clearly ascertained. Apparently, having many children under such conditions is undesirable, but, in reality, people tend to respond with greater fertility than that which is found in the more fortunate sectors. For this reason, programs that encourage sources of work, especially in urban areas, and those that provide a better distribution of wealth, especially when they are accompanied by family planning projects, tend to lower the birth rate.

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93

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VI. CRIMINAL LAW AND FERTILITY BEHAVIOR

There are a number of provisions in the Penal Code which are designed to proscribe certain types of sexual conduct. Whether or not they have an impact on the population question is not readily apparent.

A. Rape

Under Mexican law there are three gradations of rape: violation (violación), rape (rapto), and statutory rape (estupro).

1. Violation

The criminal act of violation is defined in the Federal Penal Code as "having sexual intercourse with a person of either sex, by means of physical or moral violence,"⁹⁴ and is punishable by a penalty of from 2 to 8 years in prison and a fine of 2,000 to 5,000 pesos. In the majority of the States of the Republic the penalty is from 1 to 6 years. If the injured party has not reached puberty, the penalty is from 4 to 10 years and the fine from 4,000 to 8,000 pesos. Coitus with a person under 12 years of age or with any person incapable of making a conscious decision on sexual relations is defined as violation.

Penalties are more severe when two or more persons participate in the attack or when it is committed by members of the family.

2. Rape

The crime of rape is described in Article 267 of the Penal Code as the act of taking advantage of a female by means of physical or moral violence, seduction or deceit, in order to satisfy an erotic sexual desire or for the purpose of marriage, and is punishable by a penalty of 6 months to 6 years in prison and a fine of 50 to 500 pesos. If marriage takes place no penal action ensues unless the marriage is annulled. As in all sexual crimes, a person cannot be prosecuted without a complaint from the party affected or from those who legally represent her.

3. Statutory Rape

The crime of "statutory rape" is defined as having intercourse with a chaste female who is less than 18 years of age, through deceit or

⁹⁴ Código Penal, Art. 265.

seduction,⁹⁵ and in the Federal Penal Code is punishable by imprisonment of 1 month to 3 years. Several States impose more severe penalties--some as high as 4 years in prison and fines of from 50 to 500 pesos. In the case of conviction, reparation for damages consists of supporting the victim and the child procreated by such an act.⁹⁶

B. Prostitution

Prostitution appears to come within the scope of the prohibition in the Penal Code chapter titled "Offenses Against Public Morals," which classifies as a crime the act of "scandalously inciting another to carnal intercourse."⁹⁷ Such a crime is punishable by 6 months to 5 years in prison and a fine of as high as 10,000 pesos. In at least half the States of the Republic this crime is punished with a lesser penalty, generally from 3 days to 4 months of internment.

Procuring of prostitution for profit is also a criminal act.⁹⁸ One who is convicted may be sentenced either to prison terms of from 6 months to 8 years, or, if the prostitute is under age, from 5 to 10 years. This section of the Code covers both the acts of those who maintain a house or locale for the purpose of carnal commerce and of those who serve as intermediaries.

There are no laws in existence which regulate the issuance of licenses for the practice of prostitution or which require that those who practice prostitution submit to periodic medical examinations. However, the Sanitary Code and almost all the State penal codes penalize anyone who is suffering from a venereal disease, has knowledge of that disease, and still has sexual relations with another. The penalty established by the Penal Code is up to 3 years in prison.⁹⁹

C. Homosexuality

Discreet homosexuality between consenting adults is not a crime, presumably due to the legal right of adults to freely use their bodies pro-

95

Ibid., Art. 262.

96

Ibid., Art. 264.

97

Ibid., Art. 200(III).

98

Ibid., Art. 255.

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Ibid., Art. 199.

vided that they do not cause injury to third parties. Nevertheless, the exhibition of homosexual behavior in public is penalized as a misdemeanor. The initiation of a person under 18 years of age into homosexual practices, or procuring or contributing to his sexual depravity, is classified as corrupting a minor and is assigned a penalty of 6 months to 5 years in prison.¹⁰⁰ If the act is repeated to the point where the minor acquires the habit of homosexuality, the punishment can reach as high as 5 to 10 years. In most States, the laws regarding the corruption of minors do not specifically mention homosexuality, but it is considered a crime under the statute.

D. Concubinage and Adultery

Concubinage is not penalized as long as the participants are single. Where one of the partners is married, the relationship falls under the legal provision pertaining to adultery. Adultery can be punished under the criminal law with a prison term of up to 2 years in the Federal District, 3 years in some States, and the loss of civil rights for up to 6 years.¹⁰¹ But the penalty is only applied when the act is committed in the conjugal home or when it is done scandalously. It is also a crime which is prosecutable only by complaint, and the pardon of the injured party at any moment prior to conviction is ground for dismissal of the action.

E. Other Sexual Crimes

Incest is punishable by imprisonment from 1 to 6 years for the parents, if the participants are parent and child, and from 6 months to 3 years for the child. Penalties from 6 months to 3 years are imposed on siblings who participate in incestuous relations with one another.¹⁰² Penalties for the parents are a little more severe in some States, for example, 8 years in Nueve Leon and 9 in Michoacan. Children born under these circumstances may be legally acknowledged without the stigma of being registered as children of incestuous relations.

Fornication is not prohibited, except when it injures third parties or when it disturbs the peace.

100

Ibid., Art. 201.

101

Ibid., Art. 273.

102

Ibid., Art. 272.

F. Interpretive Conclusions

The possible effects of the laws considered in this section on population dynamics are difficult to appraise, although it seems that they have relatively little impact in general. It is doubtful, for example, that the potential penalty for those who are convicted of violación either deters them from committing the crime or prevents pregnancies. These are crimes of passion, not likely to be affected by the knowledge that they are punishable under the law.

Adultery

In spite of the fact that the law protects the rights of a legal wife, the establishing of a casa chica ("little house") i.e., keeping another woman besides a wife, is considered quite common. Economic conditions, which make life difficult for women with children, and a tendency on the wives' part not to make a formal complaint, make enforcement of the penal laws against adultery impossible because of the absence of accusations. Whatever the reasons for the frequency of extramarital relations, their net effect on population growth is unknown, and more study is required to evaluate it.

Prostitution

Enforcement of the laws which penalize prostitution varies. It is presumed that in many, if not all, of the large cities there exist zones where the practice is tolerated. In addition, although on occasion the laws are vigorously enforced, a survey of the jurisprudence of the Supreme Court of the nation indicates that those who practice pandering are prosecuted more frequently than the prostitutes themselves.

The influence which prostitution has on fertility is still being debated, due in part to the fact that the effects of having sexual access to several women have not been precisely calculated, and in part to the lack of data concerning the propagation by prostitution of venereal diseases which result in sterility. It is doubtful that the strict enforcement of the prostitution laws could have either pro-natalist or anti-natalist effects.

Homosexuality

The legality of homosexuality, whose frequency in Mexico is still unknown, may represent a slight anti-natalist factor. But it cannot be supposed that if the practice were strictly forbidden, homosexuals would become heterosexuals and would have children, since such a law could not possibly represent a real barrier.

Rape

The penalties for rapto and estupro, together with the requirement of

permission by the parents for the marriage of minors, in theory constitute important barriers to sexual activity among juveniles and consequently against fertility.

Nevertheless, several sociologists argue that the principal obstacle to sexual activity for middle-class girls comes in the form of social pressure from their parents and society, while in the lower class sexual activity begins at an early age and tends to lead either to matrimony, free marriage or to the termination of the relationship without formal legal action being taken against the man. It is not known whether the lack of enforcement (only 1,388 men were sentenced for these crimes during 1970) is due to reluctance on the part of women to admit to being seduced or deceived, to a general hope that intercourse will lead to a more mature relationship, or to the fear of legal proceedings. For that reason without more detailed studies into the matter, it is impossible to predict the impact on fertility of legal attempts to reduce the incidence of sexual relations among juvenile couples. Nevertheless, it is probable that an extensive educational campaign on family planning and its methods would be more successful than an attempt to stop early sexual relations outside of marriage.

Additional References

Jurisprudencia de la Corte Suprema de la Nación (1917-1965)
Código Sanitario (1973)

VII. GENERAL CONCLUSIONS

From a great variety of laws studied herein, as well as the special effort to include all relevant laws, we consider that at a minimum, the present study has succeeded in pointing out the existing legal material that may have a bearing on the population dynamics of Mexico. The greatest difficulty confronting the authors lies in characterizing the exact nature of the effects produced by these laws on population dynamics. This was so, first, because of a lack of accurate data and, second, because of the lack of resources and personnel necessary to undertake a thorough study. The need for further research has been made manifest by this study.

It should also be noted that this study was conducted without the benefit of two types of statistics: first, those reflecting the exact degree of enforcement of the various laws and related statistical evaluations; and, second, those which show the degree to which couples take the law into account when making a decision on how many children they will have. To illustrate the nature of the former problem, we shall refer to three types of law that have been studied. First, labor laws, especially those referring to minors, are generally unambiguous. However, in reality it is common knowledge that they are not enforced as strictly as they might be. For example, the employment of underage persons in certain kinds of work, totally prohibited by the law, is quite frequent. Nevertheless, data on the actual frequency of this practice is lacking. Second, one may suppose from the laws dealing with agrarian reform that every person living in the rural areas who so desires may acquire land to support himself and his family. While statistics do exist as to the number of hectares distributed per year, there are no statistics as to the quality of the land, or the number of petitions for land which are annually rejected. It is even more obvious that a large percentage of the rural population does not have any land and that those who do, have not been granted the necessary credit to make it productive. It is also public knowledge that in some areas of Mexico the land requires a great deal of investment in order to make it cultivatable and that the means to do so are lacking. Exact statistics on these matters are difficult to come by. Third, we should mention a phenomenon commonly known as "la mordida" (the bite), which refers to the unfortunate habit that some authorities have of accepting bribes from people who are seeking favors. This type of occurrence tends to create some doubts about the validity of official statements regarding the degree of enforcement of specific laws. Obviously, there are no exact statistics on the frequency of this custom, but the practice serves to weaken the intention to enforce legal ordinances.

With regard to the second problem relating to the lack of information on how the law affects Mexican couples' decision to have a specific number of children, no one seems to know whether Mexican couples are sufficiently familiar with the law and, even if they were, whether they would take this knowledge into account in making their decision.

Several proposals for in-depth studies on law and behavior are in order: First, the impact of social security on fertility. It may be noted that eligible members of IMSS make social security contributions based on their wages, regardless of the number of children they have. At first glance, the right to receive benefits from this Institute for an unlimited number of children would seem potentially pro-natalist. However, it is a fact that people covered by IMSS have smaller families than those who are not so covered. Might this be due to a built-in anti-natalism in any social security system in that where an employee pays a fixed percentage of his income into the system, his reduced income would make it more difficult to support a larger family than a smaller one, as well as make him more conscious of the cost of raising children against the benefits to be derived from the system?

Second, the impact of income tax on fertility. We have observed that most taxes are assessed without taking family size into account. Theoretically, this could place large families with small incomes in a difficult position for lack of tax exemptions for dependents. For this reason, one might venture the opinion that the tax basis in Mexico is to a great extent anti-natalist. It is necessary to note again, however, that in Mexico the "logical" result is not the rule; rather, the opposite is true --the highest levels of fertility are observed among the impoverished segments of the population!

A few additional observations may be made. Of the laws directly affecting fertility the Mexican sterilization and contraceptive laws may be characterized as anti-natalist, while abortion law is pro-natalist. The latter, however, is seldom enforced, resulting in high-risk, illegal abortion for many Mexican women.

The relatively early ages set as the minimum age for marriage are potentially a pro-natalist factor. But for reasons pointed out in Section III, it is not really known if this factor has any impact. Nor have the effects of requiring parental permission for minors to marry been thoroughly analyzed. Marriage and divorce requirements, as well as the relatively high incidence of free marriage also seem to have a possible impact on fertility, but the exact scope of this effect is not known. Furthermore, Mexican law states that one of the primary responsibilities of a married woman is the care of the home, wherein one might see a potentially pro-natalist element. But again, it is doubtful whether such a provision really constitutes an important barrier to the participation of women in the work force. The economic incentive for marriage which the Instituto Mexicano del Seguro Social offers its members only applies to about 20 to 25 per cent of the total population, but it probably serves as a pro-natalist influence for that group.

Legal responsibility for child care which extends beyond the nuclear family could be pro-natalist. But the obligation of providing primary education to the children could work to decrease fertility, although it has not seemed to do so.

The effects of enforcing the laws against abandonment and family instability, in general, have not been fully understood. It is alleged that instability itself has some pro-natalist effect, and the same comment could be made as to illegitimacy. On the other hand, adoption laws probably do not have any great impact on population dynamics.

Legal provisions governing public welfare probably have significant effects on population phenomena. This appears to be especially true with respect to the laws that govern INFONAVIT's housing program, maternity benefits, day care centers, disability and retirement or old-age pensions, minimum wages and employment protections for Mexican workers. Programs that offer medical insurance to eligible members also have definite pro-natalist aspects. The authority that the Ministry of Health and Welfare has to restrict urban growth, rarely exercised to date, was analyzed as another possibly potential influence on population growth.

The lack of positive results from the application of the law on public education must be considered a factor that encourages population growth, as do such factors as the negligible progress of the literacy campaigns and the campaigns for primary education for adults. The absolute absence of sex education at any academic level, on the one hand, and the lack of adequate information on birth control methods, on the other hand, also seem to result in pro-natalist repercussions.

In general, laws treating fiscal matters seem to contain more anti-natalist than pro-natalist elements. Nevertheless, as was previously suggested, the reaction of a large sector of the population who are faced with economic difficulties may tend to be just the opposite of what one would expect and, therefore, any definitive statement on the true effect of these laws would be premature. What is indeed needed is much more research in this area.

The consequences resulting from agrarian law seem to be at first glance, definitively pro-natalist. But, as has been pointed out, any semblance of the strict application of these laws is doubtful, and the degree to which they are applied is not known. So it is impossible to gauge their effect. At the same time, the labor law that establishes the payment of a minimum wage in the different areas of the nation could also have certain anti-natalist effects, but it is impossible to evaluate definitively the reactions of large segments of the population regarding conditions of low economic capacity. Penal laws that punish crimes of a sexual nature--adultery, bigamy, prostitution, homosexuality and rape--may have some influence on population dynamics. But neither their direction nor the magnitude of their influence have yet been measured.

In the way of final comments, one of the most important products of this study is the conclusion that there is a need to ascertain with greater exactitude, not only which laws have a potential influence on demographic factors, but also what the attitudes of Mexican couples are toward the content of these laws. Only in this way will it be possible to evaluate

what changes in the present laws are likely to produce the population effects desired by the new population policy. Naturally, one of the most important aims of future studies must be a careful examination of the possible effects of legislative reforms so that new laws will not jeopardize the welfare of social strata which are the economically weakest.

APPENDIX A

RESEARCH METHODOLOGY

At the beginning of the decade of the 1960s a relatively small group of Mexican professionals became concerned about the possible impact of Mexico's population growth on the country's socio-economic development and about the negative effects that unregulated fertility would have on some families. During recent years, many sectors of our society have become preoccupied about the same subjects. The concern has reached such intensity that the Government has initiated a program of family planning services and has encouraged studies whose objective is to gather the data needed to formulate a totally integrated population policy relating to the socio-economic development of the country.

Until a short while ago, the content of existing laws, the faulty execution of certain ordinances, and the absence of related legislation constituted, in effect, a population policy created without design. Given the recent recognition of the need for a more consciously formulated policy, knowledge about which of the present laws¹ have an effect on the rhythm of population growth and about the nature of these effects was of obvious importance. Any attempt at planning specific measures which would be designed to bring about such an integrated policy must of necessity take into account the legal factors. Upon seeing the need for a study that could supply this type of information, a group of professionals from the Fundación para Estudios de la Población, A.C., the Faculty of Law of the Universidad Nacional Autónoma de México, and the Colegio de México, met in December 1971 to work out in detail the bases for a research project whose integral phases are described in the following paragraphs.

First, a series of meetings with representatives from the three above-mentioned institutions were organized to resolve the following questions: which areas of prevailing legislation could have an impact on population dynamics and, specifically, which types of judicial and administrative decisions and decrees should be examined during the search. After much deliberation, it was concluded that with some slight modifications the Law and Population Classification Plan² properly set out the categories of law that could have demographic meaning in the Mexican context.

1

From this point on, when mentioning the law, we refer as much to legislation as to administrative and judicial decisions and decrees.

2

Morris L. Cohen, Law and Population Classification Plan, Law and Population Monograph Series No. 5 (Medford, Massachusetts: The Fletcher School of Law and Diplomacy, Tufts University, 1972).

In the second phase of the study, approximately 200 pieces of legislation, administrative by-laws, and related jurisprudence were examined by a legal expert who brought into the survey all possible laws whose content was even remotely related to population. Of course, before beginning this process, the lawyer participated in a series of sessions dedicated to finding out obvious, remote and tenuous relationships between the law and the population situation in order to make sure that any material that had value for our purpose would not be omitted. In a later investigation of many of these legislative ordinances which was realized by other technicians, no omissions were discovered and, therefore, one may conclude that the initial compilation succeeded in identifying the entire contents of the law that touch on and concern the subject of population in Mexico. During this process of compilation, the compiler pointed out the relevant passages of the laws to a typist who transferred the material onto specially prepared cards. (See example at the end of this text.) The material was classified according to its source, according to a system developed by the researchers, and also according to subject, in conformity with the Law and Population Classification Plan. The content of the law under study was noted under the heading "Observations." Due to the great number of sources that had to be analyzed and classified, this phase consumed more than a year of work.

In the third stage the more than 9,000 cards which resulted from the compilation were studied in detail for the purpose of discarding those of little importance. Thus, the 9,000 original cards were reduced to some 3,000.

The fourth phase of the study was designed to investigate the actual application of those laws which were retained after the third phase. To this end, a variety of types of data were sought, including administrative decisions taken under the authority of existing legislation, jurisprudence of the Supreme Court, the number and outcome of lawsuits, and recent statistics on education, work, housing and health.

During the fifth and last stage of the study, an interpretation of the potential effects of the laws and of their application on population was attempted.

Classification Card (Example)

Classification of Law (Federal/Local) _____ Law _____

Type (Civil, Penal, Tax, etc.) _____ Decree _____

Subject _____ Circular _____

Source _____ Regulation _____

Publication _____

Observations _____

APPENDIX B

GENERAL LAW ON POPULATION* CHAPTER 1. OBJECTIVES AND ATTRIBUTIONS

Article 1-- The dispositions of this law are of a public nature and for general observance in the Republic. Their objective is to regulate the phenomena that affect population in regard to size, structure, dynamics, and distribution in the national territory with the goal of achieving just and equitable participation in the benefits of economic and social development;

Article 2-- The Executive Branch, through the Secretariat of the Interior, will direct, promote and coordinate when necessary adequate measures to resolve national demographic problems.

Article 3-- To this end, the Secretariat of the Interior will direct and execute or when necessary foster with qualified agencies or corresponding bodies the means necessary to:

I. Adjust programs of economic and social development to the necessities posed by the size, structure, dynamics and distribution of population;

II. Carry out family planning programs through the public health and education services run by the public sector and see that these programs and those realized by private organizations are executed with absolute respect for the fundamental rights of man and that they preserve the dignity of families with the aim of rationally regulating and stabilizing the growth of population as well as achieving better utilization of the human and natural resources of the country;

III. Reduce mortality;

IV. Influence population dynamics through the systems for education, public health, professional and technical training and child welfare and obtain collective participation in the solution of their problems;

V. Promote the full integration of marginal groups in national development;

VI. Subject the immigration of foreigners to the course of action judged pertinent and procure their better assimilation in national life and their adequate distribution throughout the territory;

*

This is an unofficial translation of Chapter I of the General Law on Population published in Mexico's Diario Oficial. January 7, 1974. The other six chapters of the law deal with immigration, emigration, migration and population registration.

SOURCE: IPPF/WHR News Service 2(1): 9. February 1974.

VII: Restrict emigration of nationals as demanded by national interest;

VIII. Procure the planning of urban population centers to assure the effective provision of required public services;

IX. Stimulate the establishment of strong concentrations of national population on frontiers that are sparsely populated;

X. Procure the mobilization of the population between different regions of the Republic with the object of adjusting geographic distribution to the possibilities of regional development, based on special settlement programs for the said population;

XI. Promote the creation of towns with the aim of consolidating settlements that are geographically isolated;

XII. Coordinate the activities of the agencies of the public sector at the federal, state and municipal levels, as well as those of private organizations in order to aid the population in areas where disaster is foreseen or occurs; and

XIII. Other objectives that this law and other legal dispositions make necessary.

Article 4-- To achieve the previous article, it is the job of the agencies of the Executive Branch and the other bodies of the public sector, according to the attribution conferred by the law, to apply and execute the necessary procedures to carry out each of the aims of the national demographic policy; but the definition of norms, group initiative and the coordination of the programs of said agencies in demographic matters falls exclusively to the Secretariat of the Interior.

Article 5-- A National Population Council will be created that will be in charge of the country's demographic planning with the object of including population in social and economic development programs that are formulated within the government sector and relating their goals to the needs posed by demographic phenomena.

Article 6-- The National Population Council will be composed of a representative of the Secretariat of the Interior who will be its head and who will act as president of the same, a representative from the Secretariat of Public Education, Health and Welfare, Housing and Public Credit, Foreign Relations, Labor and Social Welfare, one representative of the Presidency and one representative from the Department of Agricultural Affairs and Colonization; the representatives will be heads of these agencies or the subsecretaries and secretary general that they designate. For each representative, a deputy who must be at the same administrative level or that immediately below will be appointed.

When there is a question on matters in the jurisdiction of other agencies or bodies of the public sector, the Council president can request that the members attend the corresponding session or sessions or name a representative to relieve them.

The Council may have the help of technical consultants and may integrate interdisciplinary advisory units that it deems necessary with specialists in demographic and development problems.

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The Programme is under the general supervision of an International Advisory Committee on Population and Law, which is on the roster of non-governmental organizations accredited to the U.N. Economic and Social Council. The Committee meets annually in different regions of the world. Its members are:

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