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Law and Population Growth in Chile

by José Sulbrandt

and

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LAW AND POPULATION GROWTH IN CHILE

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LAW AND POPULATION GROWTH IN CHILE

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FOREWORD

This work is part of the Comparative Studies Project on law and population growth, sponsored by the Law and Population Programme of the Fletcher School of Law and Diplomacy at Tufts University (administered with the cooperation of Harvard University). It is financed in sixteen countries by the United Nations Fund for Population Activities. The Project takes as its general perspective, the "legal approach" to the population problem. Underlying this perspective is the proposition that the State's policies, expressed in its laws, even when these laws pretend to be indifferent, affect population development.

Within this general perspective, the Comparative Studies Project aims at research on national legal systems and their compatibility with the principle that family planning is a basic human right, as expressed in the Teheran Proclamation on Human Rights, which was adopted by the United Nations Conference on Human Rights in Teheran in 1968. The Conference also adopted a resolution defining such a right as including also the right of couples to be properly instructed and informed about family planning.

Although the Teheran Proclamation has been used by some people as a pretext for implementing an anti-natalist policy through reform of the legislation, we are sure that the Law and Population Project, as well as the international agencies which fund the project, do not subscribe to this narrow view. For it is obvious that national population policies must be freely determined by the respective Governments, whether pro- or anti-natalist. The worthy intellectual and financial effort made by those organizations has been aimed at understanding the ways and mechanisms by means of which a basic human right may be protected and free exercise of it made effective for the human couple.

At FLACSO* we have approached this task from a broad point of view. Therefore, this monograph, which studies the problem of the relation between law and population in Chile, is designed to identify and clarify the ways and mechanisms in which the system of legal rules has affected population processes and the exercise of the couple's right to family planning.

Before preparing the monograph, the Law and Population Project of FLACSO prepared a full compilation of the laws, regulations, decisions,

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etc. which affect Chilean fertility, directly or indirectly. This compilation was presented to a special seminar at the University of Chile. The seminar was sponsored by the Ministry of Public Health, the Faculty of Juridical, Administrative and Social Sciences of the University of Chile and the United Nations Fund for Population Activities. It was held in May 1974 and attended by jurists, physicians, sociologists and demographers from both private and public organizations.

The conclusions and recommendations of this meeting are reflected in this monograph and are included herewith as Annex A. It is of interest to note that the competent authorities have made certain legal changes since these recommendations were published.

I. THE PROBLEM

During the past decades, one of the world's principal concerns has been the demographic explosion. High fertility rates, combined with the drastic fall in mortality, have caused an uncontrolled population growth, especially in the underdeveloped or developing countries. It has been stated that this growth will not permit these countries to attain a higher standard of living for their inhabitants and that it is one of the main causes of underdevelopment. From an even more dramatic point of view, it has been stated that such a demographic growth may seriously endanger the world's food supply and will lead to the exhaustion of the non-renewable resources on which humanity relies.

This somber diagnosis and prediction, especially in its extreme formulations, is not unanimously agreed. That population growth is an obstacle to economic development has been discussed and analyzed by several authors.¹ Their views vary depending on the phase or stage of development, and on the kind of economy involved.

The most controversial statements are those which claim that contemporary demographic growth is the cause of stagnation in developing countries. However, as stated by Singer, instead of a simple relation between economic development and demographic growth, the role of population growth in the economy must be studied in relation to specific stages of technological progress and the structure of the economic system of a country. Singer pointed out² that nobody denies that any human population which grew indefinitely in a finite space would have to face problems without any solution. Sooner or later, birth rate and mortality must reach a balance. However, the question remains: sooner or later?

It must be pointed out that the opportunity for accelerated natural growth is offered to each country only once. This happens when a decrease in mortality is not accompanied by a reduction of natality; when the cultural transformation which gives rise to the mortality decrease is not accompanied by a reduction in the birth rate. A cultural transformation which does lead to a decrease in natality tends to be more or less irreversible and for this reason it is advisable that the economic basis of any population policy be carefully checked before it is applied. Those who support his position conclude that demographic growth must be evaluated according to the specific conditions of each country, due to the impossibility of generalizing such simple propositions as that demographic growth is always detrimental to a country's development, or that this growth is always beneficial.

Whatever the general position on this subject may be, some basic aspects should be pointed out which show the complexity of the population problem. This will help us to place our specific problems in a proper perspective.

The population process is determined in its demographic aspect by mortality, fertility and migration processes. This means that even if all births during a certain period of time were planned births and were desired by the parents, if the mortality rate is lower than the fertility rate, and immigration is higher than emigration, then population will continue increasing. Moreover, the legal system of a country may affect not only the population's size but its composition and geographic distribution. In other words, the law may affect any of the three above mentioned processes. For instance, laws dealing with health problems, pensions and retirement, and medical services for old people, among others, affect mortality rates. Laws regulating entering and leaving a country affect its external migration, and laws which establish colonization zones or establish tax privileges for certain zones directly affect internal migration. Finally, rules regarding production, distribution and use of contraceptives affect the fertility process.

The outline on which this study is based limits it to the law's possible effects on the fertility process, which results in a severe restriction on the scope of the general subject of law and population. Obviously behind the framing of the questions is the idea that, among demographic variables, fertility is the easiest variable to operate and control.

For the purposes of this study, we shall understand by "law" not only legislation as such, but all derived legal rules like decrees, administrative regulations and court decisions. Likewise, we understand by the word "fertility" the birth rate of the population at the reproductive age. In other words, "fertility" designates the effective procreation within a population or sub-population.

Fertility, like mortality and migration, is an internal or formal variable in the demographic system and all of them are, to a great extent, socially determined and socially determining. Whenever the demographer inquires about why demographic processes behave in a certain way, he introduces himself into the frame of reference of the social sciences. It is within this social science form of reference that a formal and explicit system of rules like the legal system must be understood. Only for analytic purposes may we consider it separately from the rest of the normative and contextual system.

Before trying to identify the legal factors which influence fertility, we shall try to characterize the dependent variable's behaviour.

II. FERTILITY AND DEMOGRAPHIC GROWTH IN CHILE

Demographic growth in Chile was rather slow during the second half of the XIX century, but it increased rapidly during the first half of this century. The country's population was estimated at 1.3 million inhabitants in 1850 (based on the 1843 and 1854 censuses). In 1900 there were 3 millions; by 1930 the population had increased to 4.4 and in 1950 it reached 6.1 millions. This rapid increase was due to a strong fall in the mortality rate, caused by the extension and improvement of health services and by a set of measures introduced by the public sector, which led to an improvement in the population's standard of living. As stated by Goldsmith:

The mortality rate has considerably decreased during this century. In 1938 the rate was 22.9 per 1.000, but in 1968 it had fallen to 9 per 1.000; a fall amounting to 61%.³

On the other hand, although fertility experienced a more moderate fall than mortality in the 1960's, it did fall considerably, as shown by Table 1.

Table 1: Gross Birth Rates^{*}

Year	GBR 0/00
1900-04	44.7
1905-09	44.6
1910-14	44.4
1915-19	43.3
1920-24	42.2
1925-29	43.8
1930-34	40.2
1935-39	38.4
1940-44	38.3
1945-49	37.0
1950-54	37.0
1955-59	37.6
**1960	38.3
**1962	37.6
**1964	35.8
**1966	34.3
**1966	34.3
**1968	31.9
**1970	27.4

^{*}From Collver, A.P. "Birth Rates in Latin America." New Estimates of Historical trends and fluctuations. Institute of International Studies. University of California Berkeley, Series No. 7, 1965.

^{**}Sergio Zubicueta. Correccion del censo de 1970 y proyeccion de la poblacion al año 2.000. (CELADE, 1971).

Table 2⁴ shows the changes in age-specific fertility rates between 1952 and 1970.

Table 2

FERTILITY RATES BY FIVE-YEAR AGE GROUPS AND GROSS
REPRODUCTION RATE (GRR) IN CHILE (1952-1970)

RATES ACCORDING TO AGE (PER 1,000 WOMEN IN AGE GROUP)*

<u>YEAR</u>	<u>GRR</u>	<u>15-19</u>	<u>20-24</u>	<u>25-29</u>	<u>30-34</u>	<u>35-39</u>	<u>40-41</u>	<u>45-49</u>
1952	2.20	73.4	213.2	218.2	179.3	135.0	65.9	17.8
1955	2.38	78.1	215.4	260.2	195.2	137.8	72.4	17.7
1960	2.51	84.4	229.4	261.9	227.4	145.8	64.7	15.4
1961	2.53	85.8	226.6	264.1	235.5	145.9	61.5	13.7
1962	2.52	84.9	230.5	257.1	236.5	147.0	64.7	13.1
1963	2.48	86.5	238.9	242.3	222.4	149.7	64.4	11.6
1964	2.39	84.2	234.5	236.5	205.7	147.2	61.3	10.8
1965	2.33	84.9	228.6	231.9	191.3	148.8	60.0	10.9
1966	2.15	85.4	226.4	229.7	128.2	143.8	58.9	10.1
1967	2.10	82.9	216.1	211.2	159.8	127.5	53.9	9.3
1968	1.97	78.9	207.8	201.7	146.3	112.9	52.8	8.4
1969	1.89	78.8	199.8	193.9	139.9	103.9	49.4	8.2
1970	1.78	77.5	191.5	187.6	131.2	89.2	45.7	7.9

* Source: Sergio Zubicueta (supra), Table 34.

Although some important changes took place in the first half of the century, the more significant changes occurred in Chile as well as in other South American countries during the 1960's. These are considered as the most remarkable changes which occurred in any region of the world during that decade.⁵ Certainly, these figures reflect a basic change and cannot be attributed to differences in the quality of data. (Chile is among the countries classified by the United Nations as offering complete data about birth registrations.)

As shown in Tables 1 and 2, during the 1960's Chile showed a decrease of about 30% in its GBR (Gross Birth Rate), as well as in its GRR (Gross Reproduction Rate). Since both rates have fallen equally, it is clear that the fall in the birth rate is not the result of shifts in age and sex distribution.

Conning has pointed out that Chile tended to follow the "classic" type of fertility decrease⁶ with greater decreases among older age groups (especially after 1965), while fertility in the middle-aged group fell slowly, and that of the youngest group just a little. Taking the age-specific fertility rate in each group during the year 1960 as 100, the indexes had fallen, by 1970, to 92.77 in the case of the youngest group and to 60 in the case of the eldest. Conning rejects the idea that nuptial or health problems may explain the falls in the fertility rate. At the same time, he discounts the effect of the family planning programme, or at least, he is uncertain about its effectiveness, because the fall of the fertility rate had begun before the programme's implementation.

The most feasible explanation appears to be a change in the socio-economic structural variables. The general modernization of society, especially urbanization, industrialization and, in particular, educational phenomena have been associated with the general fall in fertility. In general, these changes involve significant transformations in woman's role in society and the necessity for smaller family groups. These, in turn, have an effect on the fertility rate.

In spite of the difficulties in identifying and estimating the causal factors, it is possible to conclude that a fall in fertility is a concomitant of modernation.

The reliability of the conclusions reached in the above studies is not a subject to be discussed in this work. However, each one of them throws some light on a complex problem. We do not know definitely whether socio-economic or volitional variables, or the implementation of concrete policies have caused the fall in the gross reproduction rate in Chile, but the evidence now available tends to establish that socio-economic variables have a greater influence. In any case, it is important to emphasize the population development pattern in Chile: a decreasing birth rate and a fall in mortality rates have appreciably reduced population growth during the last years.

This picture corresponds to the prevailing notion among social scientists, according to whom the demographic revolution is correlated with the stages in the modernization and industrialization processes. This is expressed in the following theory: pre-modern populations keep their population stability by balancing high mortality rates with a high birth rate. The modernization process, and especially the best and most complete health and nutrition techniques, lessen the mortality rate; while urbanization and industrialization press for a small family and a reduced birth rate which permits the recovery of a balance at lower, but fluctuating levels.*

The changes in the population development pattern in Chile during its modernization process have so far been achieved without important legal modifications in those areas where legislation might affect population. Existing laws, with only administrative changes, have permitted changes in general population policies, and especially in specific public health programmes. It is in this context that we must consider the question of legislation as a factor in population development, both from the point of view of its effect on decisions taken at the collective or individual level and as a pioneer and guide of social movement.

However, before dealing with the specific subject of the legal system, we shall describe briefly the public health programs directly related to human reproduction and population. Since these programs have been carried out on the basis of the scope which the law grants to administrative organizations, they constitute a complement to the legal system and, at the same time, they provide a system of concrete rules and regulations.

*In Europe the urbanization and industrialization processes started and advanced before there was a fall in the mortality rate, but even so some balance was only achieved by expelling vast population sectors to other continents in developing countries, however, mortality did decrease very rapidly during the stages previous to the industrialization process and instead of international expulsion or migration it caused a marginalization in certain sectors of the population.

III. POPULATION POLICIES AND FAMILY PLANNING

A. Lack of a National Policy

Chile has never established a definite population policy. By such a policy we understand one which includes fertility, mortality and migration problems as integral parts of the whole development process of the country. Such a policy would be viewed in the context of the whole society and should not be limited to those aspects which only affect fertility.⁷ Such a policy should have reference to: 1) human resources and life standards; 2) education; 3) employment; 4) urban and rural life; 5) natural resources and physical environment; 6) institutional social structure. To consider all these aspects in formulating a population policy and to implement it at the societal and administrative level, would be an enormous task. No wonder, then, that such a policy is still lacking.

The difficulty lies even deeper, because it starts with the problem of defining what a population policy is and possible ways of identifying it.⁸ For instance, one of the most common mistakes is to confuse health programs, specifically family planning programs, with population policies. Health programs, and especially those regarding family planning, focus on a very limited aspect within the general of subject of population, emphasizing very restrictive aspects of the problem, such as means available to the human couple for fertility regulation. This would be a technological approach to the problem. We do not intend to state that such a technological orientation is wrong, but to point out that it covers just one of the problem's aspects.

Even when carrying out health and family planning programs it must be borne in mind that motivations, attitudes, social controls and limitations of reproductive behavior have their basis in the social structure, and, therefore, the problem is concerned not only with knowledge about the means of birth control, but with motivation and social control in a specific context. Reproductive behavior, the decision to engender and to bring up children, is socially standardized conduct and therefore it is influenced and controlled, though not completely determined, by society.

The social system like other systems, imposes on individuals certain limits within which decisions must be made; individuals are placed and operate within a social structure on the basis of certain institutional arrangements. In this sense, the family institution is a set of standardized roles and statuses. These institutions are supported by value attitudes which are highly effective among the population. They express what is considered socially acceptable in a specific role and establish the corresponding hierarchies. For instance, the fact that a woman must get married and may not remain unmarried; that she has to get married early or when she is an adult; that a family must be numerous or small: these questions are expressed in value orientations,

which in turn provide motivation to carry out those roles. Besides, in order to make sure that these roles are played within the limits imposed by society, a whole system of social controls, both formal and informal, has been developed. Among the former the legal system is prominent; among the latter we find social sanctions such as interruption of the process of interaction and isolation for those persons who contravene behavioral patterns defined as acceptable.

The implications of this formulation are the following: population policies must take into consideration the above mentioned social elements having as a main goal the establishment both of alternative roles and changes in basic orientation rather than worrying about technical means. Nevertheless, we understand that the problem's urgency may sometime impose a priority in favor of technical means.

As we do not have a national population policy, we shall study the specific public health programmes developed in Chile, which are directly related to the reproductive behavior of the population.

B. Programs Developed by the Government

The first attempts at family planning were made in the years 1938-1939. Later, centers were established which assisted or gave technical advice to women who wished to regulate their fertility. However, the activities developed by these centers had a limited character, because they were not part of a comprehensive program of assistance, nor were they incorporated into the general activities of the National Health Service.⁹

Such activities were only incorporated into this Service in 1962, thereby acquiring an official character. In May, 1962, the National Health Service created a Family Protection Committee, formed mainly by professionals in the field (doctors, obstetricians, etc.) for the purpose of studying and analyzing the fundamental aspects of family planning.

This event is very significant, since the National Health Service is the Chilean institution in charge of implementing all public health programs, as well as the main provider of services within that field. It is responsible for over 80% of the hospital beds, employs about half of the country's health personnel, and serves 70% of the population.

However, the official character of the Committee was short lived, since in December 1963 the family protection programs sponsored by the organization were accorded only a subordinate position in plans of the National Health Service. However, the Committee had already become a constituent member of the International Planned Parenthood, so that, in spite of the governmental decision, its family planning activities continued to be strongly promoted, with a growing rhythm and intensity.¹⁰

Before going into the description of governmental programs developed later in Chile, it is convenient to point out the basic aspects of the population problem which brought about the institution of those programs. The first factor was the high maternal and infant mortality, and especially the problem of induced abortion which is one of the main causes of maternal mortality because of the septic conditions in which it is practiced. In the second place, the high annual population growth of 2,7% produced by the persistently high birth rates and the general decrease in mortality, had to be considered.

On this account, on 9 August 1965 an Advisory Commission on Population and Family was appointed by the Health Ministry, its main goal being the study of the demographic growth problem at family, community and national levels. The duties assigned to this Commission were to develop research, advise the Health Ministry and propose the basis for a Health Policy in population in agreement with the government's general policy.

In November 1965, that Commission issued a report, which was unanimously approved by the members of the Technical Council of the National Health Service. It contained the following general conclusions.

1. Birth regulation activities should be incorporated into the regular maternal and child health programs of the National Health Service (for the institution's beneficiaries and held within its premises).

2. Adoption of appropriate technical and administrative measures so that the carrying out of these programs, under the supervision of the service, would be compatible both with technical efficiency and the need to gain the human couple's acceptance, with special concern for individual conscience and the dignity of the family.

3. Coordination of activities by agreements with national and foreign teaching, assistance or philanthropic organizations; provided that in any event the Service would have superior responsibility (that could not be delegated) over the carrying out of such activities.

In September 1966, Circular Letter No. 21306 from the General Director of National Health Service to its Directors of Establishments, Chiefs of Hospital Areas, Directors of Zones and Chiefs of Obstetric and Gynecological Services was published. It was intended to put into effect the decisions recommended in the report issued by the Advisory Commission. This officially began the family planning program in the National Health Service, though certain experimental programs had already been developing since 1962. This document pointed out that the goals to be reached were the following:

1. A decrease in maternal mortality, seriously threatened by clandestine abortion.
2. A fall in infant mortality, caused by the deterioration of living standards of a great part of the population.
3. The promotion of family welfare, favoring responsible parenthood which will make possible, through an adequate information program, the fulfillment of the duty and right to planned parenthood.

The document also provides the basic objectives and necessary instructions for the program's achievement, the information that must be obtained and the measures to be practiced.

Later, in October 1968, about three years after the National Health Service decided to incorporate birth regulation activities into maternal assistance programs, the Service reiterated the rules published in 1966, thereby showing the Service's continuing interest in these programs.

To summarize, during the 1958-1964 period, there is a first attempt (1962) to give an official character to family planning programs. Although it was suspended the next year, the lack of an official sponsorship did not mean the elimination of activities in the field. It was in the presidential period from 1964 to 1970, that birth regulation activities were officially incorporated into the general health policies (1965) by adopting all the necessary measures for their prompt implementation. It was at this stage that family planning programs were given a firm official basis for the purpose of decreasing maternal mortality and promoting family welfare.

During the presidential period from 1970 to 1973, family planning programs were continued, but the birth regulation activities acquired a slightly different connotation, emphasizing some aspects which had not been duly considered before. This is inferred from the statements made by the General Director of the National Health Service at the Seminar for the Directors of Family Planning Programs held in Bogota (Colombia) in May 1971. On that occasion he pointed as follows:

In the first place, we clearly do not share the concept that the reduction in the number of children is a fundamental and necessary factor for family welfare and for economic and social development. At the same time, we do not allow the use of drugs untested by the Food and Drug Administration of the United States.

Regardless of the demographic policy set by the Government, the National Health Service will provide enough information and services so that any woman who desires

it may plan the number and the time when she will have her children, to lessen obstetric and perinatal risks and to contribute to the elimination of illegal induced abortion, which was the cause, in 1969, of 35% of maternal deaths, 6.1% of total hospital admissions and 17.8% of maternity ward admissions.

In any case, the emphasis of the above-mentioned activities was not placed on decreasing the number of children, but on bringing them into the world under the best conditions within the framework of family welfare.

The purpose of the birth control program which was put into practice during 1970-73 reflects a view that birth regulation is an important part of the health and family welfare problem, promoting the family's right to be informed about, and to use, the necessary means to regulate its fertility. At the same time, it clearly rejects the position that family planning is a solution to the problem of economic development.

The authorities who took power in September 1973 stated that family planning would be given a high priority. They pointed out that the family planning program, together with the nutrition program of the National Health Service are important means of contributing to raised living standards among groups at a low socio-economic level. For this reason, they are now proposing a national plan which will be directed mainly at sectors with a low socio-economic status. The plan treats zones with a low population density as marginal, while medium and better-off sectors will not be included since for reasons of education and ability to buy their own contraceptives, they need not be considered.

C. Relationship between the Family Planning Program and Fertility Decrease in Chile

In spite of the fact that Chile is among the Latin American countries which have reliable population statistics, the possibilities of measuring the general effects of family planning programs are not great. Data with regard to the acceptance of oral contraceptives is insufficient, owing to the fact that a large number of users are not included. The sale of pills does not require a medical prescription, and there is no available data about sales volume, nor about the quantity prescribed by doctors to their private patients. Moreover, within the field covered by the National Health Service there is no complete registration for the whole country regarding the acceptance of any contraceptive method. At the same time, a considerable number of women do not come in for the required periodical medical check-ups, which makes clinical histories unreliable.

However, some indicators are available to show the volume of activity.* In 1968 the number of maternal and child health clinics offering family planning service was 138; by 1969 it had increased to 170. It is estimated that about 80 additional family planning clinics were operated by other institutions, including the health services of the Armed Forces, the Police and the Employees National Medical Service.¹¹ A typical family planning clinic includes a physician (usually half-time), a midwife and an employee concerned with activities and periodic check-ups. The services are free or at very low cost to the patients.

Thus, it may be accepted that the family planning program carried on by the National Health Service and by the other public services has a national coverage, and the field left to private clinics is small.

A report issued by the National Health Service in 1968 indicated that the number of active users was 150,182, of whom 117,309 (78.1%) used intrauterine contraceptives and 32,873 (21.9%) used oral contraceptives.¹² This report pointed out that the remarkable fall in fertility between the years 1962 and 1968 was a concomitant effect; that is, it occurred at the same time as the establishment of the family planning programs.

Aside from the specific objectives which the programs tried to reach, the total effect of the programs on the fertility rate has been disputed in an excellent work by Arthur Conning.¹³ The statement that the family planning programs caused the decrease in fertility rate has been placed in doubt, because the fall began before the implementation of the programs. Thus, the organization of the program on a national scale could only have contributed to the maintenance of a tendency which had already started. This demonstrates, in Conning's opinion, the impossibility of establishing a cause and effect relationship between the birth control program and the fall in the fertility rate.

Using data about the Latin American countries in general, Conning points out that socio-economic variables show a correlation with fertility data. On this data, Conning states that these may be the causes which better explain the fall in fertility.

As Conning himself points out, there are other elements which must be considered. In the first place, in the Chilean case, the family planning programs may be considered as having achieved a national coverage, and the number of women assisted, (as compared with the total number of women between 15 and 49 years old) is also high. Secondly, the open discussion of the subject at the beginning of the 60's, and

*The evaluation of the family planning program's effect in controlling induced abortion, one of the main goals to be achieved by the program, will be analyzed later.

especially the position of a group of priests who were open-minded on birth control for the married couple, may have had the effect of reducing the religious-moral opposition.

Curiously, Conning's conclusion that socio-economic variables might be the most important factors in causing a decrease in the fertility rate, leads us to a better understanding of how family planning programs did contribute to the decrease. Conning's propositions are consistent with the theory that the demographic transition is a correlate of the general modernization process. At the same time, they are consistent with some conclusions deduced from that theory, to the effect that until socio-economic development and modernization have reached a certain level, there is no possibility of a fall in the fertility rate, and that once that level has been reached, fertility will decrease without the necessity of an organized family planning program.

The relative growth of the urban population, the corresponding decrease in the labour force engaged in agriculture, industrialization, the extension of education, and the use of new technologies are all indicators of change within the social structure. These indicators are signs of variations in the institutions, in their sense of values and in the means of social control. It is in the context of this modernized society that a new scheme of family organization and role expectations is developed. Modern structures and their corresponding value orientations provide individuals with new motivations and attitudes as to their reproductive behaviour and as to what is an optimum family size. Therefore, it is precisely in a society with this degree of modernization that a family planning program, which provides knowledge and means to individuals who are socially and psychologically well prepared for it may, and theoretically must, produce an effect.

As far as differential rates between urban and rural areas are concerned, several studies have indicated that fertility rates are generally lower in urban than rural sectors.¹⁴ In Chile, the limited and incomplete evidence available--though of an excellent quality--tends to confirm this proposition.

Chile is an example of a country which has reached a degree of modernization and a socio-economic level sufficient to produce a decrease in the fertility rate even before applying family planning programs. This structurally favorable situation acts as a framework for the undertaking of a family planning program with national coverage. In fact, as previously stated, the percentage of coverage of women in comparison with other countries, is high and it has been called a national coverage. We think that under those circumstances it is very difficult to state that the family planning program did not substantially affect the fertility rate. In this sense, we believe that, even if Conning's statements regarding the importance of socio-economic variables are valid, his extreme caution with reference to the family planning program's effectiveness, although it may have some foundation, still needs re-

statement. Possibly a special study designed to clarify the effect of such structural factors as the relation between a couple's position in the economic system and its productive behavior would be helpful in making evaluations.¹⁵

IV. LAWS AFFECTING FERTILITY

In spite of the fact that the role and influence of social rules, especially formal rules, over individual behavior has for a long time been a matter of concern in contemporary sociology, an effort to determine the general effect of legal rules on the fertility level is a technically complex task and it is practically impossible to undertake the task as a whole. Besides, the presentation of the problem in a general manner under the heading of "Law and Population" does not help us to understand the possible relationship between the two. It is necessary to consider it more specifically because there is a wide network of legal rules regarding fertility throughout the legal system. Therefore, the study should examine the following aspects of the problem:

1. Identification of norms which are presumed to affect fertility.
2. Determination of the manner in which these rules do affect fertility, by increasing or decreasing its level.
3. Consideration of the relative importance of each of these relations.

The method of analysis should be on a more or less experimental basis in which two population groups are examined which are similar except that in one case a law exists which does not exist in the other. This would bring out the difference in fertility rates caused by the law.

Another possible way would be a quasi-experiment within the same population group, analyzing it before and after the adoption of a given law, to see what changes occur in fertility.

A less rigorous though more comprehensive alternative is to make comparisons at the international level. This is the method which will be used in the World Project on Law and Population mentioned in the Foreward.

At the national level the work will produce a more limited contribution. The most that can be expected at this stage is to identify a group of rules which is presumed to affect fertility, and to examine with the evidence at our disposal the actual social conditions which are affected by these rules. At the same time, we intend to point out both the mechanism through which the rules operate and the degree to which they are implemented, striving to identify the situations which may lead to a conclusion as to the pro- or anti-natalist effect of any particular rule.

In this chapter we describe the legal rules which appear to affect fertility both directly and indirectly. These rules are widely

scattered through different codes, laws, decrees, and administrative regulations. They were issued at different times, with different purposes and they were never drafted for the specific purpose of affecting the reproductive behavior of Chilean people, Thus, these may affect fertility in opposite ways and may counteract each other. This might result in the elimination of any effect on fertility. In the Chilean legal system there are no rules or laws which embody a clear overall population policy, meaning by this a policy which embodies conscious position as to fertility, mortality and migration.

However, as explained above, this legal system has produced institutions and organizations which can undertake action programs, especially in the field of public health. In other words, the legal system has established a field within which the State has been able to develop a family planning program without encountering serious legal obstacles. At the same time, the State has delimited another field wherein the action of private citizens has been developed, since the law permits individuals to use various means to control their reproductive behavior. The determination of which methods are permitted has been left to the general administrative regulations, especially those of the National Health Service. These regulations have been the most significant legal factors in the implementation of the right to family planning.

According to the international outline established for these studies, we shall begin with the identification of the rules or laws which are directly related to fertility, both positively and negatively. We also intend to show, as far as the available information allows, how this legislation operates in practice.

In mentioning legislation, we refer to a legal rule in its widest sense, a concept which may include both a statutory law and an instruction or regulation promulgated by the appropriate administrative authority. This is especially relevant in the Chilean case, because a considerable number of topics related to the legal regulation of birth are not found in legislated statutes, but in administrative rules established by the National Health Service. This kind of regulation based on decrees and instructions is flexible in that such rules may be modified --within certain limits--by changes in the governmental public health programs.

A. Laws Directly Related to Fertility

1. Family Planning

Medical and paramedical services, as well as the manufacture and distribution of all the instruments and means necessary for family planning are covered by administrative regulations dictated by the National Health Service. The Service acts on the authority of the Sanitary Code and of its own Organic Law, which grant it the specific authorization to regulate such activities.

a. Use of contraceptives. The birth regulation program of the National Health Service offers its beneficiaries contraceptive methods, the use of which is a matter for the free decision of the couple, considering the socio-economic and cultural problems of the family. The couple receives the technical assistance of a professional staff. In general, the methods offered are those which have shown greater acceptability, harmlessness, reversibility and low cost.

There are no rules regulating the use of mechanical contraceptives, therefore any person may buy them in any drugstore without need of medical prescription.

Anovulatory drugs are the primary responsibility of the physician. He has to make a general and gynecological examination of the woman, emphasizing the search for neoplasias in the uterus; and a monthly check-up is required where the doctor can count on a midwife's collaboration. He must himself make a yearly check-up. In the past year, however, trained midwives have also been authorized to distribute these drugs and make the check-ups under the supervision of the physician in charge of the service.

Until recently, intrauterine contraceptives had to be prescribed and inserted only by a doctor and only after the same examinations required for the supply of anovulatories. A doctor also had to make check-ups a week after, at the end of the first month, and once a year thereafter. Intermediate controls were also required.¹⁶ However, since August 1974, the Ministry of Health has given broad authority¹⁷ to specially trained midwives to insert the IUD as well as to distribute oral contraceptives.

In spite of the reports prepared by the National Health Service about the number of persons receiving contraceptives and the method used, there are serious doubts regarding validity of the data, because the information is incomplete and the methods used to obtain it are inadequate. Besides, such reports do not include clinics which are not under the National Health Service's control. Another informational problem arises from the impossibility of including the private sector use of the pill, since they are sold in drugstores without a prescription.

Studies on differential fertility patterns tend to show that the more educated sectors of society make use of effective methods to control fertility, while the sectors with a low socio-economic status do less well. However, the results of family planning programs in the poorer areas of Santiago show that if the necessary means and information are provided, it is possible to obtain positive results. At the first stage the actual use of some form of contraceptive increases, and this is followed later by an increase in the use of more effective methods. Data obtained from research by DESAL²³ on family and fertility in these marginal areas in 1966-1967 shows (in spite of the fact that we have some objection to the analysis techniques of the study) that approximately

56% of women in those sectors have at some time used some contraceptive method. "Within the group which is more exposed to sexual intercourse, where the use of contraceptive methods has been studied, more than one-fourth of the women (27.6%) are using a highly effective method." DESAL's report adds: "Summarizing, we must conclude that the use of contraceptives is widely spread among women in marginal sectors."

The above may be summarized as follows:

- 1) The use of contraceptive methods faces no legal barriers.
- 2) The differential use of contraceptive methods is explained in terms of socio-economic status as well as in terms of the convictions and attitudes of the different population sectors.
- 3) Social groups which have been in contact with specific family planning programs have shown an increase in the use of contraceptives.

b. Manufacture of contraceptives. Pharmaceutical and intra-uterine contraceptives are manufactured in Chile and may be distinguished by their different commercial names. The production and registration of these products are subject to the normal regulations regarding pharmaceutical products, medical foods and cosmetics, like any other medical product. Those regulations designate the National Health Service as the organization responsible for granting the necessary authorization for the manufacture of such products. The National Health Service is also responsible for the control of the quality of these articles, notwithstanding the obligation of all the laboratories to have their own control systems. The authorization granted by the National Health Service for the manufacture of contraceptive products meshes in with the Service's own program for the country.

The above-mentioned regulations permit the National Health Service to grant authorization for the importation of pharmaceutical products. This authorization may only be granted to chemical-pharmaceutical laboratories and to legally authorized pharmacies.

The specific legal rules regarding this subject are contained in Articles 5, 7 and 14 of the Regulations on Pharmaceutical Products, Medical Foods and Cosmetics.

c. Sale of contraceptives. Sale of contraceptives to the public in general is not subject to any particular regulation. Any person may buy them in pharmacies without a medical prescription. Moreover, it is not necessary for the buyer to be of age, and no minimum age has been established for buyers of these products.

Contraceptives available to the public are both mechanical and pharmaceutical. The mechanical contraceptives to be found for sale in pharmacies are preservatives or condoms and diaphragms. Intra-uterine contraceptives (Lippes loops, copper T's) are available in polyclinics and at assistance Centers of the National Health Service, but they are not directly sold to the public.

The pharmaceutical contraceptives sold in pharmacies are of two types: anovulatory and chemical products. Among the former we distinguish oral from injectable contraceptives. Some of the oral contraceptives are the following: Novina, Norgestrin, Nordiol, Anovlar, Primovlar, etc. The available injectable contraceptives are of two kinds:

- a) Those of monthly action (Agurin, Unalmes);
- b) Those whose effect lasts three or more months (Depoprovera).

Among the contraceptives of the chemical type sold in drugstores there are different kinds of jellies, suppositories, tablets, etc.

Contraceptives sold in pharmacies are also covered by the Regulations on Pharmaceutical Products, Medical Foods and Cosmetics, which provide as follows:

Article No. 6. The distribution of the above mentioned products... will be carried out by laboratories, pharmacies and drugstores authorized by the National Health Service.

. . . .

Article No. 8. Pharmaceutical products and medical foods may be sold only in legally authorized pharmacies. An expert committee "Comisión del Formulario Nacional"* will determine which products do not require a medical prescription for their sale.

d. Diffusion of information about birth control. We cover under this heading the existing regulations regarding contraceptive publicity. In practice, this kind of product may be publicized through various means of diffusion, provided it does not contravene the rules established by the National Health Service.

The Sanitary Code (Decree with the force of law No. 725 of 1967), Title V "About Sanitary Diffusion and Education" provides as follows:

*State organ in charge of standardizing the components and sales of the most frequently used pharmaceutical and medical products.

Article 9. In advertising a pharmaceutical product only the exact and complete reproduction of the name and explanatory text which was approved at the time of authorizing its manufacture or importation may be used.

Article 12. In advertising a pharmaceutical product, words or graphics which contradict scientific truth or lead to confusion or deception may not be used. Also forbidden are the use of exaggerated expressions regarding the characteristics or effects of the product, and comparisons with similar products.

Article 53. Any kind of publication or advertisement referring to preventive or curative medicine, hygiene or to similar subjects, is forbidden if the National Health Service considers that it tends to deceive the public or to damage collective or individual health.

Article 54. Advertisement of products as medically valuable or nutritional is forbidden unless they have been expressly found to be such by the National Health Service. The Regulations on Pharmaceutical Products, Medical Foods and Cosmetics are applicable to this situation.

According to the above regulations, information about contraceptives may be publicized and it is up to the National Health Service to judge whether this publicity does or does not comply with such regulations.

2. Abortion

Chile's code is restrictive in regard to abortion. The Penal Code punishes all kinds of abortion, punishing the pregnant woman as well as the person who practices the abortion. This is expressed in Articles 342 to 345 of the Code.

Article 342. A person who maliciously procures an abortion will be punished:

1. With major imprisonment (in its lesser degree) if he uses violence on the pregnant woman.
2. With minor imprisonment (in its greater degree) if, although he does not use violence, he procures the abortion without the woman's consent.
3. With minor imprisonment (in its medium degree) if the woman consents.

Article 343. A person who through the use of violence causes an abortion, even when he has no intent to cause it, will be punished with minor imprisonment (in its minimum to medium degrees) provided that the woman's pregnant condition is evident or if he knows about it.

Article 344. A pregnant woman who provokes an abortion on herself, or who consents to another person's causing it on her, will be punished with minor imprisonment (in its maximum degree). If the woman provokes it to conceal her dishonor, she will be punished with minor imprisonment (in its medium degree).

Article 345. If a doctor, through the misuse of his position, causes an abortion or cooperates in it, he will receive the penalties set forth in Article 342, increased by one degree.

However, the Sanitary Code (Article 119) envisages a specific situation, defined as "therapeutic abortion", whose aim is to save the woman's life, corporal integrity or her health. This article provides the following:

Pregnancy may be interrupted only for therapeutic reasons. The documented opinion of two expert surgeons is required.

In spite of the legal rules and social customs which condemn it, the relevant social fact is that abortion is illegally practiced with great frequency, causing a considerable number of maternal deaths and requiring the use of an important part of Chile's hospital facilities to treat its victims.

As mentioned in several publications by Requena, Viel, Armijo and Monreal,¹⁸ studies on the subject undertaken mainly in Santiago all agree that at least one out of three pregnancies ends in an induced abortion. This is higher among women of the lower socio-economic strata. In general, the death risk is five times higher than that for women who carry pregnancy through to term. In a case where the abortion is practiced in septic conditions the risk of death is fifty times higher than where the abortion is practiced in aseptic conditions. For every 100 maternity-related deaths, 33 are due to induced abortion.

The group of women with a higher probability of practicing induced abortion has the following characteristics: they are between 25 and 34 years of age; married; with elementary schooling; who work outside the home; who have lived five or more years in Santiago, and who have previously had one or more induced abortions. The larger the number of previously induced abortions, the larger becomes the risk that the next pregnancy will end in another. Due to the fact that this situation is illegal, it is very difficult to obtain reliable information.

Regarding the cases in which abortion requires a surgical operation, Armijo and Monreal have stated the following:

Hospital statistics show a progressive increase in abortion, specially in the last decades. In 24 years the number increased from 12,963 in 1937 to 57,368 in 1960. While the number of births increased 1.7 times, abortion increased 4.4 times. Consequently, in relation to the number of births there was an increase from 8.4% in 1937 to 22.3% in 1960.¹⁹

Benjamin Viel considers that "only 32% of induced abortions are hospitalized, which means that the number of real abortions in the country reaches over 143,000 yearly."²⁰

The National Health Service and the University of Chile have tried out some experimental programs for abortion control within limited zones. The Family Planning Program established by the National Health Service, within its plan of the comprehensive health care for women, has also set as one of its basic goals the decrease in the high rates of induced abortion.

While the evaluation of some of the programs undertaken in certain areas have indicated some success in reducing the abortion rate, Tegalua Monreal and Rolando Armijo have presented information leading to the conclusion that in Santiago the abortion rate has actually increased since the programs' inauguration. Taking the year 1962 as a base, they show that the fertility rate has considerably decreased. However, comparing a survey undertaken in 1962 with another in 1967, they establish that while there has been a fall of 4.9% in the fecundity rate (the number of pregnancies), the fertility rate (the number of births) has dropped by 13.8%. At the same time, they show that the overall rate for terminated pregnancies has increased by 15.1%, while induced abortion rate has increased by 25.8%. They thus conclude that the fall in fertility is due not only to the prevention of pregnancies, but to an increase in abortions.²¹

Thus, regarding abortion, there is a clear discrepancy between legal norms and social behavior, and it is necessary to re-examine the methods by means of which control has been attempted.²² In the first place, from a positive point of view, it is necessary to consider whether a better implementation of family planning programs, which would provide women with more effective methods, would lead to a drastic reduction in the abortion rate. Under these circumstances, women would not need to practice it as a result of contraceptive failure. Secondly, from a negative point of view, an intensive effort to control abortion might be undertaken by means of the strict application of the penal law. Control has been ineffective until now due to the fact that it is very difficult to discover this kind of crime and due to the high cost which these investigations involve, since denunciations are very few. This situation indicates that there is an ambivalent attitude toward abortion;

while the societal norms which condemn it are accepted, the practice is permitted.

A different way to face the problem could be through a modification or change in the existing cultural pattern which considers abortion to be socially deviated conduct. A new attitude which would permit abortion for certain specific socio-economic or honor reasons would lead to a fast change in the legal system. Doubtless, it would be possible to modify the law in this sense without a change in cultural patterns; but while they do exist, it would be very difficult for the law by itself to provide a solution to this problem.

3. Sterilization

Until 1974, when voluntary sterilization for socio-economic reasons was authorized under certain conditions,²³ all kinds of sterilization were theoretically punishable under the law, except for cases of therapeutic or prophylactic sterilization. The curtailment or removal of the reproductive organs is considered as a mutilation and within the Penal Code it is treated as castration, and punished under Article 395 which provides the following:

A person who maliciously castrates another will be punished with major imprisonment (in its minimum to medium degrees).

A surgical operation which causes a woman's sterilization is covered under Article 397 (1) of the Penal Code, because it produces irreversible injuries. This Article provides:

A person who injures...another person will be punished as a felon who has caused serious injuries:

1. With major imprisonment (in its minimum degree) if, as a consequence of the wounds, the injured person remains impotent.

Vasectomy, which causes male sterilization is also included under Article 397 (1) of the Penal Code because the injury produces impotence. If there is any doubt regarding the application of Article 397(1) to vasectomy, due to its possible reversibility, it would nevertheless be included within the crimes punished under Articles 397(2) or 399 of the Penal Code, according to the circumstances of each case.

Article 397 (2) states that a person who injures another will be punished:

2. With minor imprisonment (in its medium degree) if the injuries cause illness to the injured person or his inability to work for more than 30 days.

Article 399 provides:

Injuries not included in the preceding articles are considered less serious and will be punished with judicial banishment or minor imprisonment (in its minimum degree).

As previously state, therapeutic or prophylactic sterilization is not punishable, that is to say, sterilization performed to preserve human live or to heal serious illness of a physiological or psychological nature. However, under the Chilean Penal Code eugenic sterilization is punishable. Consent to the sterilization is not normally a defense in sterilization cases. However, in December 1974, the Ministry of Health in its Circular No. 432²³ specifically authorized sterilization at the request of a couple on socio-economic grounds, if approved by an expert committee established in each health zone. The particular circumstances of the case are examined by the local welfare officer.

4. Family Planning Education and Information

The National Health Service provides programs of education and information in the family planning field. It operates at four levels, as follows:

a. National Health Service itself trains its own staff with the following purposes: i) To understand a woman's health problems, and to be familiar with the program's characteristics and aims; ii) To act as a teacher and guide and to stimulate discussions of the field among community groups as a basis for learning about it.

b. At the school level, the Service organizes meetings of teachers, parents and students with the following purposes: i) To prepare people and especially women to protect their health; ii) To stimulate in adolescent students positive attitudes toward sexual development as a normal process, and to inculcate in them their responsibilities as a couple and within the family.

c. At the level of the population of reproductive age, and especially among pregnant women, the Service provides information on topics directly related to birth control. It follows different educational plans according to the different groups dealt with, as follows: i) It prepares young adult women to protect their health, emphasizing sex education and contraception. It also develops an awareness in women as to their responsibility in protecting their family's health; ii) It informs adult men about the physical, social and mental processes of women and helps them to understand their role as a member of the couple. It also helps prepare fathers to assume their responsibilities toward their children's health and education.

d. At the Community level, it attempts to create an atmosphere of active community participation in the problems of women, and

to generate a constant preoccupation with the health problems of the family group.

Finally, it is important to mention that since 1971, there has been a school program of sex education both at the elementary and medium level, which is intended to give adequate information on this subject. Within this program, the subjects offered to twelfth graders are the following:

- a) The universal demographic situation, including total size growth, birth and mortality rates.
- b) Regional differences in population distribution and growth.
- c) Recent tendencies in population displacements, including international and internal migrations (urbanization process).
- d) Regions with a moderate population growth. Mortality behavior related to socio-economic evolution. Birth rate decrease and its conditioning. The aging of population and its effects.
- e) Regions with high demographic growth. Fall in mortality rates. High birth rates associated with underdevelopment. Young population increase and its economic burden. Reciprocal action of demographic growth and socio-economic development.
- f) Chilean demographic reality. Population volume and density. Internal migrations and urbanization. The stages of demographic evolution. Present mortality and fertility tendencies and levels. Composition according to sex and age. Economically active population. Growth perspectives, changes in space distribution and structural modifications.
- g) Population policies in the framework of a general development program. Malthus's formulation, Marx's opinions and his social theory about population growth. Religious influences on fertility regulation.

Authorized international organizations regarding the present demographic tendencies. Pronatalist and anti-natalist theses in Latin America. Present situation of family-planning programs in Latin America. Family Planning in Chile. Goals and results. National programs of family regulation in other world regions: India, Japan, etc.

B. Laws on Marriage

1. Marriage

Article 102 of the Chilean Civil Code defines marriage as follows:

Marriage is a solemn contract by means of which a man and a woman join together both for the present and indissolubly in order to live together, procreate and aid each other.

Chilean legislation stipulates the conditions of existence and validity of the contract. Conditions of existence are stipulated as: a difference in sex of the persons who are going to get married; the mutual consent of these persons, and that the marriage ceremony be performed before a Civil Registration Official. Conditions of validity are the free and spontaneous consent of the persons who will get married, the fulfillment of legal formalities, and the lack of legal hindrances in the case of the parties involved. Among the impediments are: the existence of a marriage bond not dissolved; impuberty of man or woman; perpetual or incurable impotence; impossibility of expressing in a clear way one's own will (oral or written); and insanity.

2. Divorce

Article 19 of the Civil Marriage Law (January 10, 1844) provides that:

...divorce does not dissolve marriage, but suspends life in common of wife and husband.

Divorce may be temporary or perpetual (Article 20). Perpetual divorce teminates forever the common life of wife and husband, but it does not affect the marriage bond; temporary divorce suspends life in common for a period no longer than five years.

Article 21 of the same law sets forth the grounds for divorce as follows:

- a) Wife's or husband's adultery;
- b) Serious and repeated bad treatment;
- c) One of the spouses is author, instigator or accomplice in the perpetration or preparation of an offense against the property, honor or life of the other spouse;
- d) Husband's attempt to prostitute his wife.

- e) Husband's avarice, if it deprives his wife of the essential means for living, considering the husband's economic status.
- f) Wife's refusal to follow her husband without a legal reason.
- g) Desertion of the common home or refusal to fulfill conjugal duties without a justified reason.
- h) Absence without justification for more than 3 years.
- i) Gambling, drunkenness, dissipation as habitual vice.
- j) Grave, incurable and contagious illness.
- k) Wife's or husband's conviction of crime or simple offense.
- l) Bad treatment of the children which endangers their lives.
- m) Attempt to corrupt the children or complicity in their corruption.

Article 22 provides that causes b, f, g, h and l are not a sufficient basis for a decree of perpetual divorce. As to temporary divorce, it is necessary to point out that the judge, after considering the nature of the proved grounds and the result of the investigation, must determine the length of time during which the divorce will be in effect.

3. Annulment

Marriage nullity, together with real and presumed death of wife or husband, are the only causes for dissolution of the marriage bond. This nullity must be declared by a judge as a result of appropriate legal action.

Nullity may be declared only for the following grounds:

- a) Article 29 of the Civil Marriage Law provides that a marriage is void if it is celebrated with any of the following defects: i) A previous marriage bond not dissolved; ii) Men younger than 14 years and women younger than 12 years; iii) Perpetual or incurable impotence; iv) Inability of either member to express clearly his or her will (orally or written); v) Insane persons; vi) Ancestors and descendants by consanguinity or affinity, and collaterals by consanguinity up to and including the second degree; vii) Surviving spouse may not marry the murderer or accomplice in spouse's murder; viii) Woman with her correspondent in adultery.

- b) Article 31 of the Civil Marriage Law provides that a marriage is void if it is not celebrated before a competent Civil Registration Officer. Article 9 of the same law provides that the competent officer is the one responsible for the district of the wife or husband's residence, or for the residence where the couple lived for three months before the celebration of the marriage.
- c) Article 31 also provides that absence or disqualification of the witnesses is a basis for annulment. A marriage must be celebrated before two witnesses. If they do not attend the ceremony or if they suffer from some disqualification, then the marriage is not valid.
- d) Article 32 of the Civil Marriage Law provides that error, force and kidnapping vitiate consent to the marriage and cause nullity.
- e) Article 27 of Law No. 7613 on Adoption provides that marriage between adoptive parent and adopted child or between adopted child and adoptive parent's widow or widower is not valid.

As to the effects of annulment, although there is no legal text which so states, we may apply general legislative principles to the effect that once the nullity of the marriage is declared, both wife and husband are deemed to be in the same condition as if the marriage had never existed. However, in practice, the children continue to be treated as legitimate.

In practice people resort more frequently to annulment than divorce, because it dissolves the marriage bond, while divorce does not dissolve it. Comparative statistics obtained in Santiago regarding divorce and annulment verify this statement.

Table 3

Province of Santiago²⁴

<u>Year</u>	<u>Divorces</u>	<u>Annulments</u>
1945	166	845
1946	150	920
1947	191	1113
1948	159	1071
1949	160	995
1950	170	1056
1951	171	1100
1952	138	1096
1953	134	1414

Table 3 (Continued)

<u>Year</u>	<u>Divorces</u>	<u>Annulments</u>
1954	161	1637
1955	168	1907
1956	152	1828
1957	137	1715
1958	164	1613
1959	151	1647
1960	135	1007
1961	118	1207
1962	143	1499
1963	106	1467
1964	117	1120
1965	124	1702
1966	108	1972
1967	87	1562
1968	127	2150
1969	91	1684
1970	93	1120

4. Minimum Marriage Age

The Chilean Civil Code prohibits marriage by men younger than 14 years and women younger than 12. However, persons younger than 21 years cannot get married without the approval or license of the person or persons whose consent is necessary. Article 107 of the Code provides that

Persons who have not reached the age of 21 cannot marry without the consent of their legally recognized father, or in his absence, the consent of their legally recognized mother, or in the absence of both, the consent of the legitimate ancestor or ancestors most closely related.

5. Polygamy

Chilean legislation has always established monogamy as the basis of its family system. Articles 382 and 383 of the Penal Code provide the following:

A person who marries, while already validly married, will be punished with minor imprisonment (in its maximum degree), and

A person who deceives another by feigning a marriage celebration and a person who marries knowing that he has a hindrance which cannot be given a dispensation

under the law, will suffer minor imprisonment (in its medium to maximum degrees).

If the hindrance is dispensable, he will incur a fine. If owing to his fault, the marriage is not revalidated in accordance with the conditions of the court in the dispensation, he will be punished with minor imprisonment (in its medium degree), from which he will be released when his marriage has been revalidated.

6. Effect of Marriage Laws on Fertility

It is difficult to determine the effect of these dispositions on fertility. The Civil Marriage Law has a high degree of effectiveness, especially among the sectors with medium and high socio-economic status. Thus, according to data obtained from the 1960 Census for Santiago, 84% of those who had some kind of union were legally married and only 5% lived together without a marriage. Research carried on by the Center for Latin American Economic and Social Development (DESAL) in 1966-67 among the marginal sectors of the Santiago population indicates that 77% were married and 13% lived together.²⁵

The degree to which consensual unions affect fertility must be studied, especially in isolated regions and among migrants among whom this kind of union is frequent. In these cases, owing to structural factors, the law is not enforced; and cultural patterns make legitimate a situation which is outside the law.

The law on minimum marriage age should logically have an effect on fertility. The reason behind this is that the earlier a marriage is undertaken, the higher is the fertility rate since it increases the probability of bigger family. However, in spite of the fact that, with some restrictions, Chilean law permits persons to get married at an early age, in practice they marry later. According to estimates based on the 1960 Census, the average age when women get married for the first time is 23 years.

A study undertaken in marginal sectors of Santiago indicates that the age that women consider ideal for getting married is between 20 and 22 years. The same women consider that between 25 and 26 years is the ideal age for men to get married.²⁶

Therefore, the minimum age established by the law is lower than the actual average age. It is assumed that in our country, as opposed to what occurs in other countries like India or China, a rise in the minimum legal marriage age would not have a substantial effect on the fertility rate. This is an example of a situation in which the legal factor has a weaker effect than socio-cultural factors.

C. Laws with an Economic Effect

Chilean legislation has established an elaborate system of social benefits, including maternity benefits, family allowances and others. These laws have social security and income distribution purposes. This system especially since 1964, has been continually improved.

1. Child allowances

These allowances must be included within family allowances, which, according to the law, are defined as follows:

A family allowance is a social security benefit, which consists of a periodical payment of a fixed sum of money for each person living as a dependent of an employee. Its aim is to compensate for income reduction due to the maintenance expenses of that or of those persons.

Decree No. 1,216 of 17 December 1942, established the first Chilean family allowance. This document provides:

A family allowance is the payment granted to an employee for each person living at his expense. Each such dependency must be appropriately proved to the satisfaction of the Private Employees Fund.

Later on, Decree No. 245 of July 1943 also established family allowance for laborers insured under Social Security. Later labor legislation permitted the granting of the allowance to public employees, etc., although there was some discrimination regarding the amount. Finally, all sectors were granted this type of benefit.

In general, the system consists of a similar allowance for each person living as a dependent of the worker, considering as a dependent the legitimate wife, legitimate and illegitimate children younger than 18 years, or invalids of any age; children older than 18 years and younger than 23 years who certify that they are studying regularly; legitimate or illegitimate parents older than 65 years, and widowed mother of any age. No more than one family allowance may be received for the same person living at the worker's expense, nor may two or more persons count the same person as living at their expense.

Finally, Decree Law No. 97 of 22 October 1973 established a single system of family allowances. This decree puts an end to sectoral differences and establishes a uniform amount for...workers and pensioners belonging to the public and private sectors, whatever their insurance system may be. It includes Compensation Funds and all types of conventional family allowance for workers.

2. Maternity Benefits

Pregnant women who work receive several benefits under Chilean law. Such benefits include: rest periods, subsidies, guaranteed work continuity, light work, etc. These benefits are summarized in Articles 209 et seq. of the Labor Code, which provides as follows:

a) Leave. Article 309 provides:

Women employees and workers will have the right to maternity leave of six weeks before giving birth and six weeks after it. This right may not be waived and during this period pregnant and post-pregnant women are forbidden to work. At the same time, notwithstanding any special agreement to the contrary, her job must be kept open for her during the period.

The last law which amended this provision was Law No. 17,928 published in the Diario Oficial of 10 May 1973, which increased the period of leave after birth to twelve weeks.

b) Subsidies. As to economic benefits, Article 312 of the same Code provides that a woman making use of the above maternity leave, or of supplementary leaves or legally granted extended rest periods, shall receive a subsidy equal to the whole of her normal pay and allowances, from which will be deducted only taxes and legal discounts.

At the same time, Article 26 of Law No. 12,401 of 19 December 1953 provides that pregnant women will have the right to receive family allowances beginning with the sixth month of pregnancy.

c) Employment. Article 313 of the Labor Code prohibits the dismissal of a pregnant woman, either during the pregnancy period or until a year after the maternity leave has expired. At the same time, during this period Chilean law protects women from work activities involving strenuous physical exercise, or working overtime, or at night.

d) Other Benefits. Within maternity benefits we may include the Child-Care centers. Article 315 provides that organizations with 20 or more women workers, regardless of their age or marital status, must maintain an annex and independent room in order to care for children younger than 2 years old during the working hours. The maintenance cost of the above mentioned benefit must be borne exclusively by the employer.

3. Housing

Chilean housing legislation grants several tax privileges and benefits to activities connected with the construction of low-cost housing. We refer to Law No. 9, 135 of 1948 and Decree Law No. 2 of 1959. These two laws exempt this kind of construction from the taxes generally imposed on any other type of building construction in Chile.

At the same time, since 1965 there has existed the Corporacion de Servicios Habitacionales (CORHABIT), which has responsibility for the housing of low-income sectors of the population (i.e., people whose incomes are lower than three vital wages ("sueldos vitales").* The organization attempts to finance this work by means of two sources of contribution: the State's contribution through CORHABIT and that of the beneficiary, through his savings. Applicants for housing have the opportunity of choosing their system of financing, either through construction (houses built by direct action) or by means of cooperatives.

4. Effect of Economic Laws on Fertility

The above mentioned provisions might be considered as pro-natalist in effect, especially because they are addressed to the low income sectors who are the ones who have the higher fertility rates. But there are two points of view as to this. On one hand, if the decision to have a child is based on the prospect of receiving additional income equivalent to the cost of the birth and upbringing, then family allowances can be considered as pro-natalist in effect.²⁷ On the other hand, this is not consistent with the scale of values of Chilean society and especially of its low-income sectors. In fact, moreover, the family allowances do not cover the real cost of birth and maintenance. In any event such theoretical statements should be tested by specific research on the subject.

Some authors have stated that whether or not family allowances will have a natalist effect will depend on the way the people concerned fit into the system of production. In certain sectors this kind of economic benefit would amount to an important part of the whole income received by the family. However, if economic reasoning is to be a criterion, it is difficult to accept this conclusion, especially because the amount of these benefits is insufficient to compensate for the real expenses involved. Moreover, if we consider the evidence produced by Duque and Pastrana, we see that the position in society of the income groups is such that their behavior is not determined by economic rationality. This leads us to conclude that it would be a basic mistake to conclude that family allowances should be suppressed as a means of decreasing procreation. Not only would this not affect reproductive behavior, but it would damage young children who are dependent on this kind of benefit.

* The so-called "vital wage" is the term used in Chilean Labor legislation for the minimum wage.

On the other hand, maternity benefits due to their very nature certainly do have pronatalist consequences.

Housing laws and programs might also be considered as having pronatalist effects. However, Chile, like all developing countries, faces a serious housing problem. The speed of housing increase is considerably slower than the population's growth. Housing requirements are always greater than the possibilities of satisfying them, and this phenomenon affects all sectors of the population. An estimate of the Chilean situation shows that housing requirements caused by population growth for the years 1957 to 1962 amounted to an annual average of 37,000 units. At the same time, there is the problem of the deplorable condition of a large proportion of the houses already inhabited. According to the study this additional demand would require the building of another 11,300 units, a situation which aggravates the above mentioned phenomenon.²⁸

The following table, which indicates the growth of housing construction compared with the above housing necessities shows that there is a yearly increase in unsatisfied requirements.

Housing Building Construction*

<u>Year</u>	<u>No. of Houses</u>	<u>Square Meters of Space</u>
1930	1,328	212,581
1935	2,354	376,698
1940	2,701	432,215
1945	3,242	475,358
1950	4,996	614,990
1955	6,969	860,506
1960	26,603	1,589,106
1965	44,806	2,654,636
1970	21,344	1,569,544

Under these circumstances, it is very difficult to state that the housing legislation has had pronatalist consequences.

Summarizing, we must conclude that the laws dealing with social and economic factors which theoretically have a pronatalist content, do not in fact have a significant effect in this direction, due to the actual conditions under which they operate.

* Housing and Urbanization Ministry, Director of Housing Planning. Luis Cárcamo Cantin: 42 años de construcción habitacional en Chile (Santiago 1973). (Note: the author works with data provided by the National Institute of Statistics and Censuses.)

V. CONCLUSIONS

1. We have characterized the Chilean fertility situation as that of a country which has experienced a constant fall during this century, which was intensified during the 60's and which has continued until the present. This process is a concomitant of the general modernization process of Chilean society.

2. Chilean law is a complex system of legal rules which do in some ways affect fertility, but which in no way represent the expression of a national population policy. It is obvious that rules adopted for very different purposes are not suitable for analysis exclusively from the population point of view, nor can they be expected to be consistent in this regard.

3. Factors which do directly affect fertility are not specifically established through the laws but the laws establish a field within which the public authorities can formulate and undertake programs intended for that purpose.

4. In fact, during the middle 1960's, a program of birth regulation was put into effect by the National Health Service, at a time when the fertility rate had already started to decline strongly.

5. This birth regulation program was implemented within a general legal framework which grants to the National Health Service the authority to undertake this task. On the basis of this authority, this organization developed a set of rules and administrative regulations which provide a full legal framework for family planning.

6. In order to clarify the relationship between law and fertility, we have identified bodies of law which affect it either directly or indirectly. The laws which directly affect fertility (birth control, abortion, sterilization) operate so that birth control is regulated in very general terms, under which the State and private action have a wide range of action. It has been carried out under administrative regulations adopted by the National Health Service. The limits to birth control are delimited by the laws regulating abortion and sterilization.

7. Laws which affect fertility indirectly are those dealing with family planning services and education; with marriage; and with economic factors related to family. The first of these, like the laws which directly affect fertility, are designed to recognize and facilitate the practice of the right to family planning. Laws regarding marriage, according to available evidence, have a minimum of effect. Finally, although the laws concerned with economic factors may be considered as having some pronatalist intent, nevertheless they do not have a significant effect due to the context in which they operate.

8. Therefore, if we consider the laws which directly affect fertility and those regarding family planning services and education, it is possible to conclude that both the legal rules and their administrative implementation grant to the family the right and possibility of regulating its size.

9. As mentioned at the beginning of this work, this is a preliminary approach to the question of the influence of the legal system upon fertility. A full consideration of the relation between law and population would require, in addition, an analysis of the way in which legal rules affect mortality and the migration process.

10. Considering the nature and requirements of this study, we only used the evidence already available, and did not develop primary data. In order to continue advancing in this field, it would be necessary to undertake more specific studies.

VI. FOOTNOTES

¹For a discussion on the problem see: P. Singer, Dinamica de la población y desarrollo. (Siglo XXI Editions, Mexico 1971).

²Id. Introduction: Población y desarrollo económico, p. 15.

³A. Goldsmith, Chile, Country Profile, Population Council and International Institute for the Study of Human Reproduction, p. 1.

⁴A. Conning, Tendencias de la Fecundidad en América Latina y Factores de Influencia, CELADE Document for the Second Meeting of the Working Group on Population Reproduction Processes--(FLACSO, May, 1973), p. 4.

⁵United Nations Report 1972, pp.26,27.

⁶A. Conning, supra note 4: Freedman and Adlakha, Recent Fertility Declines in Hong Kong: The Role of the Changing Age Structure.

⁷T. Lyons, "Population Policies and Politics," Seminar in Law and Population, Fletcher School of Law and Diplomacy, (February 1973).

⁸Id., p. 1.

⁹APROFA (Chilean Association for the Protection of the Family) Bulletin, December 1965.

¹⁰Id.

¹¹A. Goldsmith, supra note 3, p. 5.

¹²Id., p. 6.

¹³A. Conning, supra note 4.

¹⁴For a further development of the problem see, La fecundidad rural en Latinoamerica: una encuesta experimental para medir actitudes y opiniones..., CELADE. Series A No. 56 (santiago: May 1971).

¹⁵See J. Duque and E. Pastrana, Las estrategias de supervivencia económica de las unidades familiares del sector popular urbano: una investigación exploratoria. Exchange Program ELAS/CELADE (Santiago: January 1973).

¹⁶APROFA: supra, note 9.

¹⁷Instruction of Ministry of Health on Functions of Midwives, 9 August 1974, issued under Decree Law No. 527 of 1974.

¹⁸M. Requena, Programa del Control del Aborto. Area Occidente, Va Zona, National Health Service (Santiago: April 1964).

M. Requena, El aborto inducido como problema de salud pública. Working document presented to the Central America and Panama Seminar on Population, Economic Development and Family Planning. (Tegucigalpa, Honduras: 12 June to 18 June 1966).

M. Requena, El problema del aborto inducido en una población de Santiago. Uso y Actitudes frente al empleo de anticonceptivos. (Work presented to Chilean Health Society (19 July 1965)).

¹⁹R. Armijo and T. Monreal, Epidemiología del Aborto Provocado en Santiago. (Document presented to the Fourth Conference of The International Planning Parenthood Federation. Western Hemisphere Region, San Juan, Puerto Rico. 19 April to 27 April 1964).

²⁰B. Viel, La explosión demográfica. (Santiago: 1966).

²¹D. Callahan, Abortion: Law, Choice and Morality. (New York: The MacMillan Company, 1970), Chapt. 5, Restrictive Legal Codes: the Chilean case.

²²In an attempt to deal with this problem one of the hospitals in Santiago has experimented with a "planned abortion program."

²³Internal Resolution of the Sub-Department of Health Development, National Health Service, Circular No. 432 of 2 December 1974.

²⁴E. Fuenzalida, Datos sobre demanda de justicia. (Under elaboration.)

²⁵DESAL (Center for Latin American Economic and Social Development): Encuesta sobre la familia y la fecundidad en poblaciones marginales del Gran Santiago 1966/67. Third part, general results of sampling among women, p. 157.

²⁶Id., p. 6.

²⁷Theory developed by J. Spengler. For a further discussion, see his "Values and Fertility Analysis," 3 Demography No. 1 (1966), pp. 109-130.

²⁸J. Morales V., Estimación de las necesidades de vivienda en Chile 1952-1982 (CELADE. Santiago-Chile: 1964).

ANNEX A

CONCLUSIONS AND RECOMMENDATIONS OF
THE SEMINAR ON LAW AND POPULATION*

Organized at the University of Chile in
May 1974 under the Auspices of the
Ministry of Public Health, the Faculty
of Juridical, Administrative and Social
Sciences of the University, and the
United Nations Fund for Population Studies.

1. The Seminar on "Law and Population" has had, as its purposes: the examination, from an inter-disciplinary point of view, of the methods and conclusions of the research project carried out in the field of "Law and Society" by the Coordinating Institute of Social Investigation (ICIS); the analysis of the relationship between Chilean law and population and the making of recommendations in the field of these relations.

2. The Seminar understands that population dynamics includes matters related to mortality, fertility and migration; that the examination of the problem of population refers both to its volume and its structure and to its dynamics and distribution, and that a population policy should take into consideration the following factors, among others (not arranged in order of priority):

- a) the organization of the family and family planning;
- b) public health;
- c) education in general as well as sexuality and family life education and population education in particular;
- d) the protection of minors;
- e) labor, occupational training and social security;
- f) emigration and immigration;

*The conclusions and recommendations are taken from the Report of the Latin American Faculty of Social Sciences (FLACSO), and the Coordinating Institute of Social Investigation (ICIS) to the U. N. Fund for Population Activities (UNFPA) on their project on Law and Population (C41/72/PO3), (1974). As pointed out on page 2, supra, the FLACSO project organized a seminar, the conclusions of which (pp. 21-24 of the Report) are reproduced herewith.

- g) urbanization and housing;
- h) internal migration and the incorporation of marginal groups into the society;
- i) regionalization; and
- j) national security.

3. The research work referred to above deals specially with the relationship between law and human reproduction, but the Seminar also dealt with the relationship of legal rules and population structure and processes.

The Seminar verified that Chilean law in this field is a complex of rules that were not drafted from the point of view of any particular population policy. These rules were adopted at different periods and with different purposes remote from population policies. This circumstance has produced conflicting effects on the Chilean population. ⁽¹⁾

4. As far as fertility is concerned, the rules which have affected it most directly are not embodied in statutes, but in regulations and official restrictions which allow the public authorities to formulate and carry out programs to regulate fertility. ⁽²⁾ These rules, taken together, constitute a full system for the regulation of fertility, the limits of which are set by the laws on abortion and the general understandings in the field of sterilization. The present broadness of the rules, combined with the lack of a definite policy, has permitted the carrying out of programs which, although they constitute an important advance, nevertheless originate from different and possibly conflicting intentions as far as the various health organizations are concerned.

5. The laws which indirectly affect fertility, such as those on civil marriage and those dealing with economic factors, appear to have only a limited, and not very definite effect.

6. The Seminar feels that present institutions involved with population policies lack adequate coordination.

7. The Seminar stresses that programs of economic, social and cultural development should take population into consideration, including a population policy which will give full recognition to human rights.

8. The Seminar deems it wise to make modifications in the laws dealing with population which will facilitate the carrying out of such policies as the Chilean government as a sovereign government may establish through its own institutions. These policies should permit the rational control of the size, structure, dynamics and distribution of the population within the national territory. This legislation should take

into account the realities and dynamics of society, the scale of values held by the Chilean community, technical advances, and the rights enshrined in the Universal Declaration of Human Rights.

9. The Seminar recommends that present institutions active in the population field be coordinated or that administrative organizations be set up which would put into effect the policies agreed upon. The Seminar also draws attention to the need to supply the material means required for the carrying out of the policies, for the training and provision of the human resources required for the task, and, in general for the necessary information as to population policies.

10. The Seminar recommends that scientific and technological investigation be encouraged in the design of population policies and in the study of the nature of the individual and collective motivations which should be woven into the policy. It also suggests that the conclusions of these studies be put to use in the formulation of the policies.

11. The Seminar points out the necessity of incorporating socially based organizations into population policies.

12. The Seminar calls attention to the urgency of new laws, along the lines suggested in conclusion eight, above, on sterilization,⁽³⁾ abortion,⁽⁴⁾ filiation and the protection of minors.⁽⁵⁾

Editor's Notes
on Seminar Conclusions and Recommendations

- (1) On 1 February 1974, the Chilean Government established a Permanent Commission on Family Planning and Responsible Parenthood to advise it on the establishment of a clear policy.
- (2) The Instruction of the Ministry of Health on the Functions of Midwives, issued on 9 August 1974 (under Decree Law No. 527 of 1974), gives greatly increased authority to midwives to distribute oral contraceptives and to insert IUDs.
- (3) Circular No. 432 of the National Health Service issued on 2 December 1974 sets up a procedure which will authorize voluntary sterilization on socio-economic grounds in certain cases.
- (4) See Text Note 22.
- (5) FLACSO and ICIS in their Report to the U N Fund for Population Activities referred to in note on page 42 explain the background of this recommendation. They point out (pp. 11-12 of the Report), that the laws on the protection of minors are spread out through many different codes and statutes, and that they need revision, codification, and improved administration. As a result, both in legislation and practice, the protection of minors has not been given the importance which it deserves, and has not received the attention and means needed to correct the situation.

- 19/ *Legal Aspects of Menstrual Regulation*, by Luke T. Lee and John M. Paxman (1974).
- 20/ *Symposium on Law and Population: Text of Recommendations*, Tunis, June 17–21, 1974.
- 21/ *Law and Population Growth in Iran*, Parviz Saney (1974).
- 22/ *Law and Population Growth in Kenya*, U. U. Uche (1974).
- 23/ *Law and Population Growth in Mexico*, by Gerardo Cornejo, Alan Keller, Susana Lerner, Leandro Azuara (1975).
- 24/ *The Impact of Law on Family Planning in Australia*, by H.A. Finlay (1975).
- 25/ *The World's Laws and Practices on Population and Sexuality Education*, by Edmund H. Kellogg, David K. Kline and Jan Stepan (1975).
- 26/ *Pregnancy and Abortion in Adolescence: Legal Aspects*, by Luke T. Lee and John M. Paxman (1975).
- 27/ *Law and Population Policy: Some Suggestions for Determining Priorities and Estimating Impact*, by John U. Farley and Steven S. Tokarski (1975).
- 28/ *Legal Implications of the World Population Plan of Action*, by Luke T. Lee (1975).
- 29/ *Law and Population in Lebanon*, by George M. Dib (1975).
- 30/ *Annual Review of Population Law, 1974*, International Advisory Committee on Population and Law (1975).
- 31/ *Law and Population Growth in Chile*, by José Sulbrandt and María Alicia Ferrera (1975).
- 32/ *Law and the Status of Colombian Women*, by Josefina Amezquita de Almeida (1975).
- 33/ *Law and Population Growth in Ghana*, by Richard B. Turkson (1975).
- 34/ *Law and Population in Brazil*, by Walter Rodrigues, João Antônio Gordilho de Proença, Maria Alice Paiva, Fernando de Queiroz Mattoso, Leo de Affonseca, Otávio Augusto de Pavia, Theognis Nogueira and Benjamin Moraes Filho (1975).

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Dr. Jean Bourgeois-Pichat (*Comité International de Coordination des
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