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LAW AND POPULATION IN BRAZIL

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I. HISTORICAL BACKGROUND

A. Philosophical and Religious Influences

Brazil was a colony of Portugal until the beginning of the 19th century. Starting with their religious indoctrination of the native Indians, the Jesuit missionaries were responsible for the first educational system in the country. The Jesuits assumed control of Coimbra University in 1555, and controlled the educational system through the 18th century. Then, under a reform instituted by the Marquis of Pombal, the Portuguese educational system was adopted. The reform, which replaced the dogmatic Thomist teachings with Empirical Philosophy, was limited to higher education. Although it led to the expulsion of the Jesuits, it did not create a new type of education. This gap obliged the wealthier class to go to Portuguese or other European universities and thus culture became a monopoly of the elite, which it had not been previously. This period was marked by a spread of the influence of the aristocracy in all fields, which was spurred by the movement to Brazil of the Portuguese royal family.

A noteworthy attempt to provide higher education in Brazil was the foundation of the seminary of Olinda in 1798. It was open to both priests and laymen and tried to harmonize the traditional Jesuit education with the new scientific elements of Cartesian philosophy and with liberal European ideas. All this contributed to the revolution in the state of Pernambuco in 1817 and ultimately to Brazilian independence in 1822.

Since independence, the Catholic church has continued to exert a strong influence in Brazil. The first constitution of 1824 sanctioned the Brazilian tradition of union between the church and the state. The Catholic religion was made the official religion, but each individual was allowed freedom of choice as to creed and form of worship. Nevertheless political considerations disturbed the relationship between church and state and the two powers were separated at the time of the proclamation of the Republic in 1889. Brazilian thought was highly influenced at that time by the positivism of Auguste Comte which was accepted both by religious circles and by the intellectual elite owing to the emphasis given to the sciences.

This positivist philosophy was perhaps the only one that competed with the Catholic religion in Brazil, appealing particularly to the Conservative elements. In spite of the atheistic and lay character of this philosophy, it was politically supported even by some Catholic circles, and since the Catholics were politically disorganized at the time of the Constitution of 1891, it was the positivists who were able to defeat an amendment that would have legalized divorce.

In the 20th century, Brazilian scientists and mathematicians broke with Positivism, owing to the conflict between the mathematical teachings of Comte and contemporary physics. Neopositivism, known in the 1920's

and 1930's as "Integralism," then achieved great political influence. On the other hand, members of the Catholic intelligentsia began to take up neo-Thomist theories, to press for the expansion of the education system and particularly of the Catholic universities and to exert influence in the social welfare area. This increased the influence of the church, which no longer confined itself to pastoral matters as in the past. In fact, the Church increasingly influenced the whole of Brazil's way of thinking, promoting debates on themes like divorce, abortion, and family planning, as to which, with rare exceptions, it followed Vatican policy.

B. Background of the Legal System

When Brazil became independent in 1822, it faced the problem of replacing the obsolete laws inherited from Portugal. Since this could not be done at once, the Constitutional Assembly decided, in 1823, to continue the Portuguese laws and acts in force on a temporary basis. However since the repressive "Philippine Ordinances" were viewed with considerable distaste, the Assembly agreed to reform the Penal Code as soon as possible.

In 1824, the first legislative parliament was established. In view of the close relationship between the Penal Code and Constitutional rights, the Imperial Constitution established a new Constitutional basis for the development by the parliament of new criminal laws, and thus the Imperial Penal Code was based on the Constitution of 1824.

Liberal ideas and propaganda on individual rights, developing simultaneously in France and the United States, were then at the peak of their influence, and the drafters of the new Brazilian Constitution were fully aware of them. Thus the Brazilian Imperial Constitution of 1824 was one of the most advanced of its time. Article 179 provides a complete enumeration of the rights and protections of the individual. (These provisions furnish a basis for the Penal Code). The second clause of the Article states: "there shall be no law which is not in the general public interest." The third clause states that no law may be put into effect retroactively -- an essential guaranty for individual liberty.

As far as the Penal Code (of 1830) was concerned, the drafters were influenced by the French and Bavarian Codes of 1810 and 1813, respectively, as well as by the Louisiana Code drafted by Livingstone. Only the Article on the death penalty caused dissent in the parliament. The Empire's Penal Code achieved great fame, and two eminent European criminologists went to the trouble of learning the Portuguese language in order to better understand the spirit of the document.

After the Penal Code of 1830 came the Code of Procedure of 1832 which remained in effect until 1941. A new Penal Code was put into effect in 1890 which was much criticized, and it was, in turn, followed by a Penal Code of December 7, 1940. It was put into effect by Decree No. 2,848 and is still in force. There is also a Law on Misdemeanors which was put into effect by Decree No. 3,688 of October 3, 1941.

The present Civil Code was put into effect by Law No. 3,071 of January 1916, and amended by Law No. 3,725 of January 15, 1919. It was the result of attempts beginning in 1845 by well known lawyers to codify civil rights. It is still considered to have been a model code for its time in style, arrangement and appropriateness to current social realities. However, as time went on, some of the provisions lost relevance and new social needs developed. There has therefore been a proliferation of new laws and decrees designed to meet new needs, and it is now necessary to prepare a new codification. Accordingly, a new commission of jurists has been formed which has drafted a new Civil Code now under examination by the National Congress.

The Commercial Code of Brazil was promulgated by Law No. 556 of June 25, 1850 and is still in effect. However, changing social and economic factors have required special legislation, and the need for a new codification is now under discussion. There is, however, some opposition to this on the part of the jurists concerned, on the ground that present-day commerce is dynamic and should not be subject to static rules.

Finally, there have been seven different constitutions, which reflect various historical epochs. The first was the Imperial Constitution of 1824 which followed independence in 1822. The second and fourth constitutions, in 1834 and 1937 respectively, were the results of dictatorial "New States." The fifth constitution, in 1946, was designed to eliminate the dictatorial tendencies of the 1937 constitution which is considered the greatest regression in Brazil's history. The sixth constitution of 1967 was brought about by the fall of the government in 1964, and was succeeded by the seventh constitution of 1969 which is still in force.

II. THE POPULATION PROBLEM

A. The Size and Growth Rate of the Population

Brazil recently reached a population size of over 100 million inhabitants. The growth rate between the beginning of the 20th century and 1970 was 2.41% per annum and, in the decade from 1950-1960 the rate was 3.1% per annum. Such a rate of growth is 63% higher than the growth rate of the world as a whole (which is about 1.9% per annum), and 176% greater than the population growth registered in the developed countries during the past decade, which was 1.15%.

Table I: The Population of Brazil by Region, 1900-1970*

REGION	YEAR					
	1900	1920	1940	1950	1960	1970
North	695	1,439	1,462	1,845	2,602	3,651
Northeast	6,750	11,246	14,434	17,973	22,429	28,675
Southeast	7,824	13,655	18,346	22,548	31,063	40,332
South	1,796	3,537	5,735	7,841	11,892	16,684
Middle East	373	759	1,259	1,737	3,007	5,167
Total	17,438	30,636	41,236	51,944	70,992	94,509

* All figures in thousands

Table II: The Annual Population Growth Rate of Brazil by Region, 1900-1970

REGION	TIME PERIOD				
	1900-1920	1920-1940	1940-1950	1950-1960	1960-1970
	%	%	%	%	%
North	3.8	0.1	2.3	3.5	3.4
Northeast	2.6	1.3	2.2	2.3	2.4
Southeast	2.6	1.5	2.0	3.2	2.7
South	3.4	2.5	2.2	4.2	3.4
Middle West	3.6	2.6	2.3	5.8	5.6
All Brazil	2.8	1.5	2.2	3.1	2.9

Table III: Urban/Suburban and Rural Populations of Brazil by Region, 1950-1970*

REGION	URBAN AND SUBURBAN			RURAL		
	1950	1960	1970	1950	1960	1970
North	581	983	1,650	1,264	1,618	2,001
Northeast	4,745	7,681	11,981	13,229	14,784	16,694
Southeast	10,721	17,819	29,347	11,828	13,244	10,985
South	2,313	4,469	7,344	5,528	7,423	9,249
Middle West	423	1,053	2,493	1,313	1,954	2,674
Total	18,783	32,005	52,905	33,162	38,988	41,604

*All figures in thousands

Table IV: The Annual Rate of Population Growth of Urban/Suburban and Rural Populations in Brazil by Region, 1950-1970

REGION	URBAN AND SUBURBAN		RURAL	
	1950-1960 %	1960-1970 %	1950-1960 %	1960-1970 %
North	5.4	5.4	2.5	2.2
Northeast	4.9	4.5	1.5	1.2
Southeast	5.2	5.2	1.8	-2.0*
South	6.8	5.2	3.0	2.3
Middle West	9.5	9.0	4.0	2.3
All Brazil	5.5	5.3	1.7	0.5

* negative growth rate, i. e., decreasing population

Table 5 shows how uneven is the distribution of population. The region that has the highest demographic density is the Southeast followed by the South. Although these two regions have only 18% of Brazil's land area, they have 60% of the population and contribute 80% of the total national production of goods and services.

Table V: Population Density in Brazil by Region, 1970

REGION	AREA (Km ²)	1970 POPULATION	POPULATION DENSITY Pop./Km ²
North	3,554,000	3,651,000	1
Northeast	1,542,000	28,675,000	19
Southeast	919,000	40,332,000	44
South	562,000	16,684,000	30
Middle West	1,879,000	5,167,000	3
Total	8,456,000	94,509,000	

B. The Population, Resources and Attitudes of Brazil as Compared to Those of the Developed Countries

The resources available to a country may be classified, in order of importance, in three categories:

Human resources: One measure is the proportion of the working-age population having high qualifications in cultural and economic terms. Human resources also include the people who produce goods and services

under the direction of persons with university education, such as educators, physicians, lawyers, economists, and other specialists.

Location: This refers to the strategic situation of the country on the geographic and economic map of the world.

Natural resources: These include a favorable climate and natural resources of flora, fauna and subsoil, especially those available to the most populated areas.

From the point of view of the above, Brazil is a country of limited resources. Although the natural resources are numerous, they are badly situated both in relation to the centers of population and in regard to world markets. The human resources are extremely weak, with only 5% of the population qualifying as skilled labor or above. The corresponding class in a developed country constitutes 25% of the population and is made up of professionals and such skilled workers as carpenters, masons, electricians, mechanics, plumbers, laboratory assistants, agricultural foremen, and school teachers who have received at least a secondary school education. In Brazil, there are very few certified primary school teachers who have themselves received a secondary education. All the underdeveloped countries suffer from a similar lack of human resources trained at the middle level, yet such people may be more important to the country than doctors, on one hand, or unskilled manual laborers on the other.

In order for Brazil to have the same proportion of qualified people as exists in the developed countries (i. e., 25% of the population), Brazil would need to have approximately 25 million of its workers be at the professional or skilled worker level. Since Brazil now has only 5 million workers at such a level it must upgrade 20 million workers.

Among the 145 countries about which we have information, 39 have an annual per capita income of US\$ 650 and are called the "developed countries." The 104 other countries have a per capita income lower than this amount and constitute the "underdeveloped countries." Among the 39 developed countries, 7 have 50 million inhabitants or more and the remaining 32 have fewer than this number. Of the latter group, some remain sociologically undeveloped as a result of the inequality of the income distribution (e.g., Libya, South Africa, Hong Kong, Venezuela and Kuwait). In the remaining developed countries, the people share in a large part of the country's wealth. This is particularly true in twelve countries with small populations: Denmark, Norway, Switzerland, Iceland, Finland, Belgium, Holland, Austria, Sweden, Australia, New Zealand and Luxembourg

The total population of the seven most populous developed countries is about 800 million inhabitants, and the median income is about \$2,060. The rate of population growth is under 1%. These countries are experiencing a continual falling off in the population growth rate and are approaching a

demographic growth rate of zero. When this stabilization occurs, the birth rate will have fallen to the level of the death rate, and the average couple will have 2.2 children. Among these seven countries, those that are European and Protestant (Britain and West Germany) are now growing at only 0.3% per year; the Catholic countries (France and Italy) have 0.9% and 0.5% growth rates, respectively; and the countries with no definite religious background (Japan and Russia) have rates of 1.3% and 1% per year, respectively. Finally, the United States is growing at the rate of 0.9%. The birth rate decreases have been voluntary and motivated by the principle of responsible parenthood. The people of these seven nations are influenced by a general view in favor of stabilization of the population.*

From these indications, we can conclude that there is a close relationship between a country's becoming developed and a reduction in its rate of demographic growth.

As to attitudes towards unpopulated land, Russia, the most extensive country in the world, includes 13 million square miles of empty space with a birth rate of only 18 per thousand inhabitants per year; yet, it does not seem to be concerned with stimulating the birth rate to inhabit these spaces. The same attitude seems to exist in the other countries with large open spaces, as in the United States, with a birth rate of 16, Canada with more than nine million square kilometers of relatively unpopulated space, Australia with almost 8 million square kilometers of empty space, or China with an uninhabited area of 6 million square kilometers (despite a population of 800 million persons). The birth rate is 19 in Canada, 21 in Australia and 27 in China (which also has higher mortality rates than the other four nations). Among the six countries of the world with the largest areas, only in Brazil do the people and government seem to believe that there is a need to increase the population to fill the continental empty spaces. The country does not seem to be worried about its high birth rate of 37 births per thousand in spite of the low death rate of 9 per thousand. The Brazilians, in hoping to occupy six million square kilometers of empty continent, forget the remoteness of this area in relation to markets. Although a few million inhabitants could occupy the area safely and economically, in fact the majority of the population increment will add to the crowding of the big cities, as is happening in all parts of the world.

C. Economic Problems

In view of the 10% annual growth in Brazil's Gross National Product which has occurred in the past few years, many government officials have opposed family planning, since they feel that the economic growth can absorb the 3% of population growth. They claim that the 7% net will make possible the doubling of per capita production in eleven years.

*All population size and growth rate data in this paragraph are from 1975 World Population Data Sheet (Population Reference Bureau, Inc Washington, D.C., March 1975).

However, a closer examination of the facts in Brazil may show that this growth rate will not solve the problems of dependency, employment, education and housing which are now serious problems in the country.

1. Dependency Ratio

From the economic point of view, the population of any country may be divided between the economically active people who produce the necessary goods and services, and the economically dependent section of the population, made up of minors and old people. In the developed countries, the economically active part of the population (between the ages of 15 and 60) constitutes about 68% and the dependent part about 32%. In the underdeveloped countries as a whole, the economically active part of the population is only 57% with 43% dependent on them. In Brazil, the economically active part of the population is only 53%, and the very high rate of population growth continues to increase the proportion of dependents.

Thus, assuming that all the population of working age is employed, in a typical under-developed country every four producers must support themselves plus almost four other consumers. In a developed country the four producers need only to support three other consumers. This demonstrates the economic potential of the developed countries which, in addition to having a lighter dependency load, have a higher percentage of skilled and educated people.

2. Employment

The percent of the total population of Brazil which was actually employed was already low in 1940, namely 35.8%. The percentage is declining and had sunk to 31.7% in 1970. This is very low when compared to the corresponding figure of 43% for the developed countries.

Table VI shows the relationships between the working age population (between 15 and 60), the employed population and the total population.

Table VI: Working Age and Employed Population in Brazil, 1940-70
(in thousands)

	<u>1940</u>	<u>1950</u>	<u>1960</u>	<u>1970</u>
1. Total Population	41,236	51,944	70,119	93,204
2. Working Age Population(15-60)	22,004	27,931	36,766	49,406
3. Employed Population	14,758	17,117	22,651	29,545
4. Percent of Total Population in Working Age Group	53.3%	53.7%	52.4%	53.0%
5. Percent of Total Population Employed	35.8%	34.1%	32.3%	31.7%
6. Percent of Total Working Age Population Employed	67.0%	61.0%	61.6%	59.8%

Data furnished by Censuses of 1940, 1950, 1960, and 1970.

The figures in the table show that, between 1940 and 1970, a total of 14,787,000 new jobs were created. The table also shows that, during the same thirty years, the total number of people of working age rose from 22,004,000 to 49,406,000 or a rise of 27,402,000 in the number of people who might have been looking for work, and the percent of the working age population which was actually employed fell from 67.0% to 59.8%. Whereas in 1940, there were only a little over 7 million people of working age who were unemployed, by 1970, almost 20 million people were in this category. Thus, despite the relatively fast growth of the gross national product, the economy does not appear to be generating new jobs fast enough to keep up with population growth.

As for the future, the experience of the preceding decade showed that for every rise of 1% in the gross national product, there was a rise of .47% in the number of jobs available. If this relationship should remain the same in the decade 1970 to 1980, and if the present high rate of 10% per annum in the economic growth rate should last until 1980, then the number of jobs available in 1980 will rise by 17,000,000. This number would be about the same as the projected increase in the working age population in the same decade, and would restore the percentage of employment among the working age population to its 1940 level.

However, it seems to us over-optimistic to believe that the above relationship of a .47% rise in jobs for every 1% rise in gross national product which prevailed in the 1960-1970 decade will continue until 1980. That this will probably not occur is shown by the experience of the "SUDENE." The SUDENE is a scheme for the economic and industrial development of the Northeast and Central South of Brazil, a region with 30% of the population but only 16% of the national production. The scheme has been the principal incentive supplied by the government for the industrial development of the Northeast.

SUDENE provided a series of special incentives to encourage the establishment of new industries in the region. These were designed to cope with the problems of transport and the low scale of local demand and to stimulate the building and enlarging of enterprises. Except for an income tax exemption designed to reduce the sale price of the region's products and to give them a comparative advantage, the incentives consisted of various ways of lowering the cost of capital and increasing its availability.

As might have been anticipated, the result in the Northeast was a rise in the rate of private investment and a consequent substitution of capital for manual labor. When the cost of capital falls and the cost of labor remains unchanged, industries increase their reliance on capital at the expense of labor. Not only did the number of man-hours per unit of product fall, but the total employment in the region's industrial sector fell between 1959 and 1967.

The Government has begun a series of similar schemes in other less developed regions involving one and a half billion dollars annually (SUDAN , PIN , PROTERRA , PROVALE , and PRODOESTE). These plans all provide capital at low cost, in order to induce investors to bring resources to the less developed regions. The same results are to be expected as those in the SUDENE case; - economic progress is made without any automatic net increase in employment opportunities.

Experience with the export incentive schemes in some of the better developed regions has been the same. The export firms get certain tax benefits (equal to as much as 20% of the value of the exports) and receive credit to encourage the production of products for the international market. Capital intensive production tends to be encouraged in order for Brazilian products to be competitive with the products of the developed countries, where a high ratio of capital to labor is frequently used.

Thus, the conclusion is that Brazilian industry will develop on the basis of an increasing ratio of capital to labor, and that this trend will grow. As this occurs, we may assume, as a practical matter, that the tertiary sector of the economy will operate with a growing proportion of capital. The industrial sector, with its advanced technology, will have a definite influence on the other sectors of the economy, and the unemployment problem will become more acute.

3. Housing and Education

The most apparent of Brazil's social deficits is in the field of housing, where two and a half million urban units and four and a half rural units are needed. Pricing each unit on the basis of sixty minimum annual wages per unit (a rate which is less than the cost of houses financed by the national housing organization, "BNH"), the money needed to provide these units would amount to 22 billion dollars (420,000,000 minimum annual wages) and is about equal to the total stock of capital which now exists in Brazil.

In addition, in order to keep up with the present mushrooming rate of population growth and to replace obsolete buildings, 600,000 additional new units would be needed (on the basis of five persons per unit). This would cost 1.8 billion dollars, which equals 20% of the country's entire capital savings. Thus, the requirements of growth alone cannot be met and the huge housing deficit of 7,000,000 units will grow at the rate of from two to three hundred thousand urban units per year (or one billion dollars worth of housing).

Education is another unsolved social deficit in Brazil. The Brazilian work force (1970 census) is over 29,000,000 persons, of whom twelve to thirteen million are illiterate. The job of educating the wholly illiterate and improving the status of the semi-literate (giving them, on a systematic basis, the skills and training needed for better productivity so as to improve substantially the national production) would cost 10.8 billion

cruzeiros or 1.8 billion dollars a year, assuming that the average cost per individual is about 400 cruzeiros a year. (This amount was calculated by dividing the total amount spent on education in 1970 from public, private and external sources, (cr. 6.539 billion) by the total number of registered students in Brazil, or 18,823,000).

In addition to educating the present work force, there is still the problem of educating youth, another 26 million persons of which only half are now receiving any education. This education, although of low quality, is the best that Brazil can now offer. To provide all of the youth with an adequate education would require a doubling of the number of teachers at an additional cost of 2.7 billion dollars a year.

Even on the assumption that the housing problem is confined to the relief of the present housing deficit, a solution would require the re-channeling of 4.5 billion dollars of resources away from investment areas which yield higher short-term returns and into housing and education whose short-term return is insignificant.

Thus, since the total annual investment in other areas was estimated in 1973 as 9 billion dollars, the re-allocation of 4.5 billion dollars to housing and education would cut total investment in other areas by half, would sacrifice the present Brazilian economic development plans, would thereby cause a drastic fall in the country's rate of development.

III. LAWS DIRECTLY INFLUENCING FERTILITY

A. Sterilization

The Brazilian Government does not intend to adopt a policy with regard to sterilization. Sterilization is still a privilege of the higher social classes. Up to the present time it is more frequently performed on women than on men and performed by the ligation of the Fallopian tubes.

According to Decree Law No. 4113 of February 14, 1942, physicians, nurses and hospitals are forbidden to provide information on any treatment that prevents pregnancy or interrupts gestation.

However the Code of Medical Ethics, Article 52, states: "Sterilization is condemned; however it can be done under exceptional circumstances, after there has been consultation and approval by two physicians."

In practice a physician only performs a sterilization in response to an unsolicited request by a person and his or her spouse and after obtaining the opinions of three other physicians. In Rio de Janeiro there are public hospitals that perform sterilizations free.

The law does not include an age requirement.

B. Contraception

1. Inducements and restrictions generally

No law prohibits the importation, sale, or use of contraceptives. However, in the past the Brazilian Government's attitude toward contraception has been clearly pro-natalist, based on religious and economic rationales. Now the attitude is less clear. There are differences between Federal and State authorities. Some State governments and clergy have supported the provision of contraception. Popular opinion increasingly supports the use of modern contraceptives, especially the opinion of the relatively young, urbanized, educated, and high income sectors of the population.

2. Regulation

The Service of Medical Control does not permit the importing, manufacture or sale of products labelled as "contraceptives". Presumably they may be imported as "prophylactics" or as "medications to control bleeding". Based on similarity to other products, the import duties have been set at 37%. However, there are so many legal requirements that the importing of pills is practically forbidden. The importing of IUDs is also in effect forbidden. Regulation No. 42 of October 11, 1972 from the Service of Medical Control states that medical devices and

instruments may be imported only after a special license is granted. In the case of IUDs this license has not been granted by the Service.

There is no regulation of the transportation of contraceptives in the country, including use of the mail, except for several regulations that set minimum standards for strength of packaging.

The Service of Medical Control does not permit the sale of products labelled as "contraceptives". Condoms are sold as "prophylactics" against venereal disease. Pills are sold as drugs used for ovulation control and medical regularization. Under Decree No. 40 GB of January 25, 1970 prescriptions are required as a precondition for the sale of "pills", and sales are limited to pharmacies. The conditions of the prescription are specially regulated. There is also a limit on the amount that can be prescribed for sale at any one time.

3. Advertising

Decree No. 4113 of February 14, 1942 forbids physicians, nurses and hospitals to advertise any method of avoiding or terminating pregnancy. (A draft law which removes this provision is now under consideration by the Congress.)

4. Official distribution

The only program for distribution of contraceptives that is official in any respect is part of the program of BEMFAM (The Society "Bem Estar Familiar"). Some of BEMFAM's distribution of contraceptives is carried out under agreements with the State of Rio Grande de Norte and with several city governments. BEMFAM's programs also include Pap Smear tests, and treatment for sterility. By the end of 1973 BEMFAM had served 479,000 persons, through 84 clinics. Their distribution by method adopted was: IUD, 22%; oral contraceptives, 76%; other, 2%.

5. Financial aid

The Federal Government and one state government made very small contributions to BEMFAM in 1973 and 1974, as an institution of public utility. Otherwise there is no regular governmental support other than as stated under Section 2.4 above.

6. Popular attitude

In 1966, the Brazilian Institute of Public Opinion and Statistics (IBOPE) made an opinion survey relating to contraceptive practice. The 2800 respondents were adult men under age 50 and women under age 45 in 7 cities. Almost no persons refused to be interviewed. Large majorities favored several family planning ideas and had relevant knowledge, as follows:

(a) Economic reasons for fertility control:

Eighty-four percent of the female respondents supported the idea that only persons who can financially afford to raise a child should have one. Men were somewhat less supportive.

Seventy-nine percent of all respondents agreed that financial limitations are a sufficient reason for parents to limit the number of their children. Persons with low incomes were less in agreement with this idea than were others.

(b) Knowledge of contraception:

Seventy percent of the female respondents knew that modern contraceptives existed. Somewhat fewer men had this knowledge.

(c) Contraception's value for preventing abortion:

Ninety-one percent of respondents agreed that contraception is a valuable means for reducing the number of abortions.

(d) Willingness to use contraception:

Eighty percent of the female respondents said they would use some type of contraceptive, if it should become necessary to limit their childbearing.

(e) Family planning education:

Ninety-one percent of respondents supported the idea of a program to educate people about the use of contraceptives. Women were more supportive than men.

C. Abortion

1. Restrictions and prohibitions generally

Article 128 of the Penal Code* prohibits abortion except under the following two circumstances:

- (1) Abortion is the only way to save the life of the pregnant woman.
- (2) The pregnancy resulted from rape.

* Article 130 of a draft Penal Code now under consideration by the Congress does not change this substantially.

When an abortion is performed in violation of this Article, both the abortionist and the pregnant woman, if she has consented to the abortion, are guilty of a criminal act. The penalty for the abortionist is higher if there was no valid consent, or if the woman was under age 14 (Article 125). Furthermore, this penalty is further increased if the abortion caused death or serious injury.

The intent to avoid dishonor reduces the penalties. A woman who aborts herself with this intent is subject to 6 months to 2 years imprisonment. An abortionist who also operates with this intent and with the consent of the pregnant woman is subject to the same penalty (Article 128). The new draft code reduces all the penalties slightly.

2. Regulation

When an abortion is performed to save the life of the pregnant woman, the concurring opinion of a second doctor is required, when a consultation with another doctor is possible. When there is an abortion of a pregnancy resulting from rape, the consent of the pregnant woman is required. If she is not capable of consent, her legal representative must give it.

Only physicians are permitted to do abortions.

3. Advertising

Article 20 prohibits "announcement of new processes, substances or objects designed to provoke abortion or to prevent pregnancy." The penalty is a fine of Cr \$500 to Cr \$5,000. Article 20 was added to the Code in 1940, in response to the prevalence of such advertising at the time, but the provision against advertising contraceptives will be repealed if the new draft law now in Congress is adopted.

4. Prevalence of abortion

It is extremely difficult to estimate the number of abortions done every year in Brazil, because most of them are illegal. BEMFAM has attempted to measure at least the abortion history of 4988 women who were registered and interviewed in BEMFAM clinics during 1962-64. Twenty-nine percent of the women admitted to having had one or more abortions. Moreover, the total number of abortions reported was 39 percent of the total number of births to these women.

Not all the abortions were reported as induced, however. The distribution, according to the women's statements, was as follows: spontaneous, 32%; induced, 55%; not specified, 13%.

Of all women who said they had had one or more abortions, 44 percent were at the time single, 55 percent married, and 1 percent widowed. This seems to confirm that the abortions are more frequently sought for social or economic reasons than on moral grounds.

It has been estimated that the total number of induced abortions was 700,000 in 1966 and 3,000,000 in 1972. A substantial portion of the women who have these abortions were later hospitalized because of complications. Complications are caused by the poor quality of the abortion operation that is to be expected when they must be obtained illegally. In one of the largest hospitals in Belo Horizonte it was reported in 1968 that of a total of 10,000 female admissions, 4,000 needed treatment for complications of abortions done outside the hospital.

IV. FAMILY STATUS

A. Marriage

1. Inducements

Social welfare legislation provides three specific inducements to marriage. The first is provided by Law 5.107 of September 13, 1966, which created a fund to provide unemployment compensation for employees, known as the "FGTS". Payments from this fund are ordinarily made to employees only when they are laid off. However, an exception is made in the case of marriage, whereby a female employee at the time of marriage may withdraw the full amount of her contribution to the fund. Another exception is with regard to purchase of a home. For such a purchase, an employee may withdraw from the fund. The second inducement is a paid vacation for three days following marriage. The third inducement is that an employee may at the time of his marriage withdraw the amount deposited in his name in the Social Integration Plan ("PIS").

Another category of inducement is more indirect. It is payments or leaves of absence related to childbearing. A lump sum payment related to the minimum wage is provided to pregnant employees or employees whose wives are pregnant, provided that the employee has made at least twelve monthly contributions to the Provident Fund. The payment is made to offset the costs of delivery. (Article 33 of Law No. 3.807/60). There is also a family allowance established by Law No. 4.266/63, which provides to each eligible employee a payment of 5 percent of the minimum wage for each of his children under the age of fourteen. Finally, there is paid maternity leave for a period of one month before and two months after delivery.

However, despite the above inducements, and despite the efforts of the Civil Code to protect marriage as an institution, Brazilian law as a whole does not provide strong motivation for marriage. A major disincentive for marriage is the difficulty of terminating it, since Brazilian law does not permit divorce. Annulment is possible in some cases (see below) but the majority of terminations are merely separations, and remarriage is not permitted. Moreover, as will be seen below, the incentives for separation are greater than those for marriage. Moreover, moral restrictions on sexual relations between people who are not married have gradually been eased, owing to social realities.

2. Age restrictions

The current Civil Code (Art. 183(12)) and the new draft Civil Code now before Congress both provide that the minimum age for marriage is sixteen years for females and eighteen years for males. A violation of these limits makes the marriage subject to annulment, unless a pregnancy has resulted from the marriage. If there is no annulment of a marriage which violates these minimum ages, then when the spouses

reach the required ages, they may make the marriage valid by ratification before a judge and a notary of the civil register. This ratification has a retroactive effect.

3. Other restrictions and conditions

Those who have not reached the age of twenty-one and those who, irrespective of their age, are judged to require the guardianship of an adult, may not marry without the authorization of those upon whom they are legally dependent. The denial of permission to marry may be appealed, and if the judge finds the denial unjustified, he may provide the necessary consent. In general, the consent of both parents is required. Should the parents disagree, the father's will prevails, or, if the parents are separated, the will of the spouse with whom the child is living.

Article 183 of the Civil Code prohibits marriage between persons who have any of a large number of possible pre-existing relationships. These relationships include the following: ascendance, descendance, lineal relatives, and siblings and other collaterals through the third degree. All these relationships are prohibited irrespective of whether they are illegitimate or legitimate, natural or civil. Other prohibited relationships relate to relationship by adoption, adulterous relationship, and guardianship.

The Civil Code establishes in great detail a number of procedural requirements that precede marriage and relate to the registration of marriage. These requirements appear to be related to concern with the prevention of bigamy.* A number of documents must be submitted to the civil register's office in order to obtain an official notice of the banns. The documents include proof of age, an annulment of any previous marriage, a death certificate of any deceased previous spouse, a statement of two witnesses to the effect that no impediment to the marriage exists, authorization from those whose consent is required, if any, and a statement of other information by the persons desiring to be married. The official notice of the banns is displayed in the building where civil marriages are celebrated, and published in the local newspaper, if there is one. After a waiting period permission is granted for a marriage to occur within the following three months. If a marriage does not occur within these three months, then the above procedure must begin again. The marriage must be public and in the presence of

* Bigamy is a potential problem, because divorce is not legal in Brazil. Brazilian law does not permit either polygamy or polyandry. (The law does not distinguish between polygamy and polyandry, but it may be inferred that the prohibition of polygamy also applies to polyandry.) Under Article 235 of the Penal Code, polygamy is punishable by a two to six year prison sentence.

witnesses who are not relatives of the contracting parties. If the parties are illiterate, there must be four witnesses. A marriage in the church may be substituted for a civil ceremony. In either case, there must be registration of the marriage immediately after the ceremony. The law provides for a detailed list of relevant information, including agreements with regard to property rights. The registration must be signed by both the parties, the witnesses, and the person who performed the marriage.

Civil marriage is free of charge, except for the expense of the certificates, publications, display and filing of the public notice, etc. The costs of these latter procedures, are, however, low. Marriage in a church is more expensive.

B. Divorce and Annulment

1. Divorce

The Brazilian law does not allow divorce, as is clearly shown in the introduction to the Civil Code (Decree-Law No. 4657 of September 4, 1942), Article 7, paragraph 6. There have been periodic attempts to change the law, but these attempts have never succeeded because of the strong influence of the Catholic Church.

2. Grounds for annulment

Although divorce is not permissible, marriages can be terminated under special circumstances by annulment. The law makes a distinction between nullity and annulment. A null marriage is deemed never to have existed, while an annulled marriage is deemed to have existed before its termination.

Article 183 of the Civil Code names sixteen types of cases where people may not marry. A marriage is null if it has been contracted in the first eight cases. These cases are the prohibitions of marriage referred to above (page 22). A marriage contracted before an incompetent authority is also null, but this nullity will be deemed to have been corrected if no action is taken for a period of two or more years after the marriage ceremony. Before the completion of the two year period, a statement of nullity may be requested either by the interested parties or by the public ministry.

A marriage contract that violates cases 9-12 of Article 183 is not null but may be annulled. Cases 9-11 relate to marriage without proper consent. Annulment of a marriage which violates case 11 may only be requested by those whose consent was necessary for the marriage. Case 12 is the minimum marriage age requirement. Annulment based on violation of this requirement may be requested by the minor spouse, by legal representatives of either spouse, or by persons whom Article 190 of the Civil Code specifies (relatives in a straight line of either

spouse, and second grade collaterals). To avoid a criminal penalty for marrying under age, the parties may accept a bodily separation without annulment until such time as the spouses reach legal age.

A marriage that results in a pregnancy may not be annulled by reason of age.

A marriage may also be annulled by one of the spouses if there has been an essential error as to the person of the other spouse. An essential error includes: identity, honor and good name such that the error would make life in common unbearable, ignorance of a serious crime committed before marriage and for which there has been a conviction, ignorance before marriage of a physical and incurable defect or serious disease, and the nonvirginity of the woman of which the husband was not aware. In the case of such errors annulment may only be requested by the deceived spouse.

Even though a marriage may be liable to annulment or nullity, if it was contracted in good faith by both spouses, the marriage in relation to them and their children has all the effects in civil law of a valid marriage, until the annulment actually occurs. On the other hand, if one of the spouses was not acting in good faith, that spouse cannot benefit from the civil law defect.

Annulment does not, in itself, make illegitimate any child conceived before or during the marriage.

3. Time limitations

There are a variety of time limitations which apply to specific grounds for annulment of a marriage. At one extreme there is a ten day limitation on the husband's seeking annulment of a marriage on the grounds of non-virginity of his wife. At the other extreme, there is a two year limitation on a spouse's seeking annulment on grounds that she was coerced into the marriage, and the two-year period does not begin until the day on which the coercion is deemed to have ceased. A parent or guardian whose consent was required but not obtained for a marriage must request annulment within three months of his discovering the occurrence of the marriage. Annulment proceedings on the ground of one or both spouses being under age must be instituted by a spouse within six months of his or her reaching the legal minimum age for marriage. In the case of a suit filed by a legal representative or relatives, the time period is six months after the date of the marriage. There is no time limit with regard to marriages which are deemed to have been null (non-existent) on the grounds of violating sections 1-8 of Article 183 of the Civil Code.

4. Procedural matters

Suits for annulment of a marriage are in general, more expensive than suits for legal separation. The annulment proceeding is treated as

an ordinary suit in which a state representative (family curator) is required by law to oppose the suit, in accord with the state policy to protect the institution of marriage.

C. Separation

1. Types and grounds for separation

There are two types of legal separation under Brazilian law. One is by mutual consent or agreement and is hereafter referred to as "amicable." The other is a legal separation which must be secured by one party to the marriage through litigation either because of the absence of the other party or the opposition of the other party. Hereafter this type of separation will be referred to as "contested."

Article 318 of the Civil Code prohibits amicable separations until a period of at least two years has elapsed after marriage. There is no such time limit for contested separation with the exception of contested separation secured on the grounds of voluntary abandonment of the home by one of the spouses for a period of two continuous years.

Besides voluntary abandonment of the home, there are three other grounds upon which a contested separation may be granted. These are adultery, attempted murder of the petitioning spouse, and ill treatment or another grave offense perpetrated upon the petitioning spouse by the other.

The draft of the proposed new Civil Code reduces to one year the waiting period after marriage before an amicable separation is obtainable. Also reduced to one year is the period of voluntary abandonment that is grounds for a contested separation.

Table 7 gives data on legal separations in Brazil for the years 1967-1969 by type of separation, grounds for contested separations, duration of marriage, and age of husband and wife. Separations seem to be spread somewhat evenly through all age groups and periods of duration of marriage. Amicable separations are about three times as frequent as contested separations. Abandonment of the home by one of the spouses is a ground for a contested separation that is about twice as frequent as adultery or cruelty.

Table VII: Legal Separations

a. Separations by Type

<u>Year</u>	<u>Amicable</u>	<u>Contested</u>	<u>Total</u>
1967	4,076	1,550	5,626
1968	5,014	1,589	6,603
1969	5,834	1,850	7,684

b. Contested Separations by Grounds for Suit

<u>Year</u>	<u>Adultery</u>	<u>Attempted Homicide</u>	<u>Cruelty or Offense</u>	<u>Abandonment of Home</u>	<u>Not Stated</u>
1967	397	23	351	724	55
1968	474	29	346	686	54
1969	447	38	405	884	76

c. Separations by Duration of Marriage

<u>Year</u>	<u>Less than 5 Years</u>	<u>6 to 9 Years</u>	<u>10 to 14 Years</u>	<u>Over 15 Years</u>	<u>Not Stated</u>
1967	971	1,045	1,152	1,615	652
1968	1,241	1,226	1,253	2,025	616
1969	1,513	1,487	1,365	2,226	820

d. Separations by Age of Spouse who Sues

<u>Year</u>	<u>Suit by Husband</u>				<u>Suit by Wife</u>			
	<u>Up to 30 Yrs</u>	<u>31 to 44 Yrs</u>	<u>Over 45 Yrs</u>	<u>Not Stated</u>	<u>Up to 30 Yrs</u>	<u>31 to 44 Yrs</u>	<u>Over 45 Yrs</u>	<u>Not Stated</u>
1967	1,079	2,648	1,306	593	1,868	2,303	853	602
1968	1,250	3,243	1,564	564	2,296	2,771	998	538
1969	1,595	3,614	1,741	734	2,816	3,034	1,113	721

2. Procedural matters

The procedure for an amicable separation is as follows: The spouses present to the court a petition signed by both in which there is proof that the marriage took place over two years ago and in which are set forth the details of their separation agreement with regard to the distribution of assets, custody of minor children, alimony for the wife, and child support. A judge has a separate hearing for each spouse to inform himself of the causes for the separation. Then after a waiting period of fifteen to thirty days the spouses must reaffirm their request for separation. Next, within five days a representative of the state is heard with regard to the acceptability of the separation agreement from the state's point of view. If after these hearings the separation agreement is satisfactory to all parties, it is recorded in the civil register.

The procedure for contested separation is regulated by Law No. 968 of December 10, 1949. It proceeds, in general, as an ordinary legal suit with the difference that there is participation by a representative of the state who defends the state's interest in preserving the marriage institution. At a preliminary hearing the judge tries to bring about a reconciliation. For this purpose he will hear the parties separately or together. If he fails, he attempts at least to bring about a separation through mutual agreement. If he succeeds in this, then the subsequent procedure is along the lines described above for amicable separations. Should he fail for such reasons as the absence of one of the spouses, then the suit must proceed with the necessary complications of proof of the existence of one of the grounds for contested separation stated above.

Contested separations are more expensive than amicable separations. In each case there is a fixed fee plus a percentage fee related to the amount of property which is being divided by the agreement. Brazilian law, however, provides for legal assistance to the indigent.

D. Alimony and Support

1. Nature and entitlement

In the preceding section on separation the subject of alimony and child support was alluded to. The husband is obligated to pay an allowance to his wife and children, except that the wife is not eligible for support payments (alimony) if she was the cause of the separation. The wife may temporarily waive her rights to alimony but may not permanently give up her rights to alimony. In no case can the mother waive the rights of her children to child support payments.

Illegitimate children may be eligible for child support. A paternity suit may be undertaken for the sole purpose of payment of child support. Also an illegitimate child may sue his father in a secret judicial proceeding to secure child support.

While the obligation of a husband to support his wife and children may be the most common form of support obligations to be enforced by legal proceedings, the law defines other support obligations among relatives as well. Under Article 396 of the Civil Code any relative may request from another support payments necessary for his or her subsistence. Article 400 provides that the support payments be made proportionate to the claimant's needs and the means of the relative from whom the payments are sought. All relatives, however, are not equally obligated to support any particular individual. The obligation first falls upon the ascendants in order of the closeness of the relationship. Next the obligation falls upon the descendants in order of proximity of relationship. If there are no ascendants or descendants then the obligation falls upon the brothers.

There is some choice with regard to the form of support provided. Providing support in kind, e.g., food and lodging, can be an alternative to cash payments. It is, however, the responsibility of the judge to determine whether a particular form of support is appropriate.

Article 402 of the Civil Code provides that the obligation to provide support is not transmissible to the heirs of the person providing the support.

2. Procedural Matters

When support from relatives is being sought in the form of alimony or child support, the legal procedures are those that have been described above in the section on separation (p. 27). As noted there, if the separation is amicable, the alimony and child support are generally agreed to before the legal proceedings and are put into a separation agreement which is given to the court with a particular set of information including his earnings and other means of support. Supporting documentary proof may be required when it does not already exist in public records or in the possession of the party from whom support is sought. If the applicant appears personally without an attorney, the judge will appoint an attorney to represent him. The judge then makes a decision with regard to what support payments are appropriate. Within forty-eight hours of this decision a copy of it is provided to the obligated relative and a hearing for conciliation and judgment is set. The date of the hearing is set to allow a reasonable period of time to the person from whom support is sought to contest the claim and avoid the public notice that would come from a final judgment. At the hearing both parties will be present. If the person from whom support is requested is not present there will be a judgment against him by default. Each party may bring up three witnesses and any other written proof desired. Initially in the hearing, the judge will seek a conciliation and voluntary agreement to provide reasonable support, if it appears due. If no voluntary agreement is obtained, the judge will hear the statements of the parties and witnesses. The judge will then renew his proposal for a voluntary agreement, and

if this is not accepted, he will dictate his decision along with a brief report of what has taken place at the hearing.

An applicant who is not in a position to pay the costs of these proceedings may have the court costs waived by simply stating his position before the judge. The penalty for false statement, however, is up to ten times the costs of the proceedings. A person who claims to be poor is presumed to be so, and any contest of his right to free proceedings is treated as a separate suit and will not interrupt the suit for support.

The law gives special attention to the problems of obtaining accurate information about the income and assets of the parties in this sort of proceeding. After the time of the hearing is set, the judge will notify the plaintiff's employer, requesting that information with regard to wages or salary be forwarded to the judge no later than the day set for hearing. The withholding of this information is subject to criminal penalties. In addition the law provides that civil and military government departments, including the income tax departments, must provide to the judge and the parties in this suit all information that is necessary. These departments must also provide information at later dates which is related to enforcing the decision on support payments reached by the court.

A party who believes he will be responsible for support may expedite matters by taking the initiative. For example a husband who abandons the common residence may, without giving the reasons for this abandonment, inform the judge of his income and request that his wife or her representatives be summoned to appear for a hearing for conciliation and judgment.

A court decision with regard to support obligations is always provisional. Should a change occur at any time in the income, assets, or other aspects of the position of either party, the party may request a rehearing and a decision to change the support payments or other obligation as appropriate. Such a request will always be processed as a separate suit. Until the suit is concluded, the previous decision remains binding. However, if the suit results in a decision to change the support payments, the decision is retroactive to the date of the citation in the latter suit, and adjustments will be made accordingly.

Enforcement of a decision on support obligations may include garnishment and imprisonment. Payments may be deducted by the debtor's employer from his salary or may be collected out of rentals or any other kind of income the debtor has. The amounts may be collected directly by the person receiving the payments or by a depository appointed by the court. Article 920 of the Code of Civil Procedure provides for a penalty in the form of imprisonment for non-payment of support obligations. Furthermore the serving of a prison term does not in any degree relieve the payment obligation.

V. CHILDREN AND CHILD WELFARE

A. Parental Obligation

Article 384 of the Civil Code lists the obligations of parents as follows:

- a. To guide their education and upbringing.
- b. To care for them.
- c. To grant or refuse permission to marry.
- d. To name a guardian by proper legal documents in case of death of both parents or in case the surviving parent is unable to ensure proper parental authority.
- e. To act as legal representative for the child until the age of 16 and to assist the child in legal activities after that age by giving consent to such activities.
- f. To reclaim the children in case they are illegally detained.
- g. To teach the children obedience and respect and how to perform such duties as are fitting for their age and social condition.

Parental authority may be terminated or suspended for misuse by parents of their authority. Among the provisions with regard to this are the following:

Article 394 of the Civil Code provides:

If the father or mother abuse their power, misuse their parental position or damage the financial position of the children, a judge is required, upon the request of any relative or of the Public Ministry, to take such steps as may seem necessary to him to protect the security of the minor and his goods and may suspend the parental authority for as long as as may seem appropriate.

The practice of parental authority is also suspended when the father or mother is formally condemned for a crime involving a penalty exceeding two years imprisonment.

Article 395 of the Civil Code states that:

The father or mother will by judicial act be deprived of parental authority if they:

- a) Punish the child beyond moderation.
- b) Abandon him.
- c) Commit acts against the morals and good behavior of the child.

Article 244 of the Penal Code of 1940 provides that it is a "crime against family support" to:

...stop, without just cause, the provision of subsistence for the spouse or for the son under 18 years old or who is incapable of working...or not to give them the necessary means or to fail to provide a food pension payment which has been fixed judicially; or to stop without just cause the provision of aid to extremely ill children or grandchildren.

Two more provisions of the Penal Code provide punishment for giving custody of a minor child to an irresponsible person (known as "material abandonment") or discontinuing without just cause, the basic instruction of a school-age child ("intellectual disregard"). The Penal Code also penalizes a person who allows a minor under 18 years of age who is under his guardianship :

- a. To frequent gambling houses or houses of ill repute;
- b. To frequent theatrical performances capable of corrupting his or her chastity;
- c. To live or work in a house of prostitution;
- d. To beg.

There are also criminal penalties under the new draft Penal Code for a person who fails to take steps necessary to prevent the moral corruption of a child under sixteen.

B. Obligations of Other Relatives

Articles 396, 397 and 399 of the Civil Code, dealing with "food support" provide that relatives may demand from one another the food they need to survive. The right is reciprocal between parents and children and extends to all older relatives. The support is obligatory when the relative that requests it has no property and is not able to support himself and when the relative from whom the food is requested can furnish it without endangering his own sustenance.

C. Governmental Obligations

The Federal Constitution provides that the "law will establish assistance for pregnant women, the child and the adolescent." It also provides that "education is the right of all." Generally in Brazil, the government's function is to supplement the responsibility of the parents by assistance and supervision.

D. Abandonment of Children

The Penal Code provides a penalty of imprisonment for the abandonment of a child who is unable to defend himself. The penalties rise if the abandonment results in serious injury or death to the child. Under Article 134 of the Penal Code, there are special provisions in regard to abandonment of a newborn child by a woman to hide dishonor. Articles 135 and 136 provide various penalties for various aspects of the crime of abandonment.

VI. CRIMINAL OFFENSES

A. Rape

Article 213 of the Penal Code defines rape as forcing a woman to have bodily intercourse by violence or threat. It has a penalty of from three to eight years imprisonment. (The new Penal Code now before Congress leaves this unchanged.)

B. Adultery and Concubinage

Adultery is considered as a "crime against the family" and is punishable because it damages the exclusivism of the conjugal relationship, which is a condition of the order and maintenance of the family.

Article 279 of the Penal Code punishes a married woman who commits adultery, and a husband who keeps a concubine. It also covers the concubine and the man with whom the wife committed adultery.

Article 240 of the Penal Code provides the same penalties to the correspondent as to the adulterous spouse. Charges may only be brought by the wronged spouse, and must be brought within a month of the time when he or she had knowledge of the act. If the spouse in any way consents, no charge may be brought. Moreover, the prosecuting witness may not press charges if he or she has committed adultery, attempted murder, committed serious offenses or has voluntarily abandoned the home for two consecutive years (Article 317 of the Civil Code).

The Civil Code (Article 317) treats husband and wife alike in connection with separation proceedings, and, if a spouse is separated, he or she is not punishable for adultery under the Criminal Code.

Although the draft Penal Code now before Congress maintains the same provision, there is a tendency not to give criminal sentences for the crime. Police investigations in this field are usually carried on only in connection with civil suits for separation. The maintenance of the crime in the Penal Code is primarily for didactic purposes.

C. Prostitution

Prostitution is not a crime in Brazil, and some state and municipal governments regulate it to some extent. However, some ancillary activities, such as pimping and inducement, are crimes.

D. Miscellaneous

Incest has been made a crime in Article 259 of the draft Penal Code now before Congress. Homosexuality is not a crime, but obscenity and assault in connection with it are punishable.

E. Penology

Modern penal practices in Brazil, which are designed to rehabilitate the prisoner in society, are concerned with the maintenance of his family life. Some penitentiaries make provision for marital visits of the prisoners' mates. This privilege is not granted to female prisoners for fear of pregnancy since use of contraceptives is not permitted.

VII. PUBLIC WELFARE

A. Family Allowances, Including Aid to Dependent Children

Parents receive child allowances for each child under the age of 14 (under Law No. 4.266/63). The amount is equivalent to 5% of the minimum wage. Enterprises that employ more than 100 persons are required to provide education for all children of their employees.

B. Housing Assistance Program

The National Housing Bank ("B. N. H. ") was created by Law No. 4380 of Aug. 21, 1964 with very limited resources. In the light of the need for more funds, the Government took over the financing of this operation through the Guarantee Fund for Time of Service ("F. G. T. S. "), which is the organization operating the unemployment insurance system which was established in 1956. As of June 1969, the B. N. H. had funded the construction of 500,000 houses, of which 170,000 were low-cost. The B. N. H. makes the regulations regarding this housing. For a comment on the vast scope of the housing problem, see Chap. II, C, 3, supra.

C. Maternity Leaves and Benefits

Article 392 of the Consolidated Labor Law provides that a woman may have maternity leave for a period beginning 4 weeks before delivery and 8 weeks after. If a doctor certifies that it is advisable, the period may begin 6 weeks before delivery and extend to 10 weeks after. During this time the woman receives her full salary. Furthermore, an employer is not permitted to terminate the employment of a woman because she is pregnant. On the other hand, if a pregnancy, in the opinion of a physician, prevents a woman from fulfilling an employment contract, she may break this contract without prejudice.

For a period of six months after she gives birth, an employee has the right to two special half-hour rest periods during the day for the purpose of nursing her baby. This time period may be extended to one year on the advice of a physician. To facilitate such child care by working mothers, the place of employment must have a suitable nursery where the children are kept and tended to while the mother is working.

D. Old Age Retirement and Death Benefits

The Instituto Nacional de Providencia Social ("I. N. P. S. "), run by the Government, administers a social security program that includes both regular employees and self-employed workers (odd jobbers, piece workers, etc.). Both workers and employees make regular contributions to a social security fund. At the time of retirement, both the worker and his dependents receive a pension. There is also a death benefit for dependents who survive the worker. Dependents include a wife, an invalid

husband, a concubine maintained for more than 5 years, sons under 18, daughters under 21, any designated person who, if male, is under 18 or more than 60, a mother or an invalid father, brothers under 18, sisters under 21, or any invalid sibling. It is financed by a tax of 8% on payrolls.

In addition, the I.N.P.S. provides a pension for any man over 70 and any woman over 65. A man may retire with retirement benefits after 35 years of work and a woman after 30 years.

E. Personal Status and Integrity

The right to choose freely one's family size and to receive information and services to facilitate the exercise of this right is not specifically provided for in the Brazilian Constitution. However, Section 36 of Article 153 provides that "the specification of the rights and guarantees expressed in this Constitution does not exclude other rights and guarantees...."

The first section of Article 153 of the Federal Constitution provides that "everybody is equal before the law, without discrimination with regard to sex, occupation, race, religion, or political conviction." Despite this provision and the growing participation of women in social and economic life, it is clear that there still exists flagrant inequality between the sexes in Brazil, both in absolute terms and in comparison to the developed countries. This situation, more prevalent in the rural regions of Brazil than in urban areas, limits women's influence in family planning decisions and is a major cause of the present demographic disorganization.

As to personal privacy, Article 153, Section 10 of the Federal Constitution provides that the house is the inviolable asylum of the individual. No one may enter the house at night without the owner's permission except in case of crime or disaster. During the day, entry is only authorized in the cases and manner prescribed by law.

Special preferences for male offspring do not exist under Brazilian law. Inheritance is equal between male and female heirs.

F. Personal Mobility

There are no restrictions on emigration or on internal migration, although there are certain governmental subsidies to encourage the development of the interior. On immigration, the law requires that immigrants give evidence that they can be self-supporting.

VIII. PUBLIC HEALTH

A. Health Insurance and Medical Assistance

Law No. 3,807 of August 26, 1960, amended in 1973 established a broad Social Welfare program. The social security aspects have been discussed above. The health aspect includes health insurance through the I. N. P. S. for employees and self-employed workers. This includes hospitalization. Persons who purchase private health insurance may count the premiums as income tax deductions.

Law 3,807 excludes rural workers, and this has been one of the causes of the migration from rural to urban areas. The Government is now planning to extend the coverage to rural areas.

B. Control of Medical Facilities

In 1969, only 539 or 15% of the total of 3,600 hospitals in Brazil were public. The rest were privately run, half being for profit and half non-profit.

Although religious control of the hospitals does not exist from a legal point of view, nevertheless, religious influence on the population is great, as far as avoiding contraceptives is concerned.

C. Medical Professions

As in most developing countries, there is a strong concentration of physicians in the large urban centers with a high ratio of physicians to the general population. The majority of these doctors work under contract with the I. N. P. S.

The Code of Medical Ethics, of January 11, 1965 includes, as Article 52, the prohibition of sterilization except in unusual cases and after consultation with two more physicians in conference. Article 53 forbids artificial insemination with an outside donor. Article 54 forbids abortion except to save the life of the woman or when pregnancy was the result of rape and after consultation with two other doctors. Article 55 permits a physician to operate in a case where an abortion has already been provoked, in the interest of the patient's health. However, he must report the case to the Regional Medical Council. Article 56 forbids a physician from describing or advertising a method or treatment designed to prevent pregnancy.

The Decree Law No. 4,113 of February 14, 1942 regulates medical advertising and publicity, including advertising of pharmaceutical products. Decree No. 20,397 of January 14, 1946 (amended in 1958) regulates the pharmaceutical industry in Brazil. Decree No. 50,780 of June 10, 1961 controls sale of medicines.

D. Disease Control Program

Articles 130 and 131 of the Penal Code provide penalties for transmitting venereal disease.

There are nationwide campaigns to eliminate malaria, smallpox, yellow fever. There are programs that seek to vaccinate a high percentage of youth against polio, measles and typhoid, and to administer the BCG and DPT vaccines. There is also a nutrition program aimed at the 9,5 million mothers and children who are estimated to require improved nutrition. At present the program seeks to serve a population of 700,000.

A program to indirectly control disease is one to accelerate the production of essential medicines, both in federally owned and private manufacturing operations. The program includes incentives to the development of the chemical industry, to the establishment of pharmacies close to hospitals and at a scale large enough to permit minimum pricing of drugs, and the production of essential medicines in large quantities and with simple packaging to permit distribution at minimum prices.

The Government is now attempting to establish clear guidelines defining the sectors of activity of the public and private health services. A reorganization of the National Health Plan is under way.

The Government is only beginning a control of air and water pollution. The levels of pollution are quite high, as for example in Sao Paulo where the concentration of sulphur dioxide is twice as high as the level in comparable areas in the United States. Also, only a minority of districts in the country have any sewage treatment. As a result of speeded population growth and concentration, the Government has started to give this problem a high priority.

IX. EDUCATION

A. Compulsory Education

The Brazilian constitution provides that education from the ages of 7 to 14 is compulsory and free to all within the official elementary schools. Law No. 5,692 of August 11, 1971 sets the policies for instruction in elementary and secondary schools. Secondary school education is not compulsory but is free for all those who "show effective achievement." A federal advisory board of education is created to define a set of required and optional subjects, but Article 7 of the 1971 Law requires, inter alia, civic, moral, physical and health education. A minimum length of the school year is set at 180 days, but in rural areas considerable flexibility is allowed in the allocation of these 180 days to different parts of the year, in order to permit school age children to do farming work when they are most needed (Article 11). It is further provided (Article 18) that the elementary education shall consist of eight school years and at least 720 (credit) hours of activities. The inclusion of children younger than the age of seven in pre-school activities is encouraged but not required. As noted earlier however, despite these laws, one-half of persons age 6 to 20 are not in school.

B. Literacy and Adult Education Program

In 1971 a program was proposed to reduce by 1973 the number of illiterate young adults (age 15 to 35) from the estimated 7 million to 3.5 million. The program, called Mobral, has a budget of Cr \$110 million, derived from general revenues and revenues from the public lottery. The program uses both radio and television.

Law No. 5692 of 1971 mentioned above also makes provision for adult education. It proposes both schooling for adults who did not complete primary and secondary education and other education to improve the professional skills of persons who did complete their education at these levels. The programs will use radio, television and correspondence courses as well as conventional classroom instruction. There is also an Intensive Program for the Training of Labor which is designed to train 750,000 workers in industry and 40,000 agricultural workers between 1971 and 1973.

C. Financial Assistance

Federal expenditures on education are estimated to have increased by 67% between 1969 and 1973. The total expenditures would then be over half again as large as the expenditures in the preceding three years (1966-1969). This constitutes an increase in educational expenditures, as a percentage of the federal budget, from 5.6% in 1963 to almost 15% in 1973. This emphasis is consistent with the constitutional requirement that at

least 20% of municipal budgets be spent for education. Support comes from the Fund for the Development of Education which is raising 500,000,000 cruzeir from new services between 1970 and 1973.

D. Educational Opportunities for Women

Article 176 of the 1969 Constitution provides that education is the "right of everyone." In fact, the statistics on National Education for 1972 show that, in the primary, medium and superior stages, female students have nearly equal participation in the schools (from 54% in the second cycle of the medium stage to 44.7% in the superior stage). In the post-graduate stages, women's share falls off to 20% of the doctoral students.*

E. Education Affecting Population Directly

Decree No. 69,450 of November 1, 1971 makes physical education including sports and recreation a regular part of the curriculum at all stages. Although sex education does not exist in any official curriculum, some private schools are beginning to provide this as a science course in the seventh grade.

There is no specific requirement for population education in the official curriculum. However, some subjects within this area may be dealt with in the third year of secondary school. The family planning association ("BEMFAM") is the only entity in Brazil which provides education on family planning and responsible parenthood in general. As pointed out above, dissemination of information on contraceptive methods and on abortion is forbidden under present law. However, BEMFAM is making an effort to educate people on responsible parenthood and under the new code now under consideration in Congress, the present restraint on contraceptive information will be removed.

For a comment on the size of the educational task in Brazil and the degree of success so far achieved, see Chapter II, C, 3, supra.

*See T. Saraiva, A Mulher e a Educacao (Rio de Janeiro, 1973) which gives a table showing women's participation in education at all stages.

X. PROPERTY AND ECONOMIC FACTORS

A. General Income Distribution Measures

Under the system of distribution of the proceeds of taxes to the state and local governments, the more developed regions (mainly in the south) get a considerably higher share of the proceeds than the less developed regions. This has encouraged heavy internal migration away from the latter regions, and has forced the federal government to set up special schemes to encourage development and employment in these areas (See above Chapter II, C, 2).

B. Taxation

Only persons with an annual income of more than Cr \$7,600 (US \$1,266 in 1973) must file an income tax return. On such returns a deduction of Cr \$3,099 is allowed for each dependent and there is no limit on the number of dependents which may be claimed. In addition, as in some other countries, the taxpayer can take an additional deduction for the full cost of all support payments he has made to a wife and children. This would seem to be an incentive for the dissolution of marriages, since normally a married man's deductions are considerably less than those of a separated husband.

A more desirable incentive is the fact that contributions to the social security system are tax deductible, up to certain maximum limits (about Cr \$6,200 per year).

No other taxes are in any way related to the number of dependents, with the exception that the inheritance tax of 2% (placed only on real estate) is reduced by a 50% marital deduction for a surviving spouse. Other taxes, not related to the number of dependents, are real estate, sales and excise taxes, housing and occupancy taxes.

C. Land Tenure and Reform

Brazil has, in the past, had a policy of redistribution of some of the large landholdings, particularly in the northeast and midwest. However, such a program requires considerable farm machinery, equipment and education and might cut exports which are important for foreign exchange purposes. Therefore the present policy on land distribution is based on expropriation only of land which is unused or inefficiently used, under Decree Law 1,179 of July 6, 1971. This will be accompanied by a program of research of investment in modernization of rural production and of education.

For the Government's program to succeed, the fast growth of population must be moderated through family planning. It is not yet

clear what effect the land reform program, if it succeeds, will have on population growth.

Since the ownership of real estate is in the hands of a small proportion of the population at the present time, the effect of land inheritance laws on fertility is not of great demographic significance.

XI. CONCLUSION

Certain conclusions are clear with regard to the subject of population in Brazil. It is clear that there is a population problem and that more action must be taken to deal with it, including action that improves the general understanding of the problem. For example it appears that the problem has never been analyzed as a whole. The civil, penal, social welfare, administrative, fiscal, economic, ethical, and religious aspects have never been considered in a systematic fashion. There has not been sufficient appreciation of the conflicts between national and individual goals, between economic and human goals, and between population growth and all the national goals for the advancement of human welfare in Brazil.

In the frequent debate and discussion about Brazilian economic problems, the participants often seem to forget that the fundamental goal is the improvement of individual well-being. For example, it is argued that Brazil's problems could be solved more easily if there were simply: more settlement of uninhabited land areas; an increase in total, but not necessarily per capita, production, and labor costs low enough to be competitive on the international market. Other persons attach great priority to population size for purposes of national security and defense without assessing the actual value of mere increases in numbers of people. Still others advance arguments of a religious nature in which individual well-being is not always the principal consideration and where freedom of choice with regard to family size is mistakenly equated with the decline of the institution of the family. The confusion and lack of agreed criteria in this debate seem to have produced still another unfortunate by-product. This is that the debate seems to conceal or ignore many problems and solutions that might involve structural or political changes in Brazilian society and have far-reaching consequences for various powerful political and economic interests. Finally, various ideological groups have used this subject to further their immediate interests, and in the process, have reduced the discussion to an absolute minimum of reason.

The factions most antagonistic to family planning use pseudo-scientific arguments that by-pass the problem and avoid facing it, with the result that there is a lot of obscurantism in this field. On one hand, the conservatives oppose family planning because it might disrupt the status quo, while the radicals oppose it as a disguised weapon of the conservatives designed to obscure the need for more basic reforms. The latter even regard the demographic explosion as a possible instrument of revolution which could uproot the existing system. Of course, none of these arguments could withstand scientific analysis which must have as its objective the furtherance of man's welfare. Without this objective, all arguments, regardless of their political content, are without value.

We do not deny that fundamental social and economic reforms may be necessary in Brazil, but we propose that formal planning be debated with full knowledge of the facts. The crucial factual questions about which the debate should center are as follows:

- (a) Is the cost which the country is paying to provide for the annual 3 percent growth in population balanced by any improvement in the general welfare?
- (b) Will the practice of family planning have undesirable effects on the institution of the family?
- (c) Is the practice of family planning "natural" in the accepted sense of this word?

The relationship between man and his environment is increasingly unstable and fraught with danger for both man and nature. A dispassionate analysis is necessary if equilibrium in this relationship is ever to be attained. Through growth in his technology and his knowledge, man has greater means than ever before to achieve this equilibrium, yet he hesitates to use these means. Family planning is one of these means, and in the case of Brazil where the country is under developed, but where there is a precipitous and disorganized process of development going on, it is urgent to remove every barrier which deprives a citizen of an understanding of the population problem and of the right to make a free individual decision with regard to its solution.

There are two specific reforms in Brazilian law which should be considered. One is that since present financial incentives for large families, although small in size, do have an effect, they should be discontinued. Since they are so small, their removal would not create great hardship. Another possible reform would be in the present law which forbids publicity for abortion and contraception. It should be amended so as to allow advertising of contraceptives in the medical and scientific press, and to make a clear distinction between abortion and contraception.

More generally the authors feel that the change in law which would have the greatest and most desirable impact in slowing population growth is the enactment of a new law with regard to the right of every citizen to practice family planning and to receive information and services to assist him in the exercise of that right. We propose a law which would read as follows:

Whereas:

--the liberty of action of the individual may only be limited when necessary to achieve the social objectives of the society of which he forms a part;

--there is no evidence whatsoever that family planning, as properly conceived, constitutes any threat to society in general, or to Brazilian society in particular;

--informed family planning is an aspect of individual liberty which the Government is obligated to preserve and encourage.

Article 1

Each citizen has the right to plan his offspring, having in mind the need to assure to them the maximum spiritual, economic and social well-being.

Article 2

It is incumbent on the Federal Government, on the basis of Article 8, paragraph XIV and XVII of the Federal Constitution, to take actions consistent with and supportive of the right set forth in the previous Article.

Article 3

Such actions by the Federal Government shall include:

- (a) providing for the instruction of the population concerning family planning;
- (b) entering into agreements, both domestic and international, for the accomplishment of the objectives of this law;
- (c) establishing laws regulating the use of contraceptives, and adapting present legislation to the objectives of this law.

The States, Territories, Municipalities and Federal District shall cooperate with the Federal Government, and the Federal Government shall cooperate with them, in the implementation of the goals established in this Article.

Article 4

A Working Group shall be established with the collaboration of the Labor Unions and the Employers' Associations, for the purpose of drafting the appropriate regulations to accomplish the purposes of this law.

Article 5

The Working Group referred to in Article 4 shall include one representative from each of the following:

- (a) the Ministry of Health;**
- (b) the Ministry of Education;**
- (c) the Ministry of Planning;**
- (d) the Federal Council of Medicine;**
- (e) the Federal Council of the Brazilian Bar Association;
and,**
- (f) the Council for the Protection of Human Rights.**

The Working Group provided for in this Article has a period of ninety (90) days within which to present the drafts of legal and regulatory provisions that will accomplish the goals established by this Law.

Article 6

This law shall become effective on the date of its publication. Any provisions to the contrary are revoked.

- 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).
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International Advisory Committee on Population and Law

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

Professor Georges Abi-Saab (*Institute of International Studies, Geneva*)

Professor Richard Baxter (*Harvard University*)

Mr. Robert Black (*Organization for Economic Cooperation and Development*)

Dr. Jean Bourgeois-Pichat (*Comité International de Coordination des
Recherches Nationales en Démographie*)

Mr. Philander Claxton, Jr. (*U.S. Department of State*)

Lic. Gerardo Cornejo M. (*Fundación para Estudios de la Población, A.C.,
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Dean Irene Cortes (*University of the Philippines*)

Dr. Jean de Moerloose (*World Health Organization*)

Mr. Kailas C. Doctor (*International Labour Organisation*)

Mr. Carl M. Frisén (*U.N. Economic and Social Commission for Asia and the
Pacific*)

Mr. Robert K. A. Gardiner (*U.N. Economic Commission for Africa*)

Professor Richard Gardner (*Columbia University*)

Mr. Halvor Gille (*U.N. Fund for Population Activities*)

Professor Leo Gross (*Fletcher School of Law and Diplomacy*)

Dean Edmund A. Gullion (*Fletcher School of Law and Diplomacy*)

Miss Julia Henderson (*International Planned Parenthood Federation*)

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Mr. Leon Tabah (*U.N. Population Division*)