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by Edmund H. Kellogg

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REFORM OF LAWS AFFECTING POPULATION GROWTH: RECENT DEVELOPMENTS

EDMUND H. KELLOGG*

I. INTRODUCTION

In the December issue of this Journal, there is an article by my colleague, Dr. Luke T. Lee, on the Legal Implications of the World Plan of Action.¹ Dr. Lee wrote the article on his return from the United Nations World Population Conference at Bucharest. The Conference had called on each country to review, in the light of human rights, its laws bearing directly or indirectly on population. More specifically, the Conference had reaffirmed earlier United Nations proclamations declaring that all couples and individuals have the basic right to determine freely and responsibly the number and spacing of their children. People are to have available the information, education and means to effectuate this right.² The Conference affirmed that "women have the right to complete integration in the development process. . . (N)ecessary measures should be taken to facilitate this integration with family responsibilities, which should be fully shared by both partners."³

Dr. Lee's article defines population law as covering laws, regulations, decisions and customs which directly or indirectly affect population. His article describes this body of law as traditionally being pro-natalist, most countries having yet to respond to the present population conditions. In these countries there has been little acceptance of family planning. Dr. Lee explains the human rights aspects of the problem and discusses the "strategy for action" adopted by the United Nations and the International Planned Parenthood Federation (IPPF) for bringing these laws up to date. These two organizations have funded, in over twenty-five developing countries, projects designed to compile the laws which affect fertility and population growth, to review these laws with respect to present day thinking and conditions, and to bring to

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1. LEE, *Legal Implication of the World Population Plan of Action*, 9 J. INT'L. LAW & ECON. 375 (1974).

2. *World Population Plan of Action*, U.N. Doc. E/5585 (1974). [hereinafter cited as *Plan of Action*].

3. *Id.*, para. h.

the attention of the proper government officials any problems identified in the review.⁴

This article as a further discussion of population law, will indicate the various areas both in developing and developed countries which have been found to have a significant bearing on population growth, to point out the particular problems within each field, and to indicate what is being accomplished in the modernization process.

II. LAWS AFFECTING FERTILITY

The work done by the U.N. and IPPF sponsored projects and the events of the 1974 U.N. World Population Conference have shown that there is a surprisingly large number of fields where law either directly or indirectly affects fertility behavior. These fields include: contraception; voluntary sterilization; pregnancy termination; menstrual regulation; population and sex education; activities of professional para-medical personnel; discrimination against women; protection and support of illegitimate children; old age insurance and social security; social welfare; and incentives both discouraging and encouraging fertility. Each of these fields will be discussed briefly.

A. *Laws on Contraception*

In the field of family planning, contraception is one of the most important factors. This is the first field to consider, since every country has laws or regulations regarding contraception. The obviously impossible task of enforcing laws directly forbidding the *use* of contraceptives explains why virtually no jurisdiction⁵ has such a law.⁶ However, contraception has been banned, deterred or impeded in nearly every country and in almost every possible way at one time or another. These ways may be grouped as follows: laws against publicity for contraception;

4. Projects of this kind have been organized in Brazil, Chile, Costa Rica, Dominican Republic, Ecuador, Egypt, Ethiopia, Ghana, Indonesia, Iran, Kenya, South Korea, Lebanon, Malaysia, Mexico, Morocco, Nigeria, Pakistan, Philippines, Romania, Singapore, Sri Lanka, Thailand, Togo, Tunisia and Turkey. New projects are under consideration in several African, Latin American and Asian countries.

5. As used in this article, the word "jurisdiction" means national government, or the government of any state, province, city or other subdivision thereof which has authority to adopt laws or regulations in this field.

6. The only known law of this nature was in the state of Connecticut. It was declared unconstitutional in *Griswold v. Connecticut*, 381 U.S. 479 (1965).

laws against manufacture of contraceptives; laws against importation; laws against sale; laws against commercial advertising; and laws against the use of mails. These laws are found in all contexts: penal laws,⁷ customs and tariff laws,⁸ industrial regulations,⁹ public health laws and regulations,¹⁰ codes of medical ethics,¹¹ press laws,¹² and postal laws.¹³ Until recently, no effort had been made to pull these laws together and consider them as a group in the light of their effect on family planning.¹⁴

The French Law of July 31, 1920, prohibiting *publicity* for contraception has probably had the greatest effect in stopping the spread of family planning.¹⁵ This law was copied in all areas of the old French Empire in Africa and Asia.¹⁶ Although the law has largely been repealed in France,¹⁷ it still remains in effect in one form or another in most of the countries that emerged from the empire. The law treats contraception in the same context as abortion and forbids contraceptive propaganda. Initially aimed at the conditions in metropolitan France after World War I, the law was worded so as only to cover "anti-conceptive propaganda." However, by judicial interpretation the law was extended to bar the sale of contraceptives. This ban has also resulted in barring con-

7. Criminal Law Amendment Act of 1935, No. 6, § 17 (Ireland).

8. The Mexican duty on condoms is 50 pesos, plus 100% of value, plus 10%. The duty on I.U.D.'s is 110% of value, plus fees.

9. Spain forbids the manufacture of contraceptives (CODIG PENAL art. 416 § 2). See also The Drugs and Cosmetics Act, 1940, No. 23. 9 The A.I.R. Manual, 371 (India) and regulations, and The Drugs Control Act, 1950, No. 26. 9 The A.I.R. Manual, 407.

10. Until 1974, the French Law 67-1176, § 3, para. 2 (Decree of Dec. 28, 1967. [1967] J.O. 12861) imposed the same controls on contraceptive pills as were imposed on narcotics.

11. Regulations of Secretary of Health No. 735 of May 17, 1967 of Brazilian State of Guanabara. In most countries, codes of medical ethics severely restrict right of paramedical personnel to insert I.U.D.'s or prescribe pills.

12. Censorship of Publications Act of 1929 [No. 21] 117, and Censorship of Publications Act of 1946 [No. 1] 3 (Ireland).

13. 39 U.S.C. § 3001(e).

14. For a recent discussion in this area see J. Stepan & E. Kellogg, *The World's Laws on Contraceptives* (Law and Population Programme Monograph Series No. 17, 1974, rev. ed. 1975).

15. Law of July 31, 1920. This law prohibited the sale of abortifacients and of contraceptives but only when sold for "purposes of anti-conceptive propaganda." The French Supreme Court held that whoever sold contraceptives must necessarily do so for this reason. *Dame C.*, [1925] D.P. I. 97, (Cass. crim.).

16. All the Francophone countries of West Africa and Madagascar inherited this law. Only Mali and Togo have repealed it as of this time. It is also in effect in Lebanon, Cambodia, and South Viet Nam.

17. Decree of Dec. 28, 1967, [1967] J.O. 12861. Decree of Dec. 4, 1974, [1974] J.O. 12123.

traceptive publicity and education. It still remains the law in Francophone Africa, the Levant and Indochina.

Ireland has a provision similar to the French law in the form of a censorship law.¹⁸ Argentina imposed the same ban by presidential decree in 1974.¹⁹ Fascist Italy enacted a similar law which in 1971 was held unconstitutional on grounds of freedom of information.²⁰

Considering the generally suspicious attitude toward family planning which prevailed in most countries well into the twentieth century, there have been surprisingly few laws prohibiting the *manufacture* of contraceptives. Such laws do exist in Spain,²¹ Romania,²² Lebanon,²³ and several of the Francophone African countries. Strict laws including the imposition of high duties on raw materials, quotas on foreign currency and bureaucratic red tape in getting permits are also used to inhibit manufacture.²⁴

Laws limiting the *sale* of contraceptives are of various kinds. In only a few countries are sales virtually unhindered except for reasonable health precautions. Several of the extremely conservative countries (Ireland, Argentina, Spain, and Romania) still have bans on all sales. The Irish Parliament rejected, in July 1974, a government-supported law which would have permitted the sale of contraceptives to married persons. Spain does not strictly enforce the law against the sale of contraceptives.²⁵ In Romania, the Government carries out all manufacture, import and sales operations. Thus it simply does not manufacture, import or sell any contraceptives (other than condoms) except in

18. Censorship of Publications Act of 1929 [No. 21] 117, and Censorship of Publications Act of 1946 [No. 1] 3.

19. Ministry of Health Decree of March 1974, makes pills available only on prescription signed by three medical authorities. N.Y. Times, Mar. 17, 1974, at 4 col. 1.

20. Constitutional Court, Italy, declared the law unconstitutional as contrary to freedom of information in the *DeMarchi* Case, March 16, 1971, decision No. 49.

21. CODIG PENAL art. 416, § 2.

22. The Government of Romania carries on all manufacturing operations in the country and does not manufacture any contraceptives except condoms.

23. COMPILATION OF LEBANESE LAW (Penal Code issued as Legislative Decree No. 340 NI of March 1, 1943) arts. 537, 538 (1943) forbids manufacture by implication. However, the provisions are not enforced.

24. For a full study on factors inhibiting the manufacture and distribution of contraceptives in eight developing countries, see WESTINGHOUSE POPULATION, CENTER SURVEY OF GLOBAL PATTERNS OF CONTRACEPTIVE DISTRIBUTION IN THE PRIVATE SECTOR IN SELECTED DEVELOPING COUNTRIES (1972).

25. See STEPAN & KELLOGG, *supra* note 14, at 46.

special cases.²⁶ Japan has prevented the sale of the birth control pill through indirect means. The question as to the pill's medical safety has been referred to a medical committee which continually fails to take action to resolve the issue.²⁷

A recent study of contraceptive distribution by the Westinghouse Population Center revealed that the "single greatest impediment" to the increased distribution of contraceptives is the requirement that many types of contraceptives be sold in pharmacies.²⁸ The effect of this requirement, particularly in developing countries where the majority of the population is rural and the pharmacies are in the cities, has been to prevent the spread of family planning to the main body of the population who have neither access to the cities nor the information and the funds to purchase contraceptives. Surprisingly, these laws exist in a large number of countries which actively favor family planning.²⁹ These laws are based on the belief that "ethical" drugs³⁰ (particularly the pill) can best be controlled by pharmaceutical distribution. Chile and Mexico include the distribution of condoms within this rule. There is no rational basis for such an inclusion since condoms have no known adverse side effects and are a prophylactic against venereal disease. It appears that the true motive behind the laws is a pharmacist lobby which resists the loss of a promising monopoly. Fortunately, the laws are frequently not enforced, and many of the governments have widely dispersed official outlets for contraceptives, so that the rule affects only commercial distribution. A closely related law is the rule that the pill may be dispensed only on the prescription of a physician.³¹ This requirement may have some justification in de-

26. I. CETERCHI, V. ZLATESCU, I. COPIL, AND P. ANCA, *LE DROIT ET LA CROISSANCE DE LA POPULATION EN ROUMAINE* 56 (Law and Population Programme Book Series No. 8, 1974); STEPAN & KELLOGG, *supra* note 14, at 46.

27. Oral contraceptives are apparently only available "for non-contraceptive use." See *International Digest of Health Legislation* at 178 (WHO 1973); Lee and Larson, *Population and Law* at 11 (Leiden/Durham, 1971); MURAMATSU, *Japan, COUNTRY PROFILES* (1971); MISHI, *Production and Distribution of Contraceptives in Japan*, UNIDO Document ID/WG.116/4 (1971).

28. WESTINGHOUSE, *supra* note 24, *Summary Report* at 5.

29. See, e.g., Indian Drugs and Cosmetics Act of 1940, Schedule L. See also STEPAN AND KELLOGG, *supra* note 14 at 18.

30. "Ethical drugs" are those which are required to be sold on prescription.

31. This rule as applied in India is particularly inappropriate since the need for effective contraceptives is urgent and the lack of physicians, particularly in rural areas, is profound. Furthermore, India requires female physicians. At the same time, the risk of bad side effects from the pill may be in the area of 3-4 per 100,000 women, whereas the

veloped countries where physicians are available to the majority of the population,³² but, as the pill and its side effects become increasingly understood the rule results in virtually banning the most effective form of contraception in countries where the few physicians are concentrated in the cities. A number of countries have recently relaxed this requirement or are permitting distribution by specially trained para-medical personnel. The retention of the pharmacy requirement after removing the prescription requirement is difficult to understand since the only ostensible reason for the "pharmacy only" rule is to control ethical drugs. Fortunately, this rule is frequently not enforced in developing countries.

In several developed countries, the prescription requirement has had stringent regulations. Hungary has a six month limit on the prescription.³³ The French law of 1967³⁴ required the pharmacist to keep a counter-foil book and set up an accounting procedure on the same basis as is applied to narcotic drugs.

Other countries forbid the sale of "contraceptives" but permit the pill to be sold as a regulator of menstrual bleeding, and the condom to be sold as a prophylactic against venereal disease. This arrangement is common in Francophone Africa and Latin America.

Laws interfering with the *import* of contraceptives, usually occurring in the form of high duties or onerous import formalities, are frequent. The Westinghouse study concluded that import barriers are probably the second major impediment to the world distribution of contraceptives.³⁵ Import barriers are commonly justified on grounds of protecting local industries or saving foreign exchange. Illogically, they occur in many countries, such as Colombia, India, Turkey, Iran, South Korea, Mexico and Sri Lanka,

risk from pregnancy-related causes in developing countries may be as high as 500 per 100,000 pregnancies. RAVENHOLT, PIOTROW, AND SPEIDEL, *Use of Oral Contraceptives, A Decade of Controversy*, 8 INTERNATIONAL JOURNAL OF GYNECOLOGY AND OBSTETRICS, No. 6, Part 2 at 941, 945. For a recent discussion of the comparative dangers and the high number of beneficial side effects of the pill see *Oral Contraceptives*, POPULATION REPORTS, Series A, No. 2 (George Washington University Medical Center, 1975).

32. Even this is undetermined since it is by no means certain that a physician can determine in advance whether a woman is susceptible to any bad side effects from taking the pill.

33. Ministry of Health Directive No. 40/1971/Eu.K.22.

34. Decree of Dec. 28, 1967, [1967] J.O. 12861. This requirement was repealed by Decree of Dec. 4, 1974, [1974] J.O. 12123.

35. WESTINGHOUSE POPULATION CENTER, *supra* note 24, at 7.

which have policies in favor of population stabilization and contraceptive liberalization. The laws pertaining to the import of contraceptives in most of these countries are obsolete and do not reflect present conditions or concepts. Moreover, the developing countries suffering most from population pressures are often the countries which are most determined to build up local industries. These countries apparently have failed to realize that the benefits to be gained from establishing a local contraceptive industry are minor compared to the major social and economic benefits that would result from a cheap and plentiful supply of contraceptives. It is interesting that the law and population project in Mexico, which made comparatively few recommendations, strongly advocated reduction of import barriers, both on finished contraceptives and on raw materials.³⁶ By judicial decision, Ireland, whose parliament refused in 1974 to authorize the sale of contraceptives, has authorized private imports.³⁷

The Westinghouse study found the third most limiting factor on the distribution of contraceptives to be the widespread restrictions on *commercial advertising*. These restrictions are based on the belief that prescription drugs should not be advertised. But, the more compelling reason for the restrictions is probably that many people consider contraceptive advertising "objectionable." The restrictions may be either legal or tacit. In the United States, television advertises preparations for diarrhea, constipation and menstrual bleeding, yet does not advertise contraceptives, apparently considering the latter too personal. A large number of countries confine such advertising to medical journals.³⁸ In fact, it is almost impossible to find any country, with the exception of Sweden,³⁹ where commercial advertising of contraceptives is not subject to special limitations that do not apply to other equally personal aspects of bodily hygiene. Another feature of the anti-advertising rules is the provision found in many jurisdictions that contraceptives may not be displayed at the point of sale, even in drugstores.⁴⁰ Although defended on

36. CORNEJO, KELLER, LERNER, AZUARA, *LAW AND POPULATION IN MEXICO* 17 (Law and Population Programme Monograph Series No. 23, 1975).

37. *McGee Case* (Ireland Supreme Court, Dec. 19, 1973), in *The Times* (London), Dec. 20, 1973, at 4, col. 1. Official report not yet received.

38. This restriction is common all over the world, e.g. Netherlands, West Germany, Philippines, South Korea, and Mexico.

39. Semi-official Swedish Association for Sex Education (RFSU) carries on aggressive advertising campaigns.

40. Section 6811 of the New York State Education Law forbids the display of contra-

grounds of "taste," this provision appears to be an obsolete hang-over from the Comstock Law period. This restriction discourages many persons who are too embarrassed to ask in public for contraceptives, from buying them.

Finally, the *use of the mails* has been denied to contraceptive distribution, particularly in countries influenced by the United States. Under the U.S. Constitution, this was the easiest way for the federal government to attack family planning during the Comstock era.⁴¹ It still applies to contraceptive advertising in the U.S. and applied in the Philippines until 1972.

B. Voluntary Sterilization

Unlike contraception, the idea of voluntary sterilization for contraceptive purposes is so recent that special laws designed to prevent voluntary sterilization did not develop during the nineteenth and early twentieth centuries.⁴² There are, however, a few countries such as Italy⁴³ and Turkey⁴⁴ which do expressly forbid it. In contrast, a few countries have no laws whatsoever dealing with "injuries" of this kind, thus under the maxim of *nullum crimen sine lege* voluntary sterilization is legal. Mexican statutory provisions specifically state that persons have the right "freely to dispose of their bodies."⁴⁵ The Mexican Constitution states that criminal laws are to be interpreted strictly.⁴⁶ Since there are no provisions which say that voluntary sterilization is a crime, it is presumably legal.

In general, however, the world's laws on voluntary sterilization are chaotic. The situation is further complicated by the strictures against sterilization on the part of Jewish,⁴⁷ Roman Catho-

ceptives even within a pharmacy. The New York Legislature refused to repeal this provision as recently as 1974, which gave rise to the comment by a member of the body that "it is surprising that beds may be sold legally in New York State." This law was declared unconstitutional by a three judge Federal Court, *Population Services Int'l v. Wilson*, 398 F. Supp. 321 (S.D.N.Y. 1975).

41. The United States Congress, during the Comstock era in the late 19th Century, used its power over interstate commerce as a constitutional basis for attacking contraceptives.

42. Before World War II voluntary sterilization for contraceptive purposes was not envisaged at all and was considered as equivalent to castration.

43. C. PEN. art. 552, which even makes the consent to sterilization a crime.

44. Decision No. 6/8.305 of June 12, 1967 (Council of Ministers); Criminal Code, Sec. 471 (1926)(Law No. 765 of March 1926).

45. C. Civ. Dist. y Terr. Fed. art. 24 (Andrade 1952).

46. Const. Tit. 1, Chap. 1, art. 14, para. 3 (Feb. 5, 1917).

47. The prohibition apparently is traced to the ban on impairment of the reproduc-

lic⁴⁸ and some Moslem doctrines.⁴⁹ Moreover, laws pertaining to voluntary sterilization are commonly part of the criminal codes of countries, voluntary sterilization being treated as assault and battery, rather than as part of the medical code.

In the majority of countries, in the absence of a specific law on voluntary sterilization, the matter is treated as a question of grave bodily injury (comparable to castration or mayhem). The issue becomes whether the consent of the "injured" party constitutes a defense against criminal charges. Some countries have laws which specifically provide that consent is not a defense. Other countries have specific provisions making consent a defense. However, even in these countries the situation is not clear. Whereas Sri Lanka may interpret the consent provision as constituting a defense, Malaysia (under Moslem influence) may interpret the identical provision as not a defense. The same language in India has never been judicially interpreted as constituting a defense despite the Government's official support of vasectomy campaigns,⁵⁰ including the offering of incentive payments to men obtaining vasectomies.

In a large number of countries there is no law whatsoever as to whether consent is or is not a defense in bodily injury cases, and the courts must resolve the question. In France, the courts have found that consent is not a defense,⁵¹ while in the Common Law countries, such as Canada and Australia where there have

tive organs in *Leviticus* 22:24. Although there is nothing against sterilization in Israeli civil law, it might affect marriage, divorce and alimony cases in the religious courts.

48. Although not specifically banned in Canon Law, there is a body of official ecclesiastical documents, including *HUMANAE VITAE* (1968) which reflects a contrary policy.

49. Moslem opinion is split on this subject. In a speech on April 15, 1973, President Bourgiba of Tunisia accepted sterilization for his country. *Action* (newspaper), April 16, 1973 at 1. Pakistani and Iranian authorities declared at the Rabat Conference of the International Planned Parenthood Federation on Islamic attitudes toward Planned Parenthood in 1971, that there was nothing against the practice in Islamic literature. On the other hand, the majority of participants at Rabat concurred with the Islamic Research Academy in Cairo in rejecting sterilization. *Islam and Family Planning*, IPPF Middle East Region, Beirut, 1974.

50. PENAL CODE art. 88. The decision would turn on the requirement in the statute that the operation be for the "benefit" of the person sterilized, and on whether the benefit may include a pecuniary benefit. For a full discussion of this and the general field of voluntary sterilization, see J. STEPAN AND E. KELLOGG, *THE WORLD'S LAWS ON VOLUNTARY STERILIZATION FOR FAMILY PLANNING PURPOSES* (Law and Population Programme Monograph Series No. 8) in 5 CALIF. WESTERN INT. L.J. 72 (1974).

51. *La Cour de Cassation*, crim., July 1, 1937, [1937] S. Jur. I, Recueil Sirey 1938-1-193.

been no successful prosecutions, consent may well be a defense.⁵²

In response to this conclusion, the Second International Conference on Voluntary Sterilization, Geneva, 1973, recommended that governments adopt non-penal legislation specifically establishing the right to obtain voluntary infertility.⁵³ The Conference made this recommendation after deciding that voluntary sterilization is within the U.N.'s proclamation declaring family planning a basic human right.

Over the past few years the trend has been to liberalize the voluntary sterilization laws. Austria,⁵⁴ a number of United States states,⁵⁵ Tunisia⁵⁶ and the Philippines⁵⁷ have taken such steps. Austria reached this result by direct new legislation, while the Philippines and Tunisia reached the same result by interpretation of existing law.

Most of the modern laws contain preconditions which must be complied with before the sterilization procedure may be performed. These include a minimum age requirement on the part of the applicant and the requirement that full information be given to the applicant as to the nature and consequences of the procedure. In other countries, highly restrictive preconditions have been imposed which are questionable from the human rights standpoint. These include the requirement that the matter be decided by a Board or Committee of physicians rather than the applicant himself.⁵⁸

In the United States voluntary sterilization is now legal in every state, although in some states there are certain prerequisites such as the requirement that the physician performing the procedure must consult with another physician.⁵⁹

52. K.G. GRAY, *LAW AND THE PRACTICE OF MEDICINE* 45 (1955). This shows the confusion in Canada on this point.

53. M.E. SCHIMA, I. LUBELL, J.E. DAVIS, E. CONNELL & D.W.K. COTTON *Advances in Voluntary Sterilization* (1974).

54. *PENAL CODE* art. 97 (1974).

55. *W. VA. CODE ANN.* § 16-11-1 (1974) (permits sexual sterilization); *O.R.S.* 435.305 (1) and (2), (1973) (Oregon eliminates need for spouse consent); and *56 OKLA. SESSION LAWS* § 200.1 (1973) (permits public welfare department to pay costs of sterilization for male recipients of public assistance).

56. *Supra*, note 49.

57. Opinion of Secretary of Justice, Sept. 17, 1973.

58. Decree No. 94 of June 25, 1964, art. 110, (Honduras). *La Gaceta, Diario Oficial de la Republica de Honduras* (Nos. 18,320, 18,321 of July 13-14, 1964).

59. *GA. CODE ANN.* § 84-932 (1970).

C. *Pregnancy Termination*

The world's laws pertaining to pregnancy termination vary tremendously owing to differences in historical and cultural backgrounds. The historical background of English and American law is summarized by the United States Supreme Court opinion in the case of *Roe v. Wade*.⁶⁰ Justice Blackmun points out that despite the language of the Hippocratic oath there was no general condemnation of abortion in classical antiquity,⁶¹ and that under English common law "even post-quickening abortion was never established as a common law crime."⁶² In the Medieval Church the rule was that the causing of an abortion "before the soul is in the body" is not murder.⁶³ Statutes were adopted in England and the United States which made abortion an indictable offense, beginning in 1803 and in 1821 respectively.⁶⁴ These statutes are believed to have been motivated, at least in part, by the danger of infection which existed at that period in connection with any surgical operation.⁶⁵ There was no provision in traditional Chinese law against abortion.⁶⁶ In Moslem cultures the termination of a pregnancy was not necessarily considered contrary to religious doctrine until after the fetus had acquired a life or soul of its own.⁶⁷ It was in the latter part of the nineteenth century that the various colonizing powers spread contemporary European views against abortion through Asia and Africa.

Thus, most of the present laws against abortion date back only to the mid-nineteenth century. Most of the laws pertaining to abortion fit into one of eight categories. First, some countries totally prohibit all abortions. Countries with such an outright prohibition include Spain, Ireland, Indonesia, the Philippines

60. *Roe v. Wade*, 410 U.S. 113 (1973).

61. *Id.*, at 130-131.

62. *Id.*, at 135.

63. D. CALLAHAN, *ABORTION: LAW, CHOICE AND MORALITY* 411 (1970); A.M. DOURLEROLLIER, *Legal Problems Related to Abortion and Menstrual Regulation* 4, which points out that "from the time of St. Thomas Aquinas until the end of the nineteenth century, the Church did not consider abortion to be murder until the soul had 'animated' the body." Prepared for Law and Population Symposium, Tunis, June, 1974. (to be published).

64. *Roe v. Wade*, 410 U.S. 113, 136, 138 (1973).

65. R.E. HALL, *ABORTION IN A CHANGING WORLD* (1970).

66. L.T. LEE, *INTERNATIONAL STATUS OF ABORTION LEGALIZATION*, (Law and Population Monograph Series No. 16 at 348, 1973).

67. *Id.* at 349.

and Colombia.⁶⁸ Other countries permit abortions only for the protection of the woman's life. Guatemala has a statute to this effect.⁶⁹ A third category of laws would permit an abortion if the woman's physical health was threatened, an imminent threat of death to the woman not being a prerequisite. Costa Rica⁷⁰ and Greece⁷¹ have laws within this category. Ecuador, El Salvador, Mexico, and South Korea are in a group of countries that permit abortion when the pregnancy is a result of rape or incest.⁷² A fifth category of laws permit abortion when it appears the fetus may be born defective. Included within this category are El Salvador, Japan, and South Korea.⁷³ Several countries permit abortions for reasons which are more vague and therefore more permissive, such as "mental health" or the "economic" situation of the family. Japan has a law to this effect.⁷⁴ El Salvador⁷⁵ and Mexico⁷⁶ lessen the punishment for committing an abortion where it was performed to protect the woman's reputation. The final category of laws permit abortions where the woman is above or below a

68. For a collection of citations to abortion laws of the world, see *Abortion Laws, A Survey of Current World Legislation in Comparative Health Legislation: Abortion Laws*, 21 INTERNATIONAL DIGEST OF HEALTH LEGISLATION 437 (1970). Where citations not given, they appear in this publication. For comments on Indonesian law, see INDONESIA PLANNED PARENTHOOD ASSOCIATION, COMMITTEE ON LEGAL ASPECTS, (Law and Population Monograph Series No. 4, 1972). For a discussion of the absolute prohibition in Colombia, see O. LOPEZ, *LA LEY Y LA POBLACION EN COLOMBIA* (1974).

69. Congress Decree No. 17-73, art. 133-140 (1973). This was an amendment of a former total prohibition.

70. 257 PENAL CODE SUPP. 573 §§ 118-122, [1970]. According to Professor E. Odio, "the only abortion . . . recognized as legal is that which has the purpose of saving the life or health of the mother when they are definitely threatened by the pregnancy and can only be saved by an abortion." LAW AND POPULATION IN COSTA RICA, pt. 2, § 2, at 9 (1974)(unpublished).

71. G. SIAMPOS, *Report on Greece*, in STUDY OF LEGISLATION DIRECTLY OR INDIRECTLY INFLUENCING FERTILITY IN EUROPE 14 (1974), stating that abortion is "unpunished if with the purpose of avoiding an otherwise unavoidable threat to the life, or a serious and permanent damage to the health of the pregnant woman. . . ."

72. Law of Jan. 22, 1971, [1971] R.O. 94, Art. 447, § 2 (Ecuador); Law of March 30, 1973, [1973] D.O. 3480, Art. 169, § 3 (El Salvador); Law of Feb. 8, 1973, Concerning Maternal and Child Health, No. 2514, Art. 8, [1973] (S. Korea). For discussion of Mexican Law, see CORNEJO, *supra*, note 36, at 13-15.

73. Law of March 30, 1973, [1973] D.O. 3480 (El Salvador); Law of Feb. 8, 1973, Concerning Maternal and Child Health, No. 2514, Art. 8, [1973] (S. Korea); Law of July 13, 1948, Eugenic Protection Law, [1975] The Statutes Book 2265, Art. 2, *as amended* Law No. 64, 1970 (Jap.).

74. Law of July 13, 1948, Eugenic Protection Law, [1975] The Statutes Book 2265, Art. 2, *as amended* Law No. 64, 1970 (Jap.).

75. Law of March 30, 1973, [1973] D.O. 38, Art. 65, (El Salvador).

76. See CORNEJO, *supra* note 36, at 14.

certain age. Finland and Czechoslovakia allow abortions under these circumstances.⁷⁷ As can be observed under these circumstances, a number of country's laws fit into two or more of the categories.⁷⁸

It has been pointed out in a recent publication⁷⁹ that a majority of the world's population now lives in countries whose governments permit on liberal grounds the termination of pregnancy at least during the early stages. Five of the six largest countries fall into this category: China, India, the Soviet Union, the United States and Japan. The facts as to each of these countries warrant a short explanation.

China permits abortion on request and it is provided as a free public service.⁸⁰ The Government's population policy is based on the control of population growth and on the necessity for establishing the norm of small families.⁸¹ The Chinese regulations mention contraceptive failure, health of the mother, economic and work conditions, and general welfare as bases for allowing an abortion. In India, a 1971 law legalized abortion on a number of grounds including the mental health of the mother and contraceptive failure.⁸² The Soviet Union's rule permitting abortion is motivated by the human right of a woman to decide for herself on the question of motherhood. The law requires special permission if the pregnancy is beyond the twelfth week and there is a small fee.⁸³ The legality of abortion was established in the United States by the Supreme Court in *Roe v. Wade*⁸⁴ on human rights grounds and specifically on the right of privacy. It applies (with some restrictions during the second trimester) to the first twenty-four weeks of a pregnancy. Japan's Eugenic Protection Law of

77. Law of March 24, 1970, [1974] Finland Lag 1816, § 1, abortion upon request if woman is under 17 years of age and has parents' consent or over 40 and has four or more children (Finland). Law of Dec. 21, 1962, [1962] Official Collection of Slovak Laws 596, § 5, abortion permitted if woman over 40 (Czech).

78. For collection of citations of abortion laws permitting abortion on various grounds, see L. LEE & J. PAXMAN, *LEGAL ASPECTS OF MENSTRUAL REGULATION* (Law and Population Monograph Series No. 19, at 7 & 8, 1974).

79. L.T. LEE, *BRIEF SURVEY OF ABORTION LAWS OF FIVE LARGEST COUNTRIES F-1*, (Law and Population Programme Monograph Series No. 14, 1973).

80. *Id.*, at F-2.

81. Chen Pi-chao, *The Planned Birth Control Program of the People's Republic of China* (prepared for SEADAG Seminar, Bali, August, 1974).

82. *The Medical Termination of Pregnancy Bill of 1971*, § 3, Subsection 2(b) (India).

83. Ministry of Health Instruction of Dec. 28, 1955. For a short summary of the USSR legal history, see LEE, *supra* note 79, at F-4.

84. 410 U.S. 113 (1973).

1948, authorizes an abortion if the mother's health is likely to be affected from a physical or economic viewpoint.⁸⁵

Similar approaches have recently developed in other major countries. In Great Britain, the Abortion Act of 1967 authorizes an abortion if two physicians deem that the pregnancy would injure the physical or mental health of the mother or any existing children in her family.⁸⁶ The West German Bundestag in June 1974, adopted a new abortion law which authorized the procedure during the first twelve weeks without restriction. However, the Constitutional Court decided in February 1975, that the law was unconstitutional under the present West German Constitution.⁸⁷ The French National Assembly adopted on November 29, 1974, a bill which authorizes abortion during the first ten weeks of pregnancy.⁸⁸ The only requirements are a one week waiting period and that it must be performed by a physician in a hospital or clinic.⁸⁹ The operation will not be covered by the National Health Service. The Government announced that the purpose of the bill was to protect the woman's health. The opponents of the new law made an unsuccessful attempt to have it declared unconstitutional by the Constitutional Council.⁹⁰

Some of the reasons behind the present trend to liberalize the strict laws of the late nineteenth century have been suggested above. Other factors are the increasing recognition that abortion, whether legal or illegal, is prevalent and that illegal abortion is dangerous; the development of new, safe, and simple methods and techniques, particularly useful in the earlier stages of pregnancy; and the increasing importance given to the belief that children should be born wanted.

A final comment might be made with regard to the abortion experience of the Eastern European countries. Shortly after World War II most of these countries made abortion freely available. The experience under these laws caused concern among the governments, since the birth rate decreased significantly.⁹¹ The

85. Law of July 13, 1948, Eugenic Protection Law, [1975] The Statutes Book 2265, as amended Law No. 64, 1970.

86. Abortion Act of 1967, c. 87, § 1(a), (b).

87. Urteil of First Panel of German Constitutional Court, Feb. 25, 1975. Mimeo in Harvard Library (not yet published).

88. Decree of Jan. 17, 1975, [1975] J.O. 739, [1975] B.L.O. 48.

89. *Id.*, Art. 162-2, 162-5.

90. Times (London), Jan. 17, 1975, at 6, col. 1.

91. For example, the gross reproduction rate of Hungary fell from 1.35 in 1955 to .87 in 1962. In Romania, the corresponding drop was from 1.49 to .98. For full discussion of

next step was to tighten abortion requirements. The governments then found that the newly restrictive legislation merely meant greatly increased recourse to illegal abortion and had serious effects on the mental health of women. The present stage appears to be a more liberal attitude toward abortion with greatly increased emphasis on contraception and sex education as a means of countering the physical harm which excessive recourse to abortion has been found to cause.

D. Menstrual Regulation

Two new systems have been developed during the last few years which permit a woman to regulate her monthly cycle, and to eliminate an egg cell before she can be certain whether or not it has been fertilized. The first is to administer the newly developed prostaglandin hormones which cause contraction of the uterus leading to menstruation, spontaneous abortion or labor. The second technique is the use of a special cannula through which the uterine lining can be separated and removed by suction. Both techniques may be used when a period is overdue in order to regulate the cycle. These techniques are carried out within five to six weeks from the last menstrual period when it is impossible to know whether pregnancy exists.⁹² These methods have been used principally in the developed countries, though recently Bangladesh began utilizing these methods.

The question is whether these increasingly popular methods are illegal under existing anti-abortion laws. They are clearly not illegal in countries which permit abortion during the first stages of pregnancy. They are probably not banned in those Moslem countries which follow the principle that the termination of pregnancy before the time the fetus becomes an independent life is not an abortion.⁹³ Countries with more restrictive laws may be divided into two categories. Those countries which require *proof of pregnancy* and those countries which require only proof of in-

East European experience, see MCINTYRE, POPULATION POLICY IN EASTERN EUROPE: ABORTION LIBERALIZATION AND PRONATALIST COUNTERMEASURES (Paper presented at Population Association of America, Penn. State Univ., Dept. of Econ., 1974).

92. For a discussion of the two processes, see L.T. LEE AND J. PAXMAN, LEGAL ASPECTS OF MENSTRUAL EXTRACTION (Law and Population Programme Monograph Series No. 19, 1974).

93. Some nontraditional Moslem penal codes have taken the late 19th century line and forbid abortion at any time during pregnancy, e.g. Egyptian Penal Code (Law No. 58, Cairo, 1937), Art. 262-264.

tent to commit abortion, whether or not an actual pregnancy existed.

Libya, Malaysia, Pakistan and many of the Latin American countries are within the first category. The laws in these countries define the crime in such a way that pregnancy must be proven; for example, "to procure the abortion of a pregnant woman,"⁹⁴ or "to kill the product of conception during pregnancy."⁹⁵ Under these laws, menstrual regulation techniques would probably not be a crime since it would be nearly impossible to show that there was a pregnancy. In an Argentine case, where intent was proven but the occurrence of an abortion was only "apparent" and not proven, the appellate court directed acquittal.⁹⁶

The interesting problems are those arising under statutes which follow the old French and British statutes (now repealed both in Great Britain and France) where the requirement of the crime is intent to commit an abortion, whether or not it actually occurred. This type of law exists in many Francophone African countries⁹⁷ and in many of the countries of the former British Empire.⁹⁸ Whether menstrual regulation techniques are legal under statutes of this nature is not clear, though in nearly all countries with this type of statute the prosecution is required to carry the burden of proof as to intent to commit an abortion. Carrying such a burden would be difficult since the prosecution would have to show that the woman's intent was not to regulate her menstrual cycle. Moreover, there might be a "spill-over" effect from the analogy to the sale of contraceptives laws. Many French-influenced countries and some Latin American countries have forbidden the sale of contraceptives, but permit condoms to be sold as prophylactics and pills to be sold as menstrual regula-

94. CODIGO PENAL art. 317 (Editora del Caribe 1962) (Dominican Rep.) says: "causing an abortion upon a pregnant woman." See also the Penal Codes of Brazil (Arts. 125-127); Columbia (Art. 386); Egypt (Art. 261); Haiti (Art. 262); Nicaragua (Art. 400); Philippines (Art. 256); Portugal (Art. 356).

95. CODIGO PENAL ANNOTADO art. 329 (Editorial Porrúa) (Mex.).

96. 79 La Ley 30 (C.A.N.P., July 4, 1955).

97. See, e.g. Gabon, Law No. 21-63 of May 31, 1963, JOURNAL OFFICIEL No. 16 of July 25, 1963, p. 600; MALAGASY REP. CRIM. CODE art. 317, Ordonnance n. 60-161 of Oct. 3, 1960, JOURNAL OFFICIEL No. 240 of Sept. 7, 1962, p. 1784. See G.-J. BOUVENET, RECUEIL ANNOTE DES TEXTES DE DROIT PENAL APPLICABLES EN AFRIQUE OCCIDENTALE FRANCAISE (1955).

98. NIGERIAN FED. CRIM. CODE § 228, 2 LAWS OF THE FED. OF NIGERIA AND LAGOS 686 (London, 1959) (Act No. 15 of 1916, as amended); Offenses Against the Person Law of 1864, 2 LAWS OF JAMAICA 4269-4270 (§ 65-66) (London, 1953), amended in 1969; CRIM. LAW AND PRACTICE IN NEW ZEALAND, § 182-187 (Crimes Act of 1961) (2nd ed., Wellington, 1971).

tors. No question has ever been asked as to whether the purchaser must prove he or she will not use the materials for contraceptive purposes.

These and other factors will have an effect on the legality of menstrual regulation. As Justice Blackmun pointed out, even the U.S. Supreme Court was loathe to speculate as to when life begins.⁹⁹ Courts may tend to place this at an increasingly later time, and the contraception process may be seen as extending later than the moment of nidation of the fertilized egg. Thus, it is likely that the new processes of menstrual regulation will be found legal in the great majority of countries. There have, however, as yet been no special laws adopted, or cases decided, as to these new techniques.

E. *Population and Sex Education*

The U.N. World Population Conference at Bucharest in 1974, recommended that all countries expand their school curricula to schedule "a study of population dynamics and policies, including, where appropriate, family life, responsible parenthood and the relation of population dynamics to socio-economic development and to international relations."¹⁰¹ This type of study may be referred to as "population education." Its purpose is to motivate people to act responsibly in the procreation of children, having in mind the consequences of large families. For obvious reasons, it has taken hold more quickly in countries which feel threatened by population pressure (i.e. South Asian and Southeast Asian countries) than in other areas. Nevertheless, even in the United States the President's Commission on Population Growth and the American Future recommended the enactment in the U.S. of a "Population Education Act" so "present and future generations will be better prepared to meet the challenges arising from population change."¹⁰²

The United Nations has also declared that families have the basic human right to the knowledge and means necessary to en-

99. See, e.g., *U.S. v. Vuitch*, 402 U.S. 62 (1971).

100. *Roe v. Wade*, 410 U.S. 113, 159 (1973).

101. U.N. Doc. E/CNF.60/WG.L.55 Add. 3 (1974). *World Population Conference* 24, [1974] U.N. Doc. E/5585 (1974).

102. COMMISSION ON POPULATION GROWTH AND THE AMERICAN FUTURE, *POPULATION AND THE AMERICAN FUTURE* 80 (1972).

able them to plan their families.¹⁰³ The World Conference at Bucharest reiterated this, saying that "couples and individuals have the basic right to have the information, education and means" to plan their families.¹⁰⁴ This certainly includes sex education. Sex education was recommended in the United States, not only by the Commission on Population Growth, but also by the President's Commission on Pornography and Obscenity.¹⁰⁵ In contrast to population education, the purpose of sex education is primarily the welfare of the individual and his family, rather than the question of population dynamics and pressures. Both, however, will help in bringing about responsible parenthood for the benefit of the individual, his family and society. Both will clearly affect population growth. In these fields customary law, as well as statutory law, plays a very important role; and actual practice, as well as theoretical law, must be considered.

A few countries are making an effective effort both through law and practice to face the challenge through in-school programs. Sweden is the leader, both historically and in terms of effective legislation. Sex education has been compulsory in Sweden since 1956.¹⁰⁶ The government has even supplied an official instructor's handbook for teachers.¹⁰⁷ Nearly a decade after enactment of the 1956 law, a full scale review of the results was undertaken by a government commission and improvements were suggested.¹⁰⁸ The law was amended in 1965 to ensure that contraception is adequately covered. Similar steps towards sex education are being taken in Yugoslavia (particularly Slovenia)¹⁰⁹ and

103. U.N. Declaration on Social Progress and Development, U.N.G.A. Resolution 2542 (xxiv) of Dec. 11, 1969.

104. *World Population Conference*, *supra* note 101, at 8.

105. REPORT OF THE COMMISSION ON OBSCENITY AND PORNOGRAPHY 266-267 (1970).

106. Sex education was incorporated into the school plans in 1956. The material is introduced into various courses in biology, civics, and religion, and begins in the primary schools and continues through the age of 20 at university level.

107. HANDBOOK ON SEX EDUCATION IN SWEDISH SCHOOLS (1957, rev. ed. 1968).

108. T. SJÖVALL, SEX EDUCATION IN SWEDEN: BACKGROUND AND DEVELOPMENT (in mimeo - will be published in the near future). The results of the study of the experiences of ten years confirmed the Government's decision to push the program, to provide better teacher training, and to cover matters more frankly. For more on this issue see E. KELLOGG, D. KLINE, & J. STEPAN, THE WORLD'S LAWS AND PRACTICES ON POPULATION AND SEXUALITY EDUCATION (Law and Population Programme Monograph Series No. 25, 1975). See, also H.S. and A.S. Hoyman, Sweden's Experiment in Human Sexuality and Sex Education, 41 JOURNAL OF SCHOOL HEALTH 172 (1971).

109. Resolution of the Yugoslav Federal Assembly of Apr. 25, 1969, 1969 Sluzbeni List SFRJ 612 (Broj 20), No. 307, Sec. II. See also Federal Assembly Resolution on

France. France recently established, by statute, a High Council on Sex Education, Birth Control and Family Education.¹¹⁰ The High Council is to work with the Ministries of Health and Education to set up school programs which, though not compulsory, will provide complete coverage of the field. The ministries are presently issuing circulars of instruction.

Outside Europe, the Philippines, through a series of constitutional, legislative and executive measures, has set up a full scale program.¹¹¹ The United States Congress has enacted legislation which authorizes the appropriation of funds both for population and sex education.¹¹² Unfortunately, the monies appropriated have been mere token payments. The states, on which the actual responsibility for education lies, have varied widely. Some states, have issued "standards and procedures" through their Departments of Education which give strong support to the program including the making of constructive suggestions.¹¹³ Maryland has also required by law that applicants for a marriage license be given birth control information.¹¹⁴ At the other extreme is Louisiana which expressly forbids sex education by law.¹¹⁵ Laws or guidelines providing for parental consent where sex education is taught to a minor are common in many states and will presumably be useful in getting over any constitutional problem which may be raised, particularly on religious grounds.¹¹⁶

Unfortunately, illustrations of the effects of laws inhibiting population and sex education (including customs such as taboos)

Education and Upbringing on the Basis of Self-Management of Mar. 26, 1970, 1970 Sluzbeni List SFRJ 557 (Broj 16), No. 196. Individual republics adopt implementing laws and regulations.

110. Law No. 73-639 of July 11, 1973, [1973] J.O. 7531.

111. CONSTITUTION art. XV § 10 (1973); Population Act of 1971, Republic Act No. 6365, 68 OFFICIAL GAZETTE 16 (1972) (as revised by Presidential Decree No. 79, 68 OFFICIAL GAZETTE 9896 (1972)); Letters of Instruction 47 & 47-A, 68 OFFICIAL GAZETTE 9885 (1972); General Order 18, 68 OFFICIAL GAZETTE 9883 (1972).

112. Family Planning Services and Population Research Act of 1970, 42 U.S.C. § 300. See also Environmental Education Act of 1970, 20 U.S.C. § 1531.

113. MARYLAND DEPARTMENT OF EDUCATION, STANDARDS AND PROCEDURES FOR FAMILY LIFE AND HUMAN DEVELOPMENT PROGRAM (Jan. 8, 1970).

114. See 2 FAMILY PLANNING/POPULATION REP. 83 (1973); ANN. CODE OF MD. art. 62, § 7B (Supp. 1974).

115. WEST'S LA. STATS. ANN. § 17:281 (West, supp. 1975).

116. An example is OKLAHOMA STATE BOARD OF EDUCATION, *State Superintendent's Newsletter* (Feb., 1970) which states ". . . enrollment must be approved by the child's parents." See also *Hobolth v. Greenway*, 218 N.W.2d 98 (Mich., 1974) and *Medeiros v. Kiyosaki*, 478 P.2d 314 (Hawaii, 1970), which state that if parents may withdraw their children from a sex education course their constitutional rights are not infringed.

are far more prevalent. For example, almost all of the South and East Asian countries suffering from severe population pressures are prevented by strong cultural or customary taboos from providing in-school sex education. Only China, Japan, the Philippines and Taiwan seem to be doing anything effective. These four countries are providing or are experimenting with in-school sex education. The Philippines' attitude may be explained by the Christian influence, while the other three countries' attitudes can be attributed to the modern industrial influences. A number of the Asian countries still have obscenity statutes which may make sex education programs illegal.¹¹⁷ The most that can be done is population education, which is being encouraged in nearly all of these countries, usually on the basis of directives from their Ministries of Education. These countries usually have extensive out-of-school family planning information programs aimed at adults. These programs are particularly essential to overcome taboos and to reach children who never attend any school.

Another legal barrier is the French Law of July 31, 1920,¹¹⁸ which, though repealed in France,¹¹⁹ still exists in most of the countries strongly influenced by French culture. This law forbids contraceptive and anti-natalist propaganda. It makes it extremely difficult to establish in-school sex education programs, and it even affects out-of-school information efforts.¹²⁰ Argentina, by a 1974 decree,¹²¹ and Brazil¹²² ban any publicity for contraception. Brazil, under internal pressure and in response to U.N. principles, announced at the 1974 Bucharest Conference that it would make contraceptive information available.

117. Indecent Advertisements Prohibition Act of 1963 (Act No. XII), [1963 Extraordinary] GAZETTE OF PAKISTAN 349 (June 18, 1963). Obscene Publications Ordinance No. 4, 2 LEGISLATIVE ENACTMENTS OF CEYLON 145 (rev. 1956 ed.) and Press Council Law No. 5 of February 27, 1973.

118. LES LOIS NOUVELLES, ANNÉ 1920 (E. Schaffhauser ed. 1921). [1920] BULLETIN LEGISLATIF DALLOZ 418.

119. Although the new French law on contraceptives (Law No. 74-1026 [1974] J.O. 123) still bars all "anti-natalist propaganda" (§ 3) as well as all commercial advertising of contraceptives. Law No. 73-639, [1973] J.O. 7531 and the circular of the same month (July) clearly exempt sex education from this prohibition, which is to be spelled out in a decree of the Council of State.

120. Mali, by an ordinance of June 1972, and Togo, by an ordinance of March 1975 (which specifically authorize family planning programs) have authorized in-school and nonschool information programs.

121. Ministry of Health decree of March 1974, N.Y. Times, Mar. 17, 1974, at 4, col. 1.

122. Decreto-Lei No. 4.113 de 14 February 1942 art. 5^V & X, [1942] COLEÇÃO DAS LEIS, ATOS DO PODER EXECUTIVO 216.

The effect of religious influence on sex education may be inhibiting. In Moslem countries the taboos on in-school sex education are strong, although they are beginning to be attacked in Egypt,¹²³ Tunisia¹²⁴ and Iran.¹²⁵ The Buddhist countries, such as Sri Lanka and Thailand, appear to face similar taboos. The Roman Catholic attitude toward population education appears to be favorable. It is, however, doubtful that the Church would favor full sex education programs, including a discussion of contraceptives, in schools. The Church might not oppose general discussions of human reproduction and has apparently not offered strong resistance to the new Philippine program.

A survey of sixty countries in all regions of the world shows that most of the countries are now getting into the field of population education, sex education, or both.¹²⁶ The survey shows that, out of the sixty countries, twenty-seven are now providing some sort of fertility-related in-school education, twenty-three are experimenting with it, and only ten are doing nothing with respect to such education. With the United Nations now backing population and sex education, including a number of U.N. related international organizations such as UNESCO,¹²⁷ IPPF,¹²⁸ and the U.N. Fund for Population Activities,¹²⁹ the widespread adoption of population and sex education may be intensified. These developments, at the very least, make it more difficult for opponents to call sex education "obscene."

F. *Use of Professional Paramedical Personnel in Family Planning Programs*

This section discusses the involvement of registered nurses,

123. In 1972 the government introduced both population and sexuality education into the schools. Nonschool information programs are pushed by the Government's Superior Council for Family Planning.

124. Tunisia's National Office of Family Planning and Population requested the U.N. to fund a pilot project for secondary schools in 1974.

125. U.N. funded a curriculum development study for population and sexuality education for Isphahan secondary schools in 1974 and pilot projects are being carried on.

126. For a full study of this field, see KELLOGG, KLINE AND STEPAN, *supra* note 108.

127. The United Nations Educational Scientific and Cultural Organization ("UNESCO") has, among other things, carried out pilot projects and organized programs in this field in the Philippines, Iran, Sri Lanka, Colombia, Indonesia and East Africa.

128. The International Planned Parenthood Federation ("IPPF"), the "roof organization" for the world's family planning associations, is actively supporting fertility-related education projects by its member associations during its current three year program.

129. The U.N. Fund has included fertility-related education projects in its programs for at least ten countries.

pecially trained midwives who have had university or comparable technical training, and auxiliaries such as medical assistants, enrolled midwives, and lady health visitors¹³⁰ who may have had middle school education and a more limited technical training. In most of the developing countries there are vastly more of these paramedicals than there are physicians. In Pakistan, for example, the Population Council's 1973 Factbook shows that there are 1,363 physicians certified to perform vasectomies and insertions, as compared to 24,548 paramedicals who are similarly certified. Analogous situations exist in most of the other countries of Latin America, Africa and Asia.¹³¹ The majority of the physicians in these countries live in urban areas, though up to 80% of a country's population may live in rural areas. Thus, the rural population's access to medical care may be confined to treatment administered by paramedicals. Expressed differently, whereas there may be as many as one doctor per one to two thousand people in the developed countries, there may be only one doctor per 100,000 people in the rural areas of the developing countries.¹³²

The problem is that in most of the developing countries the laws or regulations are frequently copied unchanged from those of the developed countries,¹³³ thus tending to confine the functions of pill prescription, IUD insertion, vasectomy and menstrual extraction to physicians only. The effect is to cut off a vitally important aspect of family planning services from the bulk of the population.

At the same time, experience both in developed and developing countries shows that given the needed training and recognition, paramedical personnel are fully capable of carrying out these family planning functions.¹³⁴ Moreover, experience with the

130. Lady Health Visitors are women in India and Pakistan who have received special training of one to two years for rural health purposes with special emphasis on family planning. See N.R.E. FENDALL, *AUXILIARIES IN HEALTH CARE, PROGRAMS IN DEVELOPING COUNTRIES* (1972).

131. *Population and Family Planning Programs: a Factbook*, REPORTS ON POPULATION/FAMILY PLANNING (5th ed., Sept. 1973). (The Population Council: New York).

132. J. BRYANT, *HEALTH AND THE DEVELOPING WORLD* 75 (1969).

133. For example, the Indian requirement that oral contraceptives be prescribed by a physician was copied from the British requirement, which is applied under radically different conditions. See F. SHATTOCK AND N.R.E. FENDALL, *Laws Relating to the Role of Paraprofessionals in Voluntary Male Sterilization and Menstrual Regulation*; A. ROSENFELD, *Laws Relating to Paraprofessional Role in Contraception*. Both articles were prepared for Symposium on Law and Population, Tunis, June, 1974, and will be published.

134. See SHATTOCK AND FENDALL, and ROSENFELD, *supra* note 133. CHEN, P.-C.,

pill shows that the incidence of dangerous side effects of the pill (on the level of 3 to 4 per 100,000) is small compared to the risk from pregnancy in developing countries (500 to 1,000 deaths per 100,000 pregnancies).¹³⁵ A simple check list in connection with the dispensing of the pill has been found effective for use by paramedicals in developing countries. The conclusion has been reached that "there is little more that a physician can do that the paramedical cannot do in terms of initial screening."¹³⁶ Accordingly, in an increasing number of countries paramedics are doing this job.¹³⁷ According to Dr. Rosenfield of the Population Council, the paramedics are producing results as good as, or even better than, the physicians.¹³⁸ The same experience has occurred in connection with IUD insertions. In Pakistan, in 1967-68, 600,000 IUD's were inserted by paramedics, and their performance was found excellent. Similar encouraging results have been found in the U.S., Barbados, Thailand and the People's Republic of China.¹³⁹

Dr. Shattock of the Liverpool School of Tropical Medicine reports that vasectomy and menstrual regulation procedures can be performed safely and competently by trained personnel.¹⁴⁰ He shows that simple procedures, which are repetitive, uncomplicated and carried out on an out-patient basis, are eminently suitable for paramedicals provided they are given the training. Paramedics are able to establish a closer personal relationship with the patient than physicians can. The paramedics have more time and are on the patients' social level. Since paramedics perform the procedure far more frequently than a physician who must also do many other types of work, they soon become more experienced in their particular specialty than a physician. The experience of countries which have given support to the paramedical field indicated that the care of the patient may actually improve.

If full advantage is to be taken of the services of paramedicals around the world, laws which define a physician's duty (often

China's Population Program at the Grass-Roots Level, 4 STUDIES IN FAMILY PLANNING No. 8 at 219 (Population Council, 1973); S.B. RIFKIN, *Public Health in China: Is the Experience Relevant to Other Less Developed Countries?* 7 SOCIAL SCIENCE AND MEDICINE 249 (1973).

135. See ROSENFELD, *supra* note 133.

136. ROSENFELD, *supra* note 133 at 9.

137. See STEPAN AND KELLOGG, *supra* note 14 at 18 *et seq.*

138. ROSENFELD, *supra* note at 10.

139. ROSENFELD, *supra* note 133 at 12; SHATTOCK, *supra* note 133 at 9.

140. See SHATTOCK AND FENDALL, *supra* note 133 at 3 *et seq.*

automatically excluding paramedicals), regulations issued by the Ministries of Health, or codes of ethics of medical associations which directly or indirectly exclude paramedicals, must be re-examined.¹⁴¹ At the same time, positive laws or regulations specifically providing special training for paramedicals should be adopted.¹⁴² Furthermore, licensing, official recognition, and accreditation for this group of professional people should be provided. The objective must not be to provide exceptionally good medical care for the rich few, but the best available care for the many.

Reflecting these views, the International Symposium on Law and Population, meeting in June 1974, recommended that governments maximize the role of paramedical personnel in providing family planning services; that the World Health Organization (WHO) develop flexible and realistic guidelines for training and qualification of paramedics; and that governments expand their facilities for the training of these persons in a way acceptable to the local community.¹⁴³

Following the World Population Conference in Bucharest, 450 physicians from seventy-two countries attended the Conference on the Physician and Population Change in Stockholm. The doctors considered the paramedical issue and concluded:

Because most people in the developing world do not have access to a physician, it was suggested that trained auxiliaries are necessary to provide health services effectively and economically. Physicians should be ready to serve as consultants, teachers, promoters, and scientific researchers and should delegate responsibility and support auxiliaries who may subsequently become the real leaders in the community health teams.¹⁴⁴

141. See generally COLO. REVISED STATUTES art. 37, § 12—37—103 (1973), which bans nurse-midwives from practicing; and the Brazilian Order of the Ministry of Health which bars paramedical personnel from manipulation of the uterine cavity. Letter from Dr. Nogueira of BENFAM, Rio de Janeiro, Brazil, to Law and Population Programme, Feb. 11, 1974.

142. Law of Dec. 8, 1972, Amending the Population Act of 1971, § 5, (1972) Presidential Decree 79 (Phil.); Letter from G. Cornejo, Director of Fundacion para Estudios de la Poblacion to Law and Population Programme, Aug. 2, 1973, states "the Health Ministry is currently training paramedical personnel in application techniques" for the IUD; Law of Feb. 8, 1973, Mother and Child Health Law, (1973) Law No. 2514, § 7 (Korea).

143. INTERNATIONAL SYMPOSIUM ON LAW AND POPULATION, SYMPOSIUM ON LAW AND POPULATION: TEXT OF RECOMMENDATIONS 18, 23 (Law and Population Programme Monograph No. 20, 1974) (Recommendations to be reprinted by United Nations in 1975).

144. REPORT OF THE INTERNATIONAL CONFERENCE ON THE PHYSICIAN AND POPULATION CHANGE (Stockholm, Sept. 4, 1974) p. E-19.

G. Status of Women

In a large number of developing countries there are laws, both statutory and customary, which not only discriminate against women, but result in high fertility. The three most obvious fields where laws have such an effect will be discussed herein: marriage age, divorce, and work opportunities.

The minimum age of marriage for women is very low (sometimes as low as twelve years) in many developing countries.¹⁴⁵ This is based as much on custom as on statutory law. Although a girl is obviously not compelled to marry at this age, custom often makes it hard for a girl to avoid early marriage. This has the triple effect of depriving her of equal education opportunities, opportunity to become self-supporting, and lengthening the period at which she is at risk of child bearing.

A low marriage age has a strong pro-natalist effect. The shorter the gap between generations, the faster is the rate of growth. In a recent study, Mr. A. Marcoux of the Population Council showed that in a country like Tunisia, with a population of approximately 5,000,000 in 1973, the raising of the minimum age of marriage by two years would avert between seven and eight thousand births per year.¹⁴⁶ The People's Republic of China, seeking to impose controls on growth, has raised the minimum marriage age of girls to twenty-five. This measure has proven to be very effective.¹⁴⁷

Recommendations that the minimum age be raised in developing countries have come from a number of sources. Among them are the U.N. Draft Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage, the recommendations of the series of U.N. sponsored seminars on the Status of Women and Family Planning;¹⁴⁸ the International Symposium on Law and Population at Tunis in 1974;¹⁴⁹ and the Law and Population projects in a number of countries around the world.¹⁵⁰

145. See LEGAL ASPECTS OF FAMILY PLANNING IN INDONESIA, *supra* note 68, at 17.

146. A. MARCOUX, *ESSAI D'ESTIMATION DES EFFETS DEMOGRAPHIQUES D'UN RELEVEMENT DE L'AGE MINIMUM LEGAL DU MARIAGE* (1973) (mimeograph, available from Population Council, New York City).

147. Han Suyin, *Family Planning in China*, VICTOR BOSTROM FUND REPORT 21, 26 (1971).

148. Report of the U.N. Regional Seminar on the Status of Women and Family Planning (Yogyakarta, June 20, 1973), Conclusions and Recommendations paras. 5, 6 and 7(a).

149. SYMPOSIUM, *supra* note 143, at 13.

150. See part III *infra*.

Two qualifications as to this recommendation have been made. The raising of the legal marriage age may have little effect on fertility in some countries unless girls are given educational opportunities during the period of delay. Furthermore, there is a danger, particularly in Central American countries, that a change in the legal age might merely result in a corresponding increase in free unions without marriage.¹⁵¹

A second factor contributing to higher fertility rates is the lack of equal protection for women in divorce. It has been observed that in Iran, under conditions of Moslem marriage law and custom, a wife faces the difficult choice of heavy child bearing or a divorce without adequate alimony or protection, with few job opportunities and with small chance of remarriage.¹⁵² Although this was not specifically stated in the law it is the practical result of present law and custom. Similar comments have been made regarding Kenya,¹⁵³ Sri Lanka,¹⁵⁴ and Indonesia.¹⁵⁵ The U.N. Seminar on the Status of Women and Family Planning at Jogjakarta in June 1973, commented bluntly:

[T]he unilateral right of husbands to divorce their wives at will, or on grounds of failure to bear children or to bear a child of a particular sex, lowers the status of women and may also encourage high fertility.¹⁵⁶

The issue of employment opportunities for women is directly related to the two preceding areas of discrimination. Unless there are opportunities for outside employment, a woman's sole chance for distinction, self-expression, and indeed, support, may be confined to child bearing. In order to get employment outside the home, she must get education and there must be jobs available. In Mexico, the report of the law and population project cites the discriminatory law which permits a husband to block his wife's liberty to work by showing that she has not fulfilled her household

151. CORNEJO, *supra* note 36, at 33.

152. P. SANEY, *LAW AND POPULATION GROWTH IN IRAN* 29-31 (Law and Population Programme Monograph No. 21, 1974).

153. U. UCHE, *LAW AND POPULATION IN KENYA* 20-25 (Law and Population Programme Monograph No. 22, 1974).

154. GOONESEKERE AND WEERASOORIA, *REPORT OF THE NATIONAL SEMINAR ON LAW AND POPULATION IN SRI LANKA* Recommendations 10.1-10.7 (1974).

155. INDONESIA PLANNED PARENTHOOD ASS'N, *REPORT OF THE NATIONAL SEMINAR ON LAW AND POPULATION IN INDONESIA* paras. a, e, f, g of Recommendation 5 (1974).

156. Report of Regional Seminar, *supra* note 148, at 2.

duties toward the family.¹⁵⁷ Under conditions of this kind which are widespread in the developing countries, it would appear that the realities of population law are a long distance from U.N. principles, and that women are a long way from exercising freely and responsibly the right to decide the number and spacing of their children.

H. Protection of Children

In a number of countries, particularly in Central America and the Caribbean, illegitimacy is common.¹⁵⁸ Some of this stems from the "machismo" tradition that a man must prove himself by demonstrating his ability to procreate. These countries are therefore concerned with ways in which a natural father can be forced to support the children he begets. It is not surprising, therefore, that the recommendations of the projects in Chile and Costa Rica stress the need for protection of the rights of children.¹⁵⁹ A similar recommendation is now before the Mexican legislature. Outside of Latin America, the same issue is raised in the Indonesian report.¹⁶⁰ The United States took similar action in 1974, by adding to the Social Security Act a new provision on the enforcement of child support obligations.¹⁶¹

I. Old Age and Illness Protection

In a country which has primarily an agrarian economy, little or no provision for illness or old age insurance, and where child mortality is high, the only way a couple can provide for their own protection in their later years is to produce the maximum number of children in the hope that a few will survive to take care of them. It is not surprising that under these circumstances, family planning opportunities have little appeal.

157. R. ROSEN, *LAW AND POPULATION GROWTH IN JAMAICA 8-12* (Law and Population Programme Monograph No. 10, 1973).

157. CORNEJO, *supra* note 36, at 23 (referring to Arts. 162-177 of the Federal Civil Code).

158. R. ROSEN, *LAW AND POPULATION GROWTH IN JAMAICA 8-12* (Law and Population Programme Monograph No. 10, 1973).

159. UNIV. OF CHILE AND MINISTRY OF PUBLIC HEALTH, *CONCLUSIONS OF THE SEMINAR ON LAW AND POPULATION 4* (1974); *LAW AND POPULATION PROJECT, UNIV. OF COSTA RICA, EL DERECHO Y LA POBLACION EN COSTA RICA Part II, § 2*, at 15 (1974).

160. REPORT OF THE NATIONAL SEMINAR, *supra* note 155, §§ g, i, j of Recommendation 5.

161. Child Support and Establishment of Paternity, 42 U.S.C.A. §§ 651-660 (1975).

A majority of Iranians recently expressed in a knowledge, attitude, and practice study, a preference for a dependable social security system, rather than having to rely on one's children for support.¹⁶² This attitude has been illustrated by a recent scheme adopted by the Tea Planters' Association in Southern India. The employers offer to increase retirement pensions on a basis inverse to the number of children, that is, for every year a woman employee abstains from giving birth, the pension is increased. This has been found effective in encouraging smaller families.¹⁶³

Population project studies in Kenya, Sri Lanka, and Indonesia¹⁶⁴ have recommended that security schemes to provide old age and sickness protection be considered by their governments.

J. Other Social Welfare Laws

Social welfare laws refer to laws designed to raise the living standards of the population, without reference to its effect on fertility. The laws, however, have a fertility effect. These laws may be divided into two categories, those that directly influence fertility rates and laws that may do so if drafted with that purpose in mind. Laws in the first category include old age and illness protection, women's status and employment, housing, public health, and child labor laws. In the second group of laws are family and child allowances, maternity benefits, tax deductions for children, and special services for children. Women's status and old age and illness protection have been discussed earlier in this article, and will not be discussed in this section.

Housing may have a great effect on fertility, particularly in an advanced country with a colder climate. The experience of the USSR, where housing is scarce and allocated on a seniority basis to families beyond the child bearing age, shows that it may have a profound effect in limiting childbirth.¹⁶⁵ Singapore, by refusing

162. S.S. LIEBERMAN, R.W. GILLESPIE, AND M. LOGHMANI, THE ISFAHAN COMMUNICATIONS PROJECT, 4 STUDIES IN FAMILY PLANNING 73, 79 (1973).

163. This scheme is discussed at some length by its organizer in V.I. CHACKO, *Some Considerations of Incentives and Disincentives in the Promotion of Family Planning*, Report prepared for Symposium on Law & Population, Tunis, June 1974, (to be published).

164. For Kenya, see UCHE, *supra* note 153, at 31. 40; for Sri Lanka, see GOONESEKERE, *supra* note 154, Recommendation 3.1; for Indonesia, see REPORT, *supra* note 155, Recommendation 7. a.

165. P.B. MAGGS, LAW AND POPULATION GROWTH IN EASTERN EUROPE 9 (Law and Population Programme Monograph Series No. 3, 1972).

to give housing preference to larger families, is seeking to use housing as a tool to discourage high fertility.¹⁶⁶ On the other hand, in a tropical rural situation, this factor may not be important.

Public health services may foster population growth, since more people survive. On the other hand, public health services may lower birth rates as parents begin to realize that the survival chances of their children are improving, thus decreasing the importance of having many children in order for a few to survive. If the health services include family planning, the anti-natalist effect will be increased.

Child labor laws, provided they are accompanied by a provision for education can have an anti-natalist effect. If children cannot work, the economic motive to have them is diminished. Moreover, education is generally recognized to have an anti-natalist effect in most cultures.¹⁶⁷

Distinguished from the above mentioned laws are a number of welfare laws which have been thought to have an effect on fertility, though it has not been clearly shown. Children's allowances are the most obvious laws in this category. They exist in many countries subject to French or Continental European influence. Children's allowances have been used by those countries since the two world wars to encourage fertility. Although the fertility effect of these laws is unclear, it does appear that if the allowances are high enough to cover, or appear to cover, the actual cost of raising a child, they may have a positive effect.¹⁶⁸ This has been the impression gained in Eastern Europe since World War II. However, if the allowances are nominal in size, they may have no effect, or even have an anti-natalist effect if they encourage education or force parents to make realistic calculations as to the cost of child raising.¹⁶⁹ The first people to receive child allowances in developing countries are often the industrial employees who are also the first to enter the "modern" industrial economic

166. P. HALL, *LAW AND POPULATION GROWTH IN SINGAPORE* 34 (Law and Population Programme Monograph Series No. 9, 1973).

167. For a discussion of the effect of education on fertility, see D. KLINE AND W. McCANN, *LAW, EDUCATION AND POPULATION*, Paper presented at UNESCO Workshop in Teaching of Population Dynamics, Paris, February 1974.

168. For a discussion of the effect of the French laws in Francophone Africa, see A. PARAISO, *Legislation and Demographic Changes*, Report prepared for Symposium on Law & Population, Tunis, June 1974, (to be published).

169. For a full study of the effect of children's allowances on fertility, see MEASURES, POLICIES AND PROGRAMMES AFFECTING FERTILITY . . ., U.N. Doc. ST/SOA/S. A/51 (1972), at 17 *et seq.*

sector. This could account for the negative effect of the allowances since a working family in an urban environment faces a greater cost burden in child rearing.

Maternal benefits include free obstetric care and maternity leave with pay. These benefits in all probability do have an effect on fertility.¹⁷⁰ But, if the benefits are withdrawn after the third child, as has been tried in Singapore,¹⁷¹ the government may be effective in discouraging further procreation.

Tax deductions for children probably have little or no effect since most of the population in developing countries pay little or no income tax. However, the withholding of the deduction after the third child is a way of emphasizing the government's anti-natalist policy.

K. Incentives

Closely related to the preceding section in influencing population growth is the new field of incentives both to stimulate and to limit fertility. As suggested above, many European countries have tried special child payments or special maternity benefits as stimuli for greater child bearing. It is significant that a number of the law and population projects in developing countries wishing to lower fertility have suggested the withdrawal of these benefits after the third child as a negative incentive. The Costa Rican project has suggested that family allowance and special union wage provisions be re-examined by the legislature in the light of their consistency with population policy.¹⁷² Whether the withdrawal of an existing welfare benefit would cause so much resentment as to be counter-productive is difficult to determine.

Positive incentives for limiting fertility have been tried. In India, cash payments to accept a vasectomy have been made with some success. The ethics of this have been questioned on the ground that such payments take advantage of the poverty of the acceptors.¹⁷³ Other schemes involving a sort of "no baby bonus" have also been suggested, and successfully demonstrated in India. Another positive incentive suggested in India and Sri

170. *Id.* at 31.

171. See Hall, *supra* note 166, at 34. Although the degree of effect cannot be judged, it is known to have had some anti-natalist effects.

172. Costa Rica, *EL DERECHO Y LA POBLACION EN COSTA RICA*, *supra* note 159, Recommendations 3, A, at 19.

173. ЧАСКО, *supra* note 163, at 3.

Lanka has been a tax deduction for employers who provide family planning services for their employees.¹⁷⁴

As countries find themselves faced with added population pressures over the next few years, discussions of incentive laws will increase.

III. PRACTICAL RESULTS ACHIEVED

A. *Recommendations for Legal Reforms in Developing Countries*

Dr. Lee's article¹⁷⁵ describes the projects established in twenty-five developing countries. These projects are to compile and review domestic laws affecting fertility and population growth. Although the program only began four years ago, ten¹⁷⁶ of the twenty-six projects have already reached the stage of making recommendations to their respective governments.¹⁷⁶ Included in the ten projects is at least one country from every developing region in the world.

The recommendations made by these projects can be categorized into the following areas: increasing the availability of contraceptives;¹⁷⁷ improving the status of women;¹⁷⁸ increasing the marriage age for women;¹⁷⁹ liberalizing pregnancy termination laws;¹⁸⁰ clarifying and liberalizing voluntary sterilization laws;¹⁸¹

174. *Id.* at 13.

175. See *supra* note 1.

176. Copies of the project reports and recommendations are available at the Law and Population Programme, Fletcher School, Tufts University, Medford, Mass. 02155. Brazil: POPULATION AND THE ROLE OF LAW IN THE AMERICAS (Law and Population Monograph Series No. 18, 1974); Chile: SULBRANDT & FERRERA, LAW AND POPULATION GROWTH IN CHILE (Monograph in preparation for Law and Population Programme); Costa Rica: E. ODIO, EL DERECHO Y LA POBLACION EN COSTA RICA (1974); Indonesia: N. SOEWANDO, LAW AND POPULATION IN INDONESIA (1974); Iran: P. SANAY, LAW AND POPULATION GROWTH IN IRAN (Law and Population Programme Monograph Series No. 21, 1974); Kenya: U. UCHE, LAW AND POPULATION GROWTH IN KENYA (Law and Population Programme Monograph Series No. 22, 1974); Mexico: CORNEJO, LEY Y POBLACION EN MEXICO (1974); Pakistan: K. ISHAQUE, *Report prepared for International Planned Parenthood Federation* (1974); Philippines: LAW AND POPULATION IN THE PHILIPPINES (Law and Population Programme Book Series No. 9, 1974); Sri Lanka: GOONESEKERE & WEERSOORIA, REPORT OF THE NATIONAL SEMINAR ON LAW AND POPULATION IN SRI LANKA (1974). Seven new projects had reported by January 1976. Their recommendations followed the same times as those of the first ten.

177. See the projects for Brazil, Kenya, Indonesia, Mexico, Pakistan, the Philippines, and Sri Lanka.

178. See the projects for Costa Rica, Indonesia, Iran, Mexico and Sri Lanka.

179. See the projects for Indonesia, Mexico, Pakistan, and Sri Lanka.

180. See the projects for Chile, Indonesia, Iran, Kenya, Pakistan, and Sri Lanka.

181. See the projects for Chile, Pakistan, and the Philippines.

providing for population and sex education or information;¹⁸² providing social security for the elderly;¹⁸³ protecting the rights of children;¹⁸⁴ suggesting anti-natalist (or the removal of pro-natalist) incentives;¹⁸⁵ and establishing a clear government population policy including a government body to implement it.¹⁸⁶

Although this categorization is an over-simplification, it is made to show that the same or similar conclusions are reached in every region of the developing world. There are, however, certain regional characteristics. For example, there appears to be a special Latin American interest in persuading governments to develop a clear official population policy. This may be the result of the Catholic governments' previous reluctance to raise a sensitive issue. The projects concluded that a population policy can no longer be ignored.¹⁸⁷ Latin American projects have shown a special interest in forcing fathers of illegitimate children to support the results of their "machismo" exploits. (The Mexican Government has presented specific proposals on this latter issue to its parliament.)

In contrast, most of the Asian countries see their population pressures as a problem which must be reflected in their development plans.¹⁸⁸ Countries facing intense population pressures (Indonesia, Pakistan, and Philippines) display more interest in embarking on incentives for small families than countries in other regions of the world. It is too early to draw any conclusions as to regionalization peculiarities in Africa, Kenya being the only African project yet completed.

In short, the conclusions that can initially be drawn based on those projects completed indicate that the same basic problems exist throughout the developing world, though the emphasis on a specific problem may vary slightly in the different regions.

182. See the projects for Brazil, Costa Rica, Indonesia, Iran, and Mexico.

183. See the projects for Indonesia, Kenya, and Sri Lanka.

184. See the projects for Chile, Costa Rica, Mexico, Indonesia, and the Philippines.

185. See the projects for Costa Rica, Indonesia, the Philippines, and Sri Lanka.

186. See the projects for Brazil, Chile, Costa Rica, Mexico, Pakistan, and Sri Lanka.

187. Chile and Costa Rica recommend a law establishing a general population policy. In Mexico, the project members collaborated with the government in working out the General Population Law of 1974.

188. H. WHITNEY, *POPULATION PLANNING IN ASIA IN THE 1970'S: AN EVALUATION*, April 1975 (paper delivered at the annual meeting of the Population Association of America).

B. *Governmental Awareness and Action on the Need for Law Reform*

At the U.N. Conference in Bucharest, it was clearly demonstrated that governments are becoming increasingly aware of the problems caused by the gaps existing between domestic laws, the requirements of human rights and the governments' own population policies.¹⁸⁹

Considering the differences between governments in such matters as attitudes toward population, degrees of development, legislation processes, and effectiveness of law enforcement, it is not surprising that the governments in the countries where the special studies have been made have reacted by taking different types of action. However, in nearly all the cases where the law and population projects have made recommendations some action or actions have been taken which demonstrate the governments' intention to make changes. Government actions that have been taken include: the establishment of population committees or commissions, often at the Cabinet level;¹⁹⁰ the consideration of a special parliamentary committee to review proposed legislation as to its effect on population growth;¹⁹¹ the organizations of seminars to officially review the law compilations prepared by the projects;¹⁹² expressions of support for the population projects;¹⁹³ and actual law reforms based on project recommendations.¹⁹⁴

189. *World Population Conference*, *supra* note 101, at 14, para. 39 (c).

190. Law of Dec. 11, 1973, Concerning the General Population, [1974] D.O. 1, Art. 5 (Mexico); Executive Order No. 174, 64 O.G. 2296 (March 1969) (Philippines).

191. This is being done in Sri Lanka.

192. Sri Lanka, Indonesia and Chile have sponsored seminars with high level officials participating through various ministries on semi-official organizations.

193. The Prime Minister of Iran wrote to the project director to express his support. Similar support was expressed in Sri Lanka for its project.

194. In Indonesia, the process of law revision is just beginning and further seminars are planned. The new Marriage Law No. 1 of 1974 (under which regulations are still being drafted) raises the minimum marriage age. (See Indonesia, *supra* note 176 at 29.) Moreover the number of family members given tax deductions was lowered from 10 to 7 by the decision of the Minister of Finance of Nov. 20, 1973, No. KEP-1167/MK/II/73, Art. 1, para. 2 (effective in 1974). See Indonesia, *supra* note 176 at 106. A number of changes have been made in the Philippines on the basis of internal suggestions. An example is the reduction in the number of dependents eligible for tax deductions (Tax Code, as amended by Presidential Decree No. 69, Oct. 19, 1972). See Sison, Philippines, *supra* note 176 at 103. Many of the other recent changes listed by Sison were originally suggested by the project. In Sri Lanka, a 1975 policy decision of the Ministry of Health eliminated requirements for a prescription for the sale of contraceptives. By a similar decision of the Ministry of Education, classes in "Population Awareness" in school may now include materials on human sexuality. Letter from Mr. W. S. Weerasooria (of the Law and Population Project), April

Although it is too early to tell how the governments of projects not yet completed will respond to their recommendations, it is already clear in many cases that responsible officials are watching the projects with sympathetic interest. Actual law changes can be expected in most cases.

It has become clear that there is a growing trend, both in the developing and in the developed countries, to liberalize laws and regulations in the population planning field. Constitutional amendments requiring their governments to take responsibility for population policies have been adopted during the past two years in Yugoslavia, the Philippines and Thailand¹⁹⁵ and are under consideration in Mexico. More significantly, at the U.N. World Population Conference at Bucharest,¹⁹⁶ governments for the first time publicly stressed the need to review domestic laws in terms of human rights and population policies.¹⁹⁷

C. *Increasing Concern on Part of International Bodies*

The World Population Conference at Bucharest was only the culminating event in a series of United Nations Conferences and seminars held in connection with World Population Year. International organizations, both governmental and private, are vigorously encouraging needed law reform. In 1972, there was a series of three seminars (held in Turkey, Trinidad and Indonesia) on the status of women and family planning. These seminars' principal emphasis was on the need to amend laws, regulations and customs which discriminate against women and encourage fertility.¹⁹⁸ In January 1974, the U.N. Seminar on population and human rights in Amsterdam agreed that international organizations should assist governments in "reviewing national legislation in the light of both population policy and human rights."¹⁹⁹ In

17, 1975. The Brazilian Delegation at the U.N. World Population Conference in Bucharest, officially stated that his government would accept family planning as a human right and would make information and services available. A. Astrachan, "People are the Most Precious," *Saturday Review World*, Oct. 19, 1974 at 10, 59.

195. SALIGANG-BATAS (Constitution) art. XV, § 10 (Philippines, 1973); Constitution of Thailand, ch. 5, § 86 (Thailand, 1974).

196. See *World Population Conference*, *supra* note 101 at 22, para. 78 (h).

197. For a collection of the law changes in 18 months, see *Eighteen Months of Legal Change*, POPULATION REPORT, Series E, No. 1 (George Washington University Medical Center, 1974).

198. See Report, *supra* note 148, e.g. Recommendations 5, 6 and 7.

199. *Report of the Symposium On Population and Human Rights* (Amsterdam, 1974), U.N. Doc. E/CONF.60/CBP/4 (19 March 1974), para. 150 (g).

February 1974, UNESCO organized a workshop on the teaching of population dynamics in law schools. The workshop placed the entire emphasis on the legal aspects of fertility and population growth. The International Symposium on Law and Population at Tunis in June 1974, was sponsored by the U.N., the U.N. Fund for Population Activities, the World Health Organization, the International Labor Organization, UNESCO, the Tunisian Family Planning Association and the Law and Population Programme. This meeting developed a full series of specific recommendations on each of the fields discussed in Section II of this article.²⁰⁰ Finally, the International Planned Parenthood Federation (IPPF) set up a panel on law and planned parenthood. IPPF urged each of its constituent member associations to study the laws of their respective countries which impede the full implementation of an effective population policy.²⁰¹

A similar development has begun to occur regionally. The Council of Europe at Strasbourg established a Committee of Demographic Experts on Legislation Related to Fertility and Family Planning. This committee has drafted a full series of recommendations for liberalization of laws relating to family planning.²⁰² The International Union for the Scientific Study Of Population (IUSSP) has also done a complete study of the laws of each European country in the population field.²⁰³ In Latin America, the Inter-American Bar Association's Committee on Human Rights organized a seminar on law and population and set up a committee to follow related developments.²⁰⁴ The IPPF's Regional Panel has taken similar steps.²⁰⁵ Two regional seminars, one Francophone and one Anglophone, have been organized in Africa.²⁰⁶ The IPPF

200. For a report on Symposium, see *supra* note 143.

201. Resolution of IPPF Management and Planning Committee of Oct. 20, 1973, taken during the IPPF's *Planning for the Future International Conference*, at Brighton, England. See generally, B. ABEL SMITH, *PEOPLE WITHOUT CHOICE*, IPPF (1974).

202. See Recommendation 675 (1972) of the Consultative Assembly of the Council of Europe (Oct. 12, 1972), 24th Ordinary Session; Also draft resolution of the Council Committee of Demographic Experts now before the Committee of Ministers (Concl. Document Experts/Dem. (74), 2, app. II).

203. INTERNATIONAL UNION FOR THE SCIENTIFIC STUDY OF POPULATION (IUSSP), *STUDY OF LEGISLATION DIRECTLY OR INDIRECTLY INFLUENCING FERTILITY IN EUROPE* (Dolhain, 1975).

204. For a copy of the resolution setting up this committee see *POPULATION AND THE ROLE OF LAW IN THE AMERICAS*, *supra* note 176 at Appendix I.

205. The Minutes of the first meeting of the IPPF Western Hemispheric Regional Law Panel Seminar on Sept. 25, 1974 identify "legal barriers" to a community based distribution system (Minutes, item II).

206. Anglophone seminar held at the University of Nairobi in Nov. 1974, and a

is making similar plans for the Moslem Middle East and West Asia.

IV. CONCLUSIONS

Domestic laws including statutes, decisions, regulations and customs play a very important, if not the major, role in effecting population dynamics. Yet, the domestic law in nearly every country, and particularly in the developing countries, is inconsistent not only with the human rights recognized by the United Nations, but with the governments' own population policies. An increasing awareness of these inconsistencies has occurred in both international organizations and government circles. Where the inconsistencies have been shown changes in the laws have frequently been made. From all available evidence, domestic law changes will continue to increase at an ever more rapid rate until the human right of family planning becomes a reality throughout the world.

francophone seminar held by the University of Bénin, Lomé, Togo, March 10, 1975. Proceedings being published by the two universities.

- 31/ *Law and Population Growth in Chile*, by José Sulbrandt and Maria Alicia Ferrera (1975).
- 32/ *Law and the Status of Colombian Women*, by Josefina Amezcuita de Almeyda (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).
- 35/ *Law and Population Growth in Ethiopia*, by Daniel Haile and Erku Yimer (1976).
- 36/ *Reform of Laws Affecting Population Growth: Recent Developments*, by Edmund H. Kellogg (1976).

Law and Population Book Series

- 1/ *Population and Law*, Luke T. Lee and Arthur Larson (eds.) (Leyden: A.W. Sijthoff; Durham, North Carolina: Rule of Law Press, 1971).
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