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Legal Action to Stop Our Population Explosion

Marvin M. Moore*

MOST AMERICANS ARE AWARE of the fact that overpopulation constitutes a major threat to the welfare of humanity. What is less generally known, however, is that the population explosion is not confined to the underdeveloped countries of Asia and Latin America. The purposes of this article are to demonstrate that our *own nation* is rapidly becoming overpopulated, and to suggest a program for combating this phenomenon.

The present population of the United States is 186,847,000.¹ If the current rate of increase remains unchanged, our population in 1970 will be 215,000,000,² which means that in less than ten years we will have added more people than now inhabit Spain.³ Assuming that the same rate of increase continues to operate, our population in 1980 will be 260,000,000, and in the year 2000, 385,000,000.⁴

These figures are based upon a population-expansion rate of 1.85 percent per year, which is the rate currently operative in the United States.⁵ This produces a population increase of over eighteen percent in a decade and constitutes a higher rate of expansion than most Asian countries are presently experiencing,⁶ which is interesting, as American newspapers and magazines commonly cite Asia as an area undergoing a deplorable rate of population expansion.

Approximately eighty-five percent of our population increase can be ascribed to an excess of births over deaths, and the remaining fifteen percent can be attributed to immigration and annual declines in the death rate.⁷ The yearly excess of births over deaths is at present sixteen per thousand people, which is

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¹ U. S. Bureau of the Census, Current Population Reports, Series P-25, note 245 (September 13, 1962).

² Hauser, Our Population Crisis is Here and Now, Reader's Digest, Feb. 1962, p. 147.

³ Steinberg, The Statesman's Year-Book, 1379 (1961).

⁴ Hauser, *op. cit. supra* n. 2 at 147.

⁵ U. S. News and World Report, Nov. 28, 1960, p. 64.

⁶ Davis, Ideal Size for Our Population, New York Times, May 1, 1955, (magazine) p. 12.

⁷ Day, Our Irresponsible Birth Rate, Reader's Digest, Nov., 1960, p. 77.

the result of an annual birth rate of twenty-five per thousand being coupled with a yearly death rate of only nine per thousand.⁸ More than eleven thousand babies are born in this country each day,⁹ while only about forty-six hundred people die.¹⁰

The above statistics acquire significance only when one considers the effects that the rate of population growth revealed by them will have upon the lives of this country's citizens. The major effects to be anticipated are immense problems of an economic and social character, as well as the loss of certain intangible features of present-day life that many persons treasure.

That the United States faces economic problems can be explained by the fact that our natural resources are limited in quantity and, for the most part, non-renewable. In 1952 President Eisenhower's Materials Policy Commission reported that our nation was already running short of many vital minerals.¹¹ Thirty-three have been placed on a critical shortage list.¹² In 1900 this country produced fifteen percent more raw materials than it used.¹³ By 1950 it was consuming ten percent more than it produced, and this percentage has increased since that date.¹⁴ Today we are using more than half the free world's non-food raw materials, (over two-thirds of its minerals), although we constitute only one sixteenth of the world's population.¹⁵ Among the raw materials which our nation now imports in large quantities are zinc, petroleum, lead, copper, iron, rubber, and timber.¹⁶ This means that the high standard of living which we currently enjoy is to a substantial extent dependent on the natural resources of foreign nations. This becomes a cause for some concern when one realizes that many of these countries are at present comparatively undeveloped and will be needing more of their resources themselves as they industrialize and improve their own standards of living.

⁸ Hauser, *op. cit. supra* n. 2 at 147.

⁹ Day, *op. cit. supra* n. 7 at 76.

¹⁰ U. S. Department of Health, Education, and Welfare, Monthly Vital Statistics Report, v. 10, number 13 (April, 1962).

¹¹ Miller, Some Observations on the Political Economy of Population Growth, 25 Law and Contemp. Prob. 617 (1960).

¹² Davis, *op. cit. supra* n. 6 at 30.

¹³ Hauser, *op. cit. supra* n. 2 at 148.

¹⁴ *Ibid.*

¹⁵ Vogt, Are Too Many Babies Being Born?, Saturday Evening Post, Jan. 6, 1962, p. 11.

¹⁶ *Ibid.*

It will soon become necessary for the United States to import considerably more petroleum, iron, and timber than it does now, for our own supplies are dwindling. Most of our richest oil fields already have been exhausted, and our known reserves will not enable us to continue our present domestic production for more than twenty years.¹⁷ Our best iron ore deposits have been depleted to the extent that American companies are now experimenting with costly methods of processing low grade ores.¹⁸ According to Professor Alfred B. Garrett of Ohio State University, our high grade iron ore deposits will be completely exhausted in fifty years.¹⁹ As to the timber situation, the United States Forest Service has stated that, assuming continuance of current forestry practices and of the present rate of population growth, by 1975 loggers will be cutting down about fourteen percent more timber than is being grown each year.²⁰ By the year 2000 the United States will be replacing only one tree for every four it chops down.²¹

Finally, among the most pressing of the resource shortage problems confronting our nation are those related to its water supply. More than one thousand cities and towns already are forced to curtail their water service.²² The doubling of Denver's population in the first ten years after the conclusion of World War II created such a water shortage that the city contracted for the construction of a twenty-three mile tunnel through a section of the Rocky Mountains in order to obtain access to the Blue River. The tunnel has recently been completed at a total cost of fifty million dollars.²³ Our country is now consuming approximately 270 billion gallons of water per day.²⁴ It will require so many more billion gallons by 1975 that, according to Vice-President Lyndon Johnson, the nation will then be using nine of every ten available gallons, and some sections will be

¹⁷ Davis, *op. cit. supra* n. 6 at 12.

¹⁸ *Ibid.*

¹⁹ 46 Science Digest 5 (July, 1959).

²⁰ U. S. News and World Report, April 4, 1958, p. 74.

²¹ *Ibid.*

²² Day, *op. cit. supra* n. 7, at 76.

²³ Friggens, Denver Digs Twenty-three Miles for a Drink, Reader's Digest, April, 1961, p. 189.

²⁴ Barach, The Fabulous Fifteen Years Ahead, Changing Times, Jan., 1961, p. 20.

forced to ration drinking water.²⁵ The perfection of a satisfactory process of desalting sea water would significantly mitigate the problem, but no completely acceptable process has been developed as yet.²⁶

The principal social problems created by the rapidity of our population growth are four:

- (1) How to provide enough schools and colleges?
- (2) How to prevent substantial unemployment?
- (3) How to build adequate highways and streets?
- (4) How to avoid a substantial reduction in individual freedom?

The magnitude of the first problem is revealed by the following facts: In 1950 less than 26,000,000 students were enrolled in this country's schools and colleges.²⁷ By 1960 this number had increased to over 36,000,000,²⁸ and the following year the U. S. Office of Education reported that the United States was short 140,000 schoolrooms.²⁹ It is expected that by 1970 total school and college enrollments will exceed 45,000,000.³⁰ For every four children attending public schools in 1960 there will be five in 1970,³¹ and the number of high school students will have increased forty-eight percent over that of 1960.³² The difficulties confronting America's colleges are even greater than those facing the grade and high schools, for it is anticipated that college enrollments will soar from the 3,800,000 of 1960 to 6,500,000 in 1970.³³ This represents an increase of seventy percent, which exceeds the much discussed expansion of the 1950's by thirty percent. One authority recently declared that if the colleges are to house adequately the class of 1974, they will have to spend more money on construction in the decade ending in 1970 than they have spent in all the years since the Battle of Bunker Hill.³⁴

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ Vicker, *Our Population Powder Keg*, *Today's Health*, Oct., 1959, p. 68.

²⁸ *Ibid.*

²⁹ Vogt, *op. cit. supra* n. 15 at 6.

³⁰ Vicker, *op. cit. supra* n. 27 at 68.

³¹ O'Brien, *The U. S. A. in 1970: A Forecast of Things to Come*, *Reader's Digest*, Jan., 1961, p. 28.

³² Hauser, *op. cit. supra* n. 2 at 148.

³³ O'Brien, *op. cit. supra* n. 31 at 28.

³⁴ *Ibid.*

In the light of the preceding, the following observation by Richard Fagley, Executive Secretary of the World Council of Churches and the International Missionary Council, is readily understandable:

It has been increasingly recognized that to maintain or improve the quality of education, there must be a limitation on the quantity of procreation.³⁵

The problem of accommodating the tremendous volume of traffic resulting from the augmentation of our population constitutes an engineering challenge without precedent. In the first ten years after the end of the Second World War auto registrations doubled,³⁶ with the result that in 1955 there was a motor vehicle for every seven hundred feet of lane on all streets and highways in the United States.³⁷ At this time it was estimated that vehicle registrations would rise another forty percent in the following decade and reach a total of 81,000,000.³⁸ Since 1956 the number of automobiles on the roads has been increasing by more than two million per year.³⁹ The total motor vehicle population in 1975 is expected to be 111,000,000,⁴⁰ and the traffic problems attendant on the operation of so many vehicles will be intensified by the fact that eighty percent of our population will live in metropolitan areas.⁴¹ In these areas, declares *Changing Times*, "The grim prospect is for bumper-to-bumper existence in 1975."⁴²

Realizing that our existing highway system was inadequate to accommodate the current flow of traffic and that this volume was increasing substantially every year, Congress in 1956 enacted the Interstate and Defense Highway Program, which is scheduled for completion in 1972.⁴³ This program calls for the construction of 41,000 miles of highways and represents "the great-

³⁵ Fagley, A Protestant View of Population Control, 25 Law and Contemp. Prob. 481 (1960).

³⁶ Moynihan, New Roads and Urban Chaos, *The Reporter*, April 14, 1960, p. 13.

³⁷ *Ibid.*

³⁸ Moynihan, *op. cit. supra* n. 36 at 14.

³⁹ Barach, *op. cit. supra* n. 24 at 16.

⁴⁰ *Ibid.*

⁴¹ O'Brien, *op. cit. supra* n. 31 at 27.

⁴² Barach, *op. cit. supra* n. 24 at 16.

⁴³ 46 U. S. News and World Report 57 (May 25, 1959); and *supra* n. 24 at 16.

est road-building project ever undertaken.”⁴⁴ The estimated cost is forty-five billion dollars,⁴⁵ which partially explains why annual government expenditures for highways now total approximately eleven billion dollars per year.⁴⁶ Notwithstanding their enormity, these outlays are considered insufficient to cope with the traffic problem created by our present rate of population expansion.

For the past several years the United States has been plagued with a high level of unemployment, even in so called “good times.” This fact, coupled with the serious threat of an even higher unemployment ratio in the future, has caused one authority to term unemployment the “number one domestic problem” of the Kennedy administration.⁴⁷ Two phenomena are largely responsible for the development of this problem. First, the number of people entering the job market annually is much larger now than it was in past years, and this trend promises to continue into the future. Between 1950 and 1960 the labor pool expanded at an annual average of 838,000 persons per year, to produce a total increase of approximately eight and one half million people.⁴⁸ During the decade of 1960-1970 the labor force will expand at an estimated yearly average of 1,400,000 persons, thereby achieving a total expansion of fourteen million. This estimate is based on a calculation that twenty-six million people will enter the labor pool (a considerably greater number than has ever had to be absorbed in a ten-year period) and twelve million will leave it.⁴⁹

Secondly, in many fields of business and industry the number of jobs is increasing at a much lower rate than in past years, and in some fields this number is actually decreasing. This is attributable mainly to automation. Declares *The Nation*, “The ghost at the bargaining table is automation, and it is a specter that neither silence nor evasion nor ridicule can exorcise.”⁵⁰ Between 1947 and 1960 the total output of industry rose by nearly fifty-six percent.⁵¹ However, employment increased by only

⁴⁴ *Time Magazine*, March 24, 1958, p. 26.

⁴⁵ Moynihan, *op. cit. supra* n. 36 at 13.

⁴⁶ Barach, *op. cit. supra* n. 24 at 16.

⁴⁷ U. S. News and World Report, Feb. 6, 1961, p. 76.

⁴⁸ *Ibid.*

⁴⁹ *Id.* at 77.

⁵⁰ 194 *The Nation* 2 (Jan. 6, 1962).

⁵¹ U. S. News and World Report, *op. cit. supra* n. 47 at 77.

eleven percent.⁵² During the 1950's the number of jobs increased by only seven million, which represented an expansion of one and one half million less than the increase in the size of the labor pool.⁵³

Goods production constitutes a declining field of employment. The total number of persons now employed in factories, mines and on farms is less than in 1949.⁵⁴ Although factory output rose thirty-two percent in the decade 1948-58, factory employment increased by only one percent.⁵⁵ Between 1949 and 1959, 132,000 jobs were lost in automobile plants because of the augmentation in output per worker.⁵⁶ The production of automobiles increased by approximately sixty percent during this period. In the four year period of 1956-60 the number of production workers in the chemical industry diminished by fourteen thousand, although production increased by twenty-seven percent.⁵⁷ In a modern steel mill twelve men can produce one ton of steel in an hour. Twenty men were needed to accomplish this in 1941.⁵⁸

Automation is manifesting itself in offices as well as in plants, mines and on farms. Electronic computers and calculating devices now handle payrolls, read sales slips, keep inventory, process insurance claims, sort bank checks, send out bills and write receipts. There is every reason to expect that many other functions now performed by office personnel will soon be handled by machines.

A few years ago many people thought that automation would eventually create as many jobs as it displaced. Few persons entertain this belief today. The AFL-CIO's Industrial Union Department recently noted that in the middle 1950's some industrial leaders predicted that automation would soon produce new job opportunities for workers displaced by machines. The Union Department commented:

The trial period of automation (referring to its job-creating capacities) is over. The economic behavior of our nation

⁵² *Ibid.*

⁵³ Newsweek, Dec. 4, 1961, p. 91.

⁵⁴ U. S. News and World Report, Feb. 6, 1959, p. 94.

⁵⁵ *Ibid.*

⁵⁶ U. S. News and World Report, Feb. 13, 1959, p. 89.

⁵⁷ U. S. News and World Report, *op. cit. supra* n. 47 at 76.

⁵⁸ *Ibid.*

over the past decade has made a mockery of this and similar predictions.⁵⁹

Thus the dilemma confronting our society is to find jobs for more and more people during a time when business and industry can accomplish a given task with fewer and fewer people. An article recently appearing in *The Nation* states that no one has discovered any means of coping with the unemployment problems concomitant to automation except the palliative of reducing the work week. The article then declares that if anyone has a better solution it will be eagerly received.⁶⁰ This writer submits that one "better solution" is obvious: as our society has begun to require less workers than formerly, let it limit the number of workers that it produces.

Many Americans are becoming concerned over our citizens' gradual, but clearly perceptible, loss of individual freedom.⁶¹ This trend is largely explained by the fact that population growth creates the need for more organization, which, in turn, results in the enhancement of group values at the expense of individual values. Quoting Professor Arthur S. Miller of Emory University:

Increasingly intense pressures of population on resources . . . bring about the need for improved organizational techniques, whether public or private. In this process the individual will be more and more submerged.⁶²

One who doubts the truth of this should compare the amount of personal freedom which he possesses with that enjoyed by his grandfather as a young man. If this trend continues, it may result in a reduction of individual freedom sufficient to approximate conditions of authoritarianism. Asserts Professor Paul B. Sears of Yale University:

The whole record of history down to the present moment, including that of our own society, shows the progressive loss of individual liberty as numbers increase and humanity becomes more crowded. The end is complete socialization in one form or another.⁶³

⁵⁹ Akron Beacon Journal, June 17, 1962, p. 2.

⁶⁰ *The Nation*, *op. cit. supra* n. 50 at 2.

⁶¹ O'Brien, *op. cit. supra* n. 31 at 29.

⁶² Miller, *op. cit. supra* n. 11 at 618.

⁶³ Sears, *Where is the Population Boom Taking Us?*, *Science Digest*, August, 1960, p. 19.

Admittedly, a governmental program designed to limit population growth—even one calculated to encourage, rather than compel, limitation of family size—would itself restrict personal liberty to some extent. But it is believed that an optimum population, achieved through social restraint on births, would ultimately provide much more freedom than would exist in a society subsisting at a saturation level. More control appears inevitable. The only question is whether or not this control is to be imposed rationally, and thereby minimized.

In evaluating the phenomenon of a rapidly increasing population, one cannot legitimately confine his criteria to economic and social considerations. For the impact of this phenomenon is more pervasive than an analysis of these considerations will reveal. Another effect of a fast expanding population is a lessening of individual privacy. Many persons cherish their privacy and entertain a repugnance towards being crowded. This at least partly explains the mass movement to the suburbs that has taken place during the past fifteen years. Opportunities for individual privacy in 1970 will be considerably fewer than exist now, and even today they are far from plentiful in some parts of the country, as the following statement from the *New York Times Magazine* suggests:

In the East a trip to the country or the shore is a nerve-racking battle through heavy traffic, and when we are once there we are likely to find hundreds of our urban brothers close around trying desperately, but unsuccessfully, to get away from one another.⁶⁴

In 1970 four out of five Americans will live in metropolitan areas, which will contain forty-five million more people than inhabit these areas today.⁶⁵ And by the year 2000 the city will dominate every section of the nation.⁶⁶ Metropolitan New York will then comprise about twenty-three million people, and metropolitan Los Angeles will contain approximately twenty million.⁶⁷ Great regional cities flowing together along connecting railroads and highways will take distinct shape on the map. The outlines of a few are discernible today. One extends four hun-

⁶⁴ Davis, *op. cit. supra* n. 6 at 37.

⁶⁵ O'Brien, *op. cit. supra* n. 31 at 27.

⁶⁶ Ogburn, *America the Expendable*, Harper's Magazine, August, 1960, p. 56.

⁶⁷ *Ibid.*

dred miles from Boston to Washington, D. C., and another connects Milwaukee, Chicago, and Detroit.⁶⁸

That many persons value this country's open and wild land is indicated by the large numbers that visit our national and state parks every year. America's rural countryside is fast vanishing. Since an expanding population must live somewhere, about 1,300,000 new homes are being built annually,⁶⁹ and an average of three thousand acres of land is being bulldozed under each day.⁷⁰ A walk or picnic in the country within convenient motoring distance of home has already become a virtual impossibility for a substantial percentage of our citizens. Declares a writer in *Harper's Magazine*:

What the conservationists are up against is enough to discourage all but the most dauntless. The encroachment of urban civilization upon the legacies of traditional America proceeds unchecked and at a dizzy pace.⁷¹

Some may feel that though the loss of individual privacy and of rural and wilderness areas is regrettable, such things are not, after all, essential to human existence. Such considerations would even be termed trivial and insubstantial by many. But is there not a comparable lack of substance in the assumption that the purpose of life is simply to increase the number of mankind? It is not the number, but the quality and well being of people that matters.

It is hoped that the preceding paragraphs suffice to explain why this writer asserts that sooner or later the American people will *have* to formulate a population policy. At the present time the United States has none whatsoever,⁷² and it is apparent that the longer our nation waits to adopt one, the more coercive will be the measures that it will ultimately have to adopt. Conditions in the United States have not yet reached the stage where methods *compelling* the limitation of family size are necessary or justifiable, and this writer therefore favors a program designed to *encourage* small families. This program (discussed below) is aimed solely at convincing individuals that it is to their interest to limit the number of their children. Although

⁶⁸ O'Brien, *op. cit. supra* n. 31 at 27.

⁶⁹ Vicker, *op. cit. supra* n. 27 at 69.

⁷⁰ Day, *op. cit. supra* n. 7 at 77.

⁷¹ Ogburn, *op. cit. supra* n. 66 at 56.

⁷² Miller, *op. cit. supra* n. 11 at 627.

education and publicity are an indispensable part of such a scheme, relied on alone they are unlikely to have the desired effect, as experience in India has demonstrated.⁷³ Persons must be given a distinct monetary incentive to contain the size of their families. Given such an incentive, they will respond, as the low birth rate of the Depression indicates.

Since our society has no need for any more people than it already comprises, being populous enough now to enjoy the economies of mass production and mass marketing and to exploit our land resources with reasonable thoroughness, the goal of this writer's recommended program is a completely stationary population. Achievement of this aim would necessitate a decrease in our birth rate of about forty percent, assuming our present immigration quotas remained unchanged.⁷⁴ After such a decrease each couple would be averaging about 2.2 children.⁷⁵

With these considerations in mind, the writer proposes adoption of the following program, most of which would be put into effect by the federal government, and part by the state governments:

- (1) That Congress disallow income tax deductions for more than two child-dependents.
- (2) That the federal government reduce its annual immigration quotas by one half, from 156,487 persons per year⁷⁶ to 78,244.
- (3) That the federal government, acting through the Department of Health, Education, and Welfare, publicize the need for, and desirability of, limitation of family size.
- (4) That Congress alter or repeal Title 18, Section 1461 of the United States Code, which prohibits the mailing of contraceptive devices and drugs and of literature advertising them.⁷⁷
- (5) That the thirty one states which have enactments forbidding or restricting the giving of information about the prevention of conception and the advertisement of

⁷³ New York Times, Jan. 17, 1960, Sec. E, p. 4.

⁷⁴ Hauser, *op. cit. supra* n. 2 at 150.

⁷⁵ Wogt, *op. cit. supra* n. 15 at 11.

⁷⁶ This is the number of immigrants currently permitted entrance by the quotas, as is indicated in detail at 8 U. S. C. § 1151 (1961).

⁷⁷ 18 U. S. C. § 1461 (1961).

contraceptive devices and drugs alter or repeal these statutes.⁷⁸

- (6) That the thirteen states which have enactments prohibiting or restricting voluntary sterilization operations, modify or repeal such statutes.

Point one of the suggested program would involve an alteration of Title 26, section 151 of the Internal Revenue Code, which now allows a \$600 deduction for each child-dependent and places no limit on the number of dependents deductible.⁷⁹ It is recommended that the proposed change—limitation of deductible child dependents to two—be so worded as to have only a prospective operation. Thus couples who already had more than two children at the time the change became effective would still be permitted deductions for all of their existing children, but they would not be allowed deductions for any children born later than nine and one half months after the effective date of the change. It is realized that many couples would continue to produce large families, either deliberately or unintentionally. But the suggested change would beyond doubt discourage numerous couples from planning, or carelessly acquiring, a large number of children. And if the deterrent effect of the change proved to be insufficiently potent, the statute could be modified again to reduce the number of child-dependent deductions to one or zero.

Point two of the recommended program would entail alteration of Title 8, section 1151 of the United States Code.⁸⁰ It is suggested that the fifty percent quota reduction operate uniformly against all countries now subject to the quotas, in order to avoid discrimination. After the program had been in operation for a period of time sufficient to permit determination of its precise efficacy, a second alteration of the quotas could, if necessary, be made, in order to more closely approach the desired goal of a completely stationary population.

The purpose of point three of the proposed scheme is to apprise our citizenry of the need for population containment. As mentioned earlier, such a public awareness is essential if the birth rate is to be reduced, and it will doubtlessly require con-

⁷⁸ These acts are discussed in Sulloway, *The Legal and Political Aspects of Population Control in the United States*, 25 *Law and Contemp. Prob.* 593, 601-02 (1960).

⁷⁹ 26 U. S. C. § 151 (1955).

⁸⁰ *Supra* n. 76.

siderable effort to produce this awareness. As Robert C. Cook, President of the Population Reference Bureau, observed:

It is not necessary to "sell" people on the desirability of avoiding death. It is a far different thing, however, to convince them that births, too, must be limited.⁸¹

A sustained publicity program by the Department of Health, Education, and Welfare could accomplish much in this regard, and statements by the President at his press conferences would also be of significant help. Once the federal government began to publicize the need for restraining population expansion many magazines and newspapers would probably voluntarily cooperate by printing articles favorable to the effort and its goal. True, commentary opposing population containment and governmental encouragement of the same would also appear, but some statements of this character are being published already.⁸² Moreover, newspapers and magazines now commonly feature favorable articles about couples with numerous children, thereby encouraging large families. To illustrate, this writer recently read a front-page article in the *Akron Beacon Journal* approvingly discussing the prolificacy of an Akron resident who has eleven children and eighty-five grandchildren.⁸³ It is probable that fewer such articles would appear if the government openly favored small families.

Referring now to point four of the suggested program, Title 18, Section 1461 of the United States Code reads in part as follows:

Every article or thing designed, adapted, or intended for preventing conception . . . ; and

Every article, instrument, substance, drug, medicine, or thing which is advertised or described in a manner calculated to lead another to use or apply it for preventing conception . . . ; and

Every written or printed card, letter, circular, book, pamphlet, advertisement, or notice of any kind giving information . . . where, or how, or from whom, or by what means any of such mentioned matters, articles, or things may be

⁸¹ Cook, *World Population Growth*, 25 *Law and Contemp. Prob.* 379 (1960).

⁸² One such statement, a particularly deplorable one, is that made in 1959 by President Eisenhower, "I cannot imagine anything more emphatically a subject that is not a proper political or governmental activity or function or responsibility." *New York Times*, December 3, 1959, pp. 1 and 18.

⁸³ *Akron Beacon Journal*, June 19, 1962, p. 1.

obtained or made, or . . . how or by what means conception may be prevented . . . ; and

Every paper, writing, advertisement, or representation that any article, instrument, substance, drug, medicine, or thing may, or can, be used or applied for preventing conception . . . ; and

Every description calculated to induce or incite a person to so use or apply any such article, instrument, substance, drug, medicine, or thing—

Is declared to be nonmailable matter and shall not be conveyed in the mails or delivered from any post office or by any letter carrier.

Whoever knowingly uses the mails for the mailing . . . or delivery of anything declared by this section to be nonmailable, or knowingly causes to be delivered by mail according to the direction thereon . . . or knowingly takes any such thing from the mails for the purpose of circulating or disposing thereof . . . shall be fined . . . or imprisoned . . . or both. . . .⁸⁴

Since most magazines and many newspapers cannot profitably operate without using the mails, this statute clearly prevents their accepting any advertisements of contraceptive devices or drugs. Actually, the enactment's antecedent (passed in 1873) was not aimed at maintaining population growth, but rather at curbing the distribution of *obscene matter*.⁸⁵ Declares a writer in *Law and Contemporary Problems*:

As a result of this legislative action, the United States acquired a unique distinction. In no other country of the world had contraceptive information per se thus been classified with indecency.⁸⁶

However rigid our mores may have been ninety years ago, it is highly unlikely that many Americans would now deem a discreetly worded contraceptive advertisement obscene. Yet the statute in question still remains operative today, with the result that literature advertising conception preventatives may not enter the mails, although literature advertising sanitary napkins, douches, toilet tissue, and ointments for hemorrhoids may circulate freely. It being common knowledge that advertisement increases the use of any product, there is little need to point out

⁸⁴ *Supra* n. 77.

⁸⁵ Sulloway, *op. cit. supra* n. 78 at 600.

⁸⁶ *Ibid.*

that more people would utilize contraceptives if their manufacturers were permitted to advertise them.

As to point five of the recommended scheme, the state laws referred to are not, for the most part, stringently enforced.⁸⁷ However, they nevertheless constitute a hazard to anyone who violates their mandates and consequently contribute, to some degree at least, to public ignorance on the subject of birth control. Moreover, the fact that the authorities commonly refrain from enforcing these statutes do not render the statutes themselves any the less objectionable. Laws that do not merit enforcement do not merit existence.

With reference to the final point of the proposed program, the legal status of voluntary sterilization may be indicated as follows: Nine jurisdictions have enactments which appear to prohibit such sterilization even for therapeutic reasons.⁸⁸ The acts of three states permit sterilization only in the case of medical necessity.⁸⁹ And the statute of one jurisdiction, Vermont, implies that sterilization is allowable only for persons who classify as mental defectives.⁹⁰ The common law, which operates in the absence of a statute, appears to allow voluntary sterilization.⁹¹

Although sterilization constitutes a more drastic means of birth control than most people desire, it is eminently effective and entails no loss of sexual capacity or pleasure.⁹² The most common male operation, the vasectomy, involves very minor surgery, which can be performed in a few minutes in a doctor's office. Sterilization is currently being used extensively in Japan, India, and Puerto Rico for the purpose of population containment,⁹³ and it should surely be made available in all American jurisdictions.

The measures comprising the recommended program are calculated to lower the birth rate of our society without sub-

⁸⁷ See the opinion of Justice Frankfurter in *Buxton v. Ullman*, 367 U. S. 497 (1961).

⁸⁸ These states are Arizona, Indiana, Mississippi, North Carolina, Oklahoma, South Carolina, Utah, Virginia, and West Virginia. Pilpel and Zavin, *Your Marriage and the Law*, 209 (1952).

⁸⁹ Connecticut, Kansas, and Vermont are the three. Sulloway, *op. cit. supra* n. 78 at 596.

⁹⁰ Pilpel and Zavin, *op. cit. supra* n. 88 at 209.

⁹¹ Sulloway, *op. cit. supra* n. 78 at 596.

⁹² Gosney and Popenoe, *Sterilization for Human Betterment*, 21 (1929).

⁹³ Sulloway, *op. cit. supra* n. 78 at 594.

jecting any of its members to coercion. Our nation's current rate of population expansion fully justifies these measures. By adopting such a comparatively moderate program now, the United States can avoid having to later employ such expedients as the legalization of abortions and the imposition of an annual tax on children beyond the first or second. Our nation still has a better opportunity to chart a future course than do most countries. However, this opportunity dwindles with each year that passes. It is important to *our* well-being, as well as to that of our progeny, that we promptly implement the above, or a comparable, program.