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NATIONAL POPULATION PROGRAMS AND POLICY:
SOCIAL AND LEGAL IMPLICATIONS
A SYMPOSIUM*

INTRODUCTION

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RAPID POPULATION GROWTH has been a matter of world-wide concern and discussion for many years. However, until quite recently we in the United States tended to view the problem with some detachment. Overpopulation was not one of our pressing national problems. American concern about the population explosion was primarily an item for export directed to those underdeveloped countries unable to feed their growing populations.

National involvement with family limitation programs has not been clearly and directly related to overall demographic policies. Up to now governmental efforts have been directed at providing the economically deprived members of the community with birth control information and services. The express assumption has been that the poor have had more than their share of unwanted children because effective family limitation has been beyond their means and sophistication. Some have detected behind these governmental programs the implicit assumption that it is to everyone's advantage for the poor not to have more children than they can afford to rear and that special efforts should be made to get the message across to the disadvantaged as to where their best interests lie in this regard.

Recent concern for the preservation of our natural environment and the proper ecological balance has added a new dimension to the population problem and has raised the question of what directions our national population policies should now take. Accordingly, for its Sixth Annual Symposium the Villanova Law Review selected the topic,

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“National Population Programs and Policy: Social and Legal Implications.” The Review was very fortunate in obtaining a panel of five discussants who collectively bring to the topic not only the diverse perspectives of their various disciplines but also first hand experience with national and foreign population programs.

As in previous years the afternoon session was devoted to oral presentations of papers and comments thereon by the panel. The evening session was taken up with answering questions from the audience.

In his paper Dr. Carl Shultz traces the recent emergence of an explicit national population policy on the federal level. In a complementary paper Dr. Driver directs his attention to the population policies of the state governments. He effectively points out that assessment of state policies must take into account not only explicit population policies and governmental measures that directly affect the birth rate, as in the case of laws governing contraception, sterilization and abortion, but also legal controls that have an indirect but significant impact on population growth, as in the case of laws governing marriage, divorce, inheritance of property, etc.

Dr. Tien takes up the question of to whom population policies should be directed and comes up with the provocative conclusion that family limitation should be promoted among the white affluent classes rather than those in the poorer black community. Obviously concerned about limiting the coercive intrusion of the state into the marital relationship and individual decisions regarding family planning, Dr. Wishik explores the ways in which couples can be motivated to adopt socially desirable family limitation as a matter of enlightened self-interest.

In his paper Professor Means explores the constitutional limitations on the state and federal governments in pursuing direct population control programs, particularly in the areas of contraception, sterilization and abortion. He suggests that due process limitations designed to protect the privacy of the family relationship will prevent the imposition of involuntary programs in these areas until such time as the state demonstrates a “compelling, subordinating interest.” He points out that population policies relating to both voluntary and involuntary programs in these areas are primarily within the ambit of the state and looks to the treaty making power as a constitutional basis for federal entry in the field. It should be kept in mind, however, that federal spending programs can provide very significant leverage to influence state policies in these areas.

In the discussion among panelists it developed that there was not unanimity of opinion on the gravity of the population problem in the United States. Dr. Driver made the thought-provoking suggestion that those who give national population control a very high priority assume an implicit order of values that might bear explicit and critical examination. Drs. Shultz and Wishik were more insistent on the need for population limitation but were hopeful that the problem could be handled by noncoerced changes in cultural patterns relating to family size. It is interesting to note in this regard that Dr. Driver was alone on the panel in characterizing any governmental policy relating to population control as "coercive."

Dr. Tien was unable to participate in the evening session so that he did not have the occasion to give his opinion directly on the gravity of the population problem, but his paper clearly assumes there is a problem of significant proportions. Although one might surmise that Dr. Tien sees a more serious problem than the other panelists do, there is no suggestion in his paper that we are anywhere near the point that would warrant compulsory sterilization or similarly drastic measures.

The current symposium was as successful as its predecessors in raising as many questions as it sought to answer. The panelists generally struck an optimistic note on the lack of necessity for compulsory limitation of individual family size in the United States; but the audience was left with some question in its mind whether less coercive measures such as tax disincentives may be desirable or necessary in the near future. The resolution of this and related issues will require a searching reexamination of national values and a possible reordering of national priorities as suggested by Dr. Driver.

All of us associated with the Law Review's Sixth Annual Symposium owe much to the panelists for the enlightenment and stimulation they provided.