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Carl S. Shultz

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FEDERAL POPULATION POLICY:
A DECADE OF CHANGE

DR. CARL S. SHULTZ†

I WOULD LIKE to discuss with you the general topic of "Federal Population Policy: A Decade of Change." But first I would like to share with you a recent impression and experience that we have had in the Department. It comes under the heading of how federal policy is established, who establishes it, when is it established and where is it established. About two months ago the Secretary of Health, Education and Welfare, Robert Finch, was participating in a similar panel discussion of environmental problems. He gave his formal presentation and following the presentation there was a question and answer period. One of the young people from the audience said to him, "Mr. Secretary, I am very concerned about population growth and what it may contribute to an increase in environmental problems and pollution. Have you any suggestions for me as to what I, as an individual, might do?" The Secretary thought for a minute and said, "Well, you might consider the possibility that you plan when you have your family to have only two children." This was picked up by the press and the press statement said, "Secretary of HEW announces policy for two child family." Now, obviously this isn't what he had done and wasn't what he intended, but we have been absolutely deluged with letters to the President, letters to the Secretary, and letters to the Department both pro and con on this issue which certainly isn't policy, was never intended as policy, but was perceived as policy by the press — where it received nationwide distribution — and then in turn by the general population. I trust that any remarks this afternoon won't be similarly perceived. As a matter of fact I was discussing with Mr. Newman¹ the difference between the policy role and the staff role in a bureaucracy and I want to make it very clear that I am basically a staff person and not a policy person within the department and therefore what I am sharing with you are the impressions of a staff person on the current status of Federal Population Policy.

Certainly we have experienced some very remarkable changes during the last decade. We have moved to the point where on March 16th of this year President Nixon signed the following act: "To

† Director, Office of Population and Family Planning, Office of Deputy Assistant Secretary for Population Affairs, Department of HEW. M.D., Johns Hopkins University, 1948; M.P.H., Harvard University, 1960.

1. Mr. Gilbert Newman, Symposium Chairman and Articles and Book Review Editor of the *Villanova Law Review*.

establish a Commission on Population Growth and the American Future."² I shall quote from the text in part:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Commission on Population Growth and the American Future is hereby established to conduct and sponsor such studies and research and make such recommendations as may be necessary to provide information and education to all levels of government in the United States, and to our people, regarding a broad range of problems associated with population growth and their implications for America's future.*³

Now as to the duties of the Commission, in section four it states:

The Commission shall conduct an inquiry into the following aspects of population growth in the United States and its foreseeable social consequences:

(1) the probable course or population growth, internal migration, and related demographic developments between now and the year 2000;

(2) the resources in the public sector of the economy that will be required to deal with the anticipated growth in population;

(3) the ways in which population growth may affect the activities of Federal, State, and local government;

(4) the impact of population growth on environmental pollution and on the depletion of natural resources; and

(5) the various means appropriate to the ethical values and principles of this society by which our Nation can achieve a population level properly suited for its environmental, natural resources, and other needs.⁴

The first three duties were specifically mentioned in the President's message to Congress on Population Growth. The last two were added by the House of Representatives. The fourth was brought about by some of those within the House of Representatives who have been concerned about the problems of environmental pollution and degradation. The fifth is very interesting: The inquiry into the various means appropriate to the ethical values and principles of this society by which our nation could achieve a population level properly suited for its environmental and natural resources and other needs. This came about through the particular interest of a number of clergymen in the Washington area, as representatives of their specific faiths, who brought

2. Pub. L. No. 91-213 (March 16, 1970).

3. *Id.*

4. *Id.* § 4.

to the congressional body the feeling that this was a very important matter that needed to be looked at. We feel that this is a place where there will be particularly important inputs to the Commission's activities from the general educated population in the United States.

How did we get from the point in the late 'fifties during the administration of President Eisenhower when he stated that the matter of family planning and population was one in which the Federal Government should in no way concern itself, either at home or abroad, to the place where we have the President signing in March of this year an Act which establishes a Population Commission? This Act was passed in the Senate without any debate since it was placed on the unanimous consent calendar and passed in the House of Representatives after a formal debate with only 11 dissenting votes. One of the things which brought this about was the President's initiative. The report to President Johnson with which some of you may be familiar — "Population and Family Planning: The Transition From Concern To Action"⁵ — is the report of a Committee, co-chaired by Secretary Cohen of the Department of HEW and Mr. John D. Rockefeller III, which reported to President Johnson at a very "lame-duck" moment in January of 1969. Dr. Wishik, who is with us today, was one of the consultants for this particular group. After Mr. Nixon became President there were members of his administration who felt it was very important that this particular report be looked at as to what its significance was for his administration. A group of us worked with the White House in the development of the message which was sent forward in July of last year to the Congress. It was in this message that the President requested the establishment of a Population Commission. I quote from the message:

For some time population growth has been seen as a problem for developing countries. Only recently has it come to be seen that pressing problems are also posed for advanced industrial countries when their populations increase at the rate that the United States, for example, must now anticipate. Food supplies may be ample in such nations, but social supplies — the capacity to educate youth, provide privacy and living space, to maintain the process of open democratic government — may be grievously strained.

In the United States our rate of population growth is not as great as that of developing nations. In this country, in fact, the growth rate has generally declined since the eighteenth century. The present birth rate of about one percent per year is still

5. PRESIDENT'S COMMITTEE ON POPULATION AND FAMILY PLANNING, POPULATION AND FAMILY PLANNING: THE TRANSITION FROM CONCERN TO ACTION (NOV. 1968) (H.E.W. pamphlet) [hereinafter cited as PRESIDENT'S COMMITTEE REPORT].

significant, however. Moreover, current statistics indicate that the fertility rate may be approaching the end of its recent decline.⁶

At that point we had only preliminary statistics. Now we can state that there does appear to be a change, though not yet significant, in the fertility rate between 1969 and 1968. For example, the birth rate in 1968 was 17.5 per thousand which was the lowest rate on record, and in 1969 it rose to 17.7 per thousand. The fertility rate in 1968 was 85.7 per thousand and in 1969 it was 85.8. We now have a larger number of women in their reproductive years and that part of the population pyramid is larger than it was over the last five years or so therefore automatically causing some change in the birth rate. But to proceed with the President's message:

In 1917 the total number of Americans passed 100 million, after three full centuries of steady growth. In 1967 — just half a century later — the 200 million mark was passed. If the present rate of growth continues, the third 100 million persons will be added in roughly a thirty-year period. This means by the year 2000, or shortly thereafter, there will be more than 300 million Americans.

This growth will produce serious challenges for our society. I believe that many of our present social problems may be related to the fact that we have had only fifty years in which to accommodate the second hundred million Americans. In fact, since 1945 alone some 90 million babies have been born in this country. We have thus had to accomplish in a very few decades an adjustment to population growth which was once spread over centuries. And it now appears that we will have to provide for a third hundred million Americans in a period of just 30 years.

The great majority of the next hundred million Americans will be born to families which looked forward to their birth and are prepared to love them and care for them as they grow up. The critical issue is whether social institutions will also plan for their arrival and be able to accommodate them in a humane and intelligent way. We can be sure that society will *not* be ready for this growth unless it begins its planning immediately.⁷

It was for these reasons that the President asked for the establishment of a Commission on Population Growth and the American Future: To help delineate what we could anticipate and what plans we should make in order to take care of population growth within this nation.

6. MESSAGE FROM THE PRESIDENT OF THE UNITED STATES RELATIVE TO POPULATION GROWTH, H.R. DOC. No. 91-139, 91st Cong., 1st Sess. 3 (1969) [hereinafter cited as MESSAGE].

7. *Id.* at 4.

Let us trace how things changed during the decade. First, you should think back and recognize the fact that the federal government has been supporting birth control clinics for quite some time. This began in the late thirties when, under the Social Security Act, the maternal and child health grants to the states were first made available. Each state made its own decision as to how these funds might be used. A state plan was sent to Washington and if the state plan was approved as being compatible with overall federal intent, then the formula grant was made to the state. Particularly in the southern United States, quite early, family planning clinics or birth control clinic services were made available under these formula grants. However, should a state send to Washington the statement that part of its plan was to provide family planning services or birth control services, it was requested that this part of the plan be deleted. It was all right to provide these services but Washington didn't want to know about it if they were provided. Also, it was requested that they not report the extent to which such services were rendered. If a state believed that this was for the health and well being of the mothers and children of that state and the families of that state, it was perfectly all right, but the federal government didn't want to know about it. Even into the early sixties, if we received in the Department of Health, Education and Welfare an inquiry as to where family planning services or birth control services might be obtained, this inquiry was not answered. There was no response made, it was merely sent to the files. It was felt this was something that we did not dare become involved with even to the extent of suggesting where services might be obtained. Now things have obviously changed quite a bit and I would like to share with you some of these changes and how they came about.

It became obvious in the early sixties, and it had already been apparent in the late fifties, that overseas there was a very significant population problem and that economic growth of the developing nations was being impeded by the rapid growth of population within those countries. In fact, in some countries it appeared that the per capita national product was declining rather than increasing due to this enormous burden of population growth. President Eisenhower did change his mind and made the following statement:

The population explosion has already become one of the most critical world problems of our time and daily grows more serious. It threatens to smother the economic progress of many nations and endangers the free world struggle for peace and security.⁸

8. PRESIDENT'S COMMITTEE REPORT, *supra* note 5, at ii.

And President Kennedy said:

The magnitude of the problem (of economic development) is staggering. In Latin America, for example, population growth is already threatening to outpace economic growth — and in some parts of the continent living standards are actually declining . . . and the problems are no less serious or demanding in other developing areas of the world.⁹

So it became quite clear that the United States really had a responsibility to do something abroad. It was in relation to population growth — provided the nation abroad wished to be assisted in this area — and through the Agency for International Development certain actions were taken. This program got underway somewhat slowly, as is frequently the case in the federal bureaucracy, but now it has moved ahead very significantly.

At the same time President Johnson was quite concerned about what had happened to our forgotten poor at home. President Kennedy had identified the fact that there was a large body of our population which was in need of special assistance and which did not enjoy the advantages that most of us did. President Johnson followed through and established the Office of Economic Opportunity and asked for the Economic Opportunity Act. With concern that the poor did not have access to the same services as did those who were better off in this nation, there became an awareness that health services in general should be made more widely available to the poor as well as to the more affluent. Family planning and birth control services were seen as an integral part of the health service delivery system in the United States. In order to effect this, however — after what I described to you as the extreme reluctance within federal circles to have programs become involved on an open basis — it was necessary for the Secretary of Health, Education and Welfare to make a policy statement to the heads of his operating agencies.

This is the policy statement made by Secretary John Gardner on January 24, 1966; his subject was "Department Policy on Population Dynamics, Fertility, Sterility and Family Planning:"

The policy of this Department is to conduct and support programs of basic and applied research on the above topics; to conduct and support training programs; to collect and make available such data as may be necessary; to support, on request, health programs making family planning information and services available; and to provide family planning information and services, on request, to individuals who receive health services from operating agencies of the Department.

9. *Id.*

The objectives of the Departmental Policy are to improve the health of the people, to strengthen the integrity of the family and to provide families with the freedom of choice to determine the spacing of their children and the size of their families.

Programs conducted or supported by the Department should guarantee freedom from coercion or pressure of mind or conscience. There shall be freedom of choice of method so that individuals can choose in accordance with the dictates of their consciences.¹⁰

Well, in a way this was unleashing a paper tiger because funds were not available in any significant amount. Funds were already committed to existing programs and it was extremely difficult, particularly in view of the fact that we were faced with a rapidly enlarging program by the Department of Defense abroad, to find funds to pump into this particular program, or to expand existing health programs. This created a good deal of unhappiness both within the Department and on the outside. Here we had the Secretary of the Department saying "get busy and proceed" and it was quite evident that the funds were not available to proceed and also that there were difficulties in terms of how best to utilize existing funds. In order to deal with this problem a number of things happened. One thing which was extremely helpful in getting this underway was President Johnson's statement in his Health and Education Message to Congress of March 1966, in which he said: "It is essential that all families have access to information and services that will allow freedom to choose the number and spacing of their children within the dictates of individual conscience."¹¹

So here we had both the President and the Secretary saying very clearly that making these services and information available was a part of our national policy. We had following this about a year and a half in which very little happened. Because of the fact that things were not moving ahead very well within the Department, a special group of consultants was called in to advise the Secretary on what needed to be done. One of these consultants is with us here today — Dr. Wishik. Dr. Oscar Harkavy of the Ford Foundation headed the group and Mr. Fred Jaffe of Planned Parenthood was a third member of this group which prepared a report. This report

10. Memorandum to Heads of Operating Agencies from John Gardner, Secretary of the Department of Health, Education, and Welfare, January 24, 1966, in DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, FAMILY PLANNING: NATIONWIDE OPPORTUNITIES FOR ACTION 34 (1968) (H.E.W. pamphlet) [hereinafter cited as FAMILY PLANNING].

11. *Message from the President of the United States Relative to Domestic Health and Education*, March 1, 1966, 2 WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS 295, 299 (1966).

made certain specific recommendations as to what needed to be done within HEW. About the same time that this was going on, we had within the Congress a very profound change as well. Senator Tydings had introduced a bill to provide support for categorical grants for family planning services. Family planning services were set up as a special emphasis program within the Economic Opportunity Act of 1967.¹² There was an amendment to the Economic Opportunity Act in late 1967 to accomplish this. About the same time, there was an amendment to the Social Security Act which provided for the first time categorical family planning service grants.¹³

Prior to this, certain other things had happened. In December of 1964 the first grant per se for family planning services was made by the Office of Economic Opportunity to Corpus Christi, Texas. This grant was in the amount of \$8,000. By the end of that fiscal year — this was fiscal year 1965 — there were fourteen projects in five states supported by the Office of Economic Opportunity. I think this shows how that particular agency had a good deal more program flexibility in what it did than did the Department of Health, Education and Welfare. This has been one of the hallmarks of the Office of Economic Opportunity throughout. I mentioned earlier that under the maternal and child health formula grants of the Social Security Act, it was possible to support family planning services from HEW. Also in the Social Security Act amendments of 1963,¹⁴ it became possible through the maternity and infant care project grants to support family planning services as a part of maternity and infant care. But it wasn't until the 1967 Social Security amendments that it became possible for categorical family planning project grants per se to be funded from the Department of Health, Education and Welfare. Actually, it was not until fiscal year 1969 when funds first became available that it was possible to implement this particular Act. The real turning point legislatively, though, was 1967 with the amendments to the Economic Opportunity Act and the Social Security Act.

One of the recommendations of the consultants' report was that the Secretary make a statement, loud and clear, that family planning services were really to be supported by the Department. So on January 31, 1968, just two years after his initial statement, Secretary John Gardner spoke out again on the subject of family planning policy. Quoting in part from that particular pronouncement: "Family planning has been established as a priority program within the Depart-

12. 42 U.S.C. § 2701 (1970).

13. Social Security Amendments of 1967, 42 U.S.C. §§ 701-29 (Supp. III 1967).

14. 42 U.S.C. §§ 701-04 (Supp. IV 1963).

ment. Each operating agency will utilize its existing authorities to the maximum to promote the development of family planning services."¹⁵

This was felt to be a clear signal. To back up this clear signal there was a memorandum to the heads of the operating agencies from Assistant Secretary Philip Lee, who was the Assistant Secretary for Health and Scientific Affairs, cosigned by Mrs. Katherine Oettinger, who was the Deputy Assistant Secretary for Population and Family Planning. Here they stated that the objectives of family planning programs supported by HEW were "to assist parents in attaining and maintaining the family size they desire; assist families in spacing their children; decrease infant and maternal mortality and morbidity; decrease out-of-wedlock births; decrease the incidence of prematurity; decrease the incidence of mental retardation and congenital defects; improve understanding of family life and human sexuality."¹⁶ Now it's clear that most of these are health-related goals. And it was because this was basically believed to be a health-related program that these activities were sponsored. In addition, at the same time as the 1967 amendments to Title V of the Social Security Act which I've just described, we had amendments to Title IV of the Social Security Act under which it became mandatory that each female welfare client be counseled as to the availability of family planning services. All female members of reproductive age within that household as well as the principal beneficiary are to be counseled. In addition, there was the rather odd statement, which was very difficult to implement as you can imagine, that anyone who was likely to become a welfare client was also to be so counseled. This has been rather difficult for the states to carry out. There is a constant flow of certain individuals off and on the relief or Public Assistance rolls. This provision was to allow the social worker who had time to counsel persons not presently on the public assistance rolls about the availability of family planning services. It was very clearly stated that there should be no coercion in relation to this service and that no one should be deprived of other services because he did not follow through on the recommendation that family planning services were available. To assist in implementing this, under the 1967 amendments to Title V of the Social Security Act, it is required that family planning services be made available state-wide by 1975. The 1967 Social Security Act amendments were the turning point in federal legislation supporting family planning services.

15. Memorandum to Heads of Operating Agencies from John Gardner, Secretary of Health, Education, and Welfare, January 31, 1968, in *FAMILY PLANNING*, *supra* note 10, at 34.

16. Memorandum to Heads of Operating Agencies from Philip R. Lee, in *FAMILY PLANNING*, *supra* note 10, at 35.

Unfortunately, we are faced with the problem that our budget becomes available to us ever later within a given fiscal year. For example, as some of you may be aware, the President vetoed the first appropriation bill for HEW this year and then it took quite a while to work out a compromise so that the funds which were to make our operations possible from July 1 of 1969 became available to us only within the last month [March, 1970]. In fiscal 1969 this delayed the actual funding of the first family planning service categorical grants from HEW.

I should say a little about population research also. I have painted for you the services picture as it has developed and I'll touch on it again as to what the current position is. Generally it has always been safer to do something in the research area rather than in the applied area within the federal government. It has been less controversial to study a subject than to do something about it. Characteristically, it has been possible to do research before it has been possible to have an operating program. In the early sixties, with the establishment of the National Institute of Child Health and Human Development, research in the area of human reproduction received a special impetus and emphasis. After a while there was a unit within the National Institute of Child Health and Human Development which was concerned particularly with population problems. And as of August, 1968, this particular unit became the Center for Population Research.

This unit is concerned not just with the biomedical aspects of human reproduction, it is also concerned with the sociological aspects of population. In fact, one of the early contracts supported by this particular unit in 1965 was "the Growth of American Families Study," which is now again going to be supported under contract by the Center for Population Research in 1970. In addition, the Congress of the United States became concerned about the medical effects of the oral contraceptives which were in use and gave both the Center for Population Research and the Food and Drug Administration mandates to discover what the medical side effects were of oral contraceptives. As more information became available about the oral contraceptives, it became clear that the currently used contraceptives were not entirely satisfactory and that it was important to develop new contraceptive methods and agents. For example, the rhythm method was not working as well as one would hope, and money should be spent in the area of improving this particular methodology. In 1968 money became available to the Center for Population Research for the collaborative research program in contraceptive development. This program is the most rapidly growing of the research programs within the Center for

Population Research at the present time. It is their principal task to find a simple, acceptable, effective and inexpensive method of contraception or methods of contraception. It is unlikely that a single method of contraception will be satisfactory to all persons. Unfortunately, the funds available to them have not been particularly large, but they are expanding rapidly. In the budget request which just went in, there is a request for a total of \$28.4 million for the Center for Population Research for their population research efforts.

Going back to the services component, I return again to the President's message to see what he said of the need for domestic family planning services. I quote from his message of last July:

It is clear that the domestic family planning services supported by the Federal Government should be expanded and better integrated. — Both the Department of Health, Education, and Welfare and the Office of Economic Opportunity are now involved in this important work, yet their combined efforts are not adequate to provide information and services to all who want them. In particular, most of an estimated five million low income women of childbearing age in this country do not now have adequate access to family planning assistance, even though their wishes concerning family size are usually the same as those of parents of higher income groups.

It is my view that no American woman should be denied access to family planning assistance because of her economic condition. I believe, therefore, that we should establish as a national goal the provision of adequate family planning services within the next five years to all those who want them but cannot afford them. This we have the capacity to do.

Clearly, in no circumstances will the activities associated with our pursuit of this goal be allowed to infringe upon the religious convictions or personal wishes and freedom of any individual, nor will they be allowed to impair the absolute right of all individuals to have such matters of conscience respected by public authorities.¹⁷

In order to achieve this goal, funds were necessary. Also, certain administrative changes were necessary. Just as a Center for Population Research had been established in 1968 within the Department, the Secretary established in October of last year a National Center for Family Planning Services. Shortly after the establishment of this Center, the Administration sent forward to Congress a bill (S. 3219) sponsored by Senators Javits and Dominick which would provide a satisfactory legislative base and mandate for these services to accom-

17. MESSAGE, *supra* note 6, at 8.

plish the national goal of getting sufficient funds and sufficient services, trained personnel, and research in the organization and delivery of said services to the individuals needing or wanting these services within the next five years.¹⁸ This was sent forward on December 8 of last year and has been the subject of hearings along with another bill (S. 2108) which had been introduced by Senator Tydings in May of last year for the establishment of a general center within the Department of Health, Education and Welfare which would combine population research and family planning services into one agency.¹⁹ Also, the President and the Bureau of the Budget, as his particular agent, have been very considerate of the need for support for family planning services and population research in the 1971 budget. They have gone forward, even in an era of great stringency, very smoothly in the support of population and family planning activities.

I was asked earlier which policy questions are on the threshold, and I'll introduce the two that are on the threshold at this moment. I'm sure that the panel will want to discuss these further. The first is the question of voluntary sterilization and federal support for voluntary sterilization programs. As of now, there is no stated policy in this area. In regard to the beneficiaries of direct federal services, such as the American Indians or the dependents of armed forces people, this particular service is available if it is deemed to be for the health of the individual. This is, of course, voluntary sterilization. So far as I know vasectomy has not been performed as a service for any male under a federally supported program.

The other question is the policy concerned with abortion. Insofar as the federal government is concerned, abortion policy has been left to the individual state. As you know, there have been many recent changes and liberalization of state abortion laws, initially for therapeutic abortions, and more recently in relation to abortion on demand. The Federal government is involved in the problem, however. Take Hawaii, for example: If it is legal to have abortion on demand in Hawaii, and you have federally supported programs such as the family planning service program or the maternity and infant care program, and if a woman comes to that facility and asks for an abortion, does the federal government pay for that service? That is our policy question of the moment. It is something that has been under consideration but has not been debated.

In relation to established policy, we have three essential elements in federal policy that relate to domestic activities. One element is that

18. S. 3219, 91st Cong., 1st Sess. (1969).

19. S. 2108, 91st Cong., 1st Sess. (1969).

we have established as a national goal the provision of family planning services to all those who want them but cannot afford them. The second is that we have established a support mechanism for research to find new or improved methods of contraception. The third is a responsibility to increase public awareness of the problems of population growth. In this decade of change in population policy, we moved from the point where we weren't even allowed to mention family planning services in the Federal government to the point where we have the national goal of family planning services available to everyone. Population growth at the beginning of the decade of the sixties was automatically equated with something which was good. It was regarded as an economic bulwark. The soaring sixties were related to the fact that there would be a marked increase in family formation as a result of children from the baby boom of the late forties and early fifties entering into the age of marriage and reproduction. By the end of the decade we were in the position where we were questioning the desirability of growth of this kind and what the social consequences of such growth were.

Our position was summed up by the President when he stated in his message that:

One of the most serious challenges to human destiny in the last third of this century will be the growth of the population. Whether man's response to that change would be a cause for pride or for despair in the year 2000 will depend very much on what we do today. If we now begin our work in an appropriate manner and if we continue to devote a considerable amount of intention and energy to this problem, then mankind will be able to surmount this challenge as it has surmounted so many during the long march of civilization. When future generations evaluate the record of our time, one of the most important factors in their judgment will be the way in which we responded to population growth.²⁰

20. MESSAGE, *supra* note 6, at 9.