

4-1971

Ethical and Value Issues in Population Limitation and Distribution in the United States

Martin P. Golding

Naomi Holtzman Golding

Follow this and additional works at: <https://scholarship.law.vanderbilt.edu/vlr>



Part of the [Human Rights Law Commons](#), and the [Law and Society Commons](#)

Recommended Citation

Martin P. Golding and Naomi Holtzman Golding, Ethical and Value Issues in Population Limitation and Distribution in the United States, 24 *Vanderbilt Law Review* 495 (1971)

Available at: <https://scholarship.law.vanderbilt.edu/vlr/vol24/iss3/2>

This Article is brought to you for free and open access by Scholarship@Vanderbilt Law. It has been accepted for inclusion in Vanderbilt Law Review by an authorized editor of Scholarship@Vanderbilt Law. For more information, please contact mark.j.williams@vanderbilt.edu.

Ethical and Value Issues in Population Limitation and Distribution in the United States

*Martin P. Golding**
*Naomi Holtzman Golding***

I. INTRODUCTION

The story is told that when Gertrude Stein was about to breathe her last, a bystander leaned over her and solemnly whispered, "What is the answer?" With great effort, Miss Stein raised her head from the pillow and gasped, "What is the question?"

The reader of the many solutions and counter-solutions to the "population problem" in the United States will often be prompted to respond in the same manner as the late authoress. Any discussion of the ethical issues in population limitation and redistribution must begin by focusing upon the definition of "the problem," because how one views the problem, and its urgency and gravity, inevitably determines whether there is something that ought to be done and what it is that ought to be done.

As laymen in many of the areas that are relevant to the population problem, we are forced to rely on the expert knowledge of others. It would be highly salutary if there were a body of received opinion that could be used without hesitation. Unfortunately, on many crucial matters this is not the case. We are put in the uncomfortable position of the patient who must decide what to do when his doctors disagree. While some of the disagreement concerns straightforward questions of fact, much of it relates to the varied stances taken over questions of value and is therefore not easily resolvable by the use of standard scientific techniques. Moreover, disagreements between the experts at times arise because of the importance in this field of predictions about the future,

* Professor of Philosophy, John Jay College of Criminal Justice, City University of New York; Senior Associate for Ethics, Law, and the Life Sciences, Institute of Society, Ethics, and the Life Sciences, Hastings-on-Hudson, New York. Ph.D., Columbia University.

** Consultant on Problems in Urban and Regional Planning, Institute of Ethics, Society and the Life Sciences, Hastings-on-Hudson, New York. M.S., Columbia University.

The authors wish to thank the Institute for its support. Opinions expressed in this paper are those of the authors and are not to be attributed to the Institute.

and prediction is a notoriously risky business. There is some hard statistical data, but interpretations are sometimes conflicting.

We may take our bearings from an item about which there is no dispute; continued growth of world or regional population cannot go on forever. The "cannot" here simply means "physically cannot."

Anyone who knows how to use a table of logarithms must be aware that *in the long run* the average rate of population growth will approach zero as a limit. If, for example, the world's population had grown at its present rate since the beginning of the Christian era, the water content of the human race would fill a sphere having a radius more than ten times that of the earth.¹

Assuming the continued existence of humans in the United States, it is clear that its population will inevitably achieve a practically stationary type of growth; "[i]n the *very long run*, continued growth of the United States population would first become intolerable and then physically impossible."²

Conceding this undisputed fact, the path to follow is not completely obvious. The term "long run" is vague. How remote is the threat, and is action mandated *now* to deal with it? Why ought the present generation deal with this threat? What, after all, is the threat? An answer to this last question is not only intimately connected with what we would have an obligation to do, but also with whether we have any obligation at all. Can we assume that our obligation is clear?

Answers to these questions will be sought through identification and ethical scrutiny of the problem and its proposed solutions. It is usually taken for granted that the problem, in essence, is the threat to survival posed by too many people. The question is, survival of what? A clear understanding of what we are trying to protect is essential to the development of the means for containing the threat. No less important, of course, is an identification of exactly what the threat is. Are too many people in and of themselves a threat? Clearly, some features of the problem stem from overcrowding, for example, but does this mean we must reduce the number of people, or are there other solutions? A precise delineation of the threat and what is threatened makes possible a careful look at the desirability of the traditionally proposed solutions and the suggestion of an approach that both squarely addresses the problem and avoids the rather serious ethical problems inherent in population limitation proposals.³

1. Notestein, 2 FAMILY PLANNING PERSPECTIVES, July 1970, at 20 (emphasis added).

2. NATIONAL ACADEMY OF SCIENCES—NATIONAL RESEARCH COUNCIL, THE GROWTH OF U.S. POPULATION 1 (1965) (emphasis added).

3. As we indicate below our sole concern is with proposals that go "beyond (voluntary) family planning" and the liberalization of abortion. See text accompanying note 34, *infra*. This is

II. "SURVIVAL" AND OUR OBLIGATION TO PRESENT AND FUTURE GENERATIONS

"The name of the game is human survival." This is the claim most frequently advanced in arguments urging the necessity of population limitation.⁴ If this is the case, the duty to limit population derives from the duty to promote survival of the species. It is difficult to see, however, what is good about survival of the human species as such.⁵ In addition, it is not at all clear that the species will not survive if we do not now limit population. Barring total war, universal plague, and other unforeseeable occurrences, the species could well continue to survive even if humans breed freely. Many, perhaps most, would die off but the species could survive.

Even if the very survival of the species is threatened, it is possible that survival may not be worth the price. Suppose, for instance, that the species could survive only under the harshest totalitarian rule and in a condition in which there is no "ethical life." Do we have a duty to promote this kind of survival? The duty in this case seems far from clear.⁶ Our duty, of course, is to promote what is good, but is there a good here? The approach to answering this question merits independent consideration.

In any actual situation that requires a choice, the good that confronts us is rarely a single good but rather a cluster of goods.⁷ Each good has its legitimate appeal, but all cannot be realized at the same time and in the same degree. Pitting value against value, however, does not necessarily lead to an impasse. We also maintain a ranking of goods into relations of higher and lower. It is often not clear just where on the valuational scale a particular good is placed, nor is there always agreement on the ranking, but we do rank nonetheless. An example of such a ranking—going from the lower to the higher—might be the following: life or survival, material goods, recreational pursuit,

not to say that these are above ethical scrutiny. Nevertheless, for better or worse, the trend in the United States toward the extension of voluntary family planning and the liberalization of abortion, is well established.

4. Hardin, *The Tragedy of the Commons*, 162 *SCIENCE* 1243 (1968).

5. See M. P. Golding, *Ethical Issues in Biological Engineering*, 15 *U.C.L.A. L. REV.* 443, 461 (1968).

6. If we still hold ourselves under a duty to promote survival, it is because of hope or faith that such a condition will be overcome.

7. We ignore the uninteresting case in which the choice has to be made between the good and the plainly bad. In this case, we have the rather different problem of overcoming temptation. Our discussion is indebted to an undeservedly neglected book by Nicolai Hartmann. 2 *N. HARTMANN, ETHICS* 444-63 (S. Coit transl. 1932).

friendship, knowledge, love, and “radiant virtue.” Academicians, at least, are committed in principle to acknowledging that knowledge is of higher value than recreational pursuit, for instance.

Values display not only a ranking in accordance with valuational *height* but also in accordance with valuational *strength*; they are related as stronger and weaker. Thus, although friendship and love are higher than mere life, they are not stronger. We do not regard breach of friendship or incapacity to love as seriously as murder. Life, or survival, therefore, is a stronger value. We measure the strength of a value by the gravity of a violation against it. If we put honesty and self-sacrifice into their places on the scale of valuational height—although it is not precisely clear where they fit in—plainly the former would be ranked lower than the latter. Yet honesty is of greater strength than self-sacrifice. In these examples we see illustrated the following “law” stated by Nicolai Hartmann: The good attendant upon the realization of a value is inversely proportional to the gravity of its violation.

This position appears to be at least roughly correct, and we need not be put off by its pretension to mathematical exactitude. But how can we understand it? Hartmann puts the matter in these terms:

The higher value is always the more conditioned, the more dependent and in this sense the weaker; its fulfilment is conceivable only in so far as it is raised upon the fulfilment of the lower values. But the more unconditioned, the more elementary, and in this sense the stronger value is always the lower; it is only a base for the moral life, not a fulfilment of its meaning. . . . [T]he greatest moral desert attaches to the highest values.⁸

This can be pushed one step farther; the very lowest values—particularly survival—have whatever value they have because they are conditions for the higher goods. The value of survival is therefore derivative. Although this does not mean that we can ever lose sight of its importance, it does mean that we should be cautious not to accept blindly an appeal to sheer survival in justification of a social policy.⁹ What is at stake is not the survival of the species, but rather the survival, or realization, of a way of life.

The fact that values come ranked does not necessarily provide a

8. *Id.* at 451-52.

9. The appeal to survival, moreover, may not be of assistance in reconciling conflicts between the higher values or conflicts between disvalues that correspond to them. The realization of a value or the elimination of a disvalue might have no effect on survival. For example, the failure to eliminate the disvalues of the mindless music that assaults the shopping public without its consent and advertising billboards that pollute the view of travellers in no way undermines the survival of the species. The appeal to survival can obviously be pushed too far. *Contra*, Hardin, *supra* note 4, at 12440.

resolution of conflicts within clusters of goods. Shall a higher value be chosen in preference to a lower? This might be impossible. Shall a lower value be preferred over a higher? This might be unworthy. The man who chooses justice over survival can appear as an irresponsible fool or the noblest idealist. The uneasy synthesis of values that comprises the way of life or good that we are seeking to preserve must be carefully identified to insure that the means employed to promote the way of life will not ultimately undermine it. The mere fact that the species will not survive unless this or that means is adopted is insufficient. If the solution to a problem requires a "fundamental extension in morality" it is very likely that the new synthesis of values promoted by the solution will not embody the good that the society implicitly acknowledges, particularly if it involves according survival a higher rather than a derivative status.

If our obligation to our presently living fellows is to promote the survival of a way of life that we consider good, what is our obligation to future generations?¹⁰ An obligation to future generations is, if anything, an obligation to promote what is good *for* future generations. But here is the rub. The more distant the generation the less certain we can be that our ideal of the good life has any relevance to it, given the generation's conditions of life. The obligation to promote the good for the present generation will, in general, be clearer, and hence more mandatory, than our obligation to promote the good for future generations. Nevertheless, we would agree with many who are concerned with the "population problem" that the perpetuation of many of the disvalues of our current condition, such as the deterioration of the environment, can hardly be said to be good for anybody. If we cannot choose affirmatively for future generations, neither should we cut off the possibilities of a good life for them. To this extent, we have an obligation with respect to both the present generation and the future to correct these disvalues. It also should be clear, however, that the measures we employ to this end must be ethically acceptable and should not have the consequence of ultimately undermining the good that we are seeking to promote.

Since we have concluded that it is a way of life that is threatened and that at least the common denominator of the duty to present and future generations is the correction of disvalues, it is now appropriate to consider exactly what disvalue the "population problem" presents.

10. For further consideration of the nature of our obligation to the future see M. P. Golding, *supra* note 5, at 451-63, and M.P. Golding, *Obligations to Future Generations*, forthcoming in *THE MONIST*, Jan. 1972. The issue of population limitation is discussed only incidentally.

III. THE DEFINITION OF "OVERPOPULATION": AN ANALYSIS OF THE THREAT

The question of the meaning of "overpopulation" is one that raises highly technical matters that belong primarily to the province of demographers and, especially, demographically oriented economists.¹¹ Our reason for going into the subject is our belief that how one views the population problem, and its urgency and gravity, is an important factor in determining whether there is something that should be done, and if so, what. Clearly, the concept of overpopulation—and its correlate, optimum population—is not solely a concept of demography or economics when it is employed as a justification for taking action of some sort or as an argument that something should be done. Rather, the concept is at least quasi-valuative: something should be done because an evil needs to be remedied or a good promoted. "Overpopulation" and "optimum population," as they appear in policy-oriented discussions, are value-laden terms.

We propose to examine some typical arguments that are used in attempts to show that a condition of overpopulation now exists in the United States. In a sense then we shall be examining the process through which the term "overpopulation" becomes *envaluated*. We will then consider whether these arguments lead to the conclusion that the United States should now adopt programs of population limitation.

It has been said that there are many obstacles to objective analysis in the population area.¹² Ideological bias, religious attitude, and ethical predisposition are frequently evident. This is hardly surprising because of the value-laden character of key terms. A more serious factor is the distortion of fact, however unintentional, that sometimes occurs.

If the question of overpopulation were simply one for the economic expert, we would abandon our discussion immediately. This does not mean that we deny the relevance of economic factors, such as the standard indicators of income or consumption per capita. These may in fact be elements in the uneasy synthesis of values of which we spoke in the previous section. It is, of course, this synthesis of values that is at issue, namely, how present population size and its potential for growth affect the survival or the realization of the good life. The term "the good life," however, clearly needs to be unpacked. We shall see how this is done by implication in some typical discussions.

11. For a concise discussion see Spengler, *Optimum Population Theory*, in 12 INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL SCIENCES 358 (D. Sills ed. 1968).

12. See Lorimer, *Issues of Population Policy*, in THE POPULATION DILEMMA 168, 169 (2d ed. P. Hauser 1969).

The term "overpopulation" is a negatively charged value term. So also is the adjective "dishonest" as applied to some given act. But while we can usually tell whether an act is dishonest once its features have been characterized, we cannot tell whether a region is overpopulated merely on the basis of its population size. A region will be regarded as overpopulated only when certain disvalues are occurrently or potentially present. Aside from the question of what these disvalues are, however, there is an initial difficulty to be overcome. It is that of avoiding the fallacy of *affirming the consequent*. This fallacy takes the following form: If there is overpopulation, there are disvalues; there are disvalues, therefore there is overpopulation. This reasoning is no more valid than the argument: "If John fell down the stairs, then John broke his leg; John broke his leg, therefore John fell down the stairs."

Our reason for mentioning this rather elementary kind of fallacy is that we wish to throw into relief a difficulty faced in attempting to establish the existence of a condition of overpopulation in the United States. We think that instances of this fallacy occur in policy-oriented literature. The explanation of their occurrence is sometimes not hard to find. Some writers begin with the assumption that overpopulation already exists.¹³ Since the existence of overpopulation implies a condition of disvalue, almost any disvalue is taken to establish the overpopulation whose existence is already assumed. It is easy, therefore, to slip into the tendency to connect all sorts of "evils" with overpopulation. Thus, the Ehrlichs, in their book *Population, Resources, Environment*, state that "[p]opulation pressures are certainly contributing to international tensions in the world today. Russia, India and other neighbors of grossly overpopulated China guard their frontiers nervously. Chinese forces have already occupied Tibet."¹⁴ The suggestion here is plain — overpopulation led to the occupation of Tibet—but rather dubious.

13. Many discussions of population problems understandably begin with data on population growth the world over, with particular emphasis on the underdeveloped countries. It is then concluded that the world has a problem of overpopulation. It is in turn inferred that the United States has a problem of overpopulation. This, however, is a *non sequitur*. What is true of the whole is not necessarily true of any part of the whole. It is interesting to note that in Eastern Europe there is now great concern over falling birth rates and a trend toward one-child families. In the Soviet Union the birth rate has dropped from 24.9 per thousand in 1960 to 17 per thousand in 1969. Czechoslovakia, East Germany, Hungary, Rumania, and Bulgaria are reported as already committed to pronatalist policies. "It cannot be long, however, before the Soviet Union and Poland join the group." Berent, *Causes of Fertility in Eastern Europe and the Soviet Union*, 23 *POPULATION STUDIES* 286 (1970).

14. P. EHRLICH & A. EHRLICH, *POPULATION, RESOURCES, ENVIRONMENT* 37 (1970). See also *id.* at 296 (explanation of Governor Rockefeller's bad reception in Latin America in 1969). This book is a useful collection of materials, but we question many of its crucial inferences.

Obviously, deeper issues are involved, and it would be fundamentally misleading to dismiss offhandedly the arguments that seek to establish the existence of overpopulation in the United States. These arguments proceed by focusing on two sets of facts. The first is the large growth that this country has experienced. Our population is now approximately 40 times that of the year 1800, and since 1920 we have almost doubled in size. The second is comprised of a series of facts: crime, drug use, and civil disorder; breakdown of social services; crowding and high density; food supply problems; resource depletion; and—not the least of all—environmental deterioration.¹⁵ These are the primary disvalues on which the arguments turn. Plainly, there is much that can be said about each of these items, but the question is whether a correlation between the growth of the population and these disvalues necessarily indicates a present condition of overpopulation.

The answer, we think, must be in the negative, or at most a highly qualified affirmative. The difficulty in the argument is that any attempt to show a causal connection between two sets of circumstances must be preceded by an analysis of the factors under consideration. In particular what is needed is an analysis, a breakdown into elements, of the variety of changes in American life that have accompanied the growth in population size as a result of technological developments and changes in patterns of consumption.¹⁶ An analysis of these factors would make possible a determination of the extent to which the disvalues are attributable to an increase in population as such. Since this is a formidable task, many observers have devised an easy way around the difficulty. They simply define "overpopulation" in terms of these disvalues, or at least in terms of some of them. With this step the ultimate stage in the envaluation of the term is reached. Anyone who lives in Manhattan, as we do, hardly passes a day in which the housing shortage is not mentioned. Is it not obvious that Manhattan is overpopulated? Social services in Manhattan are—in the opinion of many—near collapse. Plainly, Manhattan is overpopulated. A family of five cannot ride a taxicab in New York, since most cabs are limited to four passengers. Is it not apparent that a family of five is too large? Lest we be accused of parochialism, we should also mention Europe. The

15. *Id.* See also *Hearings on S. 2701 Before the House Comm. on Government Operations*, 91st Cong., 1st Sess. (1969) [hereinafter cited as *1969 Hearings*].

16. Of course, we are pointing out nothing new. Such items are in fact mentioned by all the writers in the field. The Ehrlichs, in many places in their book, put great stress on the necessity to alter patterns in the use of technology and resources and call for a revival of certain virtues in the Puritan ethic, thrift, and economy. P. EHRLICH & A. EHRLICH, *supra* note 14, at 275.

Ehrlichs point out that although various European countries are exporters of food items, they are also importers of food. Thus, "Europe is by no means self-sufficient in food . . . Measured against food needs and production, Europe is already overpopulated."¹⁷ These conclusions seem to depend on the definitional move we have described, and examples could be multiplied from the literature.

Once this process of envaluation is taken this far, the term "overpopulation" begins to lose its utility in the policy-oriented context. "Overpopulation" now stands for a series of people-connected disvalues. Thus, in Manhattan "overpopulation" refers to the fact that there is a housing shortage or a breakdown of social services. The person who now argues for a limitation on population—rather than, say, an alleviation of the housing shortage—is simply trading on the connotations of the term.¹⁸ The real danger in this approach, from a policy perspective, is that it diverts attention from the disvalues that the term "overpopulation" now in fact refers to and instead focuses attention on population size. It also sets up what seems to be a false dilemma: either reduce population or fail to overcome the disvalues. The alternative might more accurately be stated: either reduce population or overcome the disvalues.

Even the latter alternative is not entirely satisfactory, because it remains to be shown that a reduction in population growth would indeed contribute to the solution of the problems. Additionally the definitional linkage of overpopulation and the disvalues mask many of the real problems and cut off research into the question of how large a population growth could be accommodated if some of the disvalues were overcome. It thus conceals the basic options and gives moral misdirection. This, we think, is an important matter, particularly insofar as large families might be considered by some an aspect of the good life.

What we have been arguing could perhaps be put in a less cumbersome way. The point is simply that much of the discussion of the problem is tied to a *people-population fallacy*, that is, the attribution of many "evils" solely to population size that instead should be allocated to people and their behavior patterns.¹⁹ In the United States, for

17. *Id.* at 201.

18. This definitional approach to the question of overpopulation, we think, underlies assertions to the effect that the United States has already passed its optimum population or that more than 100,000,000 is more than enough. *1969 Hearings, supra* note 15, at 4, 33.

19. Some instances of this fallacy are to be found in discussions of pollution. The Ehrlichs consider the notorious case of air pollution in the Los Angeles basin. P. EHRLICH & A. EHRLICH, *supra* note 14, at 124. This, as they point out, is not only a function of population growth, but also geographical climatic factors and, particularly, the automobile. Take away the automobile—not

example, many of the ills that are regarded as crucial by proponents of population limitation seem to be the result of the large-scale behavior pattern identified with urbanization and metropolitanization, which have resulted in greater density for certain regions of the country.²⁰ Although the assumption that crowding and density lead to disvalues also may involve a people-population fallacy,²¹ it seems that some disvalues might be susceptible to direct attack through population redistribution. Whatever the approach, however, the disvalues will have to be attacked directly even if we should quickly reach relative population stability.

The theory behind advocacy of direct attack on disvalues is not free from ethical difficulty. Up to this point, we have considered the present in relative isolation. For the most part this has been the proper perspective, because direct attack on most disvalues is required in order to fulfill our obligations to both present and future generations. One problem attributed to population growth, however, may require more careful scrutiny before we conclude that direct attack on disvalues is sufficient. This is the problem of the continued availability of resources to sustain the growing American population.²²

Although there is some question as to what constitutes a non-renewable resource,²³ it would seem that the use and depletion of non-

that anyone is about to give his up—and you have gone a long way toward alleviating pollution. What they fail to point out is a fact of which they are well cognizant—that the tremendous growth of population in Los Angeles is not so much due to natural increase as to in-migration.

This fallacy is in effect pointed out many times by Dr. Roger Revelle in his statements to the Subcommittee of the House Committee on Government Operations, *1969 Hearings, supra* note 15. See also *N.Y. Times*, Dec. 28, 1970, at 24, col. 3. It is, of course, not inconsistent to also maintain, as Revelle does, that population increase cannot go on indefinitely and that limiting family size is desirable.

20. It should be noted that many cities have suffered a significant loss of population and yet a solution to their pollution problem is not in sight. In fact many cities in the Midwest and central cities in the East have suffered population decline since the 1960 census.

21. Apparently not everyone is bothered by density. European countries, which Americans enjoy visiting, have higher densities than we do. Switzerland, which is mountainous and mostly uninhabitable, has 6 times the density of the United States. The United Kingdom, which is smaller than the State of Oregon, has more than one-fourth the population size of the United States. Yet England and Scotland are known for their green spaces. We might have something to learn from their management of space.

22. Projections about the availability of resources are often even riskier than population projections. Fisher & Potter, *Natural Resource Adequacy for the United States and the World*, in *THE POPULATION DILEMMA* 107 (2d ed. P. Hauser 1969). See also *NATIONAL ACADEMY OF SCIENCES—NATIONAL RESEARCH COUNCIL, RESOURCES AND MAN* (1969). While there is much disagreement in the literature about the future availability of resources, not even the literature of the more dire prophets seems to indicate any impending scarcity in the United States. The long run situation is less clear. We will have to learn to recycle and to develop new low-pollutant sources of energy. Technological development will undoubtedly help, but will have to be used cautiously.

23. See Notestein, *supra* note 1.

renewable resources results in a reduction of the alternatives from which future generations may choose the synthesis of goods that comports with their conception of the good life. This might be a violation of our obligation to future generations to preserve opportunities for a good life for them. Even if a resource, such as food, is renewable, one must consider what is done to the environment in extracting the resource from it. Although it has been said that sufficient food "could be produced to support three or four times the world population,"²⁴ the environmental costs of increased production may be inconsistent with our obligation to future generations. Given an obligation to future generations to deal well with resources and the environment, if ravaging the environment became the only way to support more people, we would be placed in a dilemma. We would have to carefully weigh our obligation to the future to preserve opportunities for a good life and our obligation to the present generation to affirmatively promote the good life. Resolution of the problem would depend in part on a decision concerning whether population limitation measures would do more harm to the present good life than a ravaged environment or depleted resources would do to a possible future good life.

It should be noted, however, that the dilemma—either reduce population or ravage the environment—may be more apparent than real. Given present behavior patterns, "the ecology of the earth . . . can accommodate itself better to a rising *poor* population than to a rising *rich* population."²⁵ This proposition is valid only because disposable income is pumped into technology without careful consideration of the disvalues incident to "progress." The crucial point is what people do with their disposable income. At the present moment, they make filth.²⁶

24. N.Y. Times, Dec. 17, 1970, at 47, col. 6 (late city ed.). Dr. Jean Mayer, an exponent of population limitation, thinks that it is a gross error to tie the population question to food supply. Mayer, *Towards a Non-Malthusian Population Policy*, 12 COLUM. FORUM 5 (1969). Dr. Mayer may be somewhat optimistic in this regard, but the United States certainly faces little danger of running out of food. Millions of acres have been taken out of food production in recent years, without any decline in the country's total production. If difficulties should be encountered in the future, new kinds of foods might be developed. Although Americans might have to eat soybean cutlets instead of beef steaks, we doubt the justification of requiring that family size be restricted so that people could eat beef steaks. In any case, the appropriate question here is what do people want most? Tastes differ, of course, but only voluntary patterns of behavior accurately reflect the choice. Our own view of the matter is that Americans increasingly do in fact prefer beef steaks. This is one reason, we think, behind the decline in the birth rate since 1957, a decline that occurred without governmental coercion and despite alleged pronatalist incentives in the social system.

25. Mayer, *supra* note 24, at 13.

26. For example, "packaging wastes are increasing at a rate of six percent annually, while the population grows by one percent." Singer, *Disposing of Disposables*, 1 DESIGN & ENVIRONMENT 25 (1970).

If people learned to behave themselves, however, a larger population might be accommodated.

In closing this section, we think it is important to bear in mind that the United States has undergone a "demographic transition."²⁷ This has meant a transition from high to low birth rates and death rates, a phenomenon characteristic of industrialized nations.²⁸ Although much can be said to explain this transition, the important point is that it has happened without any large-scale, or even small-scale, governmental programs.²⁹ The proponents of population limitation measures seem to be putting the following choice to the public: Do you want a television set in every bedroom or a child in every bedroom? It seems that the public has been tending, without external influence, to choose the former.³⁰ Although the American population will continue to grow—especially as the baby boom girls reach motherhood—the long-run problem might very well take care of itself. Meanwhile, much will have to be done to overcome the disvalues of which we spoke earlier. This seems to us more urgent than population growth.

27. For a discussion of the demographic transition see Stolnitz, *The Demographic Transition: From High to Low Birth Rates and Death Rates*, in *POPULATION: THE VITAL REVOLUTION* 30 (R. Freedman ed. 1964).

28. It is estimated that in 1800 the crude birth rate was 55 per 1,000 and the death rate was about 30 per 1,000 per year. A gradual decline occurred, so that in 1935 the birth rate was 18.7 and the death rate 10.9. After World War II, the birth rate soared, reaching its peak in 1957 at 25.3. The death rate has stayed in the 9 plus range since 1948. In the last 13 years the birth rate dropped steadily until it reached its low of 17.4 in 1968. In 1969 it was 17.7. In the boom of the 1950's women of childbearing age averaged 3.35 children. Now it is about 2.5. A fertility rate of 2.11 would—without immigration—eventually produce a zero growth rate. In 1967 the Bureau of the Census made 4 projections of the population through the year 2015. The 1970 census is close to the "C" projection, the second lowest—or third highest, if one is a pessimist—at about 206,000,000. For 2015 the difference between the "C" and high "A" projection is almost 110,000,000.

29. We do not mean to imply that a similar demographic transition will significantly occur in the underdeveloped countries without governmental programs. See Taeuber, *Population Growth in Less-Developed Countries*, in *THE POPULATION DILEMMA* 3 (2d ed. P. Hauser 1969) (pointing out that the United States and Japan are not models for underdeveloped nations).

30. A study, just completed by the Management Research Center of the University of Rochester, found that "[w]hile the family will remain the most important social institution of the eighties factors such as more effective birth control methods and liberalized abortion laws will result in smaller families of two to three children." See *N.Y. Times*, Jan. 22, 1971, at 45, col. 2 (late city ed.). In a recent Gallup Poll the following question was asked: "What do you think is the ideal number of children for a family to have?" Personal interviews were conducted on January 9-10, 1971, with a total of 1,502 adults in 300 selected locations across the nation. The poll shows that the percentage who favor large families has declined dramatically since 1967, the last time the subject was dealt with in a Gallup survey. Some 23% are now reported favoring 4 or more as the ideal number of children. This compares with 40% in 1967. The previous low was 34%, recorded in the depression year of 1936. The high was 49%, recorded in 1945. In the 21-29 years old group 15% now favor a family of 4 or more children, as compared with 34% in 1967. *N.Y. Times*, Feb. 21, 1971, § 1, at 31, col. 1 (late city ed.).

IV. POPULATION LIMITATION AS A MEANS OF COMBATING THE THREAT

It may be argued that while the disvalues should be attacked directly, it is nevertheless sound to attack them indirectly through population limitation. Even if the correlation between numbers and disvalues cannot be established, since it may exist, why not reduce the number of people? This approach raises ethical issues along two dimensions, at least. The first concerns the question whether we could ever have an obligation to future generations to reduce their number. We have considerable doubt on this score. Our doubt turns upon what some will surely regard a metaphysical subtlety. An analogy might help to explain what we have in mind. It is often maintained in discussions of the morality of abortion that a foetus in its earliest stages has no moral claim upon the living, not even a claim to survival—a foetus is “mere tissue.” It is not pertinent to our point to accept or reject this view, but only to admit its initial plausibility. If this is admitted, however, where does it leave the distant unborn? What is their moral standing; do they have claims upon the living? The only reply, it seems, is that as potential individuals they do have claims. (This could also be said of the foetus, but we are not concerned with that issue here.) The distant unborn are included among the individuals to whom we have obligations, because, as potential individuals, they are members of our moral community.³¹ It seems paradoxical, then, to speak of an obligation to limit their population. Can we have an obligation to some of these potential individuals to see that other equally potential individuals are not born?³² It makes us most uneasy to assert any such thing. We do not think that this doubt can be escaped by maintaining that although we do not have an obligation to limit the size of future generations, it would nevertheless be good to do so. For here we would ask: good for whom?; which potential individuals have a claim to that good?³³ If we have an

31. For a discussion of the concept of moral community see the article referred to in note 5 *supra*. See also M. P. Golding, *Towards a Theory of Human Rights*, 52 *THE MONIST* 521 (1968).

32. Professor Hardin remarks that “there is no prosperous population that has, and has had for some time, a growth rate of zero. Any people that has intuitively identified its optimum point will soon reach it, after which its growth rate becomes and remains zero.” Hardin, *supra* note 4, at 1244. On this we might comment that voluntary associations and clubs often restrict their size and have growth rates of zero. We find it interesting that society has been regarded in some recent discussions as a club to which “election” is required, a rather new conception of society. Pursuing the analogy, it seems that there is a point of similarity between Calvinist theologians and “crisis ecologists.” Some potential individuals are Elect—born—and some suffer Eternal Damnation—remain unborn. Of course it could be said that in the Brave New World it is the unborn who are the Elect.

33. Against us it might be argued, as we think Professor Hardin would, that in denying an obligation to limit the population of future generations, we are in effect denying them the possibility

obligation to promote the good for future generations, can it be that we have this obligation only with respect to some potential members of the future? To assert this would be highly paradoxical.³⁴

The second dimension of the problem, and the one to which the rest of this section is devoted, involves ethical problems raised by proposed population limitation measures. Even if certain disvalues can be attacked only by population limitation, it is arguable that if measures that are employed violate ethical values or have the consequence of undermining goods that we ought to preserve and promote, these measures should not be adopted under some pretense of an obligation to the future. There are many coercive rules that men, living a social life, inevitably do adopt and should adopt because it is in their interest to do so. It does not follow, however, that because mankind at some stage might have to restrict its population, the present generation, as part of mankind, must restrict its population. Assuming that we shall otherwise endeavor to fulfill our obligation to preserve opportunities for a good life for the future, a decision on the propriety of limiting our population should largely turn on the ethical acceptability of population limitation measures.

Population limitation measures raise the ancient problem of ends and means. Not every end justifies any means. One cannot estimate the acceptability of a means solely in terms of its effectiveness in promoting even an admittedly desirable end. "It is willful folly to fasten upon some single end or consequence which is liked, and permit the view of that to blot from perception all other undesired and undesirable consequences. . . . Not *the* end—in the singular—justifies the means."³⁵ The kinds of issues that concern us are those of rights, freedom, justice, and the promotion of societal values. Although these issues have constitutional dimensions, we shall not consider such dimensions here.

Our discussion focuses solely upon governmental programs that might go beyond family planning and the liberalization of abortion.³⁶

of living the good life. We would reply in return that it may very well have to be the case that the "good" will have to be spread about a bit more thinly. Moreover, perhaps we should just leave it to them to choose whether they want to limit their own population in order to enjoy the alleged benefits of affluence.

34. There is one argument that might be dismissed as being either trivial or perverse but we shall mention it anyway, namely, that it is not clear that we would be doing any future generation a favor by taking steps that would result in a limiting of its population. After all, it has been said, and it is surely sometimes true, that "in the struggle for life a refusal to limit numbers gives a positive advantage." Darwin, *Can Man Control His Numbers?*, in 2 *EVOLUTION AFTER DARWIN* 263, 470 (S. Tax ed. 1960).

35. J. DEWEY, *HUMAN NATURE AND CONDUCT* 229 (1922).

36. The phrase "beyond family planning" is taken from Berelson, *Beyond Family Planning*,

This is not to say that contraception and abortion do not merit serious moral scrutiny. We are convinced, however, that voluntary family planning is here to stay and that there is a growing trend toward liberalization of abortion.³⁷ The question has been raised, however, whether these will be effective "enough" to achieve relative population stability.³⁸ Other measures have, therefore, been proposed. For convenience we shall separate them into three general kinds: economic measures, noneconomic coercive measures, and social measures.

A. Economic Measures

Economic measures that have been proposed are of three sorts: (1) provision of incentives; (2) withdrawal of welfare and tax benefits; and (3) reversal of benefits, *e.g.*, through the imposition of taxes. We begin our examination with incentive programs, but we shall not enter into the intricate semantic questions of the meaning of "incentive" and what particular measures may be classified under this head.

Ethical objections to incentive measures arise primarily in relation to what the acceptance of an incentive might induce or oblige one to do. A system of incentives, as such, will not necessarily impair rights, diminish freedom, or be unjust. Consider a system of incentives that provides money payments to couples who have no children for five years. Unless the payments were very large, probably only the poor would be induced to have smaller families. It might be argued, therefore, that such a system would be discriminatory. However, it need not be discriminatory on its face. In fact, given the general trend toward smaller families, a very large segment of the population

38 STUDIES IN FAMILY PLANNING, Feb. 1969, at 1, 3. Berelson surveys the literature on the topic. He classifies 29 proposals under 8 different heads. The proposals are then rated in terms of 6 criteria: "is the scientific/medical/technological base available or likely? will governments approve? can the proposal be administered? can the society afford the proposal? is it morally acceptable? and, finally, will it work?" (p. 3). By "morally acceptable," Berelson primarily has in mind whether the target population will see a proposal as acceptable. The target populations he is concerned with are the countries of the "developing world," and India is the main illustrative example. Berelson's time scale is the next decade or 2. Most of the proposals that might be expected to be effective are rated negatively in terms of one or the other criteria. They generally come off poorly as compared with family planning programs, the presumed effectiveness of which is held to be "moderately high."

37. Berelson rates liberalization of abortion "low" in terms of ethical acceptability and "moderate to low" in terms of political viability. While this may be correct for the developing world, in the United States the trend is very much toward liberalization of abortion.

38. See, *e.g.*, Blake, *Population Policy for Americans: Is the Government Being Misled?*, 164 SCIENCE 522 (1969); Davis, *Population Policy: Will Current Programs Succeed?*, 158 SCIENCE 730 (1967); Harkavy, Jaffe, & Wishik, *Family Planning and Public Policy: Who is Misleading Whom?*, 165 SCIENCE 367 (1969) (reply to Blake). Optimism on the effectiveness of family planning is implied in Bumpass & Westoff, *The 'Perfect Contraceptive' Population*, 169 SCIENCE 1177 (1970).

could—depending on the system—qualify for such payments. The main difficulty, then, would be whether the system is “coercive.” As a general proposition, we are hesitant to regard systems of incentives as coercive.³⁹ Do incentives widen one’s options or narrow them? The answer depends on whether the incentive in effect leaves one with no choice but to accept it. Whether this could be said of the poor generally is at least debatable, and close attention to the given context of choice is necessary.⁴⁰

Proposals for withdrawal or reversal of benefits pose more clearly the question of the propriety of coercive population measures. It is difficult to say whether average family size in this country would be much affected by withdrawing or reversing tax and welfare benefits. To do so would seemingly leave unimpaired one’s right to have as many children as desired. It seems likely that the individuals who would be most affected by the withdrawal of benefits would be those who most need them—children of large, poor families. The injustice is apparent. It might be maintained that any injustice that resulted would be counterbalanced by the benefit that accrues to society at large because of a limitation on population growth. In this particular case, we think that such a position would be a trap; it strikes at the very humanitarian impulses that are alleged to be behind proposals for population limitation. If our society goes this far, it will not be long before it goes completely Spartan.

Although the right to have as many children as one would like would not necessarily be impaired by the withdrawal of benefits, it seems that any effective measure would have to be one that made the option to have, say, the Nth child significantly less attractive than its alternative. The exercise of the right, therefore, apparently would not be a practical possibility for a large segment of society. This would be particularly true in the case of the poor, and to this extent such a measure would be discriminatory in its effect. It would border on coercion insofar as it could be said that one had no “real choice” to have the Nth child. While the right would be unimpaired, the sphere of freedom would be lessened.

B. Noneconomic Coercive Measures

Noneconomic coercive measures that have been proposed include compulsory vasectomization after the Nth birth, compulsory

39. See M. P. Golding, *Freedom and Coercion: a General Perspective*, in *FREEDOM, COERCION, AND THE LIFE SCIENCES* (D. Callahan & L. Kass eds.) (a forthcoming publication).

40. A system of incentives, however, might have an adverse effect on other societal values and could for this reason be highly objectionable. A system that made marriage itself unattractive appears to be a case in point, because it could easily result in a weakening of the family bond and concomitantly deprive individuals of needed physical and psychological support.

sterilization of mothers after the Nth birth, marketable licenses to have children, compulsory abortions for illegitimate children, the addition of temporary sterilants to water supplies, and compulsory temporary sterilization by time capsule contraceptives. The last two items have not been developed. Each one of these has its own particular problems, but we shall not go into them separately. Plainly, coercive measures impinge on rights and freedom. How do proponents of such measures respond to this?

It is interesting to note the reaction of some proponents of programs that go beyond family planning to the statement on population that was approved in 1967 by 30 countries at the United Nations. This statement affirms that "the Universal Declaration of Human Rights describes the family as the natural and fundamental unit of society. It follows that any choice and decision with regard to the size of the family must irrevocably rest with the family itself, and cannot be made by any one else."⁴¹ The motive behind the Declaration was, in fact, to undercut resistance on moral and religious grounds to family planning programs. The right of the family to choose the size of the family is seen by the beyond-family-planners, however, as implying the "freedom to breed." Hardin, for one, denies "categorically the validity of this right."⁴² The Ehrlichs state that "there is no basis for a sacrosanct status for the 'right' to have children." If a state can prevent a woman from having more than one husband, they ask, why should it not be able to prevent her from having more than two children?⁴³

In order to evaluate this argument we must inquire into the basis of rights. It has been argued that rights have their source in a conception of the good life for man.⁴⁴ It seems undeniable that family life is a vital part of this good, and that the family is thus a bearer of rights that deserve social protection. Childbearing and proprietary parenthood are essentials of family life. It is through them that one gets hold of the past, the present, and the future. For many, children are a joy—not infrequently the source of what little good one has in life.⁴⁵ It would

41. This portion of the United Nations statement appears in Hardin, *supra* note 4, at 1246.

42. *Id.*

43. P. EHRLICH & A. EHRLICH, *supra* note 14, at 273. Some exponents of population control rest their case on "new fundamental human rights" that in their view ought to be recognized. Thus, Dr. Cloud speaks of "[t]he right of the fetus not to be conceived or, if conceived, not to be born into a world where its presence assures additional misery and privation. The right of society as a whole to determine the density of population that best assures a continuing flexibility of options and access to necessary resources of food, clean air and water, recreation, and essential raw materials." 1969 *Hearings*, *supra* note 15, at 6.

44. See M. P. Golding, *supra* note 31.

45. On the meaning of childbearing see A. Dyke, *Population Policies and Ethical*

seem, then, that if there are any rights at all, there are rights vested in family life. These rights are a complex of two sorts of rights: (1) rights to goods that sustain family life, and (2) freedoms or option-rights, including a right to procreate.⁴⁶ The right to procreate, touching as it does on the fundamental aspects of the human good, deserves the appellation "sacrosanct."

Rights imply claims. Thus, if one has a right to goods, there is implied for others an obligation to assist in securing those goods. One's rights to goods, however, are limited by the availability of the goods in the society. This applies not only to trivial goods, but also to the most important goods. Option-rights or freedoms imply claims for protection. It does not follow, however, that a protected right deserves protection in every conceivable instance of its exercise or that its exercise should be unrestricted.

Can it be maintained that a right to procreate may be coercively limited as far as numbers is concerned? The mere use of coercion to restrict the exercise of some right may present no difficulty in itself, because the possibility of coercion is in fact implied in the protection of rights.⁴⁷ An individual's freedom—the ability to do as he wishes—is always limited when another's right is protected. In deciding what to protect and what to restrict, however, a society makes a crucial choice. At the heart of this choice is a conception of the good life and the role that freedom plays in this good. A society must tread very gingerly before it decides to restrict those institutions and the activities implied in them that are basic to the good life. This is especially true of the family.

It is argued, however, that an unrestricted freedom to procreate conflicts with the realization of various goods and, particularly, with the combatting of various disvalues. Even if this were true, it would not be obvious that it is the right to procreate that must give way. A very delicate weighing of the elements of the good life is required, and the rights vested in family life will be counter-balanced only by a good of a momentous order. We are unable to reach the conclusion that the right to procreate should be restricted as opposed to a limitation on other rights and goods. The coercive restriction of the right to procreate can come only as the very last resort, if at all. If the aim of population

Acceptability, 1970 (unpublished article by the Saltonstall Professor of Population Ethics at the Harvard University School of Public Health).

46. We should keep in mind that if "survival" is a good, there is at least a limited duty to procreate.

47. See M. P. Golding, *Private Right and the Limits of Law*, in *PHILOSOPHY EAST & WEST* (forthcoming publication).

limitation is to combat disvalues, it will fail in its efforts if in the process it undermines fundamental values.

This, we think, is one of the grave dangers in the use of coercive measures. It is sometimes claimed that certain coercive measures circumvent the possible injustices that seem to be inherent in the benefit-withdrawal measures. The sterilant in the water supply allegedly would be perfectly impartial. So also are the harsh restrictive rules of the concentration camp. Can it be supposed that such coercive measures could be imposed by other than an authoritarian regime? And can it be supposed that authoritarian regimes tend to be fair and wise? The answer to these rhetorical questions, we submit, is no. This is one of those cases in which the game is hardly worth the candle.

Professor Hardin apparently believes that at least some coercive measures might be democratically agreed upon. "The only kind of coercion I recommend," he says, "is mutual coercion, mutually agreed upon by the majority of people affected."⁴⁸ His context suggests that he has taxes in mind. A system of taxation might be unjust, but he is not bothered by this. In any event, it seems to us that once a majority would be willing to agree to the more draconian measures, it is doubtful that they would be necessary. To be sure, a recalcitrant minority might remain. If involuntary measures were applied, it is this minority that would be hit by them. Surely, a large repressive apparatus would be needed to keep them in line. Here, again, it is doubtful that the allegedly humanitarian impulses that motivate population control would survive for very long.

C. *Social Measures*

Social measures that have been proposed to stem population growth have the great advantage, it is claimed, of being liberating rather than coercive and restrictive.⁴⁹ The basis of the argument is that our society has influential and coercive pronatalist policies. Aside from such matters as restrictions on abortions, there are social mechanisms—the institutionalization of sexual roles in terms of reproductive functions, obligations, and activities, for example—that encourage mating, pregnancy, and the care, support, and rearing of children. It is argued that reversal of these pronatalist policies can be accomplished only by changing the social organization of reproduction—the family

48. Hardin, *supra* note 4, at 1247.

49. See 1969 Hearings, *supra* note 15, at 67 (statement of Dr. Judith Blake Davis); Blake, *supra* note 38, at 528. Social measures are also proposed in these Hearings by Dr. and Mrs. Day. 1969 Hearings, *supra* at 86.

structure—so that it encourages nonmarriage, childlessness, and two-child families. Two kinds of measures are suggested. First, it is proposed that occupational opportunities for women be broadened to provide avenues of satisfaction other than motherhood. Secondly, it is proposed that the social and legal pressures that imply that “normal” persons will attain the status of parents be reversed. These kinds of measures are to some extent related; but the second would specifically include new forms of marriage, such as homosexual unions,⁵⁰ and educational and attitude-changing techniques designed to promote non-familial life-styles.

In commenting on these proposals, it should first be pointed out that the character of the American family is now changing rapidly. It has declined in both size and importance,⁵¹ perhaps as the inevitable result of industrialization and urbanization. The extension of occupational opportunities for women has also been a factor and is bound to increase in importance. The decline in family size in Eastern Europe, for instance, is often attributed to the increased participation of women in the labor force.

Other features of contemporary American life also are highly significant. Birth, growth, education, work, retirement, and death occur in surroundings that are populated more by strangers than by those who have a personal and loving involvement with the individual. We live in a period in which social institutions are increasingly impersonal and disengaged. What our society needs is a strengthening, not a weakening, of the family bond. A reinforcement of the integrity of personal relationships within the familial setting is essential to the maintenance of humanistic values in an increasingly mechanized milieu.

A society that undertakes a program of population limitation must seriously reflect on the values it wishes to promote and must consider whether particular measures would have undesired side-effects. Are we to be concerned exclusively with such matters as clean air and water, necessary as they may be? Are there not other values that we wish to preserve and even enhance? Recasting parenthood as abnormal through educational and attitude-changing techniques threatens not only the family, but also the values that it embodies and supports.⁵² Furthermore,

50. N.Y. Times, Aug. 11, 1970, at 23, col. 6 (proposal by Mrs. Rita E. Hauser, the United States Representative to the U.N. Human Rights Commission).

51. *Time* has recently run a feature article on the subject, titled “The American Family: Future Uncertain.” *TIME*, Dec. 28, 1970, at 34.

52. The legalization of homosexual unions is probably imminent for the United States, although there will be a nasty battle over it. That it would aid in limiting reproduction, however, is a dubious proposition. It is also worth noting that reproduction can occur outside of the aegis of the

it is difficult to see how such measures would maximize freedom. If pronatalist incentives are "coercive," so also are antinatalist measures of this kind.

The decline of the centrality of the family in everyday life is at best a mixed blessing. There could be no change having more elemental effects on human life than a diminution of the cohesiveness of the family. This was recognized long ago by Plato, who tied his social schemes to a withering away of the family. Buying such change is like buying a "pig in a poke." The consequences of such a basic change in human relationships are largely unknown, and it would be unwise to take steps that would further alter the meaning and distinction of the family bond. Society will do well, we think, to reject the new Gospel of the "crisis ecologists" on this matter. We cannot help but feel that in proposing social measures of the sort we have criticized the beyond-family-planners, have made population limitation an end in itself and have blotted "from perception all other undesired and undesirable consequences."⁵³

V. POPULATION REDISTRIBUTION: AN ALTERNATIVE

It has been the burden of the previous sections to establish not only that there are serious ethical obstacles to measures of population control but also that it is an error to equate current population-related disvalues with population size. Fertility control is the wrong tool with which to attack the disvalues that are so much discussed in the literature. The United States population will continue to grow for some time before it reaches relative stability, and the disvalues will remain with us unless they are attacked directly.⁵⁴ These disvalues are, in the main, consequences of behavior patterns, particularly the abuse of the environment and natural resources in the use and misuse of technology and of population density. The density patterns are largely a matter of the uneven continental distribution that has resulted from migration

law of marriage. Witness the large rise in illegitimate births. Moreover, to bear an illegitimate child is now considered "chic" in certain circles.

53. J. DEWEY, *supra* note 35.

54. In fact, they will remain with us even if the population stops growing tomorrow. Certain central cities, for example, have been losing population, yet they continue to deteriorate. Newark, New Jersey, is a case in point. It is reported to have the highest incidence of per capita crime, the greatest percentage of slum housing, and the worst incidence of venereal disease and maternal mortality, as well as the highest population turnover. Although it has the second highest birth rate and population density, Newark has lost about 35,000 people since 1950. N.Y. Times, Feb. 7, 1971, § 4, at 4, col. 5.

patterns.⁵⁵ It is to this point that this section is directed. It is our contention that the more urgent item for the United States agenda is a comprehensive national distribution policy. We propose to discuss briefly some questions of ethical and valuational interest that arise in connection with redistribution policies. While it is impossible to go into detail in the absence of an articulated plan for the implementation, our examination supports the modest thesis that the costs in human values, rights, and freedom do not need to be as great as in measures of population control. Moreover, the prospects for the promotion of values are decidedly brighter.

The aim of a distribution policy would be a regionally balanced growth of the population coupled with better land development and use. While the need for this is recognized in the literature,⁵⁶ any discussion of "optimum population" for the United States should take into account its spatial and geographic potentials, which are, for the most part, given short shrift. Problems of concentration do not necessarily add up to a problem of overall size.

A national distribution policy, of necessity, would have to be embodied in governmental programs, and governmental intervention typically raises issues of rights and freedom, justice, and the promotion of values. Our treatment will concern itself only with the general contours of how a distribution policy would fare in these respects. Undoubtedly, many practical problems of ethical and valuational import would arise in the implementation even of ideal programs. These issues of detail are not handled by our treatment. We shall proceed in reverse order, beginning with the promotion of values. A concise statement of the background is necessary.

The facts concerning recent migration and settlement patterns in the United States are matters of common knowledge.⁵⁷ Since 1940 migration has clearly been metropolis-oriented. Approximately two-thirds of the population now live in metropolitan counties, and if the trend continues, by 1975 three-fourths of the population will be in metropolitan areas. Compared to earlier movements, the shift from an inter-regionally focused movement to movement focused upon large

55. The *New York Times* recently printed a map based on 1970 census data showing that most of the entire central vertical corridor of the United States, extending from Montana, North Dakota, and Minnesota in the north, to New Mexico and Texas in the south, has lost 10% or more of its population in the last decade. *N.Y. Times*, Feb. 14, 1971, at 68, cols. 3-6.

56. See, e.g., *1969 Hearings*, *supra* note 15, at 7.

57. Data may be found in *ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, URBAN AND RURAL AMERICA: POLICIES FOR FUTURE GROWTH* (1968); D. BOGUE, *THE POPULATION OF THE UNITED STATES* (1959).

urban concentrations is significant both because of its impact on density patterns and because of its elimination of differentials in living arrangements. During the past ten years, the flow has been primarily toward metropolitan areas in the South, Southwest, Mountain States, and the Pacific Coast; but the large mideastern metropolis also has continued to grow. Migration has been the major factor in the growth of large metropolitan areas, in some of which the ratio of net migration to total population growth is 50 percent or more.

Especially noteworthy has been the tremendous suburbanization and the accompanying decline of central cities. Whites have moved outward into suburban rings, while the black population, whose movement in very large numbers from rural areas began in the 1940's, has tended to concentrate in the cities. Although the 1960's saw the small beginnings of a black suburbanward movement, the conflict between a continuing press to disperse and a continuation of current inner-city agglomeration has yet to be resolved.

The existing patterns of urban growth reflect deeper "schizoid" characteristics of our society. The country has a rural bias⁵⁸ but rural areas are depopulated. We depend on cities for a cultural life but cities deteriorate. Wealth grows but poverty is endemic. We revere nature but befoul it. We laud variety but standardize scales of living. Equality is preached but discrimination is practiced.

The accompaniments of the patterns of movement are well known; impoverishment and deterioration of many cities; strains on already decayed or almost nonexistent transportation facilities; apparent increase in psychological stresses concomitant with high density; general environmental deterioration and pollution; pressure on inadequate utilities and public services; and, not least of all, weakening of family life. Certainly it would be a mistake to attribute all the ills of American life to metropolitanization, but it has undoubtedly been a factor in many of them. To mention these items is simply to restate the disvalues we discussed earlier.

Two essential components of any policy aimed at promoting regionally balanced growth and rational land use planning are the revitalization of rural areas and a planned system of new towns. It is irrelevant to our point to enter extensively into the semantic issue of the

58. In a 1969 Gallup national opinion poll sponsored by the National Wildlife Federation, it was established that approximately one-half of the sample selected a rural area, the mountains, or the seashore as the most pleasant place to live, with only 6% choosing a "large city." Barnett, *Education and Religion as Factors Influencing Attitudes Toward Population Growth in the United States*, 17 *SOCIAL BIOLOGY* 26, 35 (1970).

meaning of "new towns." As used here, new towns should not be confused with large-scale urban renewal, dormitory suburbs, or the development of a community that depends upon a major metropolis for its life line. A network of new towns should provide differentials in geographical context and in scales of living. It should also enhance regional goals, the formulation of which must necessarily precede any comprehensive program. Unquestionably, there are intricate political and technical problems involved in selecting sites for new towns and in drafting legislation to cover their actual planning and construction.⁵⁹ It would seem, however, that rural areas would experience an almost automatic revitalization from strategically located new settlements, and could in turn cease to generate those forces that ultimately manifest themselves as big-city problems.

New town development, when pursued in a comprehensive manner, would materially alleviate the pressures of density and crowding in metropolitan areas. Perhaps more importantly, however, it would stimulate our ecological friends to formulate concrete proposals for cities of different sizes and in different geographical locations. The pollution problem is difficult to attack in existing, growing metropolitan areas, but industrial and other polluting activities might be handled better in carefully planned new growth centers. Pollution control costs for new factories, for example, are likely to be substantially lower than for the installation or construction of control devices in existing facilities. We do not suppose that a balanced pattern of new town development would in itself remedy all the ills that have given rise to the concern over population growth. Population distribution through new towns, however, might offer the best context in which to efficiently attack the disvalues.

It should not be assumed that the period of internal mass migration in the United States is past and done with. We are a highly mobile population, and new settlements should not have difficulty attracting their inhabitants. While there is, of course, a potential danger in the rootlessness that accompanies population movement, this rootlessness seems less harmful than the depersonalization that is often maintained to be a product of contemporary city life. Moreover, new towns should not, in fact, be transient communities, and they might provide the family with a fresh environment in which to regenerate itself.

It is currently fashionable to condemn the "frontier philosophy" that is allegedly the source of many of our current ills, particularly the

59. See Mandelker, *Some Policy Considerations in the Drafting of New Towns Legislation*, 1965 WASH. U.L.Q. 71.

despoilment of nature. We would suggest, however, that our country desperately needs a resurgence of the "pioneering spirit" that was part of the "frontier philosophy." This spirit is not without its manifestations in the twentieth century. The State of Israel is a case in point. Pioneers, willing to suffer deprivation in order to create a new life for themselves and to create those conditions deemed essential for a good life for their descendents, made deserts bloom. Wasteland was replaced with thriving industry; science and culture now flourish. The early pioneers paved the way for later immigrants. In the first three years of Israel's existence its population more than doubled through immigration; the population more than tripled in a period of twenty years. These immigrants were people from the four corners of the earth, and they differed widely in technical skills and cultural background. Growth took place during a period in which the country was under severe security threats from the outside. Much of this growth was handled in terms of a policy of resettlement in which both agricultural communities and new towns have played an important role.⁶⁰ We are not claiming that Israel has none of the problems associated with urbanization and technological development. Our point is, rather, that much can be done in the way of new settlements in a short time, if there is the will to do it. It would be foolhardy to believe that a regionally balanced new settlement policy would overcome all the disvalues associated with population growth patterns in the United States. Nevertheless, from the standpoint of the promotion of values such a policy does have substantial significance.

A policy of distribution, in a number of ways, can be used as a means of promulgating social justice. Professor Frank Lorimer has stated that "the most critical issues in American population policy in the immediate future are, in this writer's opinion, not those concerning our national population as a whole but rather the social implications of its distribution, diverse reproductive trends, and internal migration."⁶¹ Lorimer is referring to the pattern of racial and ethnic distribution and the diverse reproductive trends that racial and ethnic groups exhibit. Whether regionally dispersed new towns would have any effect on reproductive trends is an item for speculation, but they would provide a unique opportunity to deal, on many fronts, with some of our most pressing social problems.

In the first instance, new settlements would relieve the pressures on

60. See B. AKZIN & U. DROR, *ISRAEL: HIGH PRESSURE PLANNING* (1966); E. SPIEGEL, *NEW TOWNS IN ISRAEL* (1967).

61. Lorimer, *supra* note 12, at 189.

established neighborhoods and cities created by a cycle of hostility and mistrust between resident groups and migrants who are seen as threatening the residents' way of life. New towns also would make possible the circumvention of suburban rings that are resisting the influx of unwelcome groups. The cycle of entry and flight, which has damaging consequences to existing communities and cities, could thus be broken. Additionally, new towns carefully planned to attract a diversity of racial and ethnic groups could give rise to new patterns of living that foster attitudes of accommodation. The range for experimentation is so great that integration at a variety of levels—building, block, neighborhood—could be attempted. Fresh insights might thereby be gained into current problems of racial and ethnic imbalance. Ethical considerations regarding integration—one of our most fundamental, severe, and long-range problems in social relationships—seem to us singularly unaddressed by fertility control proposals. Finally, a more balanced distribution of the population might assist in providing for a more equitable distribution of social amenities.

This is not to say that no difficulties, from the standpoint of social justice, would arise in the pursuit of such a policy. Regions and new towns will compete for the economic resources on which the implementation of distribution programs depend. Established settlements will press their claims against those of the new towns. Competition for economic resources, however, already exists. In some degree a new settlement scheme, if it could cut down on the need to patch and repatch the facilities and social services of the densely populated and deteriorating areas, might mitigate the fierceness of competition between the old and the new.

Issues of rights and freedom are bound to arise in programs designed to implement new town development, and the issues are intricate. Eminent domain, land use practices, zoning, pollution control, the distribution of incentives in the form of tax abatements, and the role of the private sector⁶² are samples. There is nothing essentially novel for our society in these issues as compared with those that are inherent in population control measures. The political ramifications, however, might prove to be complex. The powers of local government vis-a-vis state government and of state government vis-a-vis regional units, the need for which is widely recognized, will need elaboration. But here, too,

62. Jonathan, Minnesota, is a recent noteworthy example of a new town that originated in private initiative. Built outside the suburban ring, it is designed to become a self-contained city of 50,000 on 5,000 acres of rolling farmland. It was the first project approved under the New Communities Section of the Housing Act of 1968. *N.Y. Times*, Feb. 4, 1971, at 37, col. 4.

nothing exceptionally novel is posed; we already have experience in bi-state and regional agencies of government.

There is in addition a broader issue of rights and freedom. It is clear that the implementation of a policy of national population dispersal would require a greater concentration of power in the centralized federal government even if the private sector also played a substantial role. While the benefits that would accrue to a society from this needed concentration could easily be counterbalanced by the dangers inherent in the concentration, it seems to us that the increased centralization would be less than that required to implement population control policies.

A policy of deliberate distribution that works through forced movement would certainly fail in the United States. The right of free movement, especially the right to leave, is essential to a free society. The question, however, is whether these rights embody realistic options for many members of our community. Freedom is also a matter of opportunities and alternatives. These are now limited for many people in this country and will be further limited if current patterns of distribution continue. A new towns policy for balanced geographic development would enlarge the range of choice. Ideally the choice should not be between the bad and the worse. New towns must be made attractive enough in their own terms to draw people to them and to keep them there.

The precedents for a national distribution policy exist; they go back to the Homestead Act of 1862. Federal involvement in the establishment of new towns goes back to the war-industry housing shortages of World War I.⁶³ In 1918 Congress appropriated \$175 million to the Emergency Fleet Corporation of the United States Shipping Board and to the United States Housing Corporation for the creation of permanent homes and communities. In the five months that intervened between congressional action and the armistice, detailed plans for 80 developments were formulated by the United States Housing Corporation alone; 25 were actually built, including Yorkship Village, New Jersey and Cradock and Hilton, Virginia. Another national emergency, the Depression, was largely responsible for the next phase in the federal development of new communities, the greenbelt towns.⁶⁴ The Resettlement Administration was created by Executive Order in 1935 with the express purpose of building communities that were to have

63. For a concise survey see ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, *supra* note 57, at 71-72.

64. See P. CONKIN, *TOMORROW A NEW WORLD: THE NEW DEAL COMMUNITY PROGRAM* (1959).

unified land ownership and use, exclusively low-income housing, coordinated urban-rural attributes, perpetual leasing, and a municipal government suited to the local area. Three towns were constructed by 1938—Greenbelt in the District of Columbia, Greenhills in Ohio, and Greendale in Wisconsin. Finally, there are the communities created by government sponsorship of large-scale power and reclamation projects in the 1930's—Boulder City, Nevada and Norris, Tennessee—and of atomic energy projects in the late 1940's—Oak Ridge, Tennessee; Hanford, Washington, and Los Alamos, New Mexico. As the federal role emerged, so too did the necessary legislative machinery. Most recently, in December 1970, the new communities provisions of the Housing Act of 1968 were greatly expanded. The Act now allows for further articulation of a comprehensive national growth plan. The overall scale of such a plan would be novel, but the components of this proposal are within tradition.

VI. CONCLUSION

In the foregoing discussion, we have argued that “the population problem” in the United States is ill defined when it is conceived as a problem of population size. We also have observed that the disvalues attributed to overpopulation must be attacked directly because they will persist even if we achieve zero population growth. Moreover, there are serious ethical obstacles to attacking the disvalues indirectly through population limitation. A more effective, and ethically more desirable, means of attacking the disvalues is embodied in the pursuit of a balanced population dispersal. The details of a plan for balanced regional growth are yet to be formulated.⁶⁵ Economic costs will have to be calcu-

65. For a discussion of the possible components of such a policy see ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, *supra* note 57, at 123-72.

lated. The investment will have to be substantial—part of the price that has to be paid to attack the disvalues that are at the center of “the population problem”—but the returns will be highly profitable.⁶⁶

66. After completion of this paper, a short article by Paul R. Ehrlich and John P. Holdren, entitled “Why Do People Move,” was called to our attention. *SATURDAY REV.*, Sept. 5, 1970, at 51. Its purported demonstration of why “population redistribution alone is not enough,” misrepresents the rationale and strategy of population redistribution. The article alleges, for example, that proponents of redistribution argue that only urban areas have population problems. This is incorrect. The focus upon distribution is in fact used to indicate the problems of depopulated areas; problems that are not at all addressed by population limitation. It is further claimed that “vast amounts of surface area may be uninhabitable, uncultivable, or simply very disagreeable places to live.” *Id.* This was precisely the description of much of what is now Israel that was used by anti-Zionist Jews to reject Israel as a homeland and to discourage migration. Critics notwithstanding, Israel’s “uninhabitable” land has become fertile and viable. The article intimates that people move from sparsely populated areas to cities because of inherent rural deficiencies and inherent urban advantages. Many people, however, move to cities because they have no other choice. Despite their desire for other kinds of “agreeable surroundings” than those presumably appealing to Ehrlich and Holdren (and to ourselves as well), the economic decline of nonurban places dictates such a move. It is invalid to argue, as do Ehrlich and Holdren, against distribution in terms of the “provision of water and power to the wastelands of central Nevada.” *Id.* People are moving toward the peripheries of the continent, leaving most of the entire central section. Many areas losing population have all the physical necessities, and it is not a question of raping Canada’s or anyone else’s river. They also claim that “moving people to more ‘habitable’ areas, such as . . . most suburbs, exacerbates another serious problem—the paving-over of prime farmland.” *Id.* But distribution schemes are in fact designed *not* to move people into suburbs, and *are* designed to preserve farmland. The burgeoning of suburbs at the cost of agricultural land is the direct result of current migration patterns. Only *planned* distribution can deal with problems of urban sprawl and wasteful land use.

