

Population and Law†

It has been only within a decade or so that population growth in this and other countries has seemed a proper subject for public concern, much less for legal or even quasi-legal action. The rapid reversal of public attitudes here and abroad, in our Congress, in legislatures of other countries and in various United Nations and other international bodies has been one of the dramatic phenomena of the 1960s.

These reversals were prompted by increasingly widespread recognition of the startling changes in the demographic characteristics of the world, particularly the spectacular growth in populations of the developing countries since about the end of World War II and the almost incredible projections for future growth.

An understanding of the magnitude of the population explosion and its more important implications aids an appreciation of the current changes in law and practice.

Facts and Implications of World Population Growth

Chart 1 (Page 20)

The world's population, growing at one-tenth or so of one percent per year, took all history to about the year 1830 to reach 1 billion. As public sanitation began to spread and scientific medicine developed and became increasingly available, the world's population doubled to 2 billion in only 100 years by 1930. With rapid advances in medicine, including the discovery and widespread use of antibiotics, and with malaria control programs in effect in many areas of the world, the 3rd billion was reached in 30 years by 1960. At present rates of growth the 4th billion will be reached

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in 15 years by 1975. It will have taken only 45 years to double the population—this time from 2 billion to 4 billion. Now, in 1970, the world's population is about 3.6 billion. The rate of growth is about 2% per year—some 70 million per year. *If* present fertility rates cannot be reduced, the world's population would double to over 7 billion by the year 2000—only 30 years. At the end of the century, the 1 billion leap from 6 billion to 7 billion would take only 5 years.

Chart 2 (Page 21)

Even more significant than the total growth is the fact that by far the most rapid population growth is in the developing countries of the world which can least afford it. The United States has a natural population increase of about 0.8% per year. If present fertility is continued we will reach 300 million or more by the year 2000. Europe and Oceania will perhaps grow about 40–50% in this period. But Latin America with a present population of about 275 million is growing at 3% per year and, if this rate continues, will almost treble its population to something like 750 million by the year 2000. Africa with about 340 million will increase to some 860 million. India now with 550 million growing at 2.5% per year will have a billion and a quarter people unless its present tremendous effort to slow population growth succeeds. Mainland China may have some three-quarters of a billion people and by the year 2000 may have about a billion and a half. Other Asian countries with more than 700 million people will add an additional billion by the end of the century.

The year 2000 is, of course, only a convenient mark. It will be by no means the end of population growth. Unless drastic action is taken to reduce birth rates, the mushroom cloud of population growth will expand even more rapidly in the next century. The numbers will be so great that it appears inevitable, as the National Academy of Sciences has said: "Either the birth rate of the world must come down or the death rate must go back up."

Why has the population explosion occurred so recently and why is it so relatively rapid in the developing countries?

Chart 3 (Page 22)

The answer can be seen in a comparison of the demographic transitions in the industrialized areas and the less developed countries—the LDC's. In most of the industrialized countries of the world, this change from a state of high birth rates and high death rates to a state of low birth rates and low death rates, took place slowly over a period of 100 years or more. Death rates went down from traditionally high levels to modern comparatively

low levels gradually, as modern medicine developed and as modern sanitation spread. Birth rates went down similarly over this long period of time as the Industrial Revolution and many other factors led parents to want and to have smaller families. During this period of transition the population growth rate in most countries for most years did not exceed 1 or 1½%.

The situation in the developing countries has been radically different. Most of them remained in a period of especially high birth rates and death rates until only two or three decades ago. Then with the sudden availability of massive programs of inoculations and vaccinations against many diseases, many forms of advanced medication, including antibiotics, and with the world-wide programs to stamp out malaria, death rates in many of these countries dropped radically. At the same time, birth rates have continued in most of the developing countries at their traditionally very high levels. The result has been population growth rates that leaped within periods of a very few years from 0.3% or 0.5% of the traditional period to 2.5%, 3.0%, 3.5% or more in most of the developing countries. This situation is actually getting worse as death rates in many countries, particularly in Africa, continue to go down.

Chart 4 (Page 23)

The principal result of this uncompleted demographic transition in the developing countries, has been to place a burden of population growth on them enormously greater than was ever borne by the industrialized countries. For example, in a typical Western European country the percentage of dependent children under the age of 15 may be 20 to 25% of the population. The percentage of the population in the ages of economic productivity will be comparatively high. On the other hand, in a typical developing country some 45% of the population will be under 15 years of age and the percentage of the population in ages of economic productivity will be comparatively smaller. Moreover, in a developed country, as each cohort of the population moves out of the years of human reproductivity, the cohort of young men and women moving into years of reproductivity will be approximately the same. But in a typical developing country two and a half to three times as many young people will move into the ages of fertility as the number of older people moving out.

What do these growth facts mean, particularly for the developing countries?

Perhaps the basic question is, when does a developing country have a "population problem?" We tend to think of density as the characteristic "population problem." This is not so. For most of the countries of the developing world today the real problem is that the *rate* of population

growth is equal to or close to the rate at which it can increase its output of goods and services—gross national product. The result is that in many of the countries the rate at which it can increase the *per capita* income of its people is too slow. In many of the developing countries the overall rate of increase in the production of such goods and services is commendable, when compared with the overall rate of increase of such goods and services in the industrialized countries. It is only when population growth is taken into account that it becomes so plainly apparent that the far greater rate of increase in the developing countries makes their improvement per person so much less than they and we had hoped for.

Although much of the attention which has been given the population explosion has been in terms of the food-population balance, and this remains a most serious problem for the future, it is not the most critical danger for the present. The great present danger of population growth is the burden which it places on economic development and social progress of the developing countries.

Chart 5 (Page 24)

At present, something like 27% of the world's population in the developed countries enjoy about 79% of the world's gross national product. Some 73% of the world's population in the less developed countries share only 21%. The average income *per capita* in the developed countries is over \$2,000; in the less developed countries it is about \$200.

Chart 6 (Page 25)

In the years of this decade the less developed countries have done as well, on the average, as the developed countries in the annual growth rate of their total gross national products. But when population growth is considered and the increase in *per capita* income is computed, it is only too apparent that the rate of improvement in the less developed countries is far short of that in the developed countries. In the simplest terms, during this decade of particular attention to economic development the great gap between the rich nations and the poor nations has widened even further. At the same time, population growth in many developing countries is absorbing two-thirds of economic development, leaving only one-third to raise standards of living.

If, as we have seen, the current unusually high rates of population growth in many developing countries have slowed the increase in *per capita* income, the natural question is whether slowing population growth will increase it more rapidly. A number of economic analyses indicate that slowing population growth under the present circumstances in most of the

developing countries, will in fact make it possible for them to move forward more rapidly with their economic development and social progress.

Chart 7 (Page 26)

A computer study of a "typical" developing country indicates that between now and the end of the century a population with a reducing rate of growth would be able to produce as great an increase in goods and services as the population which will result if present high growth rates are continued. This surprising result occurs because the population will grow more rapidly than additional capital and technology, and many of the added people will be unemployed or underemployed, and will produce not more but less than they consume. With all other factors being equal, the population with the diminishing growth rate would achieve a substantial increase—about 63%—in GNP *per capita* by the year 2000.

Rapidly growing populations are increasing the destruction of our limited and precious biosphere. There is mounting public recognition in developed countries of the relationship between affluence and effluence with destructive consumption and polluting waste. In our own country, a 50% increase in the population in 30 years will increase by 50% whatever problems of pollution and destruction of the environment would otherwise occur. Developing countries, even with far less affluence, have achieved tragic destruction of forest and agricultural land and are already spawning urban pollution to match that of more industrialized nations. With far higher rates of population growth, the contribution of population to pollution and environmental destruction will rise even faster in these countries than in the more developed ones.

U.S. Domestic

The U.S. population reached the level of 100 million by 1917, after three centuries of growth. One-half century added the second 100 million by 1967. Although our present rate of growth (about 0.8% per year) is low compared to developing countries, as noted before, if it continues we will have a population of 300 million by the year 2000. Just since World War II there have been over 90 million births in our country. Providing for the education, health and development of these children has put unusual strains on our economy. As young adults, they are now coming out of our high schools and colleges in rapidly growing numbers and we are already experiencing problems of providing employment for them and housing as they marry and form new families.

The magnitude of the problems of coping with 100 million additional people in 30 years is hard to grasp. President Nixon illustrated it in his

1969 Message to the Congress on Population by pointing out that if we were to accommodate the full 100 million people in new communities, we would have to build a new city of 250,000—about the size of Tulsa, Dayton or Jersey City—each month until the end of the century. It might be added that unless our population growth slows by that time, the requirements for crowding in the next generation would be even greater.

Growing Population and Changing Law

Turning now from this very brief factual background of population growth to the changes in national law and international declarations it has precipitated, a few case histories will illustrate advances in comparative law.

In the United States, during our national history, we have generally regarded population growth as a national good. Public policy has favored it. Recently, as we have come to sense the facts and implications of our own and the world's population growth, our outlook has begun to change. We are becoming increasingly conscious of its costs in terms of crowded living, jammed transportation, expensive social institutions, mounting pollution and further degradation of our supporting environment. We have developed a deepening sense that the public interest will now be served best by slowing population growth.

This new concept has combined with our sense of the rights of the individual to bring about widening legal support of the right of people to control their own fertility by contraception, and the right of the individual woman to decide whether to maintain a pregnancy. It has also led to executive and legislative action to regard population growth as a matter requiring serious public attention.

The right to obtain the means of contraception was tested and sustained in 1964 in *Griswold v. Connecticut*.¹ The defendants had been found guilty of providing contraceptives to a married couple, contrary to the statute. The Supreme Court reversed, holding that the law, in forbidding the use of contraceptives rather than regulating their manufacture or sale, could not stand in the light of the principle that a "governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms." In a concurring opinion, three members of the Court argued that the right of privacy in marriage, though not mentioned in the Constitution, is one of those retained by the people under the Ninth Amendment and that such a right may be encroached upon by the state "only upon showing a subordinating interest which is compelling."

¹381 US 479 (1964).

Five years later, in *Baird v. Eisenstatt*² the First Circuit Court of Appeals reversed the conviction of a defendant who, in violation of a statute, supplied contraceptives to an unmarried woman. The Court held that, although the legislature may increase the statutory penalty against intercourse outside of marriage, it “may not do so . . . by making the penalty a personally, and socially, undesired pregnancy.”

Abortions under common law were not penalized unless the woman was “quick with child,” generally after some 16 to 18 weeks of pregnancy. The early U.S. statutes imposing penalties for abortion were directed against the doctors of the time to protect women against an operation then much more dangerous than childbirth. In general, these laws have permitted abortions only to save the life of the mother. In very recent years, efforts have been made in many states to liberalize old laws by permitting abortions according to the terms of the American Law Institute model code: when the pregnancy is the result of rape or incest, when there is reason to fear grave physical or mental defects in the fetus, or to protect the life, physical and mental health of the woman. Such laws have been adopted by 12 states³ and are pending in several others.

The belief that it is a woman’s right to determine, in consultation with her physician, whether to maintain a pregnancy has led to the adoption of such legislation in Hawaii, New York and Alaska. Similar legislation was passed by the Maryland legislature and vetoed by the governor on narrow grounds. Washington voters will decide in November whether to adopt a bill passed by the legislature in February, removing all restrictions on abortion in the first 16 weeks of pregnancy. A similar bill passed the Arizona House but was held in the Senate.

The old abortion laws have also come under constitutional attack. The California Supreme Court held⁴ such a law to be unconstitutional on the ground of vagueness of the statute and abridgment of the “fundamental right of the woman to choose to bear children.” In Washington, D.C., a Federal District Court has ruled⁵ the old type District of Columbia law unconstitutional on the ground of vagueness, and that it invaded the woman’s liberty and right of privacy in matters of family, marriage and sex, “which may well include the right” to terminate an unwanted pregnancy, at least in the early stages. The Supreme Court has accepted this case for argument this fall.

In Wisconsin, a three-judge Federal court granted a declaratory judg-

²39 LW 2014 (7/14/70).

³Arkansas, California, Colorado, Delaware, Georgia, Kansas, Maryland, New Mexico, North Carolina, Oregon, South Carolina, and Virginia.

⁴People v. Belous, 458 P.2d 194 (1969).

⁵US v. Vuitch, 305 F.Supp. 1032 (1969).

ment holding⁶ Wisconsin's anti-abortion law invalid insofar as it prohibits abortions prior to the quickening of the fetus. The Court based its decision squarely on the woman's private rights in matters relating to marriage, sex and the family, and said that the State had no compelling interest to justify the denial of the woman's basic right reserved under the Ninth Amendment, "to decide whether she should carry or reject an embryo which has not yet quickened."

On the level of national policy, a national survey in 1965 indicated that some 87% of U.S. white couples (87% of Protestants, 78% of Catholics) and 77% of U.S. Negro couples practice—or have practiced—contraception. Nevertheless, it has been estimated that some five million low-income women of child-bearing age lack access to such information and services. Surveys show that seven out of ten of these women are white and nearly two-thirds live in cities. Moreover, studies have shown that excessive fertility is both a result and a cause of a self-perpetuating cycle of ignorance and poverty.

With factors such as these in mind, President Johnson, in his 1966 Message to the Congress on U.S. Health Programs, 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 consciences." President Nixon in his Message to the Congress on Population in July, 1969, stated: "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 a national goal for the provision of adequate family planning services within the next five years to all of those who want them but cannot afford them." He directed the Secretary of Health, Education and Welfare to develop such a program.

Meanwhile, the Congress has moved ahead rapidly. On July 14, 1970, the Senate adopted a bill which would establish centralized responsibility in HEW for population/family planning programs, and authorized appropriations totalling nearly a billion dollars over five years for research and the delivery of contraceptive services.

Looking toward the future on a broader plane, President Nixon asked the Congress to authorize a Commission on Population and the American Future to study and report on the implications of population growth for the United States. The Congress has provided the legislation, and the President has appointed the Commission under the chairmanship of John D. Rockefeller III.

⁶*Babbitt v. McCann*, 310 F.Supp. 293 (1970).

International

One of the major events on the world population scene was the enactment by the U.S. Congress in 1967, of an amendment to the Foreign Assistance Act of 1961: Title X - Programs Relating to Population Growth. The amendment states its purpose:

It is the sense of the Congress that, while every nation is and should be free to determine its own policies and procedures with respect to problems of population growth and family planning within its own boundaries, nevertheless, voluntary family planning programs to provide individual couples with the knowledge and medical facilities to plan their family size in accordance with their own moral convictions and the latest medical information, can make a substantial contribution to improve health, family stability, greater individual opportunity, economic development, a sufficiency of food, and a higher standard of living.

Title X gives the broadest possible authority to the President to provide technical and material assistance of all kinds, directly or indirectly, to governments or private organizations, bilaterally or through United Nations agencies, for programs relating to population growth in friendly developing countries.⁷ The Congress earmarked for this purpose, foreign aid funds in the amounts of \$35,000,000 in FY 1968, \$50,000,000 in FY 1969, \$75,000,000 in FY 1970, and \$100,000,000 in FY 1971.

Abroad, some twenty countries have now undertaken public programs to slow population growth. An additional fifteen or so have undertaken to provide family planning services as part of their national health services. In many countries, changes have been made or initiated in laws or regulations concerning contraceptives, abortion, age of marriage, and other factors affecting birth rates. Government policies have been adopted, regulations issued, executive bodies established and legislation enacted. There have also been changes in the declarations governing international bodies which could not have been believed possible a decade ago.

Korea,⁸ one of the earliest countries to undertake a population-planning program—and one of the most successful—illustrates several of these developments. The government determined in 1961 to make a program to reduce its population growth, an essential part of its Ten-Year Economic Plan. The Supreme Council for National Reconstruction projected a reduction in the population growth rate from 2.88% to 2.5% during the First Five-Year Plan and down to 2% during the Second Five-Year Plan. It now projects a reduction to 1.5% for the new Five-Year Plan (1971-76). Prior to 1961, the manufacture and importation of contraceptives were prohibit-

⁷Foreign Assistance Act of 1961, as amended, Sec. 291.

⁸Much of the material illustrating executive and legislative actions in Korea, Tunisia, Turkey, Sweden and Japan has been drawn from studies by Prof. Luke T. Lee.

ed. This law was repealed, and the Ministry of Health and Social Affairs officially approved both. Abortion in Korea is forbidden by the Criminal Code, but permitted for certain medical reasons under court decisions. Legislation to legalize abortion for social, economic and eugenic reasons has been proposed but not enacted.

In Tunisia also, the repeal in 1961 of the existing law prohibiting the importation, advertisement and sale of contraceptives preceded the development of a national program of family planning. Tunisia abolished polygamy (1956), restricted family allowances to the first four children (1960), and raised the age of marriage for women to 17 and for men to 20 (1964). In 1965, Tunisia amended its 1940 law prohibiting abortions to permit them if the duration of the pregnancy is less than three months, both parents have requested the abortion in writing, and the parents have five living children.

Turkey also repealed its anti-contraceptive law in 1965 as a prelude to a national family planning program. So did Morocco in 1967 and France in 1968. Vietnam, on the other hand, though suffering from an extremely high population growth rate despite the deaths and dislocations of war, has not yet adopted the legislation introduced to repeal its old French-era anti-contraceptive law.

Abortions have been permitted under Swedish law since 1938 for a number of medical indications. A government commission has recommended a further liberalization of the law. On emerging from World War II, Japan created a Population Planning Committee (1946) and a Population Problem Council (1949) which recommended a series of measures to reduce birth rates, among them the free provision of contraceptives. In 1949, the Government authorized the manufacture and sale of contraceptives. In 1948, Japan enacted the Eugenic Protection Law, which substantially reversed the purpose of the pro-natalist 1940 National Eugenic Law which had permitted abortions for only therapeutic or eugenic reasons, or to preserve the life of the mother. The 1948 law was intended to prevent the dangers of illegal abortion by legalizing it under carefully regulated conditions. In 1949, an amendment allowed abortions for economic reasons (Article 14(e)(iv)). Later amendments resulted in making abortions available essentially on request. This law, the ready availability of contraceptives, the wide distribution of information on their use through the mass media, the high literacy, and the strong motivation of Japanese couples, have brought about a relatively low population growth rate in Japan without any official anti-natalist policy.

The Communist countries of Eastern Europe, with recent exceptions,

have had liberal policies toward contraception and abortion.⁹ In 1913, Lenin advocated the abolition of all legislation prohibiting abortion and the unrestricted dissemination of medical works on contraception. The Soviet Union in 1920 made abortion accessible on request of the woman. During Stalin's regime, interruption of pregnancy was again limited to medical and eugenic grounds. After his death this restriction was repealed in 1955. Before World War II abortion was generally illegal in the other countries of Eastern Europe. After the war, liberal abortion laws were promulgated in Bulgaria (1956), Poland (1956), Hungary (1956), Romania (1956), Czechoslovakia (1957), and Yugoslavia (1960), with a liberalization of the East German law in 1965. In the Soviet Union, the woman is counselled by the gynecological department, but her conclusion is decisive. In Poland, authorization may be given by a single physician. In the other countries the request must be considered by commissions whose decisions are generally favorable. In Hungary, the woman's decision is final. In all of these countries, abortions are limited to the first three months except in cases of danger to life or of serious eugenic reasons. Only Albania prohibits abortions.

These countries have experienced substantially declining birth rates in recent years. Romanian authorities, becoming concerned over the drop in birth rates, severely restricted abortions in 1966, increased family allowances and raised taxes on childless individuals. The birth rate rose dramatically after the new decree and then gradually dropped. The incidence of "spontaneous" abortions increased. In 1967, Bulgaria prohibited abortion for women with no children, allowed them on request for women with three or more children, and after advice by a commission for women with one or two.

In 1967, the United Kingdom enacted legislation, effective April 1968, authorizing abortions, among other reasons, to prevent "injury to the physical or mental health" of the woman, "or of any existing children of her family, greater than if the pregnancy were terminated." In determining the question of such injury, it is permissible "to take account of her actual or reasonably foreseeable environment."

Among the developing countries, Singapore, in December 1969, enacted a statute authorizing abortions for several indications. These include situations in which continuance of the pregnancy would involve "injury to the physical or mental health of the pregnant woman" and where "the environment of the pregnant woman, both at the time the child would be born and

⁹Henry P. David, *Family Planning and Abortion in the Countries of Central and Eastern Europe*, The Population Council, New York, 1970.

thereafter so far as is foreseeable, justifies the termination of her pregnancy." The "environment" includes family and financial circumstances.

Indian law, enacted a century ago, permits abortion only to avert a serious, medically indicated threat to the life of the woman. Nevertheless, Indian authorities estimate that nearly 32% of the total admissions to maternity wards are for cases of abortion, and that there are some four million induced abortions annually. Following the recommendations of a government study committee, a bill to allow the medical termination of pregnancies is now under consideration by Parliament.

After restricting paid maternity leave for government employees to three births, India has taken a unique initiative in another aspect of population law. On the recommendation of the Prime Minister, acting as Finance Minister, the former system of income tax exemptions, under which exemptions were related to the number of dependents, was eliminated in the current budget and replaced by a uniform exemption, "irrespective of whether the [taxpayer] is married or has any children."

Actions by United Nations Bodies

There are as yet no international treaties or executive agreements on population matters, yet a very important body of declarations, resolutions and practices has developed on an international basis, particularly in United Nations organizations. These may be examined, in somewhat chronological order, in terms of actions by the United Nations General Assembly, the Economic and Social Council, the Children's Fund, the Economic Commissions, the specialized agencies—UNESCO, WHO, ILO, FAO—and several Commissions devoted to particular subjects.

On December 18, 1962, the General Assembly adopted a resolution¹⁰ on "Population Growth and Economic Development." Among other things, it recognized that "economic and social development and population policies are closely interrelated," that population growth has recently been especially high in low-income countries, that "it is the responsibility of each government to decide its own policies and to devise its own programmes of action for dealing with the problems of population and economic and social progress." The resolution requested the Secretary-General to conduct an inquiry among U.N. Members and the specialized agencies concerning problems confronting them as a result of the reciprocal action of economic development and population changes. It recommended that the Economic and Social Council in cooperation with the specialized agencies, the regional economic commissions and the Popu-

¹⁰UNGA, 17th Session, Resolution 1838 (XVII).

lation Commission, taking into account the requested reports, "intensify its studies and research on the interrelationship of population growth and economic and social development, with particular reference to the needs of the developing countries for investment in health and educational facilities within the framework of their general development programmes."

The General Assembly resolution also endorsed the view of the Population Commission that the United Nations should encourage and assist the governments, especially of the less developed countries, in obtaining basic data and carrying out essential studies of the demographic aspects, as well as other aspects, of their economic and social development problems.

It recommended that the Second World Population Conference to be held in 1965, pay special attention to the interrelationship of population growth to economic and social development.

This basic resolution was adopted after extensive debate by a vote of 69 to 0 with 27 abstentions.

The resolution as drafted contained a provision "that the United Nations give technical assistance, as requested by governments, for national projects and programmes dealing with the problems of population." This key sentence was put to a vote by the full General Assembly and failed 34 to 34 with 32 abstentions. The U.S. abstained on the ground that this authority already existed.

An Asian Population Conference the next year—December 1963—recognized that rapid population growth in many Asian countries was impeding the success of efforts to reach satisfactory levels of living. Following the conference, the Economic Commission for Asia and the Far East (ECAFE) unanimously adopted a resolution¹¹ on Population Growth and Economic and Social Development which invited its Member States "to take account of the urgent need to adopt a positive population policy related to their individual needs. . ." It also invited "the United Nations and the specialized agencies to expand the scope of the technical assistance they are prepared to give, upon request of governments, in the development of statistics, research, experimentation and action programmes related to population."

In 1965, the Economic and Social Council, after some preliminary resolutions, adopted unanimously a major resolution¹² which endorsed a long-range program prepared by the U.N. Population Commission, and requested the Secretary-General to provide "advisory services and training on action programmes in the field of population at the request of Governments desiring assistance in this field." At the same session, ECOSOC

¹¹Resolution 54 (XX), 17 March 1964.

¹²Resolution 1084 (XXXIX), July 30, 1965.

adopted a resolution¹³ recognizing that, at the halfway point in the U.N. Development Decade, "the rapid growth in population in many developing countries in relation to the growth of their national income calls for the most urgent action."

The World Health Assembly in May 1965 requested¹⁴ the Director-General of the World Health Organization (WHO) to develop his proposed studies on medical aspects of sterility and fertility control methods and health aspects of population dynamics and to provide "technical advice on the health aspects of human reproduction." The resolution made clear, however, that this assistance "should not provide operational activities." In May 1966, the World Health Assembly adopted a second resolution¹⁵ which confirmed the role of WHO to give Members "technical advice upon request, in the development of activities in family planning, as part of an organized health service, without impairing its normal preventive and curative functions." The Assembly's 1967 resolution¹⁶ showed increased concern for the health problems associated with population dynamics and requested the Director-General to "assist on request in national research projects, and in securing the training of university teachers and of professional staff" in this field. In 1968, the Assembly recognized for the first time that "family planning is viewed by many Member States as an important component of basic health services . . . and plays a role in social and economic development." It substantially restated its past directives to the Director-General to provide assistance to national family planning programs.¹⁷

The United Nations Educational, Scientific and Cultural Organization (UNESCO) entered the population field in November 1966, with a resolution¹⁸ of its General Conference calling for a study of the relations between the development of education and the evolution of population, and requesting the Director-General to appoint a special committee to define UNESCO's responsibilities in the population field, particularly with regard to "sociological studies on social, cultural and other factors influencing attitudes for family planning."

While this pattern of U.N. agency policies was being created, a most unusual process of developing an international principle began in 1966: the Statement on Population by World Leaders. By December 1966, the Heads of Government of twelve nations had signed and presented to U.N.

¹³Resolution 1089 (XXXIX), July 31, 1965.

¹⁴WHA 18.49, May 21, 1965.

¹⁵WHA 19.43, May 20, 1966.

¹⁶WHA 20.41, May 25, 1967.

¹⁷WHA 21.43, May 23, 1968.

¹⁸Resolution 3.252, November 29, 1966.

Secretary-General U Thant a statement which said, *inter alia*, that too rapid, unplanned population growth threatens the world, seriously hampers efforts to raise living standards and frustrates and jeopardizes the human aspiration to live a better life. These heads of government (later joined by others to a total of thirty)¹⁹ declared four convictions:

We believe that the population problem must be recognized as a principal element in long-range national planning if governments are to achieve their economic goals and fulfill the aspirations of their people.

We believe that the great majority of parents desire to have the knowledge and the means to plan their families; that the opportunity to decide the number and spacing of children is a basic human right.

We believe that lasting and meaningful peace will depend to a considerable measure upon how the challenge of population growth is met.

We believe that the objective of family planning is the enrichment of human life, not its restriction; that family planning, by assuring greater opportunity to each person, frees man to attain his individual dignity and reach his full potential.

Against this background, the U.N. General Assembly adopted, unanimously, a second resolution on Population Growth and Economic Development in December 1966.²⁰ It noted with approval the resolutions of ECOSOC, the WHO, and UNESCO and requested the U.N. Secretary-General to pursue the work programme covering training, research, information and advisory services in the field of population and called upon ECOSOC, the Population Commission, the regional economic commissions and the specialized agencies "to assist, when requested, in further developing and strengthening national and regional facilities for training, research, information and advisory services in the field of population. . . ." The several U.N. bodies responded to the General Assembly's request with resolutions of their own, authorizing new or increased action in this field.

The Economic Commission for Asia and the Far East (ECAFE) adopted a sweeping resolution in 1967²¹ on Regional Cooperation in the Field of Population which, in the most advanced of such international agency actions, called on its Executive Secretary to explore the effect of the pressure of population in delaying the advancement of development goals "and to consider the setting of targets designed to bring rates of population increase and of economic growth and social advancement into some reasonable alignment with one another. . . ."

¹⁹Australia, Barbados, Britain, Colombia, Denmark, Dominican Republic, Finland, Ghana, India, Indonesia, Iran, Japan, Jordan, Malaysia, Morocco, Nepal, Netherlands, New Zealand, Norway, Pakistan, Philippines, Singapore, South Korea, Sweden, Thailand, Trinidad & Tobago, Tunisia, United Arab Republic, United States, Yugoslavia.

²⁰Resolution 2211 (XXI), December 17, 1966.

²¹ECAFE 74 (XXIII), April 17, 1967.

The International Labor Organization (ILO) General Conference in June 1967 adopted a resolution²² which recognized that rapid population growth was aggravating unemployment and underemployment in developing countries, and called for a comprehensive "study on the influence and consequences of rapid population growth on opportunities for training and employment and on welfare of workers. . ." The Food and Agriculture Organization (FAO) Conference in November 1967 approved a program on "Better Family Living" to be carried out through its Home Economics Service to help families understand values of family planning as part of a program for better family living.²³

In June, 1967, the U.N. Children's Fund Executive Board decided that UNICEF may assist governments, on their request, to develop family planning programs as part of a maternal and child-health service by providing vehicles, supplies and equipment and training personnel. (Supplying contraceptives was excluded in 1967 but was recommended and agreed to by the Executive Board on April 30, 1970.)²⁴

In 1965, the U.N. Commission on the Status of Women requested²⁵ the U.N. Secretary-General to report to the Commission on the effect of the lack of family planning on the status of women, and on the relationship between family planning and the advancement of women. In 1966, the Commission repeated its request,²⁶ and welcomed the increasing recognition of the role of the U.N. in providing assistance in family planning. In its 1968 resolution²⁷ on Family Planning and the Status of Women, the Commission called upon Member States to undertake national surveys or case studies on the status of women and family planning, and appointed a special Rapporteur to continue the study of the status of women and family planning.

The second International Conference on Human Rights in Tehran, April-May 1968, adopted a special resolution²⁸ which noted the actions of the General Assembly, ECOSOC, the Commission on the Status of Women and the World Leaders' Declaration. It observed that the present rapid rate of population growth in some areas of the world reduces the possibilities of rapidly achieving adequate standards of living and thereby impairs the full realization of human rights. The resolution recognized that "the moderation of the present rate of population growth in such areas

²²ILO Resolution IV, 51st Session, June 1967.

²³FAO, Report of Fourteenth Session of Conference, Nov. 4-23, 1967.

²⁴UNICEF, 24th Session.

²⁵Resolution 7 (XVIII), March 8, 1965.

²⁶Resolution 4 (XIX), March 4, 1966.

²⁷Resolution 7 (XXI), February 16, 1968.

²⁸Resolution XVIII, May 12, 1968.

would enhance the conditions for offering greater opportunities for the enjoyment of human rights and the improvement of living conditions for each person.” The resolution considered that “couples have a basic human right to decide freely and responsibly on the number and spacing of their children and a right to adequate education and information in this respect.” The resolution was adopted 65-0-2. Sponsors attempted but were unable to include a provision that couples have a right to family planning *services* as well as information.

Such a provision was included, however, by the U.N. Commission for Social Development in the provisions on Means and Methods in its 1968 Declaration on Social Development.²⁹ Its draft was considered by ECOSOC, circulated to U.N. Members for comment, and adopted by the General Assembly in December 1969.³⁰ In solemnly proclaiming this Declaration, the General Assembly “calls for national and international action for its use as a common basis for social development policies.” These include in Article 22(b): “. . .the provision to families of the knowledge and means necessary to enable them to exercise their right to determine freely and responsibly the number and spacing of their children.”

To return to the Economic and Social Council (ECOSOC), its August 1967 resolution³¹ on Development of Activities in the Field of Population reviewed the resolutions of the General Assembly and other U.N. bodies and urged all organizations of the U.N. system to make every effort, within their competence to develop and render more effective training, research, information and advisory services in the field of population and, in particular, invited UNESCO to pursue actively its education, social sciences and news media activities in this regard.

UNESCO’s Governing Board, in November 1967, responding to UNESCO’s resolution, adopted³² a broad ten-year program of action which had been developed by an expert advisory group and proposed by its Director-General as part of a coordinated U.N. program in the field of population.

The 45th Session of ECOSOC in July 1968 considered population and its relation to economic and social development as a major agenda item. It gave particular attention to what Secretary-General U Thant called “the inescapable conclusion that the Second Development Decade must emphasize the critical relationship between population and resources and begin to

²⁹ECOSOC, 214th Session, Official Records, Supplement No. 5, Report on the 19th Session of the Commission for Social Development (February 5-March 2, 1968).

³⁰Resolution 2542 (XXIV), December 11, 1969.

³¹Resolution 1279 (XLIII), August 4, 1967.

³²UNESCO, Decision 4.4.1, November 1967.

overcome the problems arising from this relationship." ECOSOC requested³³ the expert Committee on Development Planning to "give appropriate attention to the interrelation between population dynamics and economic and social growth with respect to the Second Development Decade, taking into account the diversity of regional and national characteristics."

The Population Commission also was aware of this relationship and at its Fifteenth Session in 1969 recommended³⁴ to ECOSOC a resolution on "Population Policies and the Second United Nations Development Decade," which called upon the Preparatory Committee for the Second Development Decade to include in its basic strategy paper, language recognizing that in some parts of the world present high rates of population growth could frustrate efforts of the UNDD II and that in such cases "for countries which consider it appropriate and in accordance with the special needs of each country, national policies aimed at the achievement of more desirable rates of population growth, and at the acceptance by parents on a voluntary basis of smaller families should be regarded as among the essential aspects of development strategy for the eventual achievement of satisfactory *per capita* economic growth, which would promote human welfare and dignity." ECOSOC did recommend³⁵ this language for the consideration of the Preparatory Committee. The strong opposition of only two or three countries in the Preparatory Committee, where all action was taken by consensus, made it impossible even to get consideration of this language. It will now be taken up in the September session of the General Assembly in the further consideration of the UNDD II Strategy paper.

The same session of the Population Commission recommended³⁶ to ECOSOC the designation of 1974 as "World Population Year" and approved a Third U.N. World Population Conference to be held in that year. For the first time, the participants in a world population conference will be representatives of Member States as well as specialists. The conference is to be "devoted to consideration of basic demographic problems, their relationship with economic and social development, and population policies and action programs needed to promote human welfare and development." Both recommendations were approved³⁷ by ECOSOC.

The Future

The foregoing summary deals only with highlights of national and in-

³³Resolution 1347 (XLV), July 30, 1968.

³⁴Population Commission, Report of the Fifteenth Session, November 1969, E/CN.9/235, p. 50.

³⁵Resolution 1483 (XLVIII), April 3, 1970.

³⁶Population Commission, Report of the Fifteenth Session, 3-14, November 1969, E/CN.9/235, p. 51-52.

³⁷Resolution 1485 (XLVIII and Resolution 1484 (XLVIII) respectively.

ternational legal action in the population field. It omits entirely the dramatic story of rapid expansion in action programs by individual countries, to slow their population growth and the contributions of technical assistance, materials and funds by donor nations and international bodies.

The advances in legal and program action in the past few years have been spectacular – yet they must be soberly considered as only bare beginnings compared to the enormous task ahead. We can be confident that in the next decade one developing country after another will undertake population planning programs. We can also be confident of increasing attention to the crises of population and environment in United Nations and other international bodies.

International and national efforts to slow population growth will not be accomplished without misunderstandings, suspicions and frictions. In some countries these are already occurring in a minor degree among cultural, religious, social, tribal and even economic groups who fear they will lose some advantage or suffer some disadvantages compared to others. Similarly, national leaders who are still guided by the belief that numbers mean power or safety in relation to other nations, are wary of initiating or pressing measures to reduce birth rates. We can reasonably expect that as the imperative need for serious, effective programs becomes more widely understood nations will turn increasingly to the world community for assurances of support and protection.

The substantial progress already made has been promoted and dominated essentially by demographers and medical doctors. Yet many of the basic problems are in the fields of government and advocacy. The analytical and organizational talents of lawyers as agents of social change are needed.

Particularly, the crucial test of the future will be to find means to bring the population explosion under control while maintaining the maximum possible individual liberty and freedom. This task of balancing the welfare of the whole with the rights of the individual has always been a high calling for lawyers. In this new crisis in human affairs their increasing interest and active participation will be both indispensable and invaluable.

Chart 1

THE WORLD'S POPULATION GROWTH
PAST AND PROJECTED
 (ASSUMING CONSTANT FERTILITY LEVELS)

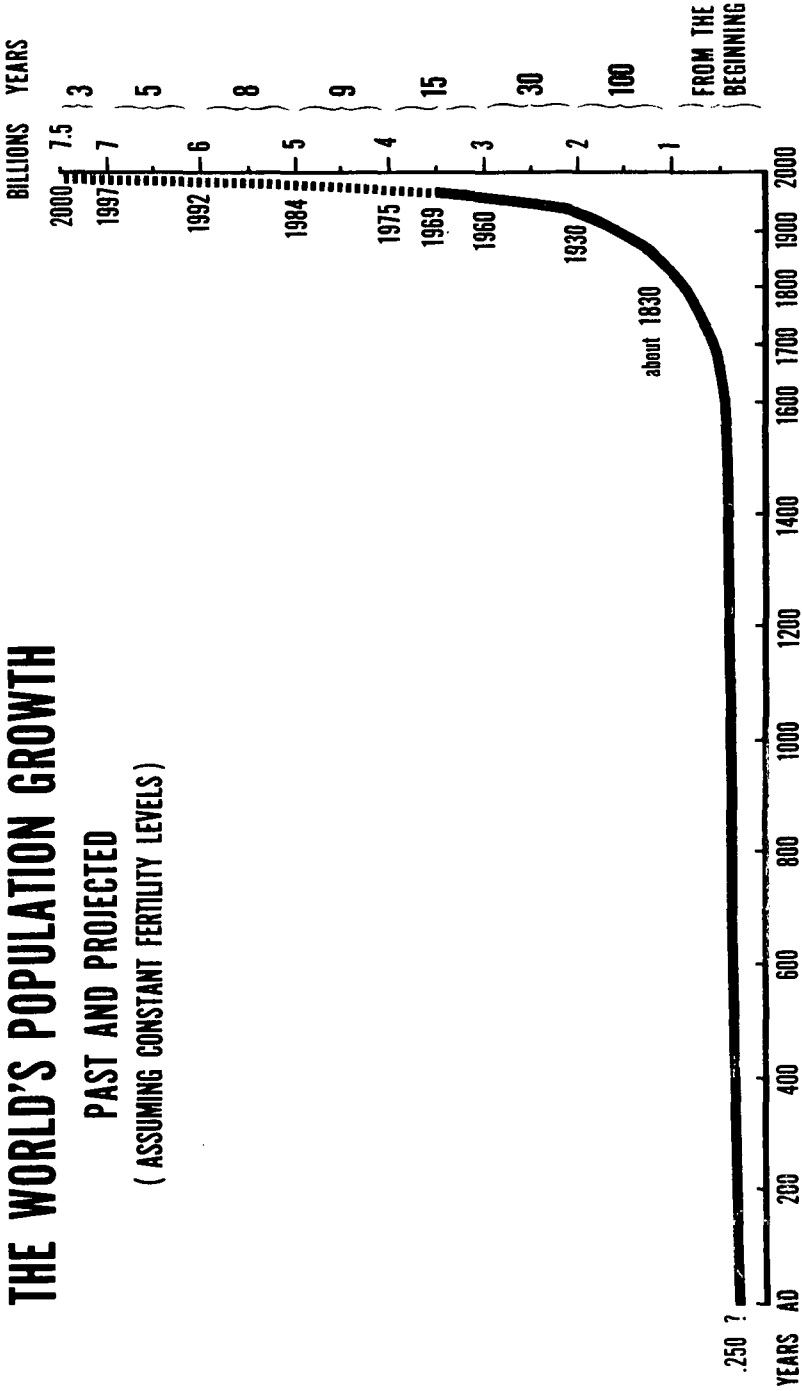


Chart 2

THE POPULATION BOMB IN THE YEAR 2,000 WHERE THE PEOPLE WILL BE

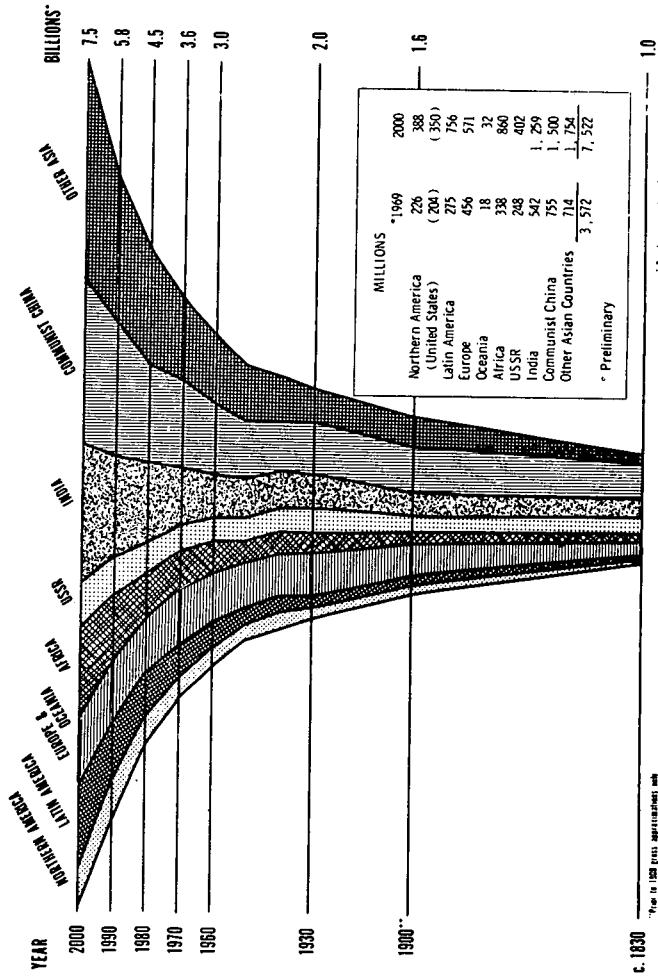
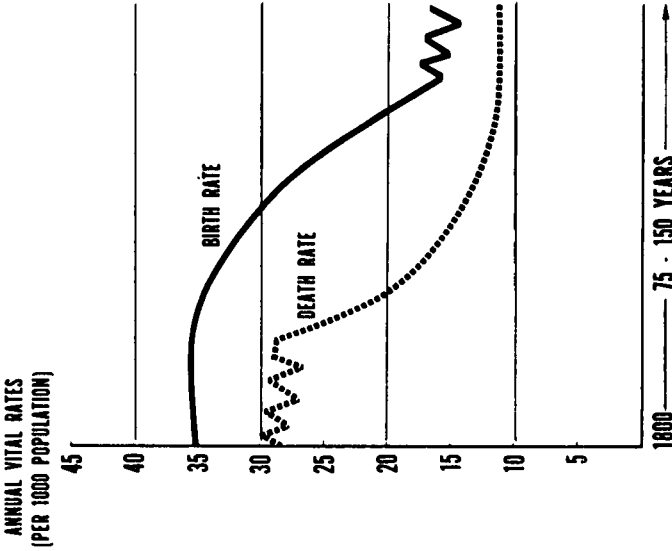


Chart 3

THE DEMOGRAPHIC TRANSITION

WESTERN EUROPE 1800 ...



LDC'S 1940 ...

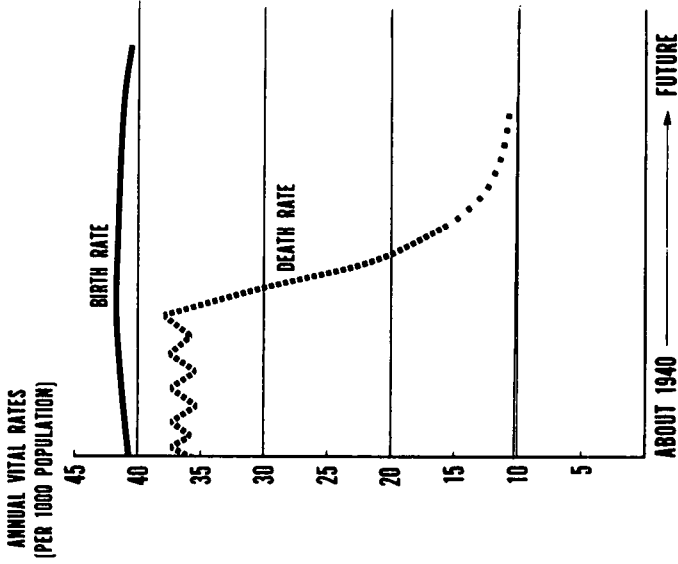
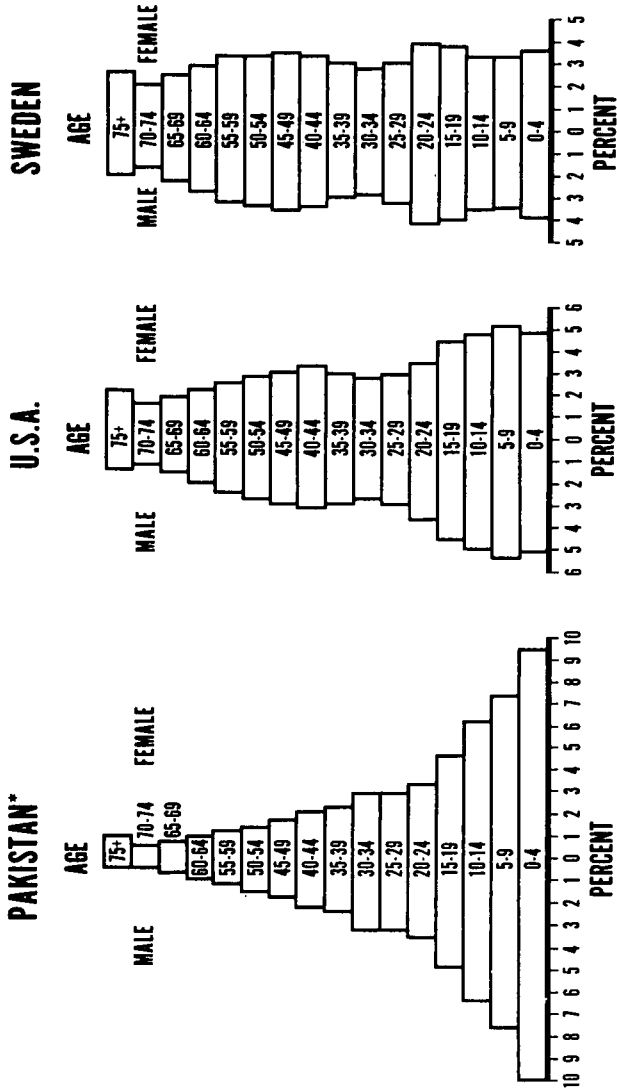


Chart 4

AGE DISTRIBUTION — CHILD DEPENDENCY 1966



PREPARED BY U.S. BUREAU OF THE CENSUS (1965)

Chart 5

POPULATION AND GROSS NATIONAL PRODUCT

1967

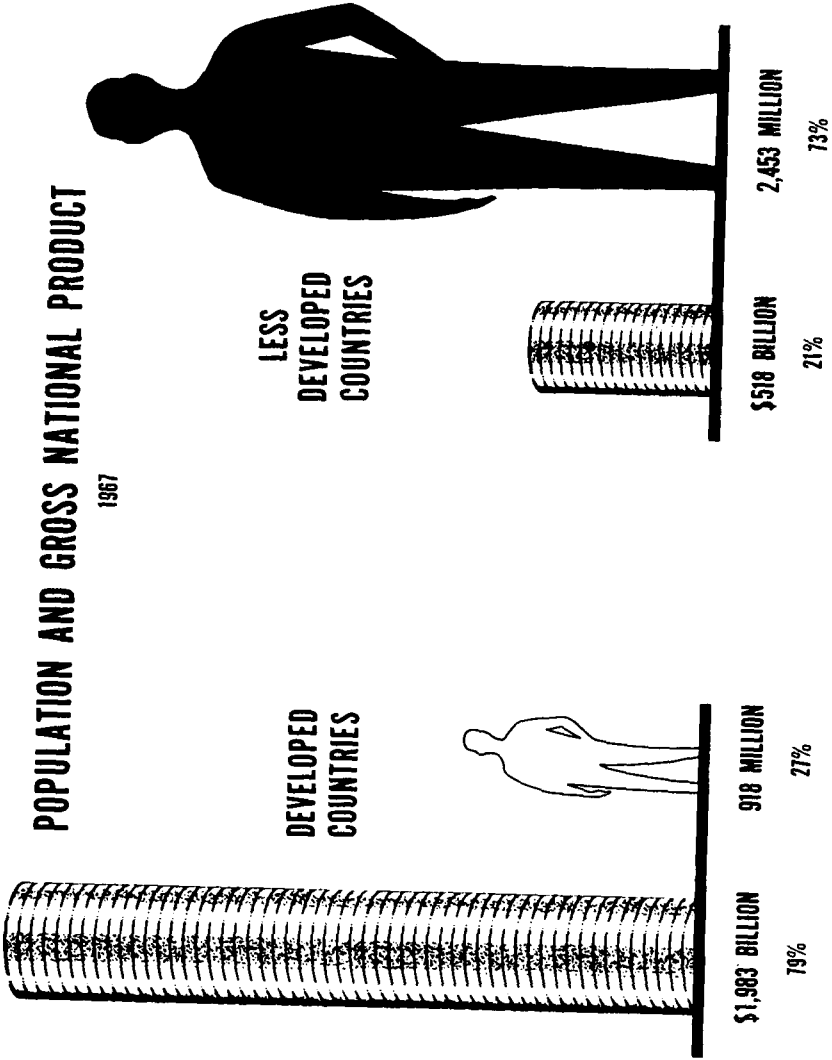


Chart 6

**TREND OF GROSS NATIONAL PRODUCT 1960-1968
IN CONSTANT 1967 PRICES**

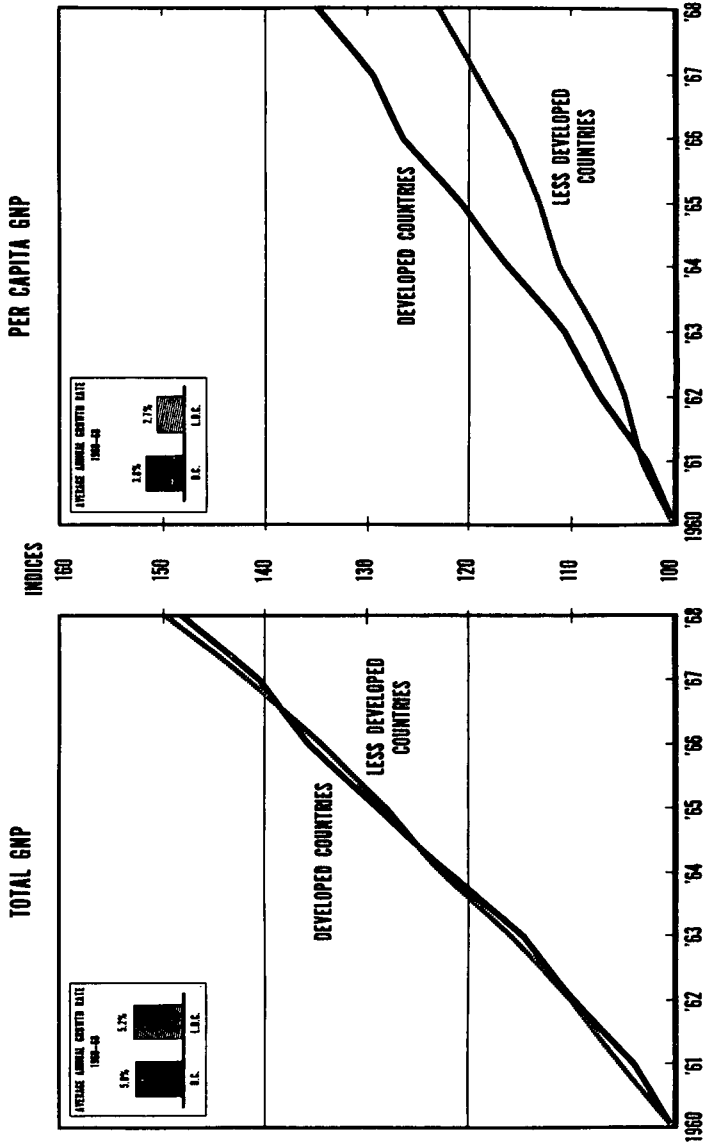


Chart 7

IN A TYPICAL LDC

SLOWING POPULATION GROWTH WILL SPEED DEVELOPMENT

