

Toward a Population Policy for the United States

by Chad Carlock

I. Introduction

The importance of environmental issues in the United States has been steadily increasing. Efforts to preserve and protect the environment have primarily been focused on remedial efforts such as recycling, reclamation, and habitat restoration. While these efforts are laudable and necessary, they are essentially damage control efforts, which attempt to mitigate damage which has already been done. As such, their effectiveness is limited. A more effective way to approach environmental protection is to prevent or minimize environmental deterioration from occurring in the first place.

Many of these preventative protection measures are already being tried: wilderness preservation, efficient manufacturing techniques, etc.. But the single most effective way to prevent environmental damage in the United States has received little or no attention: population control. The factor which most significantly affects our level of resource use and our need for space is the population level.¹ Making a meaningful effort to reduce environmental deterioration therefore requires a hard look at population control policy in the United States.

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This discussion is not meant to be a comprehensive discussion of population issues in the United States. Nor does it propose any single solution to the very complex series of problems created by population growth. Rather, this article is meant to be a catalyst for further thought and development in the area of domestic population policy. Much more analysis and discussion remain. The idea is to open up the discussion and consider the relevant issue: whether we need a policy to limit population growth in the United States, and if so, how we should do it and what it would mean to us as a society.

II. Why Population Growth is a Problem in the United States

One might ask, why should we worry about population growth in the United States? Clearly, there are plenty of other countries with more severe population problems. This does not mean, however, that we shouldn't be concerned with the growth of our own population. In order to adequately protect the environment, human population growth must be curbed in the industrial nations as well as in the developing world. There are two main reasons why population growth in the United States deserves serious consideration: our relatively high rate of increase, and our disproportionate use of world natural resources.

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First of all, United States population is increasing rapidly. The United States is currently the world's fourth most populous nation. Recent calculations by the Census Department show that the population of the United States has almost doubled in the last fifty years.² According to the Census Bureau, the entire population of the United States in 1940 was approximately 132

million.³ The 1990 census showed a population of almost 249 million.⁴ Projections for the year 2050 show a United States population of 392,031,000, *triple* the population of the U.S. in 1940.⁵ This is the equivalent of the 1940 and the 1990 Census counts, *added together*. The "population explosion" is obviously not limited to other parts of the world. Given these facts, no realistic policy can be made for the future of the United States without considering the tremendous escalation of population.

Second, people in the United States, because of our relatively high standard of living and conspicuous consumption mentality, consume large amounts of resources per person. The United States has 5% of the world's total population, but it comprises 25% of total world resource consumption.⁶ Therefore, relatively modest increases in the United States population have a disproportionately large impact on world resources. For example, measured by per capita energy consumption, an average American has approximately 50 times the impact of an average Bangladeshi.⁷ Over the next hundred years, an exploding United States population will create huge demands for new raw materials, electrical power, and food. Without population control measures in industrialized, resource-consuming nations like the United States, we cannot hope to significantly limit the depletion of worldwide natural resources.

III. United States Domestic Population Policy . . . or Lack Thereof

Current United States' policy virtually ignores the potentially disastrous effects of increasing domestic population. United States' population policy has focussed on curbing runaway population growth in the non-industrialized nations. For example, during the United Nations population conference at Mexico City in 1984, the United States pledged to "continue its long standing commitment to development and family planning assistance *to other countries*."⁸ The recent Cairo Population Conference also dealt primarily with curbing population in the non-industrial nations.⁹

While the United States has been a vocal and supportive advocate of worldwide population control, it has not seriously considered domestic population policy. In 1969, the House Conservation and Natural Resources Subcommittee held the only Congressional hearings directly examining the impacts of human population on the environment.¹⁰ Legislation in 1970 and in 1974 authorized further research in the area of population growth, but did not authorize development of a comprehensive population policy.¹¹ In addition, this legislation viewed population policy as an aspect of family planning rather than as an environmental issue. The National Environmental Policy Act of 1976 (NEPA), directs the United States to "achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities,"¹² but subsequent policymaking, too, has largely ignored this admonishment.

Currently, no official government policy exists regarding population control in the United States, and prospects are virtually nonexistent. Politicians have little incentive to advocate programs designed to curb population growth. Professors Robert Ornstein and Paul Ehrlich summarized the politician's quandary: "Why take a stand on a highly controversial issue when the voters most likely to benefit from your position are not yet even born?"¹³ This lack of policy direction is a serious oversight in our domestic environmental policy, particularly considering the potentially disastrous effects of United States' population growth discussed above.

IV. What Should United States' Population Policy Look Like?

Assuming that the political strength could be mustered to examine United States' population growth, what steps should the government pursue? Experts, not surprisingly, differ in their recommendations. Not only do scientists disagree about the extent of the problem, they also cannot reach a consensus on appropriate measures or goals of a population control program. Given this uncertainty, making a comprehensive proposal at this point would be premature, not to mention unwise. However, several proposals merit discussion here. One proposal several experts have presented is a system of negative tax incentives for having children after replacement levels (2 children per couple) have been reached.¹⁴ Such a system might work, for example, by allowing the standard dependent deduction for only the first two children.

Others argue that methods used elsewhere in the world could be adapted for use in the United States. In his book, *Earth in the Balance*, Vice-President Gore presents three parts of a world strategy for population control: literacy and educational programs, effective programs to reduce infant mortality and ensure the health of children, and availability of birth control devices and culturally appropriate instructions.¹⁵

First, literacy and educational programs are based on the premise that fertility rates tend to decrease as a country's level of education increases. Given the relatively high level of education in the United States compared to non-industrial nations, these programs may not be as effective as they might be elsewhere. However, education must be a central theme of any successful population policy. Second, health programs to reduce childhood mortality rates generally remove much of the incentive for large families. But such concerns are not a primary motivating factor in the United States, with its relatively low infant mortality rates. Finally, availability of birth control devices and techniques would be a key part of any plan to curb population growth in the United States. Unfortunately, any proposal to make birth control more widely available meets strong resistance from religious and other groups who oppose contraception of any kind.¹⁶ This divisive issue must be dealt with in order to move forward with this crucial aspect of any truly effective population policy.

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Population policy for the United States cannot be created in a vacuum. It must be integrated into our existing legal, scientific, and social structure. Any population policy should therefore be thoughtfully considered before it is enacted. Congressional hearings must consider the legal and policy effects of population policy. Further scientific study would provide a means of measuring the problem and the potential effectiveness of alternative approaches. The public must be informed of the issues and must find the proposed policy solution acceptable. These considerations place significant constraints on the possible structure and operation of a United States population control policy.

V. Constraints on Domestic Population Policy

A. Population Control and Fundamental Rights

One significant constraint on United States' population control policy is the fact that at least since *Griswold v. Connecticut*,¹⁷ reproductive rights are considered "fundamental" under the Constitution.¹⁸ As such, any law which restricts the exercise of that right is subjected to strict judicial scrutiny. Only laws which are narrowly tailored to serve a compelling state interest survive strict scrutiny.¹⁹ A comprehensive policy to curb population growth unquestionably would impinge on the fundamental right of reproductive choice. As discussed below, these impacts could be a major stumbling block in developing an effective policy to control population. Such a policy must respect the fundamental right of procreative choice, and at the same time meaningfully address the population problem.

A properly drafted and sufficiently focused population policy could survive legal challenge. Given the overwhelming environmental effects of runaway population growth, population control policies can be justified as a compelling state interest. Courts frequently accept public health and environmental protection rationales to uphold legislation.²⁰ Population control to protect the environment should be no different. As long as the law is narrowly tailored to serve the state's environmental interest, which hopefully would result from careful drafting, population policies could meet strict scrutiny review.

B. Population Control and Public Opinion

Another significant constraint on population policies is public resistance. Proposing population control to Americans frequently elicits a violently negative response. The mere thought of taking concrete steps to control population growth is simply unacceptable to many Americans. Population growth has in many ways become the modern incarnation of "manifest destiny." One legal scholar, Charles F. Wilkinson, has observed that "'You can't stop growth' is not just a truism . . . it is a dictate not even worthy of serious discussion."²¹ Challengers to the paradigm of unchecked population growth obviously have their work cut out for them. The drafters of population control policies must therefore consider the great resistance of the American people to such "radical" ideas.

Most importantly, this means that United States population policies cannot and should not be coercive. Approaches such as the mandatory child limit of China or the forced sterilization programs previously used in India simply cannot be used in the United States. Not only do draconian methods such as these violate basic human rights, they fail to convince people that

population control is a desirable public good. United States' population policies must be geared around education and incentives designed to encourage voluntary participation. As discussed above, approaches such as tax disincentives are one such way to limit population growth without stifling the exercise of personal rights. Educational programs which demonstrate the connection

between population levels and environmental health would be another positive step. In addition, the need to narrowly tailor any prospective population control policy in order to pass constitutional muster might make it more acceptable to the populace. The American public should be more willing to accept a focused plan which is carefully thought-out.

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VI. Ramifications of a Comprehensive United States Population Control Policy

Another thing which must be considered before entering into any population control policy is the ramifications of such a policy. Concrete steps to control United States population growth will unquestionably have many social and legal effects. One particular possibility will be discussed here. NEPA requires that an Environmental Impact Statement (EIS) must be prepared for any "major Federal action" which may significantly affect the environment.²² Since population levels are directly related to our impact on the environment, would a United States' population control policy require an EIS? Reading the statute literally, population policy would require exactly such an analysis.²³

However, this would not be as gargantuan an undertaking as it may at first appear. Much of the scientific analysis which would be needed to prepare an EIS would already be underway. Development of an intelligent population policy in the first place requires extensive scientific data. An EIS could therefore be prepared in conjunction with the development of the policy itself. In fact, consideration of the environmental consequences of a specific population policy and the possible alternatives is exactly what is needed. In the long run, NEPA compliance would be *desirable* for a domestic population control policy.

VII. Conclusion

The impact of population levels on the environment in the United States has been overlooked as a significant environmental issue. Runaway population growth is the underlying cause of most environmental problems. Professor Robert Hardaway has suggested that environmental groups post signs in their offices, reading "It's The Population, Stupid."²⁴ Environmental groups must press for action. Public discussion of the issues must be encouraged, so that intelligent public policy can be formulated. Politicians must take the courageous step of confronting this controversial issue. A comprehensive population policy will raise many troublesome legal and moral issues, and these issues should be squarely and honestly addressed. Most importantly, discourse on domestic population policy must continue.

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NOTES

1. Population biologist Paul Ehrlich discusses human impact on the environment using an equation: $\text{IMPACT} = \text{POPULATION} \times \text{AFFLUENCE} \times \text{TECHNOLOGY}$. Paul & Anne Ehrlich, *Healing the Planet: Strategies for Resolving the Environmental Crisis*, 1991. While high-tech, sustainable technologies are likely to increase the efficient use of resources, even high-tech equipment requires resources and power. Decreasing our level of affluence would be another way to reduce our impact on the environment, but reducing the standard of living in the U.S. (or anywhere else) is not a realistic option. If anything, levels of affluence will probably increase. Therefore, our only realistic hope of reducing our impact on the environment is by stabilizing or reducing population levels. *Id.*
2. United States Department of Commerce, Economics and Statistics Administration, Bureau of the Census, *Population Projections of the United States by Age, Sex, Race, and Hispanic Origin: 1993 to 2050*, Current Population Reports, Series P25, no. 1104, 1992.
3. *Id.*
4. *Id.*
5. *Id.*
6. Paul & Anne Ehrlich, *Healing the Planet: Strategies for Resolving the Environmental Crisis*, 1991.
7. *Id.*
8. Statement of the United States of America, *The Mexico City Conference: The Debate on the Review and Appraisal of the World Population Plan of Action*, Population Division, United Nations Dept. of International Economic and Social Affairs, 1985 (emphasis added).
9. Statement of the United States of America, Population Information Network, United Nations Population Division, 1994.
10. Effects of Population Growth on Natural Resources and the Environment: Hearings before a subcommittee of the House Committee on Government Operations, 95th Cong., 1st Session, 1969.
11. Family Planning Services and Population Research Act of 1970, 42 U.S.C.A. 300 et seq. (amended 1975).
12. 42 U.S.C.A. § 4331(b)(5).
13. Robert Ornstein and Paul Ehrlich, *New World New Mind*, 1989.
14. Robert M. Hardaway, *Population, Law, and the Environment*, 1994.
15. Albert Gore, *Earth in the Balance*, 1992.
16. The traditional argument of such groups is the "exaggerated claim that virtually any birth control policy will almost inevitably lead to abortion." *Id.*. Under no circumstances should abortion be advocated as a method of birth control or population control. As discussed *infra*, personal decisions such as these must be respected by any population policy. Availability of abortion should be an integral part of a nation's overall policy to respect individual choice regarding this fundamental right. *See infra* note 3 and accompanying text.
17. 381 U.S. 479 (1965).
18. This article is not meant to suggest that reproductive rights are not deserving of heightened protection as fundamental rights. Clearly, decisions regarding procreation are some of the most personal and important issues a person can face. The integrity of the individual requires that these personal decisions be duly respected by government. This article merely points out the fact that even fundamental rights are not absolute, and may sometimes be limited in pursuit of a compelling state interest.
19. *See, e.g., Akron v. Akron Center for Reproductive Health, Inc.*, 462 U.S. 416 (1983).
20. *See, e.g., Hodel v. Virginia Surface Mining and Reclamation Ass'n, Inc.*, 452 U.S. 264 (1981).
21. Charles F. Wilkinson, *Crossing the Next Meridian*, 1992.

22. 42 U.S.C.A. § 4332(2)(C) reads that all agencies of the federal government shall:

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on --

- (i) the environmental impact of the proposed action,
- (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
- (iii) alternatives to the proposed action,
- (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
- (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain any comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of Title 5, and shall accompany the proposal through the existing agency review process . . .

23. If taken to its logical conclusion, this rationale would seem to require an EIS for most social welfare legislation. After all, human levels of affluence and population affect our impact on the environment. Many courts, however, have refused to read NEPA this broadly, stating that reading such elaborate procedural requirements into every federal program which arguably affected the environment would be *reductio ad absurdum*. *C.f., Defenders of Wildlife v. Andrus*, 627 F.2d 1238 (D.C. Cir. 1980).

24. Robert M. Hardaway *Population, Law, and the Environment*, 1994.