"The time has already come when each country needs a considered national policy about what size of population, whether larger or smaller than at present, or the same, is most expedient. And having settled this policy, we must take steps to carry it into operation."
—John Maynard Keynes, *The Economic Consequences of the Peace* 8 (1920).

Located in the lobby of the Department of Commerce building in Washington is a large display showing the estimated size of population of the United States. Every few seconds, another addition is recorded; in the spring of 1960, the estimate reached 180,000,000, a number that, if borne out by the census, means that more than 30,000,000 people have been added in the past decade. On a planetary scale, the rise is even more spectacular: "In the last 20 years, the human race has increased by some 700 million. In the next 20 years, well over one billion people will be added if today's growth rates continue." The implications of this surge in numbers of human beings for the American political economy and public law constitute the burden of this article. Its central thesis is the relatively simple, albeit heretofore strangely neglected, proposition that population growth will create the need for more organization, which, in turn, will result in the further enhancement of group (including societal), rather than individual, values. If continued, the tendency could result in such a diminution of personal freedoms as to approximate the conditions of totalitarianism.

In setting out this thesis, the writer does not mean to imply that population growth is the sole cause of the trend toward greater control; rather, it is to be considered as one of the chief factors. While it might be possible to suggest an hypothesis running something like this: the balance between population and availability of resources determines the types of institutions that are erected to fulfill the demands of people, such a proposition would be faulty simply because it is unilinear. Population growth is one of the several current visible trends that coalesce to produce the transformation of a society in which individual values are paramount to one in which

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the group dominates. The urbanization of society, the collectivization of economic activity into huge corporate concentrates with their accompanying trade unions, the change in nature of government from the “Night-watchman State” to the “Security State,”\(^3\) the rapid depletion of natural resources, the dangers from hostile ideologies and national power centers, the rise of mass democracy and the trend toward equality—all of these and more merge into an unmistakable movement away from individualism and toward a new type of society, one in which the person qua individual tends to be submerged into a congeries of collectivities. The point of the present article is that present population growth is both an efficient cause of this general trend and, if continued, a factor that makes the posited end inevitable. Already a “new society,”\(^4\) in which the United States bears little resemblance to the nation of even a century ago, the American people face the prospect of a social structure described by Professor Harrison Brown as follows:\(^5\)

As our population grows, as the pressures from outside become even more intense, as our industrial network becomes increasingly complex, as the problems of military defense become even more involved, we as a democratic society will be confronted internally by extraordinarily difficult problems. We have only seen the beginnings of rules and regulations designed to bind men’s actions. As time goes by, the people of the United States will be steadily driven toward increased organization, increased conformity and increased control over the thoughts and actions of the individual.

I

A Backward Glance

At the outset, it is instructive to pose a question that, although self-evident, has received little attention: What are the reasons for the birth and growth of the “open” societies\(^6\) of the western world? These societies are unique in time and space. No comparable social structure developed prior to them, not even in the era of Grecian “democracy”—based as it was on the mass of the people being in a condition of slavery. And not in other areas of the planet: an open society is to be found only in the western—i.e., western Europe and North America—part of the world, and in no other. What happened, roughly 300-500 years ago, that permitted the growth of nations that placed a premium on the individual qua individual? To that question, no satisfactory reply has been set forth. Nevertheless, an answer would be extremely helpful in determining the continuing viability of government systems based on values of individualism.

The question asks too much for answer here, space not permitting more than raising it. It is, nevertheless, of interest to note that a number of important de-

\(^5\) Brown, The Prospective Environment for Policymaking and Administration, in Brookings Institution, The Formulation and Administration of United States Foreign Policy 139, 161 (1960) (a study prepared for the Senate Committee on Foreign Relations, 86th Cong., 2d Sess. (1960)).
\(^6\) The term is taken from Karl R. Popper, The Open Society and Its Enemies (1947).
developments all took place within approximately the same historical period, and it may be that inquiry into their antecedents and derivations could produce some meaningful insights. These include the Protestant Reformation, the rise of capitalism as an economic system, the rise of political democracy, and the beginnings (circa 1650) of the "population explosion" now so much a subject of concern. In sum, these developments, all of which took place during the period of 300 to 500 years ago, grew out of a set of social conditions peculiar to western Europe. Something took place then that triggered their growth. What that something was may have been the discovery, exploitation, and colonization of the "new world." In brief, the "new world" hypothesis of historian Walter Prescott Webb helps us understand, it seems to the writer, the rise of the western "open" society. Webb's views, which he set out in detail in The Great Frontier, do not, it should be added, coincide exactly with the conclusion just suggested; but even so, he comes close to it, as the following statement reveals:

This book is based on the hypothesis that the Great Frontier . . . has been one of the primary factors in modern history. The major premise is that the sudden acquisition of land and other forms of wealth by the people of Europe precipitated a boom on Western civilization, and that the boom lasted as long as the frontier was open, a period of four centuries. A corollary of the major premise is that our modern institutions, as distinguished from medieval, were differentiated and matured during a boom, and are therefore adapted to boom conditions.

The evidence tends to show that the frontier closed in the period between 1890 and 1910. It is assumed that the frontier was open as long as there remained extensive areas of royal or public domain which the sovereign Powers had not yet alienated, which had not passed into private hands. It was the constant distribution on a nominal or fee basis of the royal or public domain that kept the boom going, and that gave a peculiar dynamic quality to Western civilization for four centuries. It was in this atmosphere and under these conditions that democracy, capitalism, and individualism of the modern type came to their dominant position.

The point to be noted here is that the population surge beginning around 1650 occurred during a time when social conditions permitted an open society—it might possibly be said that the population expansion was a resultant of those conditions, particularly the opening of the Great Frontier—but that today's rapid rise in human numbers is taking place under conditions that lead ineluctably to a "closed" society. The necessary corollary to the Great Frontier hypothesis is that the institutions that reflected the social conditions of the 1500-1900 period of history are not necessarily adaptable to a different period and, in fact, are likely to change significantly. That we are already into that new era, and that there is persuasive evidence of the creation

On the relationship of the rise of Protestantism to capitalism, see Max Weber, The Protestant Ethic and the Spirit of Capitalism (Parsons transl. 1930), and Richard H. Tawney, Religion and the Rise of Capitalism (1926). On the relationship of Protestantism to democracy, see A. D. Lindsay, Christianity and Economics (1933).


Id. at 413.
of new institutional patterns, is the thesis of this article. The core principle running through the new ways of accomplishing the necessary jobs of society is that of control, control over individual behavior in the majority of its manifestations.

II

Population and American Institutions, Including the Economic System

That the problems brought about by rapid population growth, internally and abroad, create the need both for greater governmental intervention and the concomitant imposition of more control measures may be illustrated by reference to three different factual situations: (a) the relationship of population growth to economic prosperity; (b) the control of population growth; and (c) the development of the “backward” areas of the world. In all of these can be seen the need for the direct application of the public law of greater societal control over the individual. And this will come about irrespective of whether or not continuing population growth means greater prosperity, or whether or not some finite limit to population expansion should be established.

A. Population Growth and the American Economy

Economists generally accept the existence of a direct correlation between population growth and economic prosperity. Sharp disagreement, however, is evident as to the meaning to be ascribed to population-resource and population-gross national product ratios. A brief indication of the opposing schools of thought will set the picture: On one side are those who believe that economic prosperity is dependent upon a steadily rising number of human beings, Colin Clark being perhaps the most extreme of this group. Opposing them are those who see long-range deleterious effects flowing from a burgeoning population, Dr. Earle L. Rauber and Professor Joseph J. Spengler being representative of this attitude. Clark has had this to say: “Any foreseeable rate of population increase, in any part of the world, can be economically provided for at a satisfactory and indeed rising standard of real income, subject to three conditions...” The editors of Time magazine put it this way: “Gone for the first time in history, is the worry over whether a society can produce enough foods to take care of its people. The lingering worry is whether it will have enough people to consume the goods.”

1 Clark, Population Growth and Living Standards, 68 Int’l Lab. Rev. 99, 117 (1953). The three conditions listed by Clark are: Free emigration; assistance in the industrialization of the densely-populated nations, such as India; and direct aid to the smaller, weaker countries without natural resources.

2 Time, Jan. 10, 1955, p. 11.
which will of necessity begin to decline."\textsuperscript{13} And as Professor Spengler has stated it, "Population growth is really income-depressing."\textsuperscript{14}

No attempt will be made here to choose between the two schools of thought. Rather, the point sought to be made is that, whatever school one adheres to, the result will be increased governmental control, the bureaucratization of society, and diminution of individual liberties. When fast-rising population curves are plotted against diminishing supplies of natural resources, the need to husband and to allocate those scarce resources becomes more and more important. Already the United States is, as the Paley Commission noted several years ago, rapidly running short of vital materials.\textsuperscript{15} Increasingly intense pressures of population on resources will, that is to say, bring about the need for improved organizational techniques, whether public or private. In this process, the individual will more and more be submerged. Working in the same direction is the policy in the United States of maximum employment, as enunciated in the Employment Act of 1946.\textsuperscript{16} In order to provide enough jobs for the millions of new workers who are appearing at the very point in time when such techniques as automation are making the need for a mass working force obsolete\textsuperscript{17} will require programs pointing similarly in the direction of more governmental intervention. The conclusion, accordingly, seems unavoidable that whatever the relationship between population growth and economic prosperity may be, the economic system will ever increasingly be societally-controlled through public and private collective action.\textsuperscript{18}

There is, of course, ample evidence already observable to buttress that conclusion. One need look to no more than the oft-noted growth of the corporate enterprise, the large national trade union, the farmers organizations, the trade associations, and other similar economic institutions, on the one hand, and the steadily increasing quantity of governmental economic programs, on the other, to see that the line between public and private economic action is becoming blurred and, if continued,

\footnotesize{\textsuperscript{13} Rauber, Population and Economic Growth, 13 Population Bull. 2, 7 (1957).}
\footnotesize{\textsuperscript{15} See President's Materials Policy Comm'n, Resources for Freedom (1952). See also Osborn, Myth of America's Endless Resources, 35 Science Digest 11 (1954).}
\footnotesize{\textsuperscript{17} See, e.g., Norbert Wiener, The Human Use of Human Beings (1950); Howard Boone Jackson & Joseph C. Roucek (Eds.), Automation and Society (1959).}
\footnotesize{\textsuperscript{18} Cf. Barnes, Democracy and the Birthrate, 10 Antioch Rev. 435, 436, 442, 444 (1950): "If population pressure is not controlled there will be increasing need for more regimentation, and governments must move more and more toward totalitarianism. Hungry, frustrated, resentful people will have to be kept in line and apathetic people told what to do. Free enterprise, civil liberties and respect for the individual will be inconsistent with order and security. . . . In short, our problem is both technical and social but its social aspect, the attitudes of people, is the more serious—and the one most cheerfully ignored. . . . Though I dislike and fear regimentation I see no practical alternative to more government control in this area."}

Of interest in this connection is Michels's, "iron law of oligarchy," enunciated in Robert Michels, Political Parties (1949) (first published in Germany in 1911): "It is organization which gives birth to the domination of the election over the electors, of the mandataries over the mandators, of the delegates over the delegators. \textit{Who says organization says oligarchy."} Id. at 401. (Emphasis added.)
The closing of the American frontier coincided in time with the growth of large private collectivities and the rise of positive government; and population increase will insure the continuation of those developments.

B. The Control of Population Growth

If the *economics* of population growth will necessitate continuing control programs, so, too, will the *biology* of population—the possibility and desirability of placing restraints on increase in human numbers. Here, again, differences of opinion exist between those (again, Colin Clark takes the extreme position) who profess the belief that growth can take place indefinitely and with no finite limitation, and those who maintain that there is an urgent need for immediate measures of population control. The Roman Catholic hierarchy is, in the western world, a most influential advocate of added population, although its policy is usually couched in terms of antagonism to contraception as a control of birth. Clark has taken the astonishing position that there is no limit to population expansion—that if the Earth gets too crowded at some time, the excess of people can be handled by blasting them up in huge satellites to live in artificial planets orbiting through space. Against that view may be posed the conclusion reached by the more alarmed students of demography, such as Robert C. Cook, who has maintained that “the population boom is as great a threat to mankind as the nuclear bomb.” Or as Julian Huxley has put it:

And as the balance between resources and human numbers is upset, the quality of the population will, without question, go down.... We have reached a phase where the only alternative to man’s becoming a pathological phenomenon is to practice a conscious population policy.... The mere quantitative increase in number of human beings is not itself a desirable aim: improvement of life and health, and quality and variety of experience and activity must be our goal.

The point of agreement here, even among the more extreme of the proponents and opponents of stringent birth-control measures, is that a balance between population and resources is important.

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19 For a development of some of these matters, see Eugene V. Rostow, Planning for Freedom: The Public Law of American Capitalism (1959); Hanslowe, Administration by Visible Public and Invisible Private Government (to be published).

20 Compare, for discussions of various aspects of this, David Potter, People of Plenty (1954), with Joseph Wood Krutch, The Desert Year (1952), and Hacker, The Specter of Predictable Man, 14 Antioch Rev. 195 (1954), and Tillich, The Person in a Technical Society, Perspectives USA, Summer 1954, p. 115.

21 The point is so well known as to require no documentation. For a statement on point, however, see Foreign Aid and the Baby Boom, 188 Catholic World 184 (1958): “Some governments will resort to birth-control campaigns but they will find that it’s no easy task to sell a reprehensible practice to people who are close to the soil and who, like Gandhi, have nothing but contempt for the use of contraceptives.”

22 Clark, World Population, 181 Nature 1235, 1236 (1958): “In the very distant future, if our descendants outrun the food-producing capacity of the Earth, they will by that time be sufficiently skilled and wealthy to build themselves artificial satellites to live on.”


25 Admittedly, this would be difficult to define. See infra pp. 626-38 for a discussion of “optimum population.”
tion and resources is necessary. That balance might be struck at a high proportion of people (up several billion from those now in the world) or a lower level (at, say, a total of three or four billion people in the world), and it might be established at a relatively higher or lower scale of economic well-being than that now existing. But if the balance is to be maintained at a point of relatively high prosperity, then, as we have seen above, control measures will be necessary. The argument can now be taken one step further: Whether birth-control measures are imposed or not, there will still be more need for governmental intervention and influence on the behavior patterns of individuals. If, that is to say, it is decided that a public policy of birth control should be instituted, more likely than not this must, if it is to be successful, be accompanied by programs designed to persuade or convince people it is in their interest to reduce the number of new births. Education, as has been thus far proved in India, is unlikely to do the job. Thus, government could impose tax penalties rather than benefits for large families, eliminate its programs of aid to dependent children and school lunches, and modify the other programs such as the selective service laws that have the result of encouraging population growth. At the same time, state governments could repeal their laws making abortion a criminal offense. Such governmental action would doubtless have some effect on population levels—but at the cost of individual choice.

In like manner, if government, as in the United States, chooses not to have a population policy, except the policy of having no policy and permitting secondary effects of other policies to influence population growth, and always assuming that population growth continues at or near the present rates, government control will also be increasingly necessary. When, as has been the case, population growth is accompanied by urbanization, there comes with it the ancillary result of the need for government to intervene to take care of the host of problems ensuing from a citified populace. The need for rational control of resources and the planned production of consumer goods would also become irresistible. Again, individual effort becomes downgraded. And if the time ever comes when saturation of population exists and Colin Clark's satellites are pressed into use to siphon off some of the pressure, that, too, would require governmental control, both to produce the satellites and to choose those who would be banished (or allowed to escape, depending on one's viewpoint) to life on an orbiting mechanical planet. The end is more control, whichever way the knife cuts.

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26 See the article in the N.Y. Times, Jan. 17, 1960, p. 4E, col. 3, for an account of the failure of attempted birth-control programs in India: "Indian leaders are alarmed by a rapid population increase which an official birth control program has failed to stem. If the increase continues, they say, it could thwart their most ambitious economic development plans."

27 There is, of course, no official American policy dealing directly with population. But there are many programs that have secondary effects on growth and size of population.

28 This development is only too evident during recent years. Urban blight seems to be a pervasive characteristic of the American scene.

29 Other factors would, of course, influence such a development; for example, the military and other national security needs are one of the most important forces driving toward the same end. Cf. Adolph A. Berle, Jr., Power Without Property: A New Development in American Political Economy (1969).
C. Population and Economic Development Programs

When in July 1959, the Draper Committee recommended that the United States assist "in formulating programs designed to deal with the problem of rapid population growth" in the less-developed nations, an organ of the American Government for the first time in history took an official position on the global population problem. This event is rendered no less noteworthy by the President's decision not to follow that recommendation with official policy, but to leave it to the activities of private organizations to disseminate birth-control information and other forms of assistance to the poverty-stricken peoples of the underdeveloped regions. American policy has thus far been limited to death-control measures in those regions—through health programs, participation in the World Health Organization, distribution of insecticides, and the like. The United States now encourages population growth, that is, even though it is clear that the rise in numbers exacerbates, rather than resolves, the problem of poverty among the peoples of the former colonial areas. That there is a high degree of relationship between the rising population and the capacities of those peoples to raise their levels of living is clearly evident. The population explosion is largely canceling out whatever gains in productivity have been made in recent years: The population problem has become the most fundamental of all human problems. It affects every aspect of a man's social life, individual, national, and international. . . .

Nonetheless, in most countries, particularly underdeveloped ones, population growth defers or nullifies most programmes for improvement in education, public health, sanitation or rural recovery.

The need for a rational world population policy based on and balanced between the total population numbers (present and potential) and the basic needs and the available resources within the context of our technological knowledge cannot be over-emphasized.

That statement, by a competent Indian observer, finds support from numerous sources, including the Draper Committee, which maintained that "the increase in food production in most of the underdeveloped countries has been falling behind the increase in population," and Dr. Kingsley Davis, who tersely states that the gap in living standards between the industrialized West and the remainder of the world, 33

33 President's Comm. to Study the United States Military Assistance Program, Third Interim Report, Economic Assistance Programs and Administration 4 (1959) [hereinafter cited as Third Interim Report].

31 "The present rapid rates of population growth result primarily from a decrease in mortality rates rather than from a marked increase in fertility rates. Public health campaigns, especially in the less developed areas, have been phenomenally successful in many countries. In some instances, death rates have been cut by as much as 30% in a single year and 50% in the short span of 10 years. This is a great humanitarian achievement. Nevertheless, continuation of the traditionally high fertility rates results in rapid population growth." Third Interim Report 44. The United States has, of course, been a leader in promoting death-control measures throughout the world.


33 Third Interim Report 44.
already wide, is growing.\textsuperscript{34} Even the Roman Catholic hierarchy has revealed perturbation at the manner in which growth in numbers counteracts improvements in technology and food production: "The rapid population growth places such a heavy burden on plans for economic development, that in recent years increasingly more . . . argue for the introduction of a restrictive population policy."\textsuperscript{35} The Church recognizes the need for "some kind of economic planning to help increase the production of food in these underdeveloped sections. . . . Economic planning, however, . . . usually means the government that does the planning must become a Welfare State exercising controls over its natural resources and native labor."\textsuperscript{36}

That note of control by government is the one emphasized here. Fast becoming a truism is the idea that something has to be done about the growing disparity in wealth and well-being between the industrialized West and the poverty-stricken majority of the world. What that "something" is, however, can only come from government and can only come through the imposition of more controls—over resources, over individuals, over institutional patterns of behavior.\textsuperscript{37} Again, population growth enhances the likelihood of social control of individual activity, and thus buttresses the similar tendencies evident in the situations noted above.

For American institutions, the obvious interdependence of our national economy and economic well-being with that of the remainder of the world has often been noted and needs no present restatement.\textsuperscript{38} "Over-population in Asia and Africa," it has been asserted, "threatens not only the economic well-being but the very existence of our nation."\textsuperscript{39} For our external commitments and foreign policies, the conclusions recently reached by the Stanford Research Institute, in a report to the Senate Foreign Relations Committee, fix the dimension of the problem:\textsuperscript{40} World hunger and population control present major long-term international policy problems to the United States and to the other nations of the world.

In a finite world some means of controlling population growth are inescapable. The traditional means have been disease, famine, and war. If other means are to be substituted, conscious national and international policies will be required.

Population pressures can become significant causes of social unrest and war. In certain parts of the world overpopulation is already prevalent, and new approaches to the problem are urgently required . . .


\textsuperscript{36} Foreign Aid and the Baby Boom, 188 \textit{Catholic World} 184 (1958).

\textsuperscript{37} The unlikelihood of such measures as private foreign investment providing the assistance necessary is developed in Gardner, \textit{International Measures for the Promotion and Protection of Foreign Investment}, in \textit{American Society of International Law, Proceedings} 255 (1959).

\textsuperscript{38} Cf. Myrdal, op. cit. supra note 34.

\textsuperscript{39} Commager, \textit{The Enormous Increase in Population}, in 1 \textit{Comm. for Economic Development, Problems of United States Economic Development} 116 (1958). "No American economic problem exists in isolation. Our economy is part of the world economy; what happens to it depends on what happens throughout the world, and not in the economic sphere alone." \textit{Id.} at 118.

\textsuperscript{40} Stanford Research Institute, \textit{Possible Nonmilitary Scientific Developments and Their Potential Impact on Foreign Policy Problems of the United States} 40 (1959) (a study prepared for the Senate Committee on Foreign Relations, 86th Cong., 1st Sess. (1959)).
D. Summary

The conclusion to be drawn from study of these three different aspects of population growth is simply stated: More control, principally through governmental programs, is inevitable. The only question is whether it is to be developed with at least attempted rationality and with due regard to the preservation of democratic values, or whether affairs will be allowed to drift into conditions approaching authoritarianism. “The genius of American democracy,” we have been told, “comes not from any special virtue of the American people but from the unprecedented opportunities of this continent and from a peculiar and unrepeatable combination of historical circumstances.” If the American people are to retain an “open” society, the need is evident for a population policy not only within the United States, but also throughout the world, that will permit the flourishing of the conditions leading to the enhancement of the integrity of the individual. At this time, the trends noted above give only faint hope of such a development, a pessimistic conclusion underscored by the increase in organizational activity in society and reflected in changes in law, particularly public law. It is to these latter aspects of the control problem that we now turn.

III

THE ORGANIZATIONAL REVOLUTION

The theme for this section can be taken from the title of a recent book by Professor Kenneth E. Boulding, The Organizational Revolution. Although Boulding’s purpose was to discuss the question of ethics in economic organization, nevertheless, the tendencies toward collectivized behavior patterns that he has discerned have wider relevance. When added to the historical development of the trend toward organizational activity, which has been set forth by Roderick Seidenberg, it is readily to be concluded that collective, bureaucratized activity is becoming the norm of social life. Or as has been put elsewhere, “the individual spends his life as a member of groups and is significant only as a member of a group.” The point here is that the trend toward “organizationalism” is greatly enhanced by the rapid expansion in human numbers. As Boulding tells us, “the ‘organizational revolution’ ... consists in a great rise in the number, size, and power of organizations of many diverse kinds, and especially of economic organizations.” Seidenberg remarks:

43 RODERICK SEIDENBERG, POST-HISTORIC MAN (1950).
45 Boulding, op. cit. supra note 42, at xi.
Modern man has learned to accommodate himself to a world increasingly organized. The trend toward ever more explicit and consciously drawn relationships is profound and sweeping; it is marked by depth no less than by extension. Affecting virtually every aspect and condition of man’s affairs, it is everywhere apparent. . . .

The eclipse of the individual is implicit in all the trends that point toward the future: indeed the tendency has already gone so far that we are likely to believe an inevitable reaction must set in, disproving the entire principle. But though such a contrary movement is already in evidence, its effects will prove illusory. In the confusion of forces that confront us nothing is plainer than the steady drift toward ever wider and more inclusive social relationships and, by the same token, a corresponding pressure upon the individual toward greater conformity, coherence, and compliance in ever wider arcs of life.

The reflection in American law of the change from an individualistic basis of law to one socially dominated may be seen in a number of legal categories. These can merely be adumbrated here, space limitations not permitting a fuller exposition. But to take some examples among many, much of the detail within the doctrinal categories of constitutional and administrative law, of contracts, torts, and property, reflects the changing nature of the American system of law. In each of these classifications may be seen the effect of the organizational revolution changing a system of individual-centered law to one of social or group basis.

Even the fundamental law of the Constitution illustrates this development. Much of the constitutional law of recent decades—that dealing with personal liberties and civil rights—only ostensibly is cast in individualistic terms. As a recent analysis tells us, the Supreme Court in these cases has, in fact, been creating a constitutional law of associational activity. It is spelling out the rights of members of a group in such decisions as the Flag Salute Cases, the White Primary Cases and a number of the cases in labor law such as Steele v. Louisville & Nashville R.R. Explicit recognition of a constitutional right to belong to a group came in the 1958 decision in NAACP v. Alabama, in which the Court said that freedom to associate is one of the liberties protected against improper governmental action. And by upholding congressional action in such legislation as the National Labor Relations Act, the Court has placed its imprimatur of approval on governmental promotion of associational activity. Constitutional law today reflects what Earl Latham has called “the group basis of politics,” what William H. Whyte has termed the replacement of the Protestant Ethic by the “Social Ethic,” and Peter F. Drucker’s view that it is “the

47 Id. at 88.
48 Robert A. Horn, Groups and the Constitution (1956).
51 323 U.S. 192 (1944).
organization rather than the individual which is productive in an industrial system.\textsuperscript{56}

With the rise of "positive" government has come the vastly increased and steadily increasing importance of administrative law—an offshoot of constitutional law, in which the relationship of the individual to the State is spelled out in great detail. Administrative law, the public law of government intervention into societal affairs, is characterized by the immense discretion accorded governmental officials through delegations of legislative authority bound by only the vaguest of standards. It is also noteworthy for the extent to which notions of the public interest are allowed to override notions of individualism bound up in the concept of due process of law.\textsuperscript{57} The attenuated nature of controls on administration, whether judicial or legislative, indicates that the individual interest is often downgraded in favor of the official's view of the social good. A few recent decisions by the Supreme Court—\textit{Kent v. Dulles},\textsuperscript{58} \textit{Greene v. McElroy},\textsuperscript{59} \textit{Cole v. Young},\textsuperscript{60} and the like—are really aberrations in the flow of administrative law doctrine, both substantive and procedural.

Turning to the allegedly "private" law categories of contract, tort, and property, similar nonindividualistic tendencies are quite apparent. In each of these branches of law can be seen evidence of a movement of American society "from contract to status," to reverse Sir Henry Maine's famous assertion that "in progressive societies," the movement has been from status to contract.\textsuperscript{61} The new form of status, it should be noted, is not that of medieval times and ancient law, but striking parallels can be drawn between the two. Contract, Wolfgang Friedmann tells us, "is becoming increasingly institutionalized"\textsuperscript{62}—through "compulsory terms, standardized conditions, collective bargaining,"\textsuperscript{63} and the like.

The result is a new kind of status, for the worker who must accept the conditions set for him by groups of employers and labor officials, while the consumer must eat, dwell, or travel on terms prescribed for him by standardized contracts. Similar developments can be traced in the field of tort liability and, to some extent, in criminal law. The theory corresponding to Maine's contract dictum would show a movement from liability and responsibility for acts as such, to liability for actions or omissions for which a morally fully responsible individual would answer because he has exercised freedom of choice. Yet, we have seen that tort liability is increasingly moving away from the fault principle—which, itself, has lost the moral connotation of former centuries—and that, to an ever-increasing extent, status-like insurance is substituted for the individual responsibility flowing from the tortious act.\textsuperscript{64}

\textsuperscript{56} Drucker, \textit{op. cit. supra} note 4, at 6.

\textsuperscript{57} The failure of government officials to give to the concept of the public interest even the limited content now evident in the concept of due process itself permits of more discretion to those officials, which, in turn, aggrandizes governmental power. For a discussion of that failure, see WAYNE A. R. LEYS & CHARNER M. PERRY, PHILOSOPHY AND THE PUBLIC INTEREST (1959).

\textsuperscript{58} 357 U.S. 116 (1958).

\textsuperscript{59} 360 U.S. 474 (1959).

\textsuperscript{60} 351 U.S. 536 (1956).

\textsuperscript{61} HENRY MAINE, ANCIENT LAW 100 (Everyman ed. 1861).

\textsuperscript{62} WOLFGANG FRIEDMANN, LAW IN A CHANGING SOCIETY 124 (1959).

\textsuperscript{63} Id. at 487-88.

\textsuperscript{64} Id. at 488.
In property law, the impact of public law brought about by changing interpretations of the due process clauses of the Constitution, has greatly diminished the power that property ownership once brought. Although it is true that there is widespread acceptance of the idea that private property "is an essential condition of human freedom," still property as power has been vastly changed: "The abdication of individual property rights as a basis of social power is the central institutional change of our times." We are now well into an era when power is exercised "without property," as compared with a system in which power flowed from property.

These changes in law reflect the organizational nature of American society, and the diminution of individual values and accompanying enhancement of group values. The reason for mentioning them in the context of population growth and control is to suggest that the drift toward more public law and a more pronounced social basis for law will be accentuated by the population changes now so evident in the United States. This is not to say that population growth will be the only cause of such a development, but rather that it will lend added impetus to that movement, however caused.

IV

The Concept of Optimum Population in a Democratic Society

This article is prefaced with a quotation from John Maynard Keynes in which he asserted that each country needed "a considered national policy about population." Enough has perhaps been said to indicate that an understanding of the political economy of population growth, both within and without the United States, is of major importance in the continuing struggle to retain those personal liberties and rights that are the essence of the American constitutional order. Sooner or later, the American people will have to face up to the question of population and to formulate a policy concerning the numbers of people in this nation.

What such a policy should be cannot be more than adumbrated in the broadest of terms at the present time. It is suggested that a concept of optimum population should be at the center of any considered population policy. In what terms can such a concept be phrased? Most commentators on the notion tend to think in terms of economic criteria. Thus, the idea that there is a certain size of population that, in a given area and under given conditions, "corresponds to the highest attainable level of living" has been broached by a number of writers. A concept of "economic optimum population" was, as a result, defined as "that size of population which, given the technical and economic conditions existing in a given country, allows maximum per capita output." Others have suggested that military requirements should be a

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67 See Berle, op. cit. supra note 29.
70 Id. at 233.
controlling factor in optimum population. But economic and allied matters seem to overemphasize just one of several criteria that should be taken into consideration in any policy looking toward the attainment and maintenance of optimum population. These include such other important values as privacy, of aesthetics, of the retention of large areas of open and wild land, and other similar conditions underlying the "open society." It is, accordingly, suggested that the central theme of a concept of optimum population should be phrased as follows: Population policy should be directed toward attainment of the size of population that would be reasonably likely to produce the conditions (economic, political, and social) enabling the maintenance of a society in which democratic values are maximized.

Of course, what would constitute the optimum or best condition of human life in this or other nations is an extremely controversial subject. Population control, whether for growth or reduction or the maintenance of an equilibrium, involves deep-seated instincts and arouses immediate emotional reactions. It is fraught with the most difficult questions of morals and religion, of personal freedoms and natural rights, and touches the core of both individual and social well-being. Although many nations and peoples have had conscious population policies in the past, often for purpose of reducing or holding down the number of human beings, for the first time, the magnitude of the population problem has reached a planetary scale. No longer can local tribes or city-states or even nations pursue a population policy alone; it is only too evident that the numbers of human beings anywhere, and the resultant pressure on resources, will have profound effects on the value positions of individuals everywhere—including the United States of America. "The United States . . . has no population policy [at present]. In general our attitude, reflecting the 'booster' psychology of earlier frontier conditions, has been that population growth is a good thing. . . ." This lack of policy must now be replaced by a conscious American population program. That program should be one that would be reasonably calculated to further the preservation of the values of individual human dignity imbedded in the democratic principle.

Attainment of such a program will require the application of conscious, purposive thought—in other words, planning. And that planning, it would seem, will largely have to be in the direction of fertility reduction. Repugnant as it may be to one on first exposure to such a notion, the maintenance of a society in which demo-

71 See, e.g., Davis, *Ideal Size for Our Population*, N.Y. Times Magazine, May 1, 1955, pp. 12, 37: "It looks . . . as if a long-run national population policy, if we had one, would have to be a balance between very large numbers for the sheer military and industrial strength they provide, and fewer numbers for the purpose of maintaining a high level of living."
cratic values are paramount probably depends upon it. An optimum population, brought about by social control over births, will ultimately provide more human freedom than would be possible in a society subsisting at saturation level.

The techniques by which such a policy could be carried out would necessitate the most careful study and analysis before being promulgated. The first step would be the need for the influential decision-makers to take a new view of population trends. Heretofore, governmental planning, such as it is, usually has proceeded by using such trends as a point of departure. Thus, from census statistics, it has been possible to extrapolate such requirements as the amount of school equipment needed, to forecast the extent and demand for food production, to predict the number of new houses and highways that would be required, and to determine the probable demand for all other commodities and services. Now government planning—if not the planning by those centers of private governmental power, the corporations—must begin by acceptance of the need for a conscious population policy directed toward the maintenance of an optimum population. 7 Such a policy would be concerned not only with the economics and the military aspects of population, but also with the other values important to a free citizenry. It may well be that no viable answers will be found; the opportunities for rational projection of policies are remote at best. The ability of man to mold society as he will has never been demonstrated; if anything, the evidence is all the other way. Nevertheless, as one astute student of population matters has said, 8

We have no idea whether solutions will be found, or at what cost they may be put to use, but it does appear that, according to contemporary values, the alternative futures opening up for societies with excessive fertility are all quite frightening. We cannot be optimistic and honest at the same time.

CONCLUSIONS

It is impossible to be sanguine about population growth, unless one is to adopt with Pangloss the view that all is for the best in this best of all possible worlds. Opinions may and do differ about the optimum size of population and also about the optimum population growth factor. In like manner, viewpoints on methods of population control may and do differ—emotionally and even violently—about preferred methods of population control. Of all the types of control that have been used, overtly or indirectly, in the past—abortion and infanticide, famine and disease, war and pestilence, contraception and postponed marriages—only those that are directed towards limiting fertility are really useful. The others would require too great a deprivation of strongly-held values. But planned fertility control, preferably on a voluntary basis, could foreseeably produce desired ends of optimum population at the least cost in other values. 9

7 Id. ch. 4.
8 Id. at 63.
9 For a brief discussion of alternatives of future types of society that can be extrapolated from present trends, see Harrison Brown, The Challenge of Man's Future ch. 7 (1954).
"Planning" is, however, a word of opprobrium in the United States, Americans preferring to hold to the myth that theirs is an unplanned society. But that is only true to the extent that a considerable segment of social affairs is not planned centrally —by government. Planning there is, and always has been, and doubtless always will be, on a decentralized scale. That system of planning is the "American way," and it has only been in the past quarter-century that major governmental planning programs have been undertaken and maintained. The suggestion here is that to the need for economic planning—proposed by, among others, A. A. Berle and Dean E. V. Rostow—and strategic planning, there should be added a consciously designed program for the attainment of an optimum population. It could even be that population is so crucial to the resolution of other matters, of whatever type, that it must be brought to the forefront of all other programs.10

10 Berle, op. cit. supra note 29; Rostow, op. cit. supra note 19.

The general tenor of this paper is pessimistic about the survival of individual freedoms in a world of mass population and greatly increased organization. This is greatly to be deplored. Even the measures leading to the desired establishment of an optimum population would themselves be restrictive of human liberty. The choice, however, seems to the writer to be the hard but necessary one of placing limits on some aspects of individual choices in order to attain a desirable end. Seen in that way, the question is one of balancing the interests of individual liberty against the social good in much the same way as takes place under, say, the due process concept and its development. Control over births would, so the hope would be, provide more human freedom than would be possible in societies subsisting at saturation levels. But as Professor Harrison Brown has said, "Precise control of population can never be made completely compatible with the concept of a free society; on the other hand, neither can the automobile, the machine gun, or the atomic bomb. . . . Although rules of behavior which operate [in population matters] are clearly necessary if our civilization is to survive, it remains to be seen whether or not such rules can be reconciled satisfactorily with the ideal of maximum individual freedom." Harrison Brown, The Challenge of Man's Future 263-64 (1954). Both alternatives being grim, the lesser evil to the present writer is that of population control.