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A "CONTINGENCY PLAN" OF ECONOMIC INCENTIVE TO LIMIT U.S. REPRODUCTION

William G. Hollingsworth*

Unfortunately, the most disturbing problems that will arise from a larger population are probably not amenable to technological solutions. As he populates more and more of the earth, man will have to eliminate all forms of wildlife that would compete with him for space and for food; he will increasingly have to flood deserts and fell forests in order to create more farmland, factories, houses, and roads; he will tolerate wild animals, wild plants, and wild landscapes only to the extent that they serve his needs. Highways, factories, and dwellings will occupy much of the scenery; all natural resources, including water, will have to be carefully husbanded. Man will thus destroy all the aspects of the environment under which he evolved as a species and which have created his present biological being.¹

I. RATIONALE—WHAT GOALS AND WHY?

In 1976, human population on this planet passed the four billion mark and presently is believed to be increasing by something like "only" 1.7 percent per year—a growth rate that, if continued, would cause humankind to double its numbers about every 41 years. Such would mean a world population of about eight billion people by the year 2017, sixteen billion by 2058, and so forth to some inevitable stopping point.

Even if the very recent decline from humanity's previous annual growth rate of over two percent continues, the planet's capacity to

feed adequately, to shelter, to enable even minimal care for the health of, and to provide any physical amenities for, an inevitable increased billions of persons is subject to serious doubt. And even if the technological optimists are right in believing that science can provide a nutritionally sound diet for a population of several billion more people, the equally grave question must be asked: What will providing for eight, ten, twelve or more billion human beings on a continuing basis do to the still little understood chemical-climatic-microorganismic base that enables complex plant and animal life to exist on this planet at all?

Even if the environmental-ecological optimists are right in wishfully assuming that more and more billions of people can co-exist with the planet and with each other harmoniously—and the moral superoptimists are right in believing that we human beings shall be self-restrained enough to do so—other questions must also be asked: What would life on and/or "above" the planet be like with two, three, or four times the present human population? What would be the chances for anything resembling personal freedom? What value would society likely accord to an individual human being? How "socially wanted" would each person be apt to feel? What would be the success probability of humankind's efforts, even

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2 Minimal pollution? And no private motor vehicles? And none but absolutely essential energy use?

3 The answers of Rene Dubos to the above questions are not cheerful:

Behavioral changes are also likely to result from population increase. The complexity of social structures will make some form of regimentation unavoidable; freedom and privacy may come to constitute antisocial luxuries and the type of human beings more likely to prosper will be those willing to accept a regimented and sheltered way of life in a teeming and polluted world from which all wilderness and fantasy will have disappeared. The domesticated farm animals and the laboratory rodent on a controlled nutritional regimen in a controlled environment will then become true models for the study of man.

Through technological developments, the earth could probably be capable of feeding, clothing, and battery-keeping many billions of persons. But then nobody would be able to move without impediment and irritating interference. Eventually, half the population would have to be doctors, nurses, or psychiatrists tending to the physical ailments and neuroses of the other half. To this future population, the bomb may no longer be a threat but a temptation: it may appear as the salvation from all evil.

In other words, technological factors such as supplies of food, power, or natural resources and other factors involved in the operation of the body machine and of the industrial establishment are not the only ones to be considered in determining the optimum number of people that can live on earth. Just as important for maintaining human life is an environment in which it is possible to satisfy the longing for quiet, privacy, independence, initiative, and some open space. These are not frills or luxuries but real biological necessities. They will be in short supply long before there is a critical shortage of the materials and forces that keep the human machine going and industry expanding.

Dubos, supra note 1, at 58-59 (emphasis in original).
if far more earnest than our present efforts, to allow every member of the human race a decent chance for well being and self-fulfillment?

Both from the perspective of wishing to maximize humanity's and other living creatures' long-term survival chances and from the perspective of wishing to maximize quality of life prospects for the whole human family, humankind should decide that a human fertility rate in every nation no greater than that needed for that nation's population replacement—long-term "zero population growth"—is a goal demanding attainment as soon as is humanely possible.4

Although the transnational nature and scope of humanity's need to control responsibly its numerical future will surely require world community consensus and international strategies, the political reality of nation-states requires attention to population management _qua intranational_ policy. It is to this latter requirement that this article speaks, with specific focus on the United States.

Considering the extreme urgency of the population crisis in the developing world and also considering that the U.S. fertility rate has, since 1972, been appearing to be below our (U.S.) population replacement rate (exclusive of the effect of continuing immigration) of about 2.11 children per woman per lifetime,5 the reader may question any need to bother with further thinking about limiting population growth in the United States itself. Actually there are several reasons for insisting that at least as a matter of contingency planning we need to devote considerably more thought to formulating this nation's strategies for responsibly limiting its population. First, we have no assurance whatsoever that the United States' recent at-, near-, or just-below-replacement fertility rate is anything other than a temporary dip from our usual situation of a

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4 The fertility rate (children per woman's lifetime) needed for long-term population stability (exclusive of immigration and emigration) depends upon the ratio of girl births to boy births and upon how many babies die before reaching the childbearing years. Because of the latter factor, the rate required can vary significantly from nation to nation. The U.S. replacement rate is about 2.11.

5 See, e.g., _U.S. Bureau of the Census, Current Population Reports, No. 632, Estimates of the Population of the United States and Components of Change: 1930 to 1975_, at 2-4 (1976). Estimates of U.S. fertility are continually updated and published by the Bureau. Interpretations of the data vary, however. Speaking with respect to our reported fall to replacement in 1972, demographer Norman Ryder cautioned that, in view of our increasing tendency to defer babymaking, "[a] more realistic evaluation is that the cohorts now in the mainstream of childbearing will end up with a total [number of offspring] which may exceed replacement by 10 percent or even more." Ryder, _Two Cheers for ZPG_, _Daedalus_ CI, Fall, 1973, at 47.
population-expanding fertility. Interestingly, with respect to most of the world's industrial and supposedly antinatalist nations, the birth dearth worriers have thus far been proven wrong. This is not to claim that they will inevitably be proven wrong again. It is rather to claim that for us to assume that American couples will never again want and have more children than are commensurate with our long-term ZPG—and thus to avoid thinking about what policies we ought adopt if the assumption proves wrong—is foolish social unpreparedness.

Second, the still continuing population growth effect (namely, more couples of childbearing age) resulting from our baby boom lasting from the late 1940's into the 1960's—plus expected net immigration—allows the U.S. scant leeway for fertility rates in excess of the replacement rate. Due to that baby boom, and, to a lesser extent, due to expected immigration, even a 2.11 children per woman replacement fertility rate would give us a U.S. population of nearly 315 million in 2040. Were we merely to resume our 1970 fertility rate of 2.43 children per woman for ten years and then gradually level off to replacement, there would be something like 340 million Americans in 2040. A return to fertility rates comparable to those of the 1960's would produce a dramatically higher population than that. If, henceforth, American couples were once again to have an average of three children in a lifetime, there would be nearly one billion Americans in one hundred years.

Third, because of the disproportionately high energy, material resource, and food consumption demands each American makes upon this finite planet's resources and pollution-coping capacity, U.S. population growth has particularly serious environmental consequences. Even if, as must soon happen, our per capita consumption is reduced, the aggregate benefits to the rest of the world from our consumer restraint will be wholly or partially cancelled out by our own population increases. Looking at the same general point in

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9 One might ask, albeit somewhat ingenuously, why not reduce U.S. per capita consumption enough to correct in toto our unequal share of the world's admittedly finite bounty? The obvious answer is that there are political limits to the degree of economic restraint one can reasonably expect from a society as addicted to affluence as is ours, and that there are emotional limits as to how quickly one can reasonably expect a substantial withdrawal from
a somewhat different way, virtually every American claims the right
to consume goods at a level well above that of most of the world.
For every additional American there is apt to be less of the United
States' (of not unlimited potential) total wealth effectively avail­
able for sorely needed efforts to salvage the global environment and
to assist the genuinely destitute members of the human population
throughout the world in gaining a tolerable life for themselves.
Looked at in either of the foregoing ways, the cost of permitting
above-replacement U.S. fertility is extremely high.

Fourth and last, above-replacement U.S. fertility would set an
unacceptably lax example to the rest of the world. For most of the
"Third World" nations of Asia, Africa, and Latin America, the
attainment of no-greater-than-replacement fertility as soon as is
humanely possible is an essential ingredient for their peoples' hav­
ing any chance for a minimally humane existence in the foreseeable
future.\footnote{Even were they to attain that goal in less than a decade, their populations would be
soaring far into the 21st century, absent mass famine or some other catastrophe.}
Even so, we cannot necessarily expect those nations to accept from the United States the nontoken financial and technical
family planning assistance sorely needed for them to achieve long­
term ZPG unless we ourselves are unequivocally committed to the
same goal within our own borders. The history of colonial exploita­
tion makes any help from the West suspect. Suspicions may be
particularly aroused by family planning assistance, in view of the
emotional and political hypersensitivity of population meddling.
Moreover, there is something fundamentally untenable about not­
underpopulated nation X generously helping nation Y limit nation
Y's population while nation X continues to reproduce at a
population-expanding rate.

The concerns expressed in reasons three and four above warrant
our going a step further and aiming for a U.S. fertility rate no
greater than that necessary for population replacement \emph{adjusted for
the perpetual growth effect of continuing net immigration}. With our
presently expected annual net immigration of 400,000 (exclusive of
extensive illegal immigration, which we can and ought to reduce to
a very small figure), we would thus be seeking a fertility rate in this

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that addiction. The question thus has no practical relevance for the short run and only limited
relevance for the intermediate run. And, with respect to solving the global environmental-
ecological crunch, waiting for the long run is apt to be too late. \textit{See generally} D. Meadows,
\textit{The Limits to Growth, A Report for the Club of Rome's Project on the Predicament of
Mankind} (1972). Limiting its own population growth must thus be \emph{one part} of the United
States' effort to be a world-caring member of the community of nations.
country of about 1.98. Even this rate of reproduction would give the nation a population increase of about 80 million persons before we reached actual ZPG at about 296 million Americans around 2040 or so. Thanks to those women who will bear no children or have only one child in their lifetime, a 1.98 fertility rate does not preclude any woman who wants two children from having them. Nor, for the same reason, is it incompatible with nature’s full dose of multiple births and with some couples’ planning for more than two children.

Since our reception of emigrants from other nations frequently carries at least some humanitarian connotation (though along with considerable benefits to this country!) one may object to any claimed moral or political imperative to reduce our own reproduc-

10 See Coale, Alternative Paths to a Stationary Population, in COMM’N ON POPULATION GROWTH AND THE AMERICAN FUTURE, RESEARCH REPORTS Vol. I, DEMOGRAPHIC AND SOCIAL ASPECTS OF POPULATION GROWTH (1972) at 598. Coale’s fertility figure for long-term ZPG with 400,000 annual net immigration is 1.97, but it assumes a perpetual 2.11 fertility rate in the foreign born population. My figure of 1.98, approximating long-term ZPG fertility for both domestic and foreign born American women considered together, is simply the average between the 1.97 and 2.11 figures, weighted according to the projected ultimately stabilized relative size of the aforementioned two groups of persons under the 400,000 annual immigration assumption.

11 About 58 million of the 80 million increase would be the completed demographic effect of the post World War II baby boom. The resulting stabilized U.S. population of approximately 296 million would exceed by a little over eight percent, or between 22 and 23 million persons, the stabilized U.S. population of about 274 million that would have resulted with zero net immigration (and replacement fertility) since 1970. See id. and Current Population Reports, supra note 6. Perhaps partly because a reduction in U.S. net immigration from its expected figure of 400,000 per year would (1) decrease the projected ultimately stabilized U.S. population to a figure somewhere between 274 million and 296 million persons (“just where between” of course depending on the size of the reduction), and (2) slightly decrease the amount of reproductive self-restraint needed for U.S. ZPG, some commentators have favored a reduction in U.S. immigration quotas. For example, a minority of the Commission on Population Growth and the American Future “felt that the number of immigrants should be gradually decreased, about 10 percent a year for five years. This group was concerned [in part] with the inconsistency of planning for population stabilization for our country and at the same time accepting large numbers of immigrants each year.” POPULATION AND THE AMERICAN FUTURE, supra note 7, at 117. In arguing that U.S. fertility ought not exceed immigration-adjusted replacement, I am admittedly not providing any help toward deciding, nor even taking a position on, the difficult policy question raised by the just quoted passage.

12 Unsurprisingly so, in view of our reported “total fertility rate” (the sum of the year’s fertility rates for each age of women of childbearing age) in 1975 of 1.800 (1,800 births per 1,000 women). CURRENT POPULATION REPORTS, supra note 5, at 3. The Bureau of the Census cautions however:

[The total fertility rate is an annual (or period) measure of fertility, even though it is expressed as a hypothetical lifetime (or cohort) measure ... [It] is affected by the timing as well as the level of fertility ... While it is possible that young women could complete their cohort fertility at this low level, recent survey data on birth expectations suggest that the actual figure may be somewhat higher.

Id. at 2 n.1.
tion to offset an immigration-caused population gain, no matter how large that gain be. There is, however, the likely perspective of other nations viewing the U.S., which includes the widely shared perception that, within limits, a larger population does increase a nation's prestige and potential military strength. From that perspective, the moral and political imperative being here referred to must surely apply once the United States' projected population increase threatened to exceed the aforementioned 80 million gain that would occur with net annual immigration of 400,000 and immigration-adjusted replacement fertility. Were U.S. fertility instead to average 2.11 replacement, and thus not adjust to the perpetual growth effect of our 400,000 per year expected immigration, we would not only be producing a roughly 58 million population increase from understandably allowing our past baby boom to run its full demographic course;\textsuperscript{13} we would also be adding more than 15 million people to the U.S. population by 2010, more than 41 million by 2050, more than 60 million by 2080,\textsuperscript{14} with, under these assumptions, no end to substantial population increases in sight. By no plausible reckoning would this population outlook be consistent with the example of commitment to the soon as reasonably feasible achievement of ZPG that the U.S. ought, as one part of a minimum national example of earth-caring, be sharing with the rest of the world.

With respect to more immediate U.S. self-interest, there is also good reason why immigration-adjusted replacement fertility should

\textsuperscript{13} Though our present population of about 216 million is certainly adequate, for the U.S. to demand of itself immediate ZPG would be an extremely difficult and undesirable undertaking. Due to the presence now of a considerably higher proportion of young persons than would exist under a stable population, there would, for some time, have to be sufficient inducement to persuade the American people to reproduce at an average rate as low as 55% below replacement, later followed by the need for subsequent cohorts to reproduce at an above-replacement fertility rate, followed by the need for more such cycles of gradually diminishing intensity. During these decades of somewhat dizzying fertility goal shifting, there would result, if the shifts were "successfully" effected, an extremely irregular pattern of age distribution. See Coale, supra note 10, at 595-96. A less disruptive goal would be for the U.S. to decide to seek a temporarily below 1.98 fertility rate sufficient to offset the 22 to 23 million increase in the stabilized population that would ultimately result from 400,000 annual net immigration and immigration-adjusted replacement fertility. (The below 1.98 rate would, of course, eventually have to be raised, else the population would eventually disappear.) Although the latter scenario would require a much smaller degree of fertility goal shifting than the former, one must still wonder about the psychological and sociological consequences of officially or unofficially commending different fertility goals to different childbearing cohorts.

\textsuperscript{14} Figures derived from CURRENT POPULATION REPORTS, supra note 6, at 9. The projected population gains assume that childbearing by women immigrants will also average the 2.11 replacement rate.
be viewed as this nation's maximum acceptable fertility for the relevant future. I borrow the words of energy and environmental scholar John Holdren:

But in no event is a population size that is at or near the maximum [possible] likely to be optimum: if availability of resources defines the limit, the maximum implies bare subsistence for all; if environmental constraints define it, the maximum is likely to represent a precariously unstable situation.

. . . [T]he concept of the optimum population hinges on the need for social cultural and environmental diversity, for only thus can a wide variety of preferences be satisfied. At very low population sizes, the raw material for sufficient cultural and social diversity does not exist; near the physical maximum, on the other hand, diversity must be sacrificed in order to maximize efficiency. From the individual's perspective, of course, diversity in the social and physical environments is related to personal options—access to a variety of employment possibilities, living accommodations, educational and recreational opportunities, degrees of privacy, and so forth. With respect to this criterion, then, one can say that the optimum population size is that beyond which further growth closes more options than it opens. The reader may wish to ponder what this definition implies in the case of the United States. For myself, I am unable to think of many options being opened by further population growth (greater variety in airline schedules?), but I can think of a good many that are being closed (the opportunity to escape congestion, to survive without an automobile, to live anywhere but in a city).

My own suspicion is that the United States, with about 210 million people, has considerably exceeded the optimum population size under existing conditions. It seems clear to me that we have already paid a high price in diversity to achieve our present size . . . .

Whether or not Holdren's observations make a compelling case for the nation's committing itself to the goal of negative population growth, when added to the considerations already enumerated, they necessitate the conclusion that an undelayed national commitment to an at least as population-growth-limiting "fertility ceiling" as I am advocating is essential if we wish to maximize our own well being and if we wish effectively and nontrivially to help maximize the well being of all humankind.

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II. THE CHOICE OF REMEDIES—A BRIEF LOOK

Assuming *arguendo* that a political consensus in favor of limiting U.S. fertility to immigration-adjusted replacement or to some other specified norm is sooner or later reached, then comes the question of how to try and actualize the limits agreed upon. The problem is not a simple one. The nation's actual fertility rate is an average resulting from a myriad of private decisions and nondecisions. Even as to the present, or more accurately, as to the recent past, the rate is estimated rather than known. As to the future, it is inherently unknowable and, absent the inauguration of an unprecedented degree of social control, cannot be predicted with any amount of confidence.

Despite the above difficulties, and because of the considerable success of the ZPG movement in this country even without the endorsement of our elected political leaders, one may be tempted to rely upon an intensification of the moral suasion approach should U.S. fertility appear to be exceeding any explicitly or implicitly adopted national goal. This volunteer approach, however, ought not to be the whole of our contingency thinking for two reasons. The first reason is rather obvious: despite its past relative success, the moral suasion approach (along with existing economic disincentives to planning a large family) could easily prove insufficient to prevent or correct a resurgence of population-expanding fertility.

The second reason is less obvious. Assuming, as seems extremely likely, that the global (and domestic?) population and resources outlook will continue morally to require that people, Americans and others, create fewer babies than at least some couples very much want to create, even if it succeeds in the aggregate in holding down U.S. reproduction the moral suasion approach will do a very poor job in the realm of social justice: within the nation it will do a very poor job of allocating the personal sacrifice involved in persons' having fewer children than they often deeply want and would otherwise create were they not faced with the moral imperative to help limit human population growth. The moral suasion approach does such a poor job because individuals differ greatly in their sensitivity to, and in their willingness to sacrifice their own wants to, social-moral demands. Some refuse to sacrifice at all. Some "undersacrifice." Some "oversacrifice."

Accordingly, the greater a society's need to use moral suasion to limit fertility, the more likely it is that persons most mindful of social needs will bear a disproportionate share of the mental pain
involved in having a fewer than wanted number of children.\textsuperscript{16} Granting that a volunteer approach to any social duty has the same essential defect and granting that in some sense virtue is always its own reward, it still seems that in a matter as important to the individual as having children we ought attempt to allocate the burden of social imperatives in a way less exploitive of the socially dutiful. At least this is true if the need for, or the use of, moral suasion to limit fertility is intensified beyond what already exists.

At the opposite, at all thinkable extreme from ZPG via moral appeal would be the imposition of some sort of per person or, more feasibly, per woman reproduction quota to be enforced with some sort of legal sanction (compulsory sterilization? imprisonment?) against the noncomplying adult. Absent some starkly obvious and critical emergency, so Draconian an approach to U.S. ZPG would have near zero chance of public acceptance or even reluctant nonresistance.

Even apart from its unfeasibility and somewhat ghoulish overtones, absent an immediate exigency that would require that everyone be prevented from planning more than two children,\textsuperscript{17} there is reason not to fall in love with the personal quota approach. This approach fails to take cognizance of differences in individual wants and needs and differences in intensity with respect to wants and needs common to all or most persons. If the Smiths would much prefer to forgo automobiles, expensive vacations, power lawnmowers, and air conditioners, in order to have four children, then the Smiths would arguably cause no more environmental problems than the Joneses who would rather have zero children in order to maximize their store-bought pleasures. In such cases, the per person quota approach does an extremely poor job of maximizing, within feasible aggregate limits, each couple's access to their own brand of happiness.

Dissatisfaction with both the coercive quota and the volunteer approaches to attaining and sustaining population nongrowth leads

\textsuperscript{16} The above phenomenon surely includes persons who, largely because of their moral convictions with respect to the global population crisis, deny themselves the joy and personal fulfillment of creating any children at all. In believing that in recent years felt moral duty has been an important cause in more young people’s opting for nonparenthood, I admittedly rely on “soft” and anecdotal evidence. Nevertheless, I am convinced that a cynical denial of the nonrare occurrence of this cause is as unrealistic as the also fictional suggestion that “ZPG duty” is invariably the main reason anyone chooses to have no or few children.

\textsuperscript{17} Such a situation arguably does now exist in several population-exploding, subsistence-lacking nations.
to a third alternative, namely, the use of a market mechanism to avoid a population-increasing level of fertility. But this market or incentive system should be as neutral with respect to income and wealth as is reasonably possible. It ought attempt not to bring about or to maintain stronger fertility self-restraint amongst persons in any one income or wealth group than it helps accomplish or sustain amongst persons in any other. If the system generally succeeds in that respect, it will likely succeed in apportioning fertility-limiting deprivations (i.e., the having of few or no children) amongst the citizenry in such a way that those who, relative to their wants for other costly goods, least want any or many children will be the ones who have no or few children—a considerable improvement over both the moral suasion and the per person quota approaches in minimizing human unhappiness.

Because of the unpredictability and changeability of fertility rates, it would be virtually essential to be able to increase and decrease prospectively the degree of economic fertility disincentive and to be able to do so with reasonable swiftness and ease. Without this flexibility the system would have little chance of encouraging the approximate level of fertility desired for the nation as a whole.

Although the environmental literature has made frequent mention of the possibility and the arguable desirability of using an economic incentive approach either to reduce or to stabilize a nation's fertility, there has apparently been little inclination amongst writers to think through and to set forth in any detail what they have in mind. This article describes a concrete plan, including a specific example of a possible incentive structure, in the hope of encouraging others to improve upon this version and/or to offer one or more alternatives.

There already is considerable economic disincentive to having children in a highly industrialized society. In other words, the status quo employs the volunteer approach only to a partial extent. On the other hand, the proposed use, or, more accurately, the contingently proposed increased use of economic incentives to encourage fertility self-restraint ought not imply that economic considerations are the only or even the chief factor in couples' decisions to have or not to have a child. Nor ought the proposal imply that there are no other social incentives the enhancement of which would help discourage a baby boom resurgence, as well as offering other significant benefits. Women's equality and, for all ages and both sexes, the emergence of adequate structures of interpersonal relationships outside the mode of having lots of children and grandchildren are prime examples. With respect to the latter example, we had best look primarily to private, nongovernmental endeavors.

Though written with the U.S. in mind, much of what follows could likely be adapted to other highly industrialized societies as well. Whether anything like the incentive structure to be presented here would have any plausible chance of soon enough working, or even if (sur-
III. A "Contingency Plan" for the United States

A. The Basic Proposal

With all the foregoing considerations in mind, the proposal is as follows: If and when U.S. fertility should appear to be exceeding our replacement fertility rate adjusted for our expected average annual net immigration, let parents with above-average incomes pay an annual premium or tax according to how many children they produce and let persons with below-average incomes be paid an annual subsidy according to how few children they produce. The subsidy would, of course, be over and above any public assistance to which a household was entitled.

If, as is quite possible, our fertility appears to be exceeding the immigration-adjusted replacement norm when the reader reads this article, the proposal obviously loses its "contingency plan" status and becomes a call for as soon as possible enactment.

Even if the nation's then current fertility and expected immigration estimates suggest that we are apparently not exceeding the immigration-adjusted replacement norm, congressional enactment of the plan on a standby basis would be highly desirable. The prerogative of a future Congress to back off from a previously adopted policy notwithstanding, explicit commitment both to immigration-adjusted replacement as a self-imposed fertility limit and to the adoption of formal economic fertility disincentives if and when needed in order to stay within that limit would (a) offer evidence to the rest of the world of our own serious commitment to a responsible population policy, (b) insure against the needless and (in greater population growth) costly delay of having to engage in an extensive national debate over what, if any, action to take after our fertility was at some future time estimated as being significantly above our implicitly or explicitly adopted limit, (c) likely result in our developing and adopting a more carefully thought out fertility disincentive plan due to the advantage of pre-crisis, rather than during-crisis, public discussion, and (d) perhaps itself even reduce some of the pressure facing the young adult who wants biological and psychological parenthood but feels the moral weight of the population question (since an explicit national commitment to responsible limits would tend to free him or her from feeling the need to prisingly) so, ought be utilized in a below-, at-, or not-much-above-subsistence economy with a rapidly growing population is left to the judgment of others.
assume a disproportionate share of the sacrifice).

With respect to the matter of when actually to impose formal economic incentives for fertility self-restraint, the following question must be faced: If U.S. fertility should fall below immigration-adjusted replacement to any significant degree and thereafter rise above that norm, should the later above-replacement fertility be deemed acceptable (and thus not grounds for imposing incentives) as long as it didn’t more than offset the prior “fertility deficit”? In other words, what ought to be the time parameters when we ask whether our fertility is apparently exceeding the prescribed norm? This question also encompasses a possible “population deficit” caused by an increase, cataclysmic or otherwise, in mortality, as well as a drop in births or net immigration. My admittedly tentative answer has two parts. First, it is neither necessary nor realistic to regard our merely compensating for a “past” (if one happens!) occurrence of below-immigration-adjusted replacement fertility or analogous “deficit” with a later occurrence of above-the-norm fertility as a divergence from a publicly voiced U.S. commitment to immigration-adjusted replacement as our “henceforth upper fertility limit.” Second, however, in view of the global ecological threat and outlook of resource scarcity, as long as the nation’s actual and projected numbers of people appeared reasonably adequate, it would be highly desirable to institute fertility disincentives upon the apparent occurrence of even an above-the-norm fertility that was merely “making up” for a past “deficit,” and thus even in that situation attempt to encourage a prompt return to immigration-adjusted replacement.\footnote{What are the lower limits of “reasonably adequate”? Opinions will certainly differ, but an eventual fairly stable U.S. population of 180 million, our total population in 1960, ought hardly be regarded as national extinction. Concerning a collateral “birth dearth” worry, namely, an onslaught of superproblems due to a low-fertility-caused unsatisfactory (albeit temporary) age distribution situation, which in this case is a polite way of voicing the fear of there being too high a percentage of old people: There is no plausibly expectable drop in U.S. reproduction that could cause society anything near the difficulties caused by the post World War II baby boom. Clearly, though, the task of meeting a society’s needs and wants is made much less difficult by keeping fertility at a fairly stable rate (which, with a not unsatisfactory number of people, in the long run obviously should approximate replacement). By allowing the rate to fluctuate widely, we bring about a cyclical existence of needing more schools, less schools, more jobs, less jobs, more pensions and health care for the elderly, less pensions and health care for the elderly, etc., etc.}
B. The Fertility Tax and the Fertility Restraint Subsidy—A First Look

As already suggested, the actual employment of the contingency plan if and when it seemed needed would involve levying a “fertility tax” on relatively high-income parents and granting a “fertility restraint subsidy” to persons with relatively lower incomes. Unsurprisingly, a number of “secondary” policy-legal decisions are required to give shape to that plan.

For computing the amount of either (a) a particular taxpayer’s liability for the fertility tax (“FT”) in any given year or (b) a particular recipient’s entitlement to the fertility restraint subsidy (“FRS”) in any given year, fertility should be legally defined with reference to the relevant woman (or women) as the number of then living children, conceived on or after the FT-FRS system’s beginning or “contingency notice” date, which she (they) had borne. Since only the woman’s “childmaking count” is a relatively publicly ascertainable fact, both administrative feasibility and protection of personal-sexual privacy require that the primary focus of the FT-FRS system be the female gender. Accordingly, it would make compelling sense for the subsidy to be payable to women only. However, liability for the fertility tax could, and to enhance collectibility should, fall as later described on both the mother and the father if the latter’s identity is known. One man could thus be liable for fertility taxes involving two or more women. If the father’s identity were not known, the mother with an above average income would herself pay a fertility tax.  

As suggested in the proposed legal definition of “fertility” for FT liability and FRS entitlement, I do not favor taxing parents for children born or conceived prior to the tax inception date, or at least

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21 All governmental programs must ultimately be reduced to either catchy or meaningless initials.

22 Where there is a bona fide factual doubt as to whether conception preceded the relevant date, the question could and should be resolved in favor of the individual taxpayer or subsidy recipient. For a discussion of the term “contingency notice,” see note 24, infra.

23 The Equal Rights Amendment, if enacted, should not preclude the above sexual distinctions, since they reasonably relate to a physical characteristic, childbearing, unique to one sex. See Brown, Emerson, Falk & Freedman, The Equal Rights Amendment: A Constitutional Basis for Equal Rights for Women, 80 YALE L.J. 871, 893-96 (1971).

The provisions stated in the text could and should be applied to the case of artificial insemination by a donor whose identity is to be kept confidential. If, as is usual, the mother’s husband is to be regarded as the actual father, he would be liable for the FT, if for no other reason than to protect full confidentiality.
its date of widespread public "contingency notice." As with any "grandfather clause" effect, there is arguably unwarranted favoritism toward those who were spared the newly imposed burden by the fortuity of time. The only real and sufficient defense of this favoritism is that retroactively applying the fertility tax would be a substantially greater injustice against present large families, who never contemplated paying such a tax, than would their escape from the tax be an unjust windfall.

Use of the same prospective approach in granting women with below-average incomes the FRS would initially require granting an annual subsidy computed as if there were no children to all eligible women no matter how many children each had already actually borne. Only as a woman had additional children would her subsidy for fertility self-restraint ever be reduced. Unfortunately, the combined effect of not taxing higher-income parents for their previously conceived children and monetarily rewarding all women with lower incomes for fertility self-restraint, regardless of the number of children they had previously borne, would make for a prohibitively expensive program at the start and for years thereafter.

Because of the foregoing problem a special form of prospectivity is recommended for the FRS: Children conceived prior to the sys-

24 Using an earlier date than that of the tax' actual inception may be desirable since the stand-by enactment or even serious public and congressional consideration of an FT-FRS system could encourage a temporary increase in pregnancies. Some couples might go ahead and have a child or children earlier than they otherwise would have planned in hopes of avoiding the likelihood of a fertility tax or an FRS reduction for that child. Although a frantic race toward conception should not be expected, it must be noted that an acceleration of a cohort's family planning timetable may serve to increase the total number of offspring produced. More importantly, even if the number of persons affected were small, there are potentially nontrivial harms in encouraging people either to be parents sooner than they would otherwise have wanted or, worse, to make a hasty decision to assume that responsibility at all.

Solely with respect to the foregoing considerations, one is tempted to favor counting a person's FT-and-FRS-affecting fertility from a date prior to any public discussion at all. However, there is also the consideration of fair notice. As an attempt to balance these conflicting considerations, the date of "widespread public contingency notice" is proposed as a reasonably fair time from which to count anyone's fertility for purposes of computing an FT liability or an FRS entitlement. That date would be the day after the serious possibility of adopting an FT-FRS system — on a stand-by basis or otherwise — had been communicated through the mass media to the general public. Once the FT-FRS program had begun, the above difficulty could also occur with respect to word that a nontrivial increase in fertility tax rates (and/or FRS reduction rates) was appearing necessary, since those changes would also be applied prospectively. Hence use of the contingency notice concept would be warranted there too.

As ought also be the case with respect to the original inception of the program, notice of a possible tax rate of $x$ percent ought not be deemed notice for an actual rate of $x \text{ plus } y$ percent.
tem's inception or, if used, the notice date, would not reduce any woman's subsidy entitlement. However, only those women, both married and single, who were then entering or who would later be entering the major child-bearing years would be, or would become, eligible to receive FRS benefit payments (meaning perhaps all women who would reach age twenty-one on or after the system’s inception).  

A related but distinct question is that of deciding an appropriate minimum age for subsidy entitlement. Eighteen would seem to be the likeliest choice.

How high a fertility tax and how generous a fertility restraint subsidy would we need? There is no way we can know even if and when we actually decide that U.S. fertility apparently needs lowering by $x$ amount. With or without an FT-FRS system, we can never know at what rate, based on the Census Bureau’s and other experts’ ongoing estimates, fertility will appear to be for any day after yesterday. And, since fertility is ultimately a per lifetime figure, actual (as opposed to apparent or projected) fertility for persons currently of childbearing age is inherently unknowable on a current basis. Our devising specific tax and subsidy rates must always be an experiment, and doubly so in the beginning when we would have no experience as to how couples’ fertility decisionmaking responded to a given rate of fertility tax and/or a given rate of subsidy. Even after some experience, we still wouldn't really know. Social science notwithstanding, people are in some sense free to behave differently in the future than they did in the past.

Despite the foregoing agnosticisms, we ought decide on some structure of formal fertility disincentives for introduction if and when U.S. fertility should appear to be exceeding our immigration-adjusted replacement rate. Else we have no real contingency plan. What follows is offered as a plausibly appropriate initial structure, with a tax and subsidy rate plausibly appropriate for the eventuality, which is arguably the likeliest one, of U.S. fertility appearing to be but a small amount above the immigration-adjusted re-

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25 Here there is a kind of reverse grandfather clause effect since the favoritism goes to the young. Its justification is also of a nonsublime nature: I can think of no other approach that would offer comparable reproduction-limiting prospects at a reasonable cost and without as much or greater structural unfairness.

26 One or more children conceived after the system’s inception or notice date but during the mother’s pre-age-eighteen years would, of course, reduce her fertility restraint subsidy when she did reach her eighteenth birthday.
placement norm. The wholly experimental status of this structure or of any other—even after actual use—must be underscored. After some or much trial and error, and assuming the requisite political flexibility, per child tax and subsidy reduction rates could differ widely from the suggested specifications in absolute amount, in inter- and intra-comparative value, in the incidence and the degree, if any, of progressivity and/or regressivity, and/or in any other conceivable respect. Similarly, income dividing lines between FT payers, nonpayers, and FRS recipients could also turn out quite differently from what is suggested here. End of hedging; beginning of structure:

A. The annual tax on reproduction by persons with above-average income:

1. When the identity of both parents was self-reported or otherwise known with reasonable certainty by the government, and their combined income (or, if one parent was deceased or evading the FT and unreachable by legal process, the income of the remaining parent) in any given year after the program’s inception exceeded the preceding year’s average income for all U.S. families with at least two adults (both with and without children), the parents (or the remaining parent) would pay a tax for that year for each of their then living commonly produced children conceived after the program’s inception, said per child tax to be equal to three percent of their after-income-taxes income that year (likely including substantial cash and in-kind gifts and plus or minus child support payments to or from other households) in excess of the just described average U.S. income. The actual amount of tax for any given number of children would thus vary with the parents’ or parent’s above average income, if any, each year. Though it would be of little or no consequence as long as the parents were living together and pooling their income, technically the tax would be apportioned between them according to the income of each. However, their joint property ought be attachable for tax owed by either party.

In this and all other cases, U.S. income averages would be estimated net of federal and state income taxes. Although this article will not attempt to prescribe all the precise components of “income” to be used in computing the applicable U.S. averages and each taxpayer’s or subsidy recipient’s annual income, obviously, as suggested in the accompanying text, there would likely be at least a few equity-required differences from Subtitle A of the Internal Revenue Code.
2. If the identity of one parent was unknown to the government, the other natural parent, if she (or he?) had an above-average annual income of her or his own, would pay fertility tax for each then living child conceived after the program’s inception. The tax here would be equal to three percent of her or his after-tax income (likely including substantial cash and in-kind gifts and plus or minus child support payments to or from other households) in excess of the preceding year’s average income for all U.S. households with only one adult (both with and without children). 28

B. The annual subsidy for fertility self-restraint for women with a below-average income:

1. Married women, and single women declaring themselves to be cohabiting with another adult, within the eligible age span (e.g., as suggested in the previous discussion), whose income combined with their husband’s or partner’s income was below the preceding year’s average income of all U.S. households with at least two adults (both with and without children) in any given year after the program’s inception would receive a payment as follows:

28 Regarding situations A.1 and A.2., whenever one or both parents of a given child were presently married to or living with another individual, reasonable and nationally uniform rules of thumb for apportioning real income between adult constituents of the then existing more-than-one-adult household or households would be needed.

Although a comprehensive discussion is outside the scope of this article, in my totally unauthoritative opinion, the U.S. Supreme Court would and should uphold the tax as being a constitutionally permissible “excise tax” on reproduction. Though the tax would be collected annually according to the number of living children and the family’s income, it is essentially a tax on the production of babies. (The tax is levied on the parents only, not on the children themselves; it thus ought escape being labeled a not census-proportional “direct” or “capitation” tax, prohibited in U.S. Const. art. I, § 9, cl. 4.) And, if needed, the sixteenth amendment should be ample warrant for varying the tax according to income.

Admittedly, a hyperactivist and hyperreactionary future Supreme Court could hold that Due Process and/or emanations-formed penumbras prohibit a tax on human reproduction. Were the Court to do so in the face of spiralling U.S. and world population, it would be comically misapplying Roe v. Wade, 410 U.S. 113 (1973), and Griswold v. Connecticut, 381 U.S. 479 (1965), tragically dooming us to either (a) the usually difficult, time-consuming, and apt-to-fail process of constitutional amendment, (b) an unlikely attempt to enact a freedom-impinging per person “fertility quota” (which, even if it overcame immense political opposition and functional impracticability, would probably also be struck down by the Court), or (c) the implausible conclusion that the United States Constitution was designed to shield survival-threatening and freedom-threatening population growth from humanely structured social control. It is, of course, the compelling public need referred to in (c) that, with other factors, starkly distinguishes the FT-FRS proposal from the logic of Roe and Griswold.
a) If she has borne no then living children conceived after the program’s inception, a payment equal to twelve percent of the “deficit” in their combined after-tax annual income (likely including any substantial gifts, public assistance, etc.) compared with the U.S. average income described above.

b) If there was one such child then living, a payment equal to nine percent of the above income deficit.

c) If there were two such children then living, a payment equal to six percent of the above income deficit.

d) If there were three such children then living, a payment equal to three percent of the above income deficit.

e) If there were four or more such children then living, there would be no FRS payment.

2. A single, legally separated, divorced, deserted, or widowed woman with a below-average income would receive a payment based on the deficit in her after-tax income (likely including any child support payments, substantial gifts, and public assistance) in any given year compared with the preceding year’s average income for all U.S. households with only one adult (both with and without children). The subsidy percentage rates for each number of “post-inception” children would be the same as those just described for married women.29

With reference to the FT-FRS structure as a whole, it would occasionally happen that a woman who had three or less children would have both an FT obligation and an FRS entitlement in a given year. The reader is invited to design a no less fair and no more complicated system that avoids this admittedly bizarre result.

Moreover, in designing the FT-FRS, one must face the inherently perplexing problems of (a) deciding what is fair treatment for households with one adult relative to the treatment accorded households with two or more adults, and (b) trying to actualize that decision in practice. Regarding the FT, no structural distinction is made based on the number of adults then present in the taxpayers’ households. By not exacting a lighter FT from one-adult households, family splits or pseudo splits would not be encouraged. Also concerning the FT, the average income of two-adult households is to be used as the level of affluence above which the fertility tax would apply in situation A.1. (both parents known). However, the considerably lower average income of one-adult households is to be used as the point where FT liability begins in situation A.2. (only one parent known to government), thus increasing the likelihood and amount of FT liability for persons in that category. This treatment is favored in order not to encourage the incidence of “anonymous” (and thus effectively “FT exempt”) fathers. I do not believe it or any other aspect of the FT structure would weigh oppressively on then existing (not low-income!) one-adult households.

Unlike the FT, which would normally be paid by both man and woman, the locus of the FRS is the woman per se. Such is logical since it is at least as possible for a woman to remain childless without a man as with one. To attempt reasonable income-assessing fairness in the
As with the fertility tax, the actual amount of a family's subsidy applicable to any given number of children would vary with the family's income from year to year, or, more exactly, would vary from year to year with the difference between the family's income and the appropriate U.S. average income of the previous year. A family with three or less children and a sufficiently changing income situation could receive an FRS in one year and pay fertility tax in another.

C. Duration and Change—Issues and Recommendations

An especially perplexing question: For how long should the parents of any discrete group of children be subject to the fertility tax in years their household income is high enough, and for how long should any discrete group of women be entitled to the fertility restraint subsidy in years their household income is low enough? Until there is apparently no longer a population growth problem? Until U.S. fertility dropped too far and the FT-FRS system had to be shelved or perhaps even converted to a pronatalist structure? Or until the particular children for which someone is taxed or unsubsidized reach age 21? Or until the children leave home? Though, as will be discussed later, tax and subsidy rates would likely be changed or ended prospectively on the basis of subsequent experience in operating the system, the proposed answer to the “How long?” question is as follows: Once a man and a woman have a child or children who, depending on whether or not the parents had a high enough income, either did make the parents liable or would have made them liable for a prescribed rate of tax,30 those parents, or either survivor, would be liable for that tax rate with respect to that

FRS, women would be distinguished according to the two categories ("married, etc." and "single, etc.") described in B.1. and B.2. Since women filing for an FRS in the "single, etc." category would, unlike "married, etc." women, only have to declare their own income, we would measure a "single, etc." category person's deficit from the (considerably lower than for two-adult households) average U.S. income for one-adult households in order not to encourage "single, etc." or pseudo "single, etc." category filing.

If it is believed that the just stated approach would inadequately pay low-fertility women in one-adult households, a somewhat higher FRS percentage rate could be used for women in the "single, etc." category to compensate somewhat for the use of the nation's average income for one-adult households in computing their "income deficit" to which their FRS entitlement rate would be applied. Also, a lower fertility tax rate could be set for FT taxpayers in then existing one-adult household situations. However, if special one-adult rates are used for either the FT or the FRS or for both, they ought not vary from the rates applicable to two-adult households to an extent apt to encourage feigned or real splits in the family unit.

30 One possible prescribed rate of tax is the three percent per child formula described earlier. See text at note 27, supra.
child or children in all the parents' high-enough-income years for their entire lifetimes. However, the death of a child would terminate the parents' tax liability with respect to that child. Likewise, once a woman received, or would have received if her income had been small enough, a fertility restraint subsidy at a prescribed per child (or no children) rate, with respect to her fertility restraint that gave or would have given her the FRS, she would be entitled to that same subsidy rate for the rest of her life. The actual amount of her subsidy, if any, in future years would, of course, be affected by any subsequent births and by the subsidy reduction rate or rates applicable to the later births. Her subsidy would also be affected by her income and her total number of subsidy-reducing children living at any later time. In summary then, both fertility tax liability and FRS rights would "vest" for life.

This policy is desirable and reasonably just for two reasons. First, the benefits of having each child generally accrue to the parent for at least as long as parent and child are both living. More than a few parents have confessed to enjoying their children more after they had grown up than before. Even at long distances, the existence of grown children, and thus often young grandchildren and/or great-grandchildren, is a significant psychological comfort, and sometimes a material comfort, in the later years of one's life. In a world facing its population support finitude, it seems quite proper (still speaking prospectively, of course) that even elderly persons who provided themselves with $x$ number of children should incur a modest cost by paying a tax or by receiving no or less fertility restraint subsidy for that often highly coveted benefit. Stated the other way, elderly persons—to the extent they have refrained from acquiring said benefit—should receive modest compensation by receiving a subsidy or by having to pay less or no tax.

The second reason for stretching out the tax liability and subsidy eligibility for the parent's or parents' entire lifetime is that doing so would place more of the system's actual economic impact on the parents themselves and less of it on their growing children. By providing from the start that a parent would be paying a set tax or subsidy reduction rate for each child as long as both are living, smaller annual rates could, despite our tendency to discount future burdens and benefits, more likely be used than if the parent(s) were required to pay only during the child's minority. In other words,
there would not need to be as much dent into the high-fertility parents' budget while the children were still dependent on that budget.\footnote{32}

Distinguished from the question of the duration of any particular individual's fertility tax obligation or FRS entitlement is the question of when, once we had adopted the FT-FRS program, would we ever abolish it. Apart from the program proving to be an unsatisfactory or inadequate means of limiting the nation's fertility (possibilities to be discussed later and which could warrant the program's abolition or its supplementation by some other course of action), the answer seems simple in concept if somewhat problematical in practice. The FT-FRS system should be retained indefinitely, unless and until the nation's fertility appeared, on the basis of expert estimates, to have fallen to an unacceptably low level. How low is unacceptable is, of course, a question that would and should be decided through the democratic process.\footnote{33}

If U.S. fertility estimates were nearing, but were still above, the lower limits of felt adequacy, it would make sense to go ahead and reduce the degree of FT-FRS fertility-limiting incentives, a course that might well achieve the desired fertility outcome and thus warrant continuing the system at the new lower tax and subsidy reduction rates. Akin to earlier argumentation, whether the program was abolished in toto or merely modified, all changes should be applied prospectively. Specifically, if the original understanding was that liability had been "vested" by previous legislation. However, this would likely not be as popular a move as one might think; since other persons who had acted in response to the lifetime structure of incentives could and would object with justifiable vigor.\footnote{32}

Even if the just discussed reason is rejected as grounds for lifetime "vesting," it is still a strong argument for continuing parents' FT liability and FRS rights at least through the usual economically productive years (say, to age 65).\footnote{32}

The decision should, and likely would, take into account the problem of temporary distortion of the nation's age distribution, a by-product of fertility well above or well below the replacement level — as well as the taking into account of the aggregate population outlook.

It is a fair question to ask, Why not a contingency plan for using economic incentive to increase fertility should that need ever arise? Though they are generally not labeled as economic incentives to increase fertility, in truth there are in this country numerous such measures, either existing or proposed. For example, per capita tax exemptions and credits, income maintenance payments that increase with family size, subsidized day care, subsidized school lunches, Medicaid, national health insurance, etc., are all programs that reduce, or would reduce, the cost of rearing children. What government and private programs have admittedly not done is to offer any parenthood subsidizing proposal for use only to the extent, and for the duration, that fertility requires encouraging. Separating fertility considerations from what society should do in behalf of children regardless of the fertility picture is admittedly no easy moral and political task.
individuals would pay a tax on delineated income at a certain established rate structure according to the number of children born to them during the time the program was in effect, then that tax rate structure on all covered adults for all children they produced during that time should continue for whatever duration originally specified, be it lifetime or some term of years. Similarly, if the original understanding was that individuals would be paid a subsidy with reference to delineated income at a certain established rate structure according to the number of children born to them during the period of the program, then that subsidy rate structure for all adults for their fertility restraint during that time should continue for whatever duration originally specified. The reason is both clear and compelling. For the program not to follow through on the “fertility deal” that was in effect would be blatantly unfair to everyone who had acted in response to that deal.34

D. Revenues, Expenditures, and the “Phasing-In Years”

Given the already overwhelming excess of global needs over public monies, it would be highly desirable that fertility tax revenues be sufficient, or nearly sufficient, to finance the granting of fertility restraint subsidies. Exclusive of administrative expenses, which would likely be minimized by having the IRS administer the FT-FRS system along with the personal income tax, on a long-term basis the initial structure of the system is in concept roughly self-supporting.35

34 The just stated concern does not mean that people covered by the original deal ought be taxed or have their already earned FRS reduced for children produced after the FT-FRS system has been prospectively abolished. Nor should such persons be denied a new lower fertility tax rate or FRS reduction rate on any subsequent children if such a rate becomes operative. In other words, the system’s full honoring of its prior set of incentives need in no way prevent giving full and immediate prospective effect to a revised incentive structure. However, analogous to the approach to FRS prospectivity recommended for the program’s inception, budgetary constraints would likely favor extending a higher FRS benefit structure only to women reaching age 21 on or after the date the new structure has been adopted.

35 What would actually happen in practice can only be known after the fact, though educated guesstimates (beyond the scope of this article) would be helpful.

One uncertainty, which could have a substantial impact upon the comparative amounts of aggregate FT revenues and aggregate FRS expenditures, is the question of what effect, if any, a particular FT-FRS incentive structure would have upon the timing of pregnancies. Although any such effect would likely not be enormous, it is plausible — especially with a high fertility tax and/or a sizable FRS benefit scale — that persons would be induced to defer their childbearing for several years so as to minimize their number of taxpaying years and thus minimize their total FT tax bill, and/or to maximize their number of FRS-getting years and thus maximize their total subsidy. To the extent that this happened, the task of keeping
In the short run, operating the FT-FRS system without generating a loss or a profit would be a virtual, if not a total, impossibility with the proposed initial FT-FRS structure, due to the extremely high likelihood that the adult population will continue to have a higher average income within some age groups than in others. More specifically, were the FT-FRS program as previously described adopted, we would have to expect substantial operating deficits in (roughly) the first two decades of its operation. This particular expectation is the result of three factors: First, if past experience is any guide, most adults in the normally most active childbearing years, say, under age 35, would have an income below the applicable U.S. average income covering adults of all ages. Second, with our adhering to the policy of not taxing for children conceived prior to the program’s enactment, adults below age thirty-five would have the overwhelming majority of children for which the parents could possibly be taxed during the FT-FRS’s first two decades. And third, under the earlier outlined delineation of FT liability and FRS eligibility according to income, most of this below-age-35 group of parents would, in view of factor one, not be paying any fertility tax with respect to their children for a good number of years until the parents moved sufficiently up the income ladder (one possible blessing of middle-age at least) and, unless they had produced more than three children, would be receiving a fertility-restraint subsidy during the young adult years. All of this adds up to years of not insubstantial FT-FRS operating losses.

If the FT-FRS program were continued with no substantial hike

in the degree of fertility disincentives originally enacted,\(^\text{37}\) and assuming that parents' FT liability would continue at least well into the (relatively high-income) middle-age years, which under the earlier outlined structure would be essential for fiscal nondisaster, for a number of years in about the third and fourth decades of the program's existence current FT revenues could be reasonably expected to exceed current FRS payments. Since the program would not yet be old enough to be paying FRS's to the over-65 age group (the latter virtually certain to be largely comprised of persons with a below-U.S.-average income at that time of their life), and since the program would be old enough to have a full or near-full span of members in their middle years, its intermediate phasing-in years likely would encounter more above-average income subject to the FT than the aggregate difference between below-average incomes and applicable U.S. average incomes upon which difference the FRS would be computed.

Assuming that the previously recommended policy of lifetime FT liability and FRS entitlement (for those of sufficiently large/small income in any given year) was followed, we would expect that as the FT-FRS program in its fifth and sixth decades, if it lasted so long, included more and more elderly persons—most of whom likely would then be FRS recipients rather than FT payers—, the annual FT revenue surplus of the just prior decades would get progressively smaller and most likely would finally disappear or nearly disappear. Whether, once the FT-FRS system covered the entire adult age span of the population, the ensuing years would actually show a (probably not very great) cumulative FT revenue surplus or deficit is beyond the scope of current knowledge. Likewise, one cannot currently know whether or not the likely revenue surplus years would be sufficient to offset the deficit years of the phasing-in decades of the system.\(^\text{38}\) Nevertheless, if the FT-FRS system was otherwise proving

\(^{37}\) If FRS and FT rates were significantly increased, the same deficit/surplus expectancies for the increase's phasing-in decades as are discussed above with respect to the phasing in of the original program would apply, assuming that the earlier recommended approaches to FT and FRS prospectivity would be used in both cases. Since the original phasing in and the phasing in of one or several successive increases would all happen at different but likely overlapping times, the configuration could become other than simple. (The likely effect of phasing out or decreasing FT and FRS rates is suggested in note 38, infra. The quite possible problem of needing to raise or lower FRS rates relative to FT rates is discussed in the text at notes 53 et seq., infra.)

\(^{38}\) If there was a cumulative deficit from the phasing-in years, it might be made up during the phasing-out years, if the program was ever abolished. The early phasing-out decades would likely involve a period of substantial revenue surpluses due to the fact that new cohorts
satisfactory, upon finally covering the entire adult age span the system would have reached a condition of relative stability compared to the phasing-in years. Absent quite substantial changes in the nation's income, fertility, or mortality configurations, differences in income between age groups should henceforth not cause any substantial fiscal problem.

As to the question of what ought be done about the expectation of nontrivial FT revenue deficits in the first two decades or so of the program, there are several options. First, the FT-FRS system could sell bonds in the expected deficit years, the bonds to mature in the following expected surplus years, with repayment guaranteed by the federal treasury.

Second, the FT-FRS deficits could be directly financed by general federal revenues, with the later FT revenue surpluses becoming available for general governmental use. (If the system was expected to produce a substantial deficit or surplus in a given year, cognizance of same could, of course, be taken in planning the general federal budget so as to satisfy all Keynesian considerations no more imperfectly than we do now.)

Third, the program's fiscal outlook could be improved during the early years, and, if need be, in the long run, by not paying FRS's to women until they have reached a slightly higher age than the eighteen years earlier suggested. But this is a poor solution for the fairly obvious reason that starting the payments anytime later in life than at the beginning of the usual childbearing years could unduly weaken the program's desired fertility-limiting efficacy. (Arguably, with earlier pregnancies happening so frequently, the minimum FRS entitlement age should, if anything, be lowered.)

Fourth, the fertility tax could be applied to persons whose annual income exceeds the applicable U.S. average for their age bracket in order to prevent the occurrence of any fiscal problem whatsoever from income disparities between age groups. For example, the applicable average income for one group could be that of "households with two or more adults where the major income getter or getters..."
are forty to forty-five years of age.” Likewise, the FRS could be offered to otherwise eligible women of eighteen and over, still excluding those who reach age 21 prior to the program’s inception, whose annual income falls below the applicable U.S. average for their age group. This approach would in any given year cause about the same aggregate amount of the country’s personal income to be subject to the fertility tax as would constitute the computation base for the FRS. Though, even with comparable rates for the FT and the FRS, the actual amount of revenue collected and the actual total of subsidies paid each year would, of course, depend upon the fertility and income of each person involved, the probability of avoiding large fluctuations in the program’s periodic revenue and expenditure equation would be immensely greater than that with the previously described initial structure which uses the applicable average income of all ages of adults as the criteria for deciding whether one is within the FT or FRS income range. Unfortunately, relative fiscal stability would be gained at the price of having to impose a fertility tax upon individuals whose income, though above average for his/her/their age group, was anything but above the applicable national average\textsuperscript{39} with respect to all ages of adults. Obviously, this would happen only to people in the relatively low-income adult age brackets, meaning a good number of young and elderly adults. How serious an evil? By one reckoning, since all fertility taxpayers would be in the top income half of their age group anyhow, their having to pay would seem to be neither an undue burden nor an injustice. By another, the prospect of a 22-year-old parent making $10,000 a year having to pay an FT while a 45-year-old parent making $12,000 a year was getting an FRS subsidy would be intolerable.\textsuperscript{40}

Fifth, the following expedient would elude the foregoing arguable inequity and still likely avoid sizeable deficits in the starting decades of the FT-FRS without use of the age bracket income averages approach: Instead of using U.S. average income(s) as the dividing line(s) between fertility taxpayers and FRS recipients, a moderately

\textsuperscript{39} “Applicable” refers to the one-adult household versus the household with two or more adults income distinction made with respect to categories A.1. and A.2., and B.1. and B.2., of the basic structure earlier outlined.

\textsuperscript{40} The above approach could also provide an unwanted amount of encouragement for young couples to defer their childbearing until they entered an age group having a more affluent average income and, thus, a more favorable FT-FRS income dividing line. The possible delayed parenthood problem and its possible solution are described in note 35, \textit{supra}. 
lower dividing line, such as four-fifths of the applicable U.S. average for all ages of adults could be used initially. In ensuing (or nearly ensuing) years, with a sufficient number of middle-aged parents paying FT's, the FT-FRS dividing line could be gradually raised to U.S. average income, perhaps even putting the intermediate phasing-in years' surpluses to good earth-caring use rather than temporarily raising the dividing line to an above-average income level. Although the FT would be assessed free from age discrimination, for some years a fertility tax liability would be imposed upon adults of all ages with below-average incomes. However, it being the case (a) that average incomes in this country embody an immense affluence compared with most of the rest of the world, (b) that no one with an income much below the applicable U.S. average would have to pay any FT at all, and (c) that actual FT amounts payable by taxpayers with below-average incomes would not be enormous, the just mentioned approach (and, for essentially similar reasons, the prior one) should not be considered out of the question.

Needing but little imagination to suspect that options four and five would be the hardest to sell, and not wishing to make an unattractive proposal even more unattractive, I shall, in this article, continue to envision all-adult-ages average income as the most likely dividing line between FT payers and FRS recipients.

IV. THE FT AND FRS—A BALANCED BUT NONNEUTRAL EVALUATION

A. A Fairly Favorable Look

The primary attraction of a formal economic incentive approach for lowering and/or holding down fertility is obvious. Along with noneconomic fertility disincentives, such as hopefully nonexcessive moral-social suasion in behalf of ZPG, and the considerable automatic economic disincentive to fertility that already exists for most families in our and other industrial (and increasingly “nonexist”) societies, a formal system of economic disincentive, if ever needed at all, may be sufficient to prevent population-expanding fertility for the nation at large without destroying each couple's freedom to choose how many children they wish to have.

41 Similarly, if the approach involving income averages based on age brackets were instead chosen, it could be gradually converted to the use of average income for all adults as the number of middle-aged fertility taxpayers increased.

42 It would, of course, also be possible to combine two or more of the options described above, using each chosen option to a milder extent than would be required were it used alone.
For all practical purposes, persons who want children and persons who want an above-average number of children would be as free to accomplish their wants as they are under the status quo. Admittedly, however, they would be paying a modestly higher price for doing so than is presently the case. And, under the suggested FRS and FT structure, the price increase is designed to be as affordable by the poor as by the rich. Persons with relatively low incomes entering the likely childbearing years on or after the program’s inception would “pay extra” for each child conceived after the program’s inception up to four such children (there being “no extra charge” beyond the fourth) in the form of a reduction or elimination of their FRS. Persons with relatively high incomes would pay extra for each subsequent child via a higher fertility tax bill.

It is reasonable to believe that, to some unpredictable degree, persons who don’t really want, or who don’t much want, an additional child above their present or above some future number of children would be more effectively deterred than would otherwise be the case from conceiving that additional child (or from ever conceiving any children at all if they didn’t much want any?) because of the “extra charge” imposed. Clearly, though, persons who would much rather have more children than to have more affluence, than to be able to buy premium college educations for all or most of a fewer number of children, than to be able to give more to charity, or than anything else, would not be deterred by the proposed modest extra economic advantage in fertility self-restraint. But it might not be necessary that they should be! The hope in augmenting existing economic disincentives to fertility is that the effect amongst those who don’t especially want more children, or, in some cases, don’t especially want any children, will be sufficient to avoid an expansionary rate of fertility for the population as a whole while allowing those who very much want children or more children to have them.

The preceding does not mean that the moral-social duty to limit population growth would cease to be a factor in a person’s decision to refrain from creating children or more children. For one thing, there is simply no way of knowing whether or not the combined impetus of economic and other “amoral” fertility disincentives existing at any given time is fully (or “mostly”) freeing conception/nonconception decisionmaking from any consideration of a moral duty not to have children or more children because of the global threat of overpopulation. (Doubtless some people would insist that more children are conceived because of a superego-imposed, traditional moral duty to procreate than are not conceived
because of obedience of ZPG preachments. Granted that such was indisputably true in the past and is still true today in some societies, it hardly seems to be generally the case in today’s America.) Though believing that an augmenting of existing economic incentive for fertility self-restraint can reduce excessive ZPG moral pressure on those susceptible to it and thus share the burden of fertility self-sacrifice more fairly, I also tentatively hold the following expectation as to the relevant future: With ecologically reckless rates of global population growth remaining a major danger for the foreseeable future, with human beings’ strong instinctual drive for reproduction likely to remain about as deeply ingrained as it now still is, and with children still being the greatest invention (joy giver) before, during, and since sliced bread, a structure of economic disincentive to fertility strong enough to obviate all need for morally-grounded fertility self-restraint will not be a practical possibility. Having said this, I must also concede that, as with most, if not all, population-related predictions, there is at least a fifty percent chance of mine being wrong.

There is another possible advantage in raising the price of parenthood. Assuming adequate accessibility to a variety of modern contraceptive and sterilization techniques, the FT and FRS would likely encourage people to make more careful and considered decisions about whether or not to conceive children before actually doing so. Again, there is no predicting the extent to which this would occur. Nor is there an accurate way to measure the intangible social gain that would result from people more carefully deciding whether they really want children before they decide to have them. However, virtually everything we know about child development in general, and about “mostly-not-wanted children” compared with “mostly-wanted children” in particular, suggests that if decisions about procreation were made more carefully in terms of the potential parents’ own wants, the human community would be a much happier organization.

It of course can be argued that any augmentation of economic incentive for fertility self-restraint would tend to encourage abortions. However, the argument is sheer nonsense. Anything resembling the modest scale of economic rewards and costs proposed is not going to affect a pregnant woman’s willingness or unwillingness to take so emotionally agonizing a step as that of having her own child aborted. Actually, to the extent that an FT-FRS system encouraged child planning decisions before the fact, it could even reduce the incidence of abortions. The argument that the FT-FRS
system might encourage abortions could be additionally met (a) by
treating a deliberately aborted fetus as a living child for purposes
of the tax and the FRS, and/or (b) by providing that a mother's
surrender of an unwanted newborn for legal adoption would exclude
the infant from the number of children legally attributed to the
natural mother. Suggestion b is much the more preferable of the
two. Suggestion a is of questionable merit in that, as with criminal
abortion statutes, its enactment could possibly encourage some per­
sons who have decided on an abortion to get or attempt a furtive,
nonprofessional one, with the accompanying hazards to the life and
health of the mother. Also, suggestion a raises significant constitu­
tional questions. 43

B. The FT and FRS — Economically Discriminatory?

The economic justice or injustice of the FT and FRS system is
likely to be questioned from at least three different perspectives.

First: Households with above-average incomes would likely object
to the idea of paying a tax for having any subsequent children when
covered women with below-average incomes would get paid at least
some fertility restraint subsidy even though they were to have as
many as three subsequent children. The answer to this objection is
that an approach which taxes the relatively affluent and subsidizes
the relatively nonaffluent is the most feasible, if not the only, way
to structure a system of pecuniary incentive for fertility self­
restraint that (a) has a fair chance of being substantially self­
financing and (b) increases the cost of having each of at least four
future children to parents and prospective parents within a wide
range of incomes such that, in crude theory at least, the cost in­
crease is about as affordable for parents and prospective parents (or
at least for similarly aged parents and prospective parents) in one
income group as in another. It is hardly surprising that a program
that can increase the price of children at virtually all incomes and

society genuinely concerned about the tragedy of abortion should seek to provide effective
access to contraceptive information and procedures to all its citizens. Doing that ought not
imply that casual sexual intercourse is perfectly okay or perfectly not okay. It ought only
imply that we very much want couples to want to be creating a human being if such is what
they are in fact helping to happen.

Suggestion b would, of course, apply to the situation where the mother was a rape victim
and, for religious or other reasons, chose not to have an abortion. In such a case, one hopes,
for the sake of both the child and the woman, that she would surrender the child for adoption
unless she really does want to keep it.
yet doesn't at all reduce the economically poorest family's existing freedom to have an above-average number of children should superficially appear to favor the lower income family! Despite said appearance, the system is intended to be neutral in its likely comparative effect on rich people's fertility versus poor people's fertility. 

Second: Americans at the bottom of the income ladder might well feel that it is unfair to be proposing, contingently or otherwise, to pay them not to have lots of children when, as of this writing at least, we have not yet enabled every American man, woman, and child to receive a minimally adequate level of material subsistence. In view of our capability of accomplishing the just stated goals, the complaint is a justifiable one. But, contrary to the standard rhetoric, the answer is not necessarily for the nation to increase its already spiralling social welfare budget. A prime example of the kind of thing we instead ought to do would be to replace a food stamp system whose major impact is to subsidize the suppliers of over-priced food, junk food, and nonfood, with a less Camelot-sounding effort that, unlike the status quo and its apparently imminent "all cash" successor, would provide low-income households with the basic nutrition they need for life, health, and their children's proper growth. Given a bona fide effort toward giving everyone real access to the (admittedly unglamorous) necessities of life and basic health on the part of any society that, like ours, can afford it, and given the lack of "economic fertility discrimination" discussed in Section IV C, infra, the use of economic fertility disincentives is in no sense an enemy of those with low incomes.

Third: Though not necessarily for the same reasons, high-, low-, and middle-income groups might each object to the fact that, both with respect to families with incomes in the FT range and with

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44 In view of existing and expected economic constraints facing most families with (or later to have) an above-average number of children and a below-average income, neutrality does not seem likely to require extending the FRS to cover these families beyond the fourth child. Such a course would increase the program's cost and/or even increase fertility since persons could produce four or five children and still be rewarded for fertility self-restraint. However, for families whose income is above the applicable national average, there is considerable economic freedom to have five or more children, with said freedom being greater to the extent that a family's income exceeds said average. Hence, neutrality would seem to recommend taxing parents with above-average incomes for all additional children, with the amount of tax for any particular number of children varying directly with the amount of a family's income in excess of the applicable U.S. average. This, roughly, is the proposed initial structure. If it should prove discriminatory in favor of lower income families or of any other income group, we could attempt corrective changes. The question of economic fertility discrimination is more fully discussed in Section IV C, infra.
respect to families with incomes in the FRS range, under the proposed initial FT-FRS structure the dollar amount of fertility tax or subsidy in any year for any given number of children would be proportionately smaller the more closely a family's income approximated the applicable dividing line between FRS entitlement and FT liability. Under that proposed structure, FT-FRS dividing lines would initially be set at the preceding year's applicable U.S. average incomes. For families whose income was precisely equal to the applicable dividing line, the suggested structure would neither award them a subsidy nor charge them a tax that year — no matter how many, or how few, children they had. The justification for this is obvious. For a given number of children on which relatively higher income groups are taxed and relatively lower income groups are subsidized (a strategy justified in my answer to objection number one), it is necessary that there be a break-even point somewhere on the income scale, i.e., an income at which a family would net zero dollars from the tax and subsidy structure, if the structure is to avoid creating disincentives for earning income at some income point or points. Thus, for example, if having three children entitled mothers in families with a $10,000 annual income to a $50 FRS but required similarly structured families with a $10,001 annual income to pay a $50 FT, earning the last dollar of income would cost these latter families $100, a net disincentive of $99. The concern not to undermine income-earning incentive at any point also requires that the FRS decrease gradually toward the break-even point on the family income scale; likewise for the fertility tax.

Admittedly, it is not necessary that an FT-FRS break-even point be set at or near "average income," however defined. And each break-even point could be set at successively lower incomes for each increase in a family's childbearing count, thereby further augmenting the degree of economic disincentive to high fertility. However, as to any given number of children, setting the break-even point at or near some plausibly relevant societal average has a justifiable, though question-begging, twin appeal: first, setting the point much below "average income" and thus extracting a fertility tax from

45 Using U.S. average income(s) of each preceding rather than of each current year is suggested merely as an administrative convenience. For that purpose, a two-year lag would be even better, though some adjustment for estimated inflation would be called for.

46 However, that concern would not seem to prevent our placing somewhat higher FT and/or FRS marginal rates upon income dollars near a break-even point than we were placing upon income dollars farther away.
some households with incomes well below the average seems unnecessarily onerous; and second, setting the point much above “average income” and thus subsidizing for fertility restraint some women with incomes well above the average seems unnecessarily expensive.

Looking at probable outcomes, the lack of a fertility tax or subsidy at or near average U.S. income(s), be it “all age” or by age bracket, in any given year and the existence of a very low tax or subsidy on nearby incomes would not likely result in middle-income persons’ fertility significantly exceeding that of upper- or lower-income households. The just stated expectation is based on at least two grounds. In the first place, a family’s income picture seldom remains constant. Rare is the household that knows that its future income will remain at, or virtually at, any absolute or relative level. Middle-income couples entering the childbearing years would thus be cognizant of the high likelihood that, sooner or later, they would be liable for some nontrivial FT payments and/or entitled to some nontrivial amounts of FRS’s. In the second place, the sum total of fertility disincentives, economic and otherwise, in the U.S. already seems to be highest amongst persons in the middle-income range. Though there are likely many reasons for this phenomenon, one reason would seem to be that, in an industrial society, relative to family income, children tend to be most expensive for middle-income families. Whether because of external social pressures, or their own internal values, or both, middle-class parents tend to spend a relatively high percentage of their income on their children’s formal and informal education (college, music lessons, summer camps, etc.) and on other child-related expenditures beyond the physical necessities. Wealthy parents spend for these things too, but with considerably more income left over for other wants. Low-income parents certainly sacrifice for their children, but are seldom able to do so at the pecuniary level and in the style typical of the middle class. Further, public assistance tends to reduce the cost of children mainly at lower incomes.

If, despite the above two considerations, the FT and FRS struc-

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47 Though U.S. fertility does seem to be lowest among middle-income persons, probably the most striking aspect of the fertility picture as to different income groups in the U.S. is that differences in fertility rates between these groups are anything but striking. Apparently (and unsurprisingly), nonpecuniary considerations play a nontrivial role in couples’ how-many-children decisionmaking. For raw U.S. fertility data according to income, see U.S. BUREAU OF THE CENSUS, SUBJECT REPORTS, FINAL REPORT PC(2)3A, CENSUS OF THE POPULATION: WOMEN BY NUMBER OF CHILDREN EVER BORN (1970), at tables 50, 52.
ture caused fertility to bulge at middle incomes, adjustment to that structure could be made.48

C. Economic Fertility Discrimination — A Closer Look

As suggested previously, the desirability of an economic incentive approach to limiting fertility is highly dependent upon that approach not resulting in substantial discrimination according to income and wealth. Rushing in where angels probably would, and perhaps even should, fear to tread, I shall foolishly attempt to suggest the basic components of economic justice in any society's use of economic incentive to encourage a lower overall fertility:

1. All income groups should have essentially equal and adequate access to contraceptive information, procedures, and devices, including permanent, or if available, reversible sterilization and short-term (nonsterilizing) options. Presumably, the inherent justice in this requirement speaks for itself — safe ground even for fearful angels.

2. Child mortality and "adults-of-childbearing-age mortality" rates ought not vary significantly between different income groups. Whether or not a society needs to reduce its fertility, the just stated goal is fundamental — also safe for angels social justice. However, its achievement in many societies will require herculean efforts in improving the diet and health care afforded the economically disadvantaged. Until those tasks are accomplished, minimal justice requires that economically deprived groups be able to compensate for their relatively higher pre-childbearing death rates with correspondingly higher birth rates, to the extent necessary for them to beget future generations on an aggregate parity with society's more fortunate members, without incurring any social stigma in doing so.

3. Subject to the above two requisites, and henceforth beyond angelic safety, we can say that a society's encouragement of lower fertility is functioning amongst its citizenry with reasona-

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* For example, the break-even point(s) for zero children and/or one child could be raised above average income(s). And/or the break-even point(s) for three or more children could be placed below average income(s). The former change would pay an FRS to some low-fertility women with above-average incomes; the latter change would levy an FT on some high-fertility families with below-average incomes. However, it probably would be sufficient, and more desirable, to leave the break-even points at "average income" and raise marginal FT and/or FRS per child percentage rates on income dollars near break-even income levels and/or lower those rates on income dollars more remote from break-even incomes.
ble economic fairness so long as lifetime fertility does not thereafter appear to be varying significantly amongst contemporaries according to their income, exclusive of the probable extent to which fertility (and the number of children individuals think they will have) is itself affecting their acquisition of income. (Limiting our direct attention to income as opposed to income and wealth is defensible on two grounds. First, having to cope explicitly with three variables, income, wealth, and fertility, rather than the two, income and fertility, adds an extremely burdensome, if not crippling, complexity to an already complex problem. Second, the substantial nonoccurrence of fertility discrimination with respect to income would substantially diminish, if not eliminate, any striking degree of fertility discrimination with respect to accumulated wealth.)

Doubtless there are those who, from one perspective or another, would object to the inclusion of the third criterion of economic fertility justice. But it seems inherently impossible that any objection could include an equalitarian-compatible justification for why a society should encourage persons with greater or lesser incomes to propagate the next generation at a rate different from others. If lifetime fertility in a society does, in fact, differ from one income group to another exclusive of any effect of fertility on income, such is precisely the encouragement the society, intentionally or unintentionally, is giving.

Despite its (I believe) essential merit, requisite number three is not without its problems. First, for obvious reasons previously mentioned, the locus of fertility data must be the female members of the society. But how does one equate the income of an unmarried, self-supporting female with the income of a married woman supported by her working husband (or with the income of a married woman who supports her husband, or with the income of a married couple who both work) in ascertaining whether fertility is varying with income? Probably the least unfair solution to this problem would be to divide women into two categories, (1) married or cohabiting, and (2) unmarried, separated, or deserted, and to look for, and be only concerned with, variances in fertility between different incomes within each category.49

49 If there is an issue as to "fertility fairness" between these or similar categories, I leave its resolution to others. Likewise as to fertility justice in societies where polygamy is an accepted practice.
Another more difficult problem, alluded to in the statement of the third economic fertility justice requisite, is this: Though one's lifetime fertility may well be affected by one's income (and wealth), one's income (and wealth) may well be affected by one's expected and actual fertility. As regards any two income levels, the latter effect could push toward either a positive or a negative correlation between fertility and income, perhaps with contrary tendencies working at once.

The tendency toward a positive yet perfectly justifiable fertility and income correlation could happen in at least two ways. First, it is highly probable that, given two groups of persons with equal or similar income-getting prospects, the group with more present or planned dependents would tend to exert greater income-getting effort (work longer hours, or take on two jobs instead of one, or be more willing to do distasteful-but-lucrative work, or whatever). Second, public assistance payments often increase in amount according to the number of dependents in a household. Accordingly, in most societies, there would likely be some tendency toward a positive correlation between fertility and income that was due not to the greater propensity of relatively higher income-getters to have more children, but was instead due to the greater propensity of parents with more children to support to strive for more income, and to the general tendency of public assistance to provide more subsidized income to high-fertility households. 50

At any and all points along the income scale the positive effect of fertility on income-getting might be partly, wholly, or more than...
offset by (a) the unemployment, whole or partial, (b) the reduced access to higher paying work in the short run, and (c) the deferred or lost educational opportunities of mothers (and/or fathers) with young and even not-so-young children, all of which would tend to push the data toward a negative correlation between income and fertility.\(^5\) As with its opposite discussed in the preceding paragraph, this tendency would not make the society's efforts to encourage a lower overall fertility economically discriminatory. For again, it is fertility that would here be affecting income, not income affecting fertility.

Why is all this such a problem? There is no way we could be sure of the extent to which fertility was positively and/or negatively affecting income at any point or points along the income scale. And our lack of assurance here would be a nontrivial impediment to ascertaining and correcting real economic discrimination in the society's effort to lower and contain fertility, for such discrimination only exists to the extent that inequality of income, including inequality of expected income, is causing unequal rates of fertility among different income groups. To attempt to remedy either a positive or a negative fertility/income correlation to the extent such was due to the effect of fertility on income would thus be nonsensical and probably even unjust.

Despite what has thus far been said, data correlating projected lifetime fertility with income would be highly useful in attempting continually to ascertain whether or not society's effort to lower and contain fertility was discriminating against any income group or groups. For, though we can never know the extent of the effect of fertility on income-getting at various incomes, we could make sufficiently informed and intelligent guesses so as to interpret the fertility/income correlation data in reasonably rational fashion.\(^5\) If the

\(^5\) At lower incomes, the above effect would be significantly mitigated by welfare and/or other public assistance granted to the at-home mother and her children.

\(^5\) An alternative or supplemental approach to assessing fertility and actual income correlations would be to correlate fertility with income expectancy (a person's income-earning prospects based on a number of relevant factors). This approach is also not without its problems: One's income-getting potential is actually dependent upon a host of variables — including health, appearance, personality, physical strength, I.Q., grades in school, educational opportunity, educational attainment, parental and personal connections, union and/or professional memberships, licenses and franchises, and, in any capitalistic society, economic net worth and access to commercial credit. Obviously, the relative importance of these factors varies with a person's age and stage in life. An enthusiastic attempt to gather and deal with such data would be both expensive and privacy-impinging. And one's income-getting prospects are also not totally immune from the effects of one's planned and actual fertility. At best, a less
variances in fertility between different income groups were insubstantial, we probably would and probably should be content with the FT-FRS structure as it was then functioning. However, if there were substantial variances in projected lifetime fertility among contemporaries constituting different income groups, and if those variances did not appear to be the result of the effects of fertility on income, then the prospective modification of the relative amount of fertility disincentives present at the income level where fertility was above or below the societal average should be attempted.

D. The FT and FRS — A Fairly Critical Look

Unsurprisingly, there is no totally desirable social strategy for getting people to have fewer children than, if left solely to their own private 'druthers, they would like to have. The expedient of augmenting existing fertility economic disincentives is no exception. Although I favor the specific FT-FRS structure previously outlined as a "contingency plan" for use should U.S. fertility appear to be exceeding immigration-adjusted replacement fertility, I feel obliged to point out the chief disadvantages of that plan or of any similar means of encouraging greater fertility self-restraint.

First disadvantage (and probably not applicable to the U.S., at least for some time): In nations where starvation is an ordinary happening or an ever-likely possibility, the difference between government attempting to lower fertility via economic incentive and government attempting to lower fertility via compulsory sterilization of anyone who exceeded or reached some per person childbearing limit would be mostly one of form rather than of substance. Obviously, this is not a disadvantage of the incentive approach in comparison with coercive fertility control, but it is a virtual negation of any moral advantage of the incentive approach over the coercive approach to fertility limitation in any society with a below subsistence or bare subsistence economy. In such a society, any advantages of the incentive approach over the explicitly coercive one would have to do with relative public acceptance and feasibility.

Second disadvantage: Augmenting existing economic incentive for fertility self-restraint would generally heighten to some degree than comprehensive look at income-getting expectancies during and prior to the usual childbearing years and a correlation of that data with fertility rates could aid in interpreting the fertility and income correlations. In other words, we would be at least a little better able to distinguish income affecting fertility from fertility affecting income.
the disparity between the material living standard accorded to children of low-fertility parents and that accorded to children of high-fertility parents in instances where both households had the same or a similar total income. In addition, it would often heighten the aforementioned disparity in instances where the low-fertility household had the somewhat to substantially higher income (though here the approach of imposing FT's upon relatively high incomes and granting FRS’s to relatively low incomes, and the approach of varying the tax or subsidy amount according to income, would each often have the opposite effect, thus reducing said disparity), and it would sometimes heighten the aforementioned disparity even in instances where the high-fertility household had the somewhat higher income. In other words, a fertility tax and/or fertility self-restraint subsidy, though levied on and/or awarded to the parent(s), is very likely going to affect the economic situation of the children. (Were it not to do so, the tax and subsidy might lose any real chance of restraining parents' fertility: The belief that one can better provide for a few children than for a lot of children is surely a strong consideration in family planning.) Perhaps if sufficient emphasis were put on such matters as achieving minimal educational equality between high-income and low-income school districts and affording adequate nutrition to all children, any increase in the rather special type of economic inequality described above would not be of momentous consequence. Quite probably most people would consider that increase to be far less repugnant than our ever having to institute a legally enforceable per person fertility maximum.

Third disadvantage: Even in the long run the FT-FRS system might not be substantially self-financing. It could turn out that levying a tax upon relatively higher income people's childbearing was a much more effective technique for restraining fertility than awarding people with relatively lower incomes an FRS at a per child rate comparable to the FT tax rate. It could, of course, happen that the converse was the case, i.e., that the FRS was more effective than the FT at a similar per child rate. If either disparity occurred, meaning that fertility appeared to be either higher or lower amongst persons with above-average incomes than amongst persons with below-average incomes, exclusive of the estimated effects of fertility on income, there would be a situation of economic discrimination in want of correction. The former situation, FT more effective than FRS, will be dealt with here because it could cause long-term diffi-
cultures in financing the system.\(^{53}\)

We could attempt to correct any significant "relative deficiency" in fertility amongst persons with above-average incomes by prospectively making one of three changes in the FT-FRS system. If the nation's overall fertility were still believed to be too high, the dollar value of FRS's to be awarded to women with below-average incomes could be increased, hopefully avoiding an increase great enough to undermine income-earning incentive unacceptably. If overall fertility were believed to be too low, the rate of fertility tax levied on persons with above-average incomes could be decreased. Or, if the overall fertility rate seemed essentially satisfactory, the FRS's could be increased and the FT's decreased, though each more slightly than in the first two cases.

Though we might thereby sooner or later find a balance between the fertility tax and the FRS capable of achieving a fairly equal fertility rate amongst persons of widely varying income-making abilities, the total dollar value of annual FRS's could exceed fertility tax revenues by a sizeable amount year after year (and in this case without any plausible expectancy of later recoupment). If such a deficit were to occur, one way to eliminate it or at least reduce it would be to lower the FT-FRS breakeven points for some or all numbers of children. But, since this remedy would necessarily mean levying a fertility tax upon relatively large households with below-average incomes, and perhaps doing so to relatively large households with well-below-average incomes, we would not want to use it unrestrainedly.

In view of the concentration of below-average incomes in the elderly years, another way to remedy or lessen the aforementioned deficit situation would be to end persons' membership in the FT-FRS program at or near the conclusion of the usual income-earning years, say, at age 65. In conjunction with use of "all-adult-ages" U.S. average incomes at break-even points, the system would thus

\(^{53}\) The converse situation could also pose its own difficulties. The most obvious problem is the possible need for an FT rate so high that it would seriously threaten income-earning incentive amongst high-fertility persons with above-average incomes. However, there is some extra leeway for a rather high marginal FT rate. If the FRS proved more effective than the FT, FT revenues would, at least after the starting decades, be exceeding FRS expenditures. Federal income tax marginal rates on above-average incomes could thus be reduced to the somewhat guesstimate extent that the probable loss in annual income tax revenues would not likely exceed expected annual FT-FRS surpluses beyond those merely due to the earlier discussed "intermediate phasing-in" conditions. (A similar strategy for another eventuality is discussed in note 55, infra.)
be able to save a great deal more in discontinued FRS payments than it would lose in discontinued FT revenues. But even if lifetime vesting was abolished prospectively (as minimal fair play and hopefully minimal legality would require), for the reasons discussed earlier in Section III C, the resulting loss in desirability (or perhaps better stated, in social justice) would be nontrivial.

Another remedy, which could be employed with or without either of the prior two — and which might even be necessary in addition to both — would, of course, be to raise enough tax dollars from other sources to make up the deficit. However, if recurrent, sizeable FT-FRS annual operating losses were encountered, our continued insistence on achieving a nonexpansionary and economically nondiscriminatory fertility outcome purely via individual decisionmaking could become morally questionable (or worse). Given the compelling global needs that could be served by the monies used to cover the FT-FRS deficits, it just might be that the cost of preserving unlimited voluntarism in fertility was proving too high.54

Fourth disadvantage: It may not be possible to design a fertility tax and subsidy system that would be economically nondiscriminatory in actual operation. As previously stated, the tax and/or subsidy could be prospectively adjusted for different incomes in

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54 Though it would apply here only in part, the same point can be made with respect to the FT-FRS system even if it proved entirely self-supporting. Income-based fertility taxation of above-average-income households would reduce whatever leeway exists for increased income taxation (and other forms of taxation) of these affluent families and individuals, taxation whose revenues could be put to other worthwhile uses than paying FRS's. However, it is extremely likely that a good portion of (actual and potential) above-average-income earners with several dependents to support would vigorously seek income at combined (income tax plus their FT) marginal tax rates high enough to undermine the income-getting incentive of persons with similar income-getting opportunities but having very few or no dependents (provided, of course, that any combined marginal tax rate was less than confiscatory). In other words, some and perhaps even much of the revenue from the fertility tax would likely be over and above the additional monies realizable from, instead of having an income-based FT, increasing the income (and/or other) tax on more-or-less-above-average-income taxpayers to its maximum revenue producing structure (whatever that unknown rate structure might be). Even the "not otherwise tax raisable" portion of the FT revenues could, of course, theoretically be spent on worthy projects other than paying FRS's. However, choosing a market mechanism to limit fertility among persons with above-average incomes while choosing some entirely different method for the rest of society is not a very tenable option. There is also the possibility of using a fertility tax for all income levels and thus being able to use all the resulting revenues, net of administrative costs, for earth-caring and urgent human needs. However, I could not envision such a system that would appear to offer any plausible hope of discouraging population-expanding fertility with substantial equality among income groups and without either being economically oppressive to high-fertility households with low income, likely demolishing income-getting incentive among parents with high incomes, or having both these disadvantages.
quest of a structure that produced a similar lifetime fertility rate amongst contemporaries at all levels of income, exclusive of the estimated effects of fertility on anyone's income. The assessment of the degree to which this goal was being met and the prospective readjustment of the FT and FRS rates, when and if indicated, would have to be an ongoing process. But there would be limits to the range of adjustments that could be made. As noted earlier, the need to preserve adequate income-earning incentive argues against sudden jumps in the amount of an FT or FRS between nearby income levels. Another constraint is the wish not to levy an FT on large families that could not afford it. And, in any society that uses personal economic reward as a means of getting people to produce or to help produce needed and wanted goods and services (i.e., most societies), it would be undesirable for FT or FRS rates to be so high as to destroy income-earning incentive at any income level, high, medium, or low. Since, in the U.S., the FT would be levied in addition to the federal income tax and the FRS would be granted in addition to other public assistance, the danger is not illusory. If substantial disparities in lifetime fertility between different income groups could not be prospectively overcome by feasible adjustments in the FT and FRS structure, meaning that significant economic fertility discrimination could not reasonably be eliminated, we would face an unhappy three-pronged choice. We would have to either perpetuate the economic discrimination or let our population grow its merry way (and still quite possibly perpetuate economic fertility discrimination), or, if fertility was still unacceptably high, prepare for the unwelcome advent of some sort of per person fertility quota.

Fifth disadvantage: Last, but certainly not least, an acceptable incentive approach to fertility limitation may not be able to do the job. An FT-FRS structure that (a) doesn't require massive general revenue support, (b) avoids serious economic discrimination in actual practice, and (c) uses tax and subsidy rates that do not seriously undermine income-earning incentive, may not augment existing fertility disincentives sufficiently to stay a population-expanding level of fertility in the United States or in any other nation that might employ the FT-FRS approach.55

55 The following might be a last ditch attempt to give the FT-FRS concept adequate fertility-limiting "clout": Assume that per child FT and FRS marginal rates had been increased to the point that, when combined with welfare and other public assistance reduction
I do not view any of the possible ways that the FT-FRS system might fail and/or cause difficulties as reason not to try it should our fertility appear to be exceeding immigration-adjusted replacement. Any program of nonprohibitive cost with a decent chance of fairly and humanely thwarting irresponsible population growth without suppressing individual fertility freedom is, if and when needed, worth our try.

rates based on income received, for low-income families, and when combined with federal income tax rates for all other households, the FT and FRS could not be further increased without almost certainly undermining income-getting incentive to an unacceptable degree. Assume also that the then existing FT-FRS rates were not keeping the nation's level of reproduction within the goal of not exceeding immigration-adjusted replacement fertility. Assume, finally, that population-expanding fertility was occurring to about the same extent throughout the income spectrum. In short, the general desire, what the economist calls aggregate demand, for having babies was greater than thus far feasible economic disincentives had been able to limit sufficiently. The feasible level of FT-FRS fertility disincentives could then be increased by doing the following: First, lower the FT-FRS break-even points to incomes substantially below the applicable U.S. averages, a revenue-increasing move. Second, lower federal income tax rates, likely a revenue-decreasing move. Third, lower the benefit reduction rates by which welfare or other existing income maintenance payments are reduced by other household income, a move likely to increase government expenditures. Fourth, then, with lower income tax and public assistance marginal rates making it possible to do so, increase FRS per child subsidy rates and FT per child tax rates somewhat—without demolishing income-getting incentive. With a fair amount of luck and sophisticated guesstimating in setting the relative amounts of each of the foregoing changes—and perhaps some trial and error—the total package should not result in a drastically changed combined revenue and expenditure situation for the government. And, as to the point of it all, there would be at least the chance that the new level of fertility disincentive would be sufficient to actualize the nation's fertility-limiting goal. Under this scheme, the imposition of the fertility tax on the lower-middle income range of households would be offset by their paying a lower federal income tax, and in some cases, by their receiving income maintenance payments at an income that formerly would have disqualified them. But, obviously, this offsetting effect would only be an equal or nearly equal bargain for this income group taken as a whole. Within the group, a heavier net tax burden would fall on those who, in the future, have the most children, reflecting the higher price of parenthood then applicable to all income groups. Provided that greater fertility disincentive in any income group did not translate into genuine material need, into poor health that could have been prevented, and/or into severe educational deprivation for the children of high-fertility households, society would probably be paying the least evil price for achieving, if the new rates succeed, the benefit of an immigration-adjusted replacement level of fertility. If, however, it became apparent that our population-limiting imperative could not be fulfilled on a voluntary basis without upping the ante to a degree that would foster the above harms, we would then have the unhappy task of deciding whether compulsory sterilization or the continuation of population-expanding fertility rates was the lesser affront to human dignity. Even if we reluctantly opted for the former, there would likely be real benefit in continuing a nonharmful degree of fertility-limiting economic incentive: Maintaining the FT-FRS system could make compulsory sterilization unnecessary except for those who thereafter had a considerably greater number of children than would, apart from multiple births, be permitted anyone were a per person quota approach to replace the FT and FRS in toto. Were it to lessen to any substantial degree the loss of individual reproductive freedom, the FT-FRS ought still be a welcome institution.