

LAW, ECONOMICS AND POPULATION

RUBEN T. MONTEJO

I. INTRODUCTION

The points in which the subject matters of law, population and economics converge may be indicated by certain economic variables which affect the population growth at a given place and at a certain period of time. There is need to explore effectively the data available for the analysis of the inter-relations between economic and demographic movements. Accordingly, opportunity remains for calculating economic, demographic and legal data and some opportunities also remain for extending this type of analysis into deeper levels. But in any case, both economic and population data, though they contribute to the enactment of legal norms, are imperfectly suited to yield answers respecting many questions on population.

This paper will then attempt to focus attention on the relationships which are supposed to exist among population, law and economics, *i.e.*, relationships among population and economic variables which give rise to the law or may be the subject of legal activity. But it is submitted that the discussion of the legal aspects is centered upon the nature of the functional relationship rather than on specific empirical data because the manner in which law may come about in response to demographic and economic variables depends significantly upon concrete situations; upon the state of other conditions present which may vary greatly in time and space. It is a matter of fact that the legal response may be affected by several external factors that the analytical legal result will not always yield adequate explanations or answers. But in any case, an attempt is hereby made to explore the relationship.

II. THE CURRENT ECONOMIC SITUATION

A. *The Land*

The Philippine is a cluster of 7,100 islands, islets, rocks and sandbars that form an archipelago stretching 1,840 kilometers from north to south. The total land area of the country is 300,780 square kilometers, 96% of which is taken up by eleven large islands. Its land area makes the Philippines a

medium-sized country, a little larger than the British Isles or New England and New York State put together and about $\frac{2}{3}$ the size of Spain.¹

B. *The Natural Resources*

The Philippines is a country rich in natural resources, particularly mineral and marine resources. The rich mineral resources include iron, nickel, chromium, copper, lead and platinum. Its deposits of manganese are among the largest in the world. This includes also nickel. The country has also a profusion of marine resources. This includes the commercially popular sardines, tuna, mackerel, millet and sea-bass. Fish together with rice is the traditional diet.

The Philippines has, basically an agricultural economy with rice and corn as the staple crops. Sugar and coconut are widely produced for export. The country has some of the finest forest resources in the world. Of the country's total land area of 30 million hectares, about 30% is covered by forests. Commercial forests stand at about 8 million hectares.²

C. *Gross National Product*

Gross National Product expanded almost seven times between 1950 to 1975. At constant prices, it grew by an annual average of almost 6%. Real per-capita income appreciated by an average of 3% during the two decades — a remarkable achievement, given the country's high population growth rate.³ Just as significant, growth was accompanied by the diversification of production from a few cash crops like sugar, coconut and hemp to a wide range of raw (copper, pineapples and logs) as well as manufactured goods (textiles, cement, machine parts). The entire economy has been evolving structurally these past decades. Agriculture's share of the real domestic product has shrunk from about 39% in 1950 to 30% in 1974. Manufacturing has broadened its share from 13% to 21% over the same period. The trend towards industrialization can now be seen in the horizon.

D. *Food Production*

The country is engaged in a tremendous food production on the basis that self-sufficiency in food production is imperative both on economic and nutritional grounds.⁴

¹ FNCB Guide to Foreign Investments, published by FNCB Economics Department, 1975, p. 1-2.

² Philippine Economic Profile. Prepared by the Bureau of National and Foreign Information in Cooperation with the Central Bank of the Philippines for the 1976 Joint Conference of the World Bank and the International Monetary Fund. March, 1976. p. 20-26.

³ 1974 NEDA STATISTICAL YRB. 34.

⁴ PHILIPPINES (REPUBLIC) FOUR-YEAR DEVELOPMENT PLAN, 1974-1977, 270 (1973).

While the green revolution has scored a timely victory over the fruit and vegetable problem in the country, the rice and corn program has yet to be fully implemented. The economy has a comparative advantage in food production. Ironically, the importance of foodstuff has been an undue outlet of foreign exchange due to the insufficiency of domestic production. Rice as the staple food crop of the country is produced in about 3.2 million hectares representing about 35% of the total cropped area.⁵

Food production also includes vegetables. It was projected that the total output for 1975 is 1,600 metric tons while total requirements of the population is about 2,900 or a deficit of 1,300 metric tons.⁶ Fish as one of the most important food items in the Filipino diet is also a target of food production, although it is not being produced in sufficient quantities to meet the need of a fast growing population. In 1975, for instance, effective demand was for 1,786,154 metric tons while domestic demand was for 1,802,371 or a deficit of 6,577 metric tons.⁷

III. THE POPULATION SITUATION

The census of 1970 placed the total population at 36,684,486.⁸ The estimate for 1975 is 42 million from the same source. At the beginning of the 19th century, the total population was only 1.79 million. Since the Americans conducted their first census in 1903, reporting 7,635,426 inhabitants, the population has more than quintupled. Particularly since World War II, a dramatic decline in mortality has been brought about by effective public health programs. At the present rate of increase, calculated by most authorities at slightly over 3% annually (one of the world's highest since most developed countries have a growth rate of less than 2%) and with a crude birth rate of about 40 persons per thousand, while the crude death rate is about 12 deaths per thousand, the population should double in about 23 years. This dramatic and long term projection, while frequently useful in overcoming complacency with regard to population problems should be indulged in with discretion. First, they will never become true. Population growth will cease at some intermediate point either through the humane method of birth control or by an accelerated and brutal rise in deaths. Second, as grave as the population problem may be at present, it should not be made to appear worse than it is. Otherwise, people may give up hope on the face of what they think are overwhelming odds. Finally, events affecting population should stress the near future. Events which transpire 100 or more years from now would understandably

⁵ *Ibid.*, p. 274.

⁶ NEDA Estimates Based on the Daily Food Requirements of an Average Individual.

⁷ *Ibid.*

⁸ 1974 NEDA STATISTICAL YRB. 49.

command small attention on the part of political leaders and government officials who are frequently overwhelmed with immediate problems.⁹

Fully 55% of all Filipinos are below twenty years of age, while 3% are above sixty-five. The sex ratio is 17.9 males to 17.6 females or almost exactly 1 to 1. The average Filipino family has six members. An important feature of the Philippine population is its unequal geographic distribution and density. Central Luzon accounts for 8% of total land area and 15% of total population. Southern Mindanao accounts for 21% of the land area with 13% of total population.¹⁰ The average density of 90.3 persons per square kilometer in 1960 had increased to 123.1 by 1970. Inner Manila had a population density of about 34,750 persons per square kilometer in 1970, one of the highest in the world; together with its suburbs, the primate city has a density of 15,000.

IV. ECONOMIC DEVELOPMENT VS. POPULATION GROWTH

The magnitude of population growth is particularly important to a developing country. A high population growth rate poses needs that take away vital and critical resources from the economic development effort. It magnifies problems of unemployment, the supply and quality of social services, poverty, income distribution and urbanization. Consequently, the achievement of the desired level of social and economic development becomes a considerably more difficult task. This complicity of population problem in constraining the social and economic development of a country beings the issue within the immediate and long-term concern of development planning.

An attempt has been made to point out some indications in the Philippines of the increasing pressure of a rapidly growing population upon the resources of the country and the obstacles which a high birth rate of population growth pose to the nation's efforts for economic progress. The positive effects of a decline in population are not hard to discern. For one, the decrease in population of children would be progressive, the fewer young people who reach child-bearing age, the comparably fewer children to be born.¹¹

The most powerful economic motive for the limitation of children is the differentiated cost of raising children. This is defined in three ways as follows:

- (1) the increase in income that would be necessary for maintaining the same level of living after birth of the child as before;
- (2) the decrease in the level of living which the rest of the family suffers as a result of the birth of the new member; and

⁹ The Economics of Slowing Population Growth; Prepared for The Agency For International Development by Tempo, General Electric Company, Center for Advanced Studies, Santa Barbara, California, p. 4.

¹⁰ National Census and Statistics Office. Household Survey Sheets for 1975.

¹¹ MYRDAL, ASIAN DRAMA 333 (1971).

(3) the increase in the cost involved in providing for an extra child at optimum standards.

For per capita income to rise, the country's GNP must be made to increase faster than population. However, the growth of GNP is limited first, by the amount of land, labor and capital and second, by how efficiently it uses these resources as by technology. An increase in the country's population, means an increase in the labor force but not necessarily a corresponding increase in the other productive inputs. In reality, the availability of land cannot increase as rapidly as labor and capital. The rescuing elements to offset declining labor productivity are usually technology or imports of foreign capital. So the economic development process in simplest terms, is a race between the growth of population on one hand and the growth of capital and technology on the other hand. One indication that this race is being lost in this country is the staggering level of unemployment.

Two basic interactions determine the effects of slowing population growth on the growth of total output, *i.e.*, economic development. Their effects tend to be offsetting. On the one hand, a slower rate of population growth means that the labor force grows more slowly — but only after a lapse of fourteen years. This is the time it takes children to mature and enter the labor force. So, after this time lapse, the rate of growth of output due to the labor input will be slower under low fertility.

On the other hand, the rate of increase of the capital stock is amplified by a slower population growth because more resources are freed for investments. The resulting larger capital stock makes output, GNP or economic development grow faster. Thus, the GNP diminishing effect of a smaller labor force is partially offset by increases in output due to the larger capital stock.

The net result is that GNP is virtually unaffected for the first fifty years after a fertility decline. Thereafter, for the next fifteen years, in a typical case, GNP rises slightly faster under lowered fertility. Finally, in about twenty-five to thirty years, GNP under constant fertility catches up finally and surpasses GNP under lowered fertility. The important conclusion of the exercise follows logically from the above result: with almost the same GNP under constant and lowered fertility but with fewer people, GNP per capita must rise faster with declining fertility.¹²

V. THE LEGAL SITUATION

The government took an active part in population regulation with the initial issuance of Executive Order No. 174 which created the Population Com-

¹² FREJKA, *THE FUTURE OF POPULATION GROWTH* 35-50 (1973).

mission. This was made into an official act by Congress in 1971 and P.D. 79 expanded the role of the Commission. The underlying basis for the government participation was its recognition of the adverse effects a rapid population growth has on the momentum of economic growth.¹³ This in effect implements the State's responsibility of maintaining population levels most conducive to the national welfare.¹⁴ In the field of legislation, some laws that bear on child and family welfare have also the desirable effect of motivating the limitations of birth. Child labor laws have also been enacted and strictly enforced. The government has taken every legal step forward in the general health of the people. Other laws have been enacted to restrain the bearing of children.¹⁵

But other measures can still be made such as extending the rights and privileges of legitimate children to illegitimate children, less tax exemptions and higher tax deductions for single individuals. To impede the formation of families, the minimum age at which marriage shall be permitted may be raised. Legal measures should also be formulated to broaden the scope of women's rights and obligations and thereby increase the consciousness of present and potential mothers of gainful alternatives to child-bearing.

Another area which the law may intervene would be that of social security for old age. One supposed disadvantage of limiting family size is that children may provide the only form of old-age insurance for many parents especially in the rural areas. In these areas, savings institutions and securities markets are often non-existent, government or private life insurance largely unavailable, future inflation likely and real property unattainable and insecure.

A legal step in the right direction is to eliminate legal restrictions on preventing or terminating pregnancies, and at the same time counterbalance the inherent pro-natalist bias in many other government policies. Some typical government policies containing implicit pro-natalist elements are as follows:

- (1) prohibiting abortion or the distribution of contraceptives and contraceptive information except through certain authorized outlets;
- (2) child labor is allowed, permitting children to earn for their parents;
- (3) early marriages are permitted;
- (4) free public schooling in elementary and high school level;
- (5) inadequate social security, meaning that parents depend on children in later life;

¹³ Pres. Decree No. 79 (1972), sec. 2.

¹⁴ CONST. (1973), art. XV, sec. 10.

¹⁵ For an exhaustive analysis on laws affecting population see: U.P. Law Center, Law & Population Project, LAW AND POPULATION IN THE PHILIPPINES; A COUNTRY MONOGRAPH (1975); Sison, *Population Laws of the Philippines*, 48 PHIL. L.J. 356 (1973); Cortes, *Population and Law: The Fundamental Rights Aspect in the Philippine Setting*, 48 PHIL. L.J. 303 (1973).

- (6) inflation — which encourages children dependence by parents rather than financial investment for old-age security;
- (7) inadequate legal sanction against sex discrimination;
- (8) maternity leave with pay;
- (9) subsidized public housing and health care; and
- (10) expanded public health which reduces child mortality and increases fecundity.

The final step, which will hopefully never be taken, is to increasingly restrict the freedom of couples to reproduce. This would be the use of coercion as a last resort.

It should be noted that nothing in the foregoing analysis is meant to suggest that the government abandon socially desirable programs, such as free education, because of their pro-natalist bias. However, it should be aware of the full implications of such programs in order to offset undesirable demographic and economic effects. The difficult task for the government in embarking on further population control is to select a mix of measures that is both demographically effective and at the same time economically acceptable in terms of the overall objective of promoting a better life for the people of the nation.

Some General Observations

- (1) There is therefore a need to reorient the world of rewards and penalties, incentives and disincentives incident upon persons of reproductive age.

Illustrative of this case is the need to reorient or to correct the impact of discrimination against women, upon their position in the world of affairs and hence upon their view of reproduction. Ours is still a man's world. Women are discriminated against in our society and in most, if not all, other societies. Their overriding alternative may therefore appear to them to be marriage and motherhood, a function they alone remain able to perform. If all discrimination against women were removed, other activities would tend to absorb a portion of their time, energy and skills which they currently devote to marriage and motherhood, with the result that the average family size would be reduced. For in a world attaching less weight to family formation and family size and more to women's freedom and the quality of children reared, average family size would tend to be lower, and there would be greater emphasis upon quality instead of upon quantity of children.

- (2) The power to decide issues pertinent to the growth and distribution of population is also concentrated. Illustrative of concentrated decision-making is that relating to the distribution of population in space. A small number of corporations, ultimately governed by a few key executives, deter-

mine in the long run where much of the country's population must live. Over one job out of five is directly controlled by about a thousand corporations, which also determine where are manufactured the intermediate products which they make use of. These corporations could easily establish 500 cities, each with an economic base for something like 10 to 20 thousand inhabitants. These small and miniature cities would be capable of absorbing our unavoidable population growth, and thus ease the pressure upon our large cities. Indeed, this is the very reason why President Marcos passed a decree prohibiting the establishment of factories within a 50-kilometer radius from the boundaries of Manila. This also is the precise aim of the Board of Investments, and in line with its industry dispersal program, more incentives are available for industries established in the remote areas of the country. And lastly, this would be the side effect of the new Minimum Wage Law providing for separate levels of wages for the different parts of the nation.

(3) By far the most important requirement for the well-being of a worker's family is a regular living wage or its equivalent in farm income. A solution to the employment problem would have a more direct impact on the worker's standard of living and material security than could any conceivable reform of the social services, quite apart from the indirect services and benefits flowing through the economy. With full employment, the burden on the public welfare services would fall, and at the same time the government's resources for financing them would in all probability increase. If it be true that excessive population growth leads to mass unemployment and widespread underemployment, then the most baneful effect of high fertility on the worker's welfare is simply the low family incomes that result from shortage of work.

Most of the experts therefore agree that rapid population growth does in fact tend to retard the growth of income per head in countries where much of labor stands still and idle. It is reasonable to conclude therefore that gross national product of most developing countries would have grown at least as fast with slower population growth. Taking a longer view, many experts go as far as to maintain that the rate of capital formation, on which the pace of economic development ultimately depends, is held back in the high fertility areas. If the opinion of these experts is correct, then the total national output could eventually be higher with lower fertility, and the effect on income per head would be doubly favorable: not only fewer people to share the cake, but a bigger cake as well.

(4) The husband and wife team of Paul and Anne Ehrlich in their book *Population, Resources, Environment* states that the greatest potential for bringing population level under control can be found in the exploitation to its fullest extent of the legal system. Since law is the basis of a legal system,

and law is a norm of social behaviour for a group of individuals with sanctions for its violation, the sanction may either be a reward or punishment. For instance, the government may inaugurate monetary incentive programs for non-births or for the prevention of contraception or else impose heavy taxes on early marriage. While the threat of coercion may be feasible, it would be better, if the government wishes to induce an affirmative action, to promise rewards which are often more effective than the threat of punishment. This would also prevent the raising of constitutional issues involving due process, equal protection and others which are more likely to arise where punishment rather than reward is involved. Bonuses for not having children would certainly raise fewer constitutional questions than jail for over-producers.

The question of population has moved to the center of the stage and has become also a concern of the national government. This is not to say that government policies have not affected population in the past, but usually this has been a by-product rather than a deliberate attempt to influence growth or distribution of population. The authors Ehrlich further note that the right to have children is not a fundamental or much less an inalienable right. From the legal standpoint, this is more of a privilege and there is therefore no reason why its exercise cannot be regulated. The privilege to have children is not something personal to the woman, it is not solely a matter of private concern but a matter of profound public concern.

Lastly, there may be little support for laws affecting population in a country which is predominantly Christian, but when the situation is already grave and rapidly deteriorating, popular support and initiative might develop rapidly. But again, it is hoped that forced measures may not be resorted to bring the population level under control.