

## Chapter 8

# An Ethical Assessment of the Legitimacy of Anti-natalistic Birth Policies

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### 8.1 Introduction

Governmental regulations on permissible number of births raise profound ethical questions. Undoubtedly, they are a form of interference in individuals' and families' freedom of choice. Having a baby is an intimate, private affair but, at the same time, it is also a process of great relevance to society as a whole. This dual character is one of the key reasons why debates on this subject are so explosive and emotionally charged. The ethical questions are serious and intractable. Is it acceptable for a government to influence how many children its citizens have, for instance, by offering incentives? Or is freedom of choice always of greater value than the positive effects hoped for future generations? Does this in itself mean that birth policies can never be ethically legitimate? Are reproductive decisions an individual right to such an extent that the individual may reach a decision while completely disregarding other factors? If not, to what degree may the family, clan, government or even world community intervene?

This chapter offers a train of thought on how to assess the ethical legitimacy of birth policies.

### 8.2 Focus on Anti-natalistic Birth Policies

Demographic change and the wellbeing of the next generation are intimately linked because it is the size of a generation that determines a great share of its fate. But for better or for worse?

The relationships are not one-directional. Both rapid population growth in developing countries and projected population decline in developed countries are considered a threat for future generations in the respective countries.

Although shrinking societies are usually growing older, and growth processes usually go hand in hand with juvenescence, for analytical purposes the elements of demographic change can be separated into changes in population size (growth, shrinking) and changes in median age (ageing, juvenescence). Each of these four developments has different effects on policy fields and indicators relevant for the wellbeing and the quality of life of a generation. Table 8.1 shows some of the impacts and their relative strength. Regarding the quality of the environment, food safety, job opportunities and access to educational institutions, each member of the next generation is better off if his generation is smaller than the previous one. However, for other sustainability indicators (e.g. stability of the social security system, or the reduction of state debt per head), it is better for a member of the next generation if his generation is bigger than the previous one. The same complexity applies to ageing and juvenescence. Some sustainability indicators are aided by an ageing population (e.g. democratic stability) whilst others benefit from a juvenescent society (e.g. ability to innovate).

**Table 8.1** Impact matrix showing possible impacts of facets of demographic change on certain sustainability indicators (source: present author)

<b>Explanation:</b>									
	-3: strong negative influence; -2: medium negative influence; -1: weak negative influence; 0: no influence; +1: weak positive influence; +2: medium positive influence; +3: strong positive influence								
<b>Demographic change</b>	<b>A. Environmental factors: CO<sub>2</sub> emissions, etc.</b>	<b>B. Food security</b>	<b>C. Competitiveness</b>	<b>D. Pay-as-you-go retirement system</b>	<b>E. Funded retirement system</b>	<b>F. Opportunities on labour market</b>	<b>G. Efficiency of education systems</b>	<b>H. Financial solidity/public debt</b>	<b>I. Stability of the democratic system</b>
1. Ageing of population	0	-1	-2	-3	-1	-2	-1	0	+1
2. Juvenescence of population	0	+1	+2	+3	+1	+2	+1	0	-1
3. Shrinking of population <sup>a</sup>	+2	+2	0	-	-	+2	+1	-2	0
4. Growth of population	-3	-2	0	+2	+1	-2	-1	+2	-1

Source: present author. Note that this line describes the effects of shrinking, all else being equal. Only if a country could move from one state (for instance, 30 million people) to another (20 million people) without increase of the median age would the effects have the tendency shown in Table 8.1. It is, however, difficult to envisage a society which is shrinking without ageing. The reader should bear in mind that most industrialized societies are shrinking *and* ageing.

## Explanations for Table 8.1

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1 affects A	Ageing – unlike growth or shrinking – does not directly and strongly affect the environment. Minor indirect effects can occur because the consumption habits change with age
1 affects B	An ageing population might be less able to produce food than a younger one
1 affects C	An ageing population is less competitive because innovative ability and risk appetite will decrease. The (increasing) experience also influences competitiveness, but to a lesser extent
1 affects D	A pay-as-you-go system is negatively affected by ageing
1 affects E	A funded system is less prone to demographic changes but also negatively affected by ageing
1 affects F	Employers prefer young staff. Older people also have a lower tendency to become self-employed or to set up businesses. Therefore, the opportunities on the labour market become worse in an ageing society
1 affects G	Assuming that the median age of students rises, this will deteriorate the efficiency of education systems, as older students will have more problems to find jobs, esp. in an international competition
1 affects H	An ageing (but steady-state) population will not or hardly suffer from public debt, because the debt per capita ratio does not raise
1 affects I	“It is the young men that shatter states”, Cicero said. There is, in fact, empirical evidence that older societies become calmer, less inclined to wage war, to make revolutions or upheaval. This is the flipside of the coin of less risk appetite. Another aspect of the relationship between age structure and democracy is the growing overbalance of elders in political decision making
2 affects A–I	The results are more or less mirror-inverted
3 affects A	According to the PAT formula, people are a driving force in environmental problems like resource depletion, CO <sub>2</sub> emissions, and loss of forests and biodiversity. But the effects of a shrinking and a growing population are not mirror-inverted. The rate of species goes down when population grows rapidly; however, the number of species hardly increases when a population shrinks
3 affects B	A shrinking population usually has less problems to feed itself
3 affects C	A smaller population is by itself not more or less risk-averse than a bigger one
3 affects D	If a country with a pay-as-you-go retirement system would shrink without ageing, then the yield would not go down. But as this situation does not apply to any country with such a retirement system, there is no entry in this field
3 affects E	See above
3 affects F	Most studies project a lower unemployment rate or even a shortage of workers in a shrinking society
3 affects G	Less students could use the existing infrastructure (university buildings, etc.)
3 affects H	A population decrease implicates that a given amount of debt has to be paid back by less people

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(continued) Explanations for Table 8.1

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3 affects I	If all else stays equal, there is no direct influence
4 affects A–I	The results are more or less mirror-inverted but exceptions apply, as described in “3 affects A”

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This chapter confines itself to a discussion of anti-natalistic birth policies. This is because leading international environmental research institutes emphasize that we are unlikely to succeed in creating an ecologically sustainable world unless we further reduce worldwide population growth (UNEP 2000; World Resources Institute 2000; American Association for the Advancement of Sciences 2001; World Wide Fund for Nature 2004). If we assume a world population, in line with UN projections, of 9.1 billion in 2050 (United Nations 2005, p. 6)<sup>1</sup>, the pressure on renewable freshwater, arable land, woodland, fishing zones, biodiversity and the atmosphere will be greater than at any point in human history. The current trend in world population growth, which stands at 76 million people per year at present, will diminish only slowly and continue far into the future. While sinking birth rates on a global level have caused some to sound the all-clear on this issue, the increase in worldwide population of around 40%, or 2.6 billion people, makes serious consideration of anti-natalistic policies an urgent necessity.

On a country level, one cannot ignore the fact that many developing countries still suffer from very high birth rates. According to UN Population Division projections, the population of the following countries will triple between 2005 and 2050: Afghanistan, Burkina Faso, Burundi, Chad, Democratic Republic of Congo, East Timor, Guinea-Bissau, Liberia, Mali, Niger and Uganda (United Nations 2005, p. 7). China and India, which make up for more than a third of the world’s population, also regard their population growth as too high. India, with a population growing by 16.5 million people every year, accounts for around 22% of annual world population growth (Government of India 2005; United Nations 2005, p. 52). To ensure a decent life for these additional Indians, 6–7 million new jobs, 16,000 primary schools and around 400,000 new teachers would be necessary (see Bronger 1996, p. 87). India is unable to cope with these developmental needs. China, of which the territory consists largely of mountains and deserts and only 10% cultivable land, fears that rapid population growth may lead to famine. As Lester Brown of the Worldwatch Institute

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<sup>1</sup> The experts in the Population Division work from the premise that the total fertility rate (TFR) will fall to 2.05 children per woman by 2050. If the TFR will be 2.53, we could expect 10.6 billion people by 2050 (maximum variant), while a summarized birth rate of 1.56 would produce 7.7 billion (minimum variant). If TFR will remain constant, then world population would be 11.7 billion in the mid-21st century.

has shown in the study “Who will feed China?” (Brown 1997), such fears are not without foundation.

Alongside the economic and social burdens, rapid population growth also causes ecological problems, ultimately affecting every one of us. Besides deforestation, depletion of natural resources, and greenhouse gas emissions, the extinction of animal and plant species is another effect intensified by population growth in many developing countries (Rolston 1998; Tremmel 2005, pp. 75–94).

Many governments in the Western world are more preoccupied with their own low total fertility rate nowadays. And rightly so, as Table 8.1 shows. A rapidly shrinking and ageing population can create stress for the welfare state and the social security systems. Whether or not an increasing or a decreasing population size is beneficial to the next generation depends on the specific situation a nation is in. Hence, the reasons which could possibly justify a pro-natalistic policy differ from those which could legitimate an anti-natalistic policy. To discuss both kinds of cases would be beyond the scope of this chapter. The questions are difficult enough. Being able to choose to have a high number of children is undoubtedly a matter of elementary self-determination, closely bound to an individual’s personal happiness. If we can assume that the wellbeing enjoyed by future generations would increase if one had fewer children, one would have to balance the interests of those individuals living now against those of future generations. Without an endless supply of people, our species would have been unable to survive or develop. Fertility has therefore been valued greatly since Biblical times. Yet, if the inhabitants of specific regions’ food security and environment are threatened, then their rights to freedom and self-determination are also at risk.

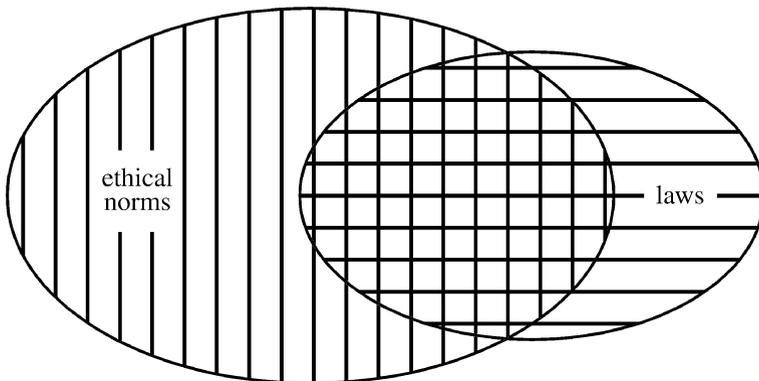
Ecologists often believe that the next generation will be better off if it grows at a smaller or even a negative rate compared to its predecessors. Economists believe the opposite (Simon 1998). How many of the 200 countries worldwide are currently in a position which requires an anti-natalistic birth policy? An ecologist might count 80, an economist only eight, and they could debate this question for a long time, each one with good arguments on her side. I do not discuss this question in my chapter. Instead, I offer a non-contextualized principle which is meant for the hypothetical case that a government has good reasons to devise and implement an anti-natalistic birth policy. For the sake of the argument, we assume that the members of the next generation would clearly benefit if the state imposed an anti-natalistic birth policy on the members of the present generation. But even good ends do not justify all means. The social and economic rights and interests of the members of the next generation must be weighted against the rights and interests of the members of the present generation, including the right to self-determination and the right to choose freely the number and spacing of one’s own children. This chapter thus asks if political intervention in family planning can be reconciled with ethical norms.

### 8.3 The Human Rights Discourse and the Ethical Discourse

Before entering into my line of argument, I want to explain my notion of the complex relationship between ethical norms and laws in the field of population ethics. I do not frame my line of thinking in human rights language, so often employed when it comes to population policies. The nationally oriented population policy discourse, and its attendant institutionalization in the global arena, sets forth norms for states to adopt, embed in the jurisprudence of national and international law (Barrett and Frank 1999, p. 199). Bentham (1824) has put forward the opinion that real (or enforceable) rights come from real (or legislated) law, recognisable by the duties imposed on others, not by normative contents of aspirational documents. But most ethicists nowadays employ the term “rights” in the ethical sphere (“moral rights”) and the legal sphere (“legal rights”). The legal and the ethical discourse overlap, but they should be distinguished. It is thus something different to say that something is “ethically unacceptable” or a “human rights violation”. The two intersecting circles in Fig. 8.1. show the relationship between laws and ethical norms.

Firstly, there are moral commandments or, alternatively, moral obligations (left circle). This is the realm of ethicists reflecting on population issues. Not all ethical norms can be embedded in positive law – some will be non-contextualized, others could be codified into legal terms but the political majority is not (yet) willing to do so. Taking a bird’s eye view, the codified law is usually sooner or later adjusted according to the changes in the moral convictions within a society.

Secondly, there is the group of ethical norms regarding population policies which are at the same time legal norms and vice versa (cf. intersecting part of the two circles). In international law, this legislative body regarding population policy consists, among other, of the Universal Declaration of Human Rights (1948), the International Covenant on Economic, Social and Cultural Rights (1966), the International Covenant on Civil and Political Rights (1966),



**Fig. 8.1** The relationship between ethical norms and laws (source: Tremmel 2006, p. 199, modified)

the Convention on the Elimination of All Forms of Discrimination Against Women (1979), the Programme of Action of the International Conference on Population and Development (1994) and the Declaration on the Elimination of Violence Against Women (1999) (for an overview, see Babor 1993).

Most *national* laws on population issues are also ethically legitimated.

The third case (non-overlapping part of the “law” circle) are legal norms which are not ethical. For example, the Nuremberg Racial Laws of Hitler’s Third Reich are laws which are blatantly unethical. Nevertheless, they were codified in positive law. Another example (still not comparable to the Nuremberg Racial Laws, but bad enough) are the apartheid laws in South Africa until 1994. They made apartheid legal, but not moral. Some of the population laws currently in force in China are also unethical, as this chapter will show.

I will confine my reflections on the sphere of ethical norms in this chapter.

## 8.4 The Dissemination of Birth Policies

This section deals with the argument that all types of birth policy are unethical. If this is accepted, follow-up questions concerning the ethical assessment of specific birth policy measures become trivial – these would then also lack legitimacy.

The widespread use of birth policies underlines the importance of their ethical assessment. The member states of the United Nations report regularly to the Population Division any active birth policy they may be pursuing. The most recent figures (cf. Table 8.2) show that this applies to 131 of 193 states (68%). In all, 77% of developing countries have implemented such policies, 59% of these anti-natalistic, 8% pro-natalistic, and 19% of policies are intended to maintain the current fertility level.

In all, 43% of the “more developed countries” pursue a natality policy (31% pro-natalistic, 2% anti-natalistic and 10% intended to maintain current fertility rates). Approximately 4.8 billion people (75% of the world population) are affected by birth policies.

## 8.5 The Role of the State

In liberal theory, the state should not interfere in any way with the decisions of its citizens concerning procreation. A *laissez-faire* state providing only for security will not take a stand regarding a desired population development – and definitely not take actions to carry it into effect. But it is now widely recognized that governments have a responsibility to try to increase their citizens’ wellbeing and prosperity. “Population policy” is a generic term for the three subterms “birth policy”, “health policy” and “migration policy”. The modern state pursues social, economic, educational and environmental policies. Through migra-

**Table 8.2** Birth policies by country (source: United Nations 2003, p. 4)

	States aims with regard to level of fertility					Percentage				
	Raise	Main- tain	Lower	No inter- vention	Total	Raise	Main- tain	Lower	No inter- vention	Total
<b>Africa</b>										
1976	2	2	12	32	48	4	4	25	67	100
1986	3	3	21	24	51	6	6	41	47	100
1996	2	3	36	12	53	4	6	68	23	100
2001	1	3	38	11	53	2	6	72	21	100
<b>Asia</b>										
1976	2	9	14	12	38	5	24	38	32	100
1986	8	6	13	11	38	21	16	34	29	100
1996	7	6	19	11	46	15	20	41	24	100
2001	8	7	20	11	46	17	15	43	24	100
<b>Latin America/Caribbean</b>										
1976	2	0	10	15	27	7	0	37	56	100
1986	0	0	15	18	33	0	0	45	55	100
1996	1	1	18	13	33	3	3	55	39	100
2001	1	1	19	12	33	3	3	58	36	100

tion policy and health policy (improving health and thus increasing life expectancy), the government is in fact already pursuing population policy, without arousing moral controversy. But what about birth policy? In 1976, the ethicist Daniel Callahan wrote on the role of governments:

“It is only fairly recently, however, that governments have taken a leading role in an anti-natalist control of fertility (...). While many countries still do not have such policies, few international objections have been raised against the right of nations to develop them. So far, most government population policies have rested upon and been justified in terms of an extension of freedom of choice. Increasingly, though, it is being recognized that, since demographic trends can significantly affect national welfare, it is within the right of nations to adopt policies designed to reduce birth rates and slow population growth. (...) Is there any special reason to presume (...) that governmental intervention in the area of individual procreation (...) raises problems which, *in kind*, are significantly different from other kinds of interventions? (...) I see no special reason to think that the formation of interventionist, anti-natalist, national population policies poses any unique *theoretical* difficulties. (...) In any case, the premise of my discussion will be that governments have as much right to intervene in procreation-related behaviour as in other areas of behaviour affecting the general welfare” (Callahan 1976, p. 26 f.).

The legitimacy of a government's claim to pursue birth policies is also embodied in the "Programme of Action" drawn up at the World Conference on Population held in Cairo in 1994 (Bib 1994). At the same time, some measures were classed as impermissible. The international community demands that governments refrain from making the subordinate civil servants who implement family planning programs pursue set targets, although governments themselves may work towards demographic objectives. The final text from Cairo+5 painstakingly captures this apparently controversial issue: "In attempting to reach this benchmark,<sup>2</sup> demographic goals, while legitimately the subject of government development strategies, should not be imposed on family planning providers in the form of targets or quotas for the recruitment of clients" (United Nations 1999b, par. 58).

On this view, a country like China may continue to proclaim national goals with respect to population growth and size. But if it wishes to act in accordance with international law, it must not stipulate target figures for local family planning services. One has to bear in mind that specific target figures may lead lower-level civil servants to behave inappropriately. Governments do not need to be indifferent. It would be preposterous to forbid a state on course to doubling its population from pursuing official birth policies of any kind.

We may provisionally conclude that a government may have demographic goals but may pursue these only by means of specific birth policy measures.

## 8.6 The Democratic Proviso

In my opinion, a government should be allowed to devise and implement a birth policy only when it is a democratic regime. It makes a great deal of difference whether birth policies are developed and implemented by a dictatorial or democratic government. Objectives are discussed and questioned constantly within democratic governments. The stance of a minority may become that of the majority. In his famous essay "The tragedy of the commons", Garrett Hardin argues that reproductive behaviour is an example of how the selfish deeds of individuals can wreck the entire system. He posits that a government in a democracy will not be able to execute an effective birth policy (Hardin 1968, pp. 1243–1248).

Under this assumptions, utility-maximizing parents have more children than is necessary for a stable population. Does this mean that the democratic proviso is wrong?

There is plenty of empirical evidence that *democratic* developing countries are able to impose anti-natalistic birth policies, despite the fact that the vast major-

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<sup>2</sup> The target is described in the preceding sentence: "Where there is a gap between contraceptive use and the proportion of individuals expressing a desire to space or limit their families, countries should attempt to close this gap by at least 50 per cent by 2005, 75 per cent by 2010 and 100 per cent by 2050."

ity of citizens would like to have more than two children. Likewise, reasonable individuals accept the necessity for taxation, although no one likes paying taxes. And compulsory military service – and sending people to war – is a much more severe intervention of the right to self-determination than restricting numbers of children. Nevertheless, many democracies continue to have military draft. This shows that the statement that democracies by their very nature are unable to have birth policies is wrong. There are thus good reasons why only democracies should be permitted to formulate population targets and birth policies. In India – unlike China – it has proved possible to correct abuses, as evident, for example, in the resignation of Indira Gandhi's administration as a result of its forced sterilization policies. Being a democracy has weakened the efficiency of India's birth policy, but it has increased its ethical legitimacy.

On the basis of the discussion thus far, we can conclude that birth policies in democracies are not generally ethically inadmissible. The crucial factor is the means deployed.

## 8.7 The Link Between Severity and Efficiency

A correlation evidently exists between severity and efficiency. A single empirical example will suffice to illustrate this—a comparison between the birth policies of China and India.<sup>3</sup> At the beginning of the 1950s, both states felt compelled to introduce measures to reduce population growth. The need to ensure food security played a particularly important role in both states.

Initially, both China and India tried to achieve their population policy objectives exclusively by means of appellative approaches combined with provision of a plentiful supply of contraceptives. In light of the unsatisfactory results from the Chinese perspective, the (in)famous “One Child Policy”, designed by Deng Xiaoping, was introduced in 1979. Between 1979 and 2004 (when this policy was significantly relaxed), couples required official approval if they wished to have children. Being married was also a precondition.

After the birth of the first child, the “One Child Policy” prescribed the use of contraceptives, mostly diaphragms and sterilization, as these were consid-

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<sup>3</sup> It would be a digression from my topic to pursue this subject in detail here. For an in-depth look at China's population policy, which has been studied thoroughly, see Zhang (1990), Qu and Li (1994), Scharping and Heuser (1995), Schultz and Yi (1995), White (2000), Xie (2000), McElroy and Yang (2000), Merli and Raftery (2000), Peng and Guo (2000, pp. 105–123), Wong (2001), Scharping (2003), Meulenbergh (2004), and announcements made by the Chinese government (see, for example, <http://www.npfpc.gov.cn/en/en2005-01/enews20050106-4.htm>). For an in-depth look at the population policy of India, see Bronger (1996), Haub (2003), Gans (2005) and announcements made by the Indian government (at <http://www.mohfw.nic.in/dofw%20website/Health%20&%20Poulation%20indicators/hpi%20frame.htm>)

ered cost-effective and reliable. Abortion was a lawful means of contraception, and unauthorized pregnancies were to be terminated by means of it. Officially, this required the consent of the woman, yet in some provinces women had been forced to comply. The “One Child Policy” was intended to combine sanctions against offenders with incentives for those who stick to the rules.

However, because the family planning authorities were anything but well-funded, sanctions predominated. Should couples refuse to abort unauthorized pregnancies, both parents faced the prospect of sanctions, such as pay cuts of 10–20% extending over 3–14 years.

Second-born children, moreover, were excluded from the state education system and had to be sent to expensive private schools. Possible sanctions also included one-off fines, discontinuation of grain rations, or disadvantages such as expulsion from the party. After the birth of the second child, sterilization was recommended, officially without compulsion, though some reports attest to the opposite. In the month of January 1983, a massive propaganda campaign resulted in record 2.68 million new cases of sterilization and 210,000 other preventative measures. The rather rarely granted incentives consisted of a “one-child bonus” of 60 Yuan per annum since 1980, enhanced welfare benefits, and help getting a job.

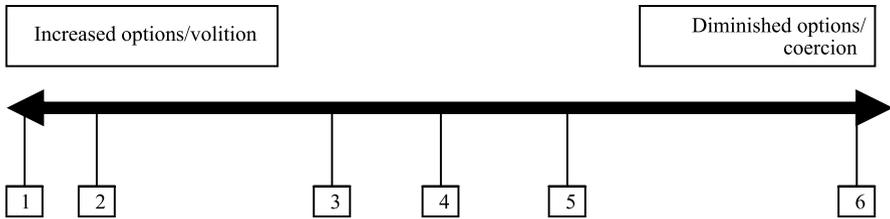
India, the second most populated country in the world, took a different approach. Though the strict Chinese birth policy has been relaxed several times (1984, 2001, 2004), from 1979 onwards India’s birth policy has always been more liberal than that of China (apart from the 1975–1977 period).

At this point, it is intriguing to look at the difference in the extent to which these countries have achieved their objectives. In 2005, the population of India was around 1.03 billion. The growth rate is 1.5% and the total fertility rate is 3.01 children per woman. Estimates suggest that India will overtake China in terms of population by 2050. It already ranks first in terms of absolute increase in population. Only 46.2% of families are covered by family planning programs.

China has a population of 1.3 billion people. The yearly growth rate is 0.7% and the fertility rate 1.83 children per woman. According to Chinese sources, 95% of the Chinese population are involved in the family planning system. The price of efficiency was (and to some extent still is) more coercion. To sum up: the more severe the measures, the more efficient the birth policy but, at the same time, the more ethically problematic they are.

## 8.8 The Classification of Birth Policies

Demography is faced with the challenge of classifying and assessing birth policies. Such policies may be categorized as pro- or anti-natalistic, depending on their aims. If one examines anti-natalistic policies only, as in this work, a large number of additional classificatory criteria exists. They may be classified, ac-



**Fig. 8.2** Continuum of birth policy measures. Types 3–5 are financial steering measures (source: present author)

cording to how pervasive they are, as fully or partly established, as supply- or demand-oriented, depending on the underlying motivation, and as governmental or non-governmental.<sup>4</sup>

In the present context, the criterion of ethical legitimacy is of greatest interest. The borderline between ensuring freedom of choice and coercion, and between ethical and unethical measures is unclear. The following continuum, which reflects their degree of ethical legitimacy, appears as sensible means of categorizing anti-natalistic measures (cf. Fig. 8.2).

### 8.8.1 *The Indirect Approach*

Here, the government refrains entirely from directly influencing how many children its citizens have. Instead, it attempts to influence other factors in order to reduce the birth rate. This includes improving health services and educational levels, and providing more job opportunities, especially for women. Making contraceptives universally available enables individuals to decide how many children to have and how long to wait between births. All necessary steps are taken to ensure that freedom of choice is real, rather than on paper only.

If one can call this a “birth policy” in the first place, it is simply because the government aims to determine demographic development or, at least, has an opinion about whether the birth rate is too high, too low or appropriate. However, it pursues these quantitative goals only indirectly.

<sup>4</sup> The reader is referred to Wingen (1975, p. 19), Görres-Gesellschaft (1985, pp. 764–770), Hauser (1991, pp. 601–655), Feucht (1999, p. 21), Gauthier (1999) and Hummel (2000, p. 103).

### ***8.8.2 The Appellative Approach***

Here, the government actively encourages people to have a specific number of children. Roadside billboards featuring happy couples with two children, and slogans such as “small family = happy family” are a common sight. Individuals are called upon to voluntarily refrain from exceeding a specific number of children. Citizens are informed about the negative effects of rapid population growth for development and the environment. This is accompanied – as with all the approaches described here – by provision of a plentiful supply of contraceptives.

### ***8.8.3 The Financial Incentives Approach***

The government offers positive financial bonuses which influence reproductive behaviour. This may include incentives<sup>5</sup> for sterilization or the use of contraceptives effective over long periods of time (such as “Norplant”), compensation for longer breaks between pregnancies, lower interest loans for small families, and awards and public commendations for responsible parenthood.

### ***8.8.4 Restricting Financial Incentives***

The government restricts existing financial bonuses to a specified number of children. Direct financial subsidies or tax reductions, free school education, paid maternity leave, childcare payments and similar incentives are, for instance, available only for the first child.

### ***8.8.5 Imposition of Financial Disincentives***

The government demands “negative” financial incentives, or disincentives<sup>6</sup>. Those who have too many children have to pay extra taxes or a specified fee per child.

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<sup>5</sup> I use this neutral word instead of “rewards” or “benefits”.

<sup>6</sup> I use this neutral word instead of “penalties” or “sanctions”.

### 8.8.6 *The Rationing Approach*

In the case of “rationing”, no one is allowed to exceed the specified number of children, even if someone is prepared to pay a hefty fee for this.

If a couple has already had the permissible number of children, a new pregnancy is classified as illegal and the woman is forced to have an abortion. Rationing laws may also result in forced sterilization.

## 8.9 Reaching Ethical Decisions

What does an individual assessment of the six identified categories of birth policy in the continuum look like? The indirect approach is ethically unproblematic. It embodies the principle, first adopted in Teheran in 1968 and reiterated in Cairo in 1994, which affirms the “fundamental right of all couples and individuals, to decide freely and responsibly the number and spacing of their children and to have the information and means to do so and to ensure informed choices and make available a full range of safe and effective methods” (UNFPA 1994, par. 7.3 or 7.12). In the second part of this formula, the state is brought in because it is its task to come up with solutions if couples have no access to contraceptives. In fact, family planning programs should not only guarantee access to one or more types of contraceptive, but must also make available “an entire choice of harmless and effective methods” (UNFPA 1994, par. 7.12). In 1994, it was ascertained that “the full supply of modern family planning methods for at least 350 million couples in the world is still not available” (UNFPA 1994, par. 7.13). To ensure that, despite a rising world population, the same proportion of people continue to use contraceptives, about 300 million additional users are needed between 2000 and 2050. Already at present millions of people are unable to obtain the contraceptives they want. In all cases in which individuals, in their own words, are forced to have more children than they would like because of a lack of other options, contraceptives or sex education, there is no ethical dilemma; the interests of individuals and those of future generations are entirely in sync. Here, it is doubly ethically imperative that both developing and developed countries do everything they can to cover people’s need for contraceptives within the framework of high-quality health services and advice.<sup>7</sup>

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<sup>7</sup> The fact that the notion of being “free to choose how many children one has” is problematic does not stand in the way of this imperative (Tremmel 2005, pp. 166–170). Even in rich countries, individuals have to reach agreement with their partners on how many children to have. The choice is thus not completely “free”. Moreover, how many children a person wishes to have can only be assessed subsequently as it also changes following the birth of a child (Goldstein et al. 2003, p. 8). Furthermore, how many children a person wishes to have also depends on the values which prevail in the specific culture as well as biological factors. Couples can thus choose how many children to have only within the framework of these external factors.

The second approach, straightforward appeals, also involves no coercion. One has only to think of governmental campaigns on organic produce, smoking, soot filters on cars and so on. Why should billboards encouraging people to have no more than two or three children involve greater pressure than those promoting other goals?

Assessing measures at the other end of the continuum is also relatively easy: there are good reasons for regarding rationing as unethical.<sup>8</sup> It is a clear violation of the human rights identified by the United Nations, which states that nobody may be tortured or subjected to cruel, inhuman or degrading treatment or punishment (13, Article 5). Rationing almost inevitably has a negative impact on society, as people, for example, live in fear of the consequences of unauthorized pregnancy. The implementation of a rationing law would require intense surveillance, and encourage informers to report anyone failing to comply. As a result, many women whose pregnancy “breaks the rules” will experience anxiety and psychological pressure. The harm done may include suicide. The potential disruption to society ranges from selecting gender by means of ultrasound to child murder. The rationing approach entails many risks for children. It is incompatible with human dignity and self-determination.

Let us assume that the state permits only one child per family. Anyone whose happiness or wellbeing depends entirely on having one more child is unable to fulfil his or her wish. He or she cannot even swap with somebody who does not want to have children. From a utilitarian point of view, this is obviously a poor solution.

A rationing policy, the most rigid of the birth policy types listed here, in recent human history was adopted only in China.

The Indian birth control law, drawn up at the beginning of 2003, may be regarded as a regulation of this type. Men and women who have more than two children are barred from running for election. The ban is intended to force politicians to set a good example in terms of family planning. This law excludes individuals who have more than two children from a specific career, in line with a rationing approach. This is rationing of a particular type. While rationing strictly applied to all citizens generates a great deal of unhappiness, as people are unable to live their lives as they would wish, in this case they are faced with a difficult decision. Do they compromise in terms of their career or their preferred number of children? To generate such dilemmas is unethical. The most interesting aspect in terms of population ethics is the assessment of financial control mechanisms, which is the topic of the following section. The aforementioned reflections thus far are summarized in Fig. 8.3.

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<sup>8</sup> A rationing strategy often seems to lead to abuses. This may and ought to be taken into consideration in making an ethical assessment. However, for analytical purposes we need to distinguish between *legally regulated* birth policy and excesses and abuses. Corruption is bad in general, and corruption in relation to birth policy is no worse than in other contexts. The risk of abuse, moreover, is not an exclusive feature of rationing strategies.

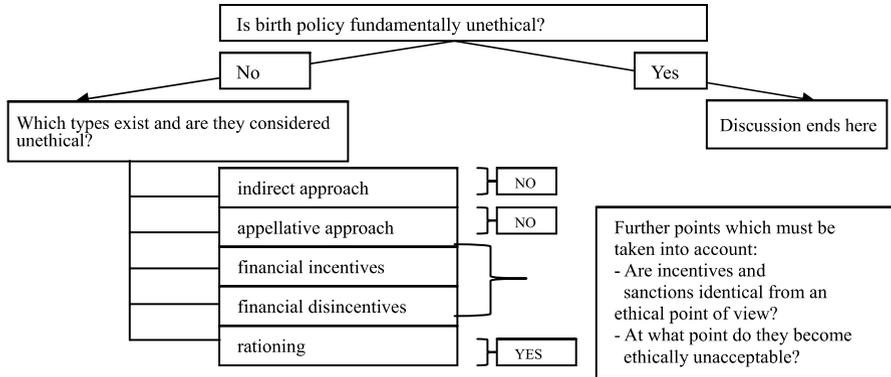


Fig. 8.3 Making ethical decisions on birth policy (source: present author)

## 8.10 Incentives and Disincentives

Most states pursuing an anti-natalistic birth policy deploy *financial or material* incentives and disincentives. Let us look at some real-world examples. In China, parents must pay a fine for every additional child. The population and natality planning law, passed in 2001 and implemented in 2002, stipulates that married couples of reproductive age must practice family planning. Citizens who have unauthorized children “must” according to the law, pay maintenance contributions, i.e. to the society which raises the children’ (§41). In Vietnam, families with more than three children are not allowed to move to town centres or industrial zones, and additional taxes and “community work” may be imposed on them (Haub 2003, p. 1). In contrast, at the discretion of the local authorities, one-child families may receive free building land, be exempted from taxes and community work obligations, and may receive child benefit and other financial rewards. In Bangladesh, the allocation of food support depends on proof of sterilization (Kasun 1988, p. 91). In Laos, an official told the village elder that his community would be provided with a well if all the villagers refrained from having a third child over a 5-year period (Schockenhoff 1996, p. 51). In many developing countries, micro-credit programs and income-generating projects are linked with family planning. In the south Indian state of Andhra Pradesh, families receive cheaper loans and subsidized seeds if they can present proof of sterilization (Randeria 1995, p. 121).

## 8.11 Are Bonuses and Maluses Equal from an Ethical Point of View?

The question of how bonus and malus systems differ is of key ethical importance. For a *homo oeconomicus*, no difference exists between the two systems.

This may be elucidated through the example of the remuneration system applying to the employees within a firm. Let us assume that half the employees have their salary increased by 5%, the other half by 4%. From an economic perspective, it makes no difference whether one speaks of a bonus for one half or a malus for the other. However, psychologically it makes a great deal of difference how one justifies these differing increases. If this difference arises from the fact that the less efficient employees have 1% deducted from the general salary increase of 5%, they will be far more angry than if the more efficient half of the employees receive a bonus of 1% on top of a general salary rise of 4%. People are more willing to do without a bonus, if they dislike the conditions attached to it, than to accept financial maluses. For the same reason, however, financial bonus systems are less effective.

Philosophers disagree over whether bonuses (i. e. incentives) and maluses (i. e. disincentives) are ethically equivalent. Some hold the view that offering people incentives involves coercion, while others maintain the opposite (Bayles 1976, p. xiv). The ethicist Callahan regards bonus systems as ethically unproblematic. He writes: “In principle, incentive schemes are noncoercive; that is, people are not forced to take advantage of the incentive. Instead the point of an incentive is to give them a choice they did not previously have” (Callahan 1976, p. 29). Bayles develops this notion further: “For example, if Jones is trying to decide whether to take a position with employer A or B and A increases the salary offered, A has not limited Jones’ liberty to decide” (Bayles 1976, p. 42). By definition, bonuses are in addition to the normal level of compensation.

But for many critics of birth policies, not only financial disincentives are unacceptable. For them, incentive systems also have a subtly coercive character. As shown, it makes no real difference to couples’ economic situation which system exists. The principles of freedom of choice and self-determination may be threatened if the economic situation means that no alternatives exist (Hummel 2000, p. 109). The power relations are less visible, but this does not mean they are absent (Schlebusch 1994, p. 162).

We may conclude that financial disincentives seem less legitimate than bonus systems, and are thus located further on the right side of the continuum (see Fig. 8.3). Restricted bonuses occupy an intermediate position. An example of this is seen when a state provides a financial bonus only for the first two children.

## 8.12 The Four-fifths Rule

The ethical acceptability of financial instruments is not primarily a matter of whether they are bonuses or maluses. It is rather a matter of how radically these affect the couple’s financial position. The higher the positive or negative financial incentive, the more one may justifiably speak of coercion. Financial steering instruments involving small amounts of money cannot be considered an offence against freedom of choice or the right to self-determination – even

in the case of a disincentive system. Raising the tax on cigarettes or on fuel oil also affects individuals' freedom of choice. Yet all these attempts to shape behaviour allow individuals varying degrees of freedom, without transgressing the coercion threshold.

If *moderate* bonuses and maluses pertain, those who want a certain number of children – whether or not this differs greatly from the governments' desired number – are not forced into a lower income bracket. If the bonuses and maluses are *substantial*, a couple's economic position will change tremendously if they have more or fewer children than the state would like.

It is difficult to determine at precisely what point a financial burden ceases to be ethically neutral. However, a line must be drawn somewhere. The following rule of thumb seems reasonable: *the lifetime income of those who choose to have more children than officially approved must not decline by more than 20% compared with the income of those who have the approved number of children.* Admittedly, this four-fifths rule provides us with no more than a rough guide to action. It can be seen as the middle value of a corridor. In many discussions, people have told me that a fifty-fifty rule would not be ethically legitimate because it would be a blatant intrusion of the government into free choice. On the other hand, most people felt that a one-twentieth rule would only slightly influence the overall financial or material situation of the families concerned, and have no effect on their actions at all.

Hence, the four-fifths rule seems to be middle ground. Rather than rejecting it out of hand, those who accept that financial birth policy measures must at some point be deemed ethically inadmissible but are unhappy with the four-fifths threshold could play a constructive role by proposing alternative fractions. This is in line with the broadly accepted principle of constructive criticism, which holds that a solution should be rejected only if a better alternative exists. In my opinion, according to the principle of commensurability, the four-fifths rule allows just enough freedom to individuals such that one cannot talk of coercion.

What does the four-fifths rule mean in practice? If, for example, the democratically elected government of India wishes to implement an anti-natalistic population policy establishing a norm of two children per couple, according to the four-fifths rule it must go about this in such a way that couple A, who choose to have six children, should not suffer an income reduction of more than 20%. If, for example, the couple has to pay a monthly malus of 15% of their income from the fourth child onwards, school fees are not paid from the third child onwards (for which couple A must use, say, 5% of their income), while two-child families receive cheaper loans (which cost couple A 6% of their income), then the overall amount of money involved is substantial. In this example, the financial disadvantages suffered by couple A amount to 26%. Couple A is more than 20% worse off as a result of state birth policy measures and, thus, disadvantaged to an unethical degree. One could argue that couple A, with six children, enjoys higher lifetime income than couples with two children, because their offspring help pay to cover their needs in old age. This, however, depends on various factors and is not included in the calculation.

**Table 8.3** One anti-natalistic population policy based on the four-fifths rule and a malus system (source: present author)

Number of children	Negative child benefit (as % of lifetime income, not cumulative)
1	–
2	–
3	5
4	10
5	15
6 or more	20

According to the four-fifths rule, China's current birth policy, for example, is ethically illegitimate. Town dwellers in many provinces suffer pay cuts of 20% for both parents per "surplus" child. This is permissible according to the four-fifths rule, but additional monetary disadvantages apply (in comparison with one-child families), constituting a violation of the rule.

The easiest way to make such calculations is to compare scenarios in which a couple decides to have more children than the government deems favorable. If we compare two different couples A and B, we must assume that the differences in the couples' income is due solely to the number of children.

Paul Ehrlich suggested in 1968 that parents with an income of \$ 25,000 should pay additional tax for the first two children (\$ 600) and \$ 1,200 for all additional children (Ehrlich 1968, p. 108). If we assume a rate of personal taxation of 15%, a couple with no children would have an available income of \$ 21,250<sup>9</sup>; a couple with four children would have \$ 17,650<sup>10</sup>. This would be compatible with the four-fifths rule<sup>11</sup>. As soon as this couple has a fifth child, however, the state would intervene too starkly, leaving them with only \$ 16,450<sup>12</sup>.

Ehrlich's system of financial control has one main disadvantage: there is no upper limit on the maluses imposed on couples with a large number of children. It is preferable for financial steering systems to calculate financial maluses in relation to income. These must exclude the income necessary to ensure the minimum acceptable standard of living. Let us assume that newly industrialized countries in Asia, with an average annual income of € 10,000, introduces the fee shown in Table 8.3 within the framework of an anti-natalistic birth

<sup>9</sup>  $25,000 - (25,000 \times 0,15)$

<sup>10</sup>  $25,000 - (25,000 \times 0,15 + 2 \times 600 + 2 \times 1200)$

<sup>11</sup>  $21,250 \times 0,8 = 17,000$

<sup>12</sup>  $17,650 - 1200$

**Table 8.4** One anti-natalistic population policy based on the four-fifths rule and a bonus system (source: present author)

Number of children	Positive child benefit (as % of lifetime income, not cumulative)
1	20
2	20
3	Discontinuation of bonuses paid for 1st and 2nd child

policy. A couple's relative income status would vary no more than 20%, no matter how many children they have.

Of course, a suitable system could be designed featuring positive, rather than negative financial incentives. Bonuses could be awarded as in Table 8.4.

Financial incentives, though the term sounds positive, are not free of coercion. In the example mentioned above, a middleclass couple with two children and an annual income of € 10,000 receives state benefits of € 2,000 per annum. If they have a third child, they lose this support. Since bonuses are clearly less ethically problematic than maluses, one might propose an upper limit of 22.5% or 25% (rather than 20%). As mentioned before, however, the four-fifths rule is a rule of thumb only. The crucial point is that people are coerced into refraining from having children even by positive incentives, once these reach a certain level. If positive child benefit amounts to 50% of annual income and is valid only for two-child households, this puts huge pressure on couples who wish to have a third child; they would probably refrain from having a third child as a result.

Another point is that negative and positive incentives differ in their consequences for state finances. While financial malification systems increase the income of the state, bonus systems are a drain on its budget. Here, international donors have a duty to help developing countries convert disincentive-based systems into the ethically less problematic incentive systems.

### 8.13 Arguments Against the Four-fifths Rule

1. *Financial bonuses or maluses are socially unjust because it is easier for rich people to have the number of children they want.* This argument applies with greatest force to one-off financial bonuses or maluses. It does not apply, for example, to the birth policies described in Tables 8.3 and 8.4 because here the financial bonuses or maluses are income-related. However, one might still argue that it is easier for a person with an annual income of € 1 million to pay € 200,000 as malus than for a person with an annual income € 100,000

to pay € 20,000. As a rule, the income necessary to a minimum acceptable standard of living (in a particular country) should therefore be tax-free. In other words, governmental birth policies should never cause poverty. A situation in which the birth policy would not apply to the poor could be avoided by introducing a system combining bonuses for the poor with maluses for the rest of the population. This is ethically unproblematic as long as the four-fifths rule is observed.

The four-fifths rule could also be adapted to produce a system of progressive taxation. However, the broader issue of whether a progressive or linear tax system is fairer is subject to heated debate the world over. Lack of space prevents me from discussing this subject further here.

2. *The four-fifths rule is not practicable for the least developed societies because they lack a monetary system.* This objection is valid to a certain extent. If in a country like Laos a village is promised a well if all its members refrain from having a third child for a 5-year period, the material changes in living standard is hard to quantify. But with some assumptions and calculating, it is still possible. The four-fifths rule might be primarily applicable to monetarized societies but not solely. The train of thought is the same for non-monetarized societies; it is only more difficult to calculate when it comes to implementation.
3. *The four-fifths rule will make the poor poorer because it is designed for developing countries.* This is not true. It is designed for every country of which the government thinks that it would be beneficiary for the future citizens to belong to a smaller generation than be without an anti-natalistic policy. I left the question open to which countries this pertains. But the assumption that countries with the biggest ecological footprint are currently overpopulated, as posited by Paul Ehrlich, is debatable.
4. *It is impossible, given the labyrinthine nature of current financial incentive systems in most states, to assess whether two contrasting decisions on how many children to have would lead to a difference in income of more than 20% as a result of state birth policy.* It is true that most states currently have extremely complex negative or positive incentive schemes in their family or birth policies. This would appear to be an argument for more transparency in relation to birth policy, rather than against the four-fifths rule.
5. *Financial steering mechanisms are unnecessary because there are equally effective and ethically less problematic alternatives.* A state should, of course, always utilize indirect and appellative anti-natalistic birth policy measures before turning to financial steering mechanisms. However, it is unlikely, for instance, in those countries of which the population is set to triple by 2050, that such measures would be sufficient. The notion that the various options open to states are equally efficient is, as we have seen, incorrect. There is no doubt that more inflexible, strictly implemented measures are more effective.
6. *Coercion can never be ethically legitimized.* Anyone raising this objection has failed to understand the purpose of the present work, which was to investigate at what point financial steering mechanisms may be described as coer-

cive. Those who claim that *all* bonuses and maluses aimed at influencing citizens' behaviour, severe or not severe, are "coercive" are simply misusing the concept of coercion. The question of where coercion begins and ends will, however, be debated by demographers and ethicists well into the future.

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