

April 1932

Twenty Cents

BIRTH CONTROL REVIEW

The Legal Aspects *of* Birth Control

TWO SURVEYS

Religion and the Birth Rate

By LEON F. WHITNEY

Joyful Ignorance

By T. SWANN HARDING

Four New Contraceptive Centers Open

Royal Oak, Michigan

Michigan Birth Control League

Chester, Pennsylvania

Delaware County Birth Control League

Kensington, Pennsylvania

Southeast Pennsylvania Birth Control League

Center at the United Jewish Aid, Brooklyn,
New York

New York City Committee

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PROBABLY no aspect of birth control is more confused than the legal one, misinformation is widespread and hampers the movement fully as much as the actual legal restrictions. Countless people, physicians among them, think vaguely that "birth control is illegal," that all information under all circumstances is bootleg. Loose talk about "change the law" is interspersed with an equal amount of declarations that "there simply isn't any law against it." We have devoted a considerable portion of this issue to an analysis of the laws on birth control—to a detailed interpretation of the Massachusetts law (generally considered up to this time to be obstructive) and a classification of all state laws by permission and restriction, and to a second survey of birth control statutes along different lines. The complexity of the situation, as shown by a careful reading of these articles, accounts, in some measure, for the confusion and differences of opinion as to the legal status of birth control.

The layman is apt to forget what is a truism for the lawyer, namely that "law" is the written words in the statute books plus the interpretations of them handed down as opinions in specific cases. This makes the matter far less simple than at first appears. It also, in most cases, makes the laws far less restrictive than is commonly supposed. The

New York law is a perfect example of this, with its successive modifications through test cases, whereby the original statute "forbidding the manufacture or distribution of contraceptives or information thereof" has been changed to permit physicians to dispense the information "for the prevention of disease." And the word disease is interpreted in its widest, preventive sense.

THERE ARE, it seems, three main attitudes in regard to the legal situation. First, the wholly logical one that laws must be obeyed, and that there are perfectly definite ways of changing those we do not want. The disintegrating effects of disregard of law are unfortunately too well known today to need further comment here. A second point of view is that laws are liberalized through court decisions, and that the practical method of procedure is to invite test cases, marshalling public opinion to back the more liberal side of the issue. A belief in gradual and almost unconscious nullification of restrictive laws is the third possible position.

To change the law through legislative action seems at first glance to be the wisest and most tenable course of action. There are, however, tremendous technical difficulties. History has shown that in the United States we seldom, if ever, repeal moral legislation. An attempt to do so involves expensive organization along political lines, and draws up the forces of opposition on a united front. Gradual liberalization of restrictive laws through proceeding in spite of them, prepared to back a test case if necessary, has the support of experience as a workable method. In most cases the restrictive laws (or laws thought to be restrictive) have simply been ignored. In the case of New York, referred to above, each successive clash has widened the interpretation of what was originally an altogether obstructive statute. Nullification, though we may fight shy of the term, and must not minimize the disruptive factors involved, is supported by practicability and precedence. The Honorable James

M Beck, speaking against the Eighteenth Amendment recently said "No law which interferes with individual liberty can ever be enforced, unless sustained by a greatly preponderating public sentiment. The old Jewish Talmud was philosophically correct when it said that custom rises above law."

THE OLD GAG about "retaining the best features of each" seems to be applicable here, for one method of attack does not exclude another, and all work in hand through the educational effects of publicity. That laws classing contraception with obscene objects and abortions, and hampering the physician in the practice of his profession should be wiped off the statute books, admits of no argument. How this should be done and how much actual obstruction there is to birth control activities are matters upon which the layman must look to the legal profession for opinions and decisions. Again, how far a state may wish to go in trying out a specific law will depend upon the temper of those at the helm and the amount and quality of public opinion behind them. At any rate everyone who takes an intelligent interest in birth control should inform himself on the legal situation and understand the issues involved.

WORD comes from England of a handbook on marriage, to be issued next month by the British Social Hygiene Council. The publication will deal with the physiological and psychological factors in marriage and is an outcome of a resolution passed at the last Lambeth Conference, calling for education in matters of marriage and sex. There is a growing awareness on the part of the church of the constructive work that is to be done in this field. As Mr. Leon F. Whitney suggests in *Religion and the Birth Rate*, though preaching does not better the race, moral ideals may and do, and the churches can have a very definite eugenic effect upon the race if they will but seize the opportunity. Whether the forthcoming pamphlet touches upon eugenical birth control is not stated in the advance notices. It would seem that any constructive education for marriage can no longer side step this issue. "Before I marry a couple," says the Reverend Loren Brad-

ford Young, Episcopal minister, "I give them advice on birth control, compatibility in the sexual relationship and the family budget. Then I talk to them about religion. Then I marry them." With this order of events we heartily concur.

FOUR new centers for contraceptive advice have been opened during March, by the Michigan Birth Control League, the Delaware County Birth Control League, the Southeast Pennsylvania Birth Control League and the New York City Committee, respectively. This is indeed good news for Spring. It is an indication of the way in which birth control is becoming a normal social process, an accepted form of medical procedure. The existing clinics, of course, only begin to take care of all who need contraceptive advice. But the way has been opened, and the work laid out. More state leagues, more local organizations, more clinics are needed, more doctors equipped to give birth control instruction, more research in contraceptive technique—and more laymen understanding the problem and its implications, and giving intelligent cooperation.

ONE HEARTENING development of Margaret Sanger's experience in New Haven, where she was barred from speaking in a public high school auditorium, was the firm stand of Yale University, both faculty and student body, in her defense. *The Yale News*, a student paper, carried an editorial which said "The issue is obviously one of freedom of speech. The proximity of this instance of arbitrary refusal to permit the use of a public platform for the expression of ideas is unique, the opportunity such an incident offers for a reassertion of the right of complete civil liberty cannot be overlooked. It has been said often enough to need no repetition that a university is (or should be) the original home of free speech and free opinion." A fracas which drew the issue so clearly was worth enduring. The Catholics, as usual, threw a boomerang, and only succeeded in waking up hundreds upon hundreds of young Americans to a principle upon which this country was founded, and which is well worth preserving.

Religion and the Birth Rate

By LEON F WHITNEY

TWO generations ago Bushnell wrote his famous essay on *The Out-Populating Power of the Christian Stock*. He was not referring to any specific denomination, but to the whole of the Christian religion. He saw that it was tending to increase, and felt the increase would continue. But that was before man contrived methods for artificially limiting the family. At about the same time, a town in Worcester County, Massachusetts, erected a memorial to two of their townspeople who were very dear to them. It bore this quaint inscription:

*Here lie the bodies of Unite Humphrey and
Shining Minot*

Such names as these they never die not

But this too, was before the days when contraception was common. However, if Dr. Bushnell and the men who authorized the wording of the memorial could live again, they would find that their predictions were wrong.

Knowledge of the physiology of reproduction seeped out. It reached, first of all, the more intelligent people and they were the first to use this knowledge in limiting their families. Gradually the information spread. Commercially-minded men saw the possibility of manufacturing devices and materials which would aid in the prevention of conception. Soon the opportunities for the purchase of such were so open that today any persons having access to a drug store may avail themselves of almost anything they want in this line. Moreover, today many men are studying and investigating new methods of making the prevention of conception easier and easier. It is not beyond the range of reason to predict that in five years we may see the problem so simplified that even the stupidest people will be as competent to prevent conceptions as are the most intelligent.

All this development has caused a wide divergence of opinion among the various denominations of the Christian religion. Today, Bushnell would not speak of the out-populating power of the Christian stock. Nor would the people of Worcester County say that such names as Minot and Humphrey would never die. On the old basis, their predictions were fairly sound. On the new, they were indeed questionable.

The divergence has come about over the ethics

of family limitation. There are those who say the use of contraception is perfectly ethical, and others who say that it is sinful—sinful because it is unnatural. Now comes a new prophet for one denomination, Dr. John A. Ryan, to proclaim that the Roman Catholics are going to out-populate the world because of the stand of that church on contraception. "We give this challenge to the proponents of birth control. We, too, are of yesterday, but we shall be the America of tomorrow, we shall be the majority. We shall occupy and dominate every sphere of activity, the farm, the factory, the counting house, the schools, the professions, the press, the legislature. We shall dominate because we shall have the numbers and the intelligence, and above all, the moral strength to struggle, to endure, and to persevere. To you we shall leave the gods and goddesses which you have made to your own image and likeness, the divinities of ease, and enjoyment and mediocrity. We shall leave you the comforts of decadence and the sentence of extinction."

Nearly all of the publicity over the subject of contraception which has deluged the newspapers for the past two years has been linked with religion. First, "Unitarians Approve Birth Control," then, "Congregationalists Approve Birth Control." Scattered here and there over the years have been frequent notices like this: "Bishop Scores Birth Control at Joint Hearing," or "Father Quinn Flays Contraception as Immoral." We read, "Anglican Conference Favors Birth Control," "Federal Council Favors Birth Control." One would think from reading the headlines that birth control and religion were in some ways allied. Now with the publicity given the subject by the Pope's Encyclical, by the comments of clergymen everywhere, by the federal hearing on the subject opposed by Roman Catholics, favored by nearly everyone else, the subject of birth control and contraception has had as thorough advertising as any new discovery could possibly have had. Religion, through favor and opposition, has done more to advertise it than all other forces combined.

So it is worth an inquiry to discover if religion really can effect the birth rate. Nearly everybody thinks it can, and does. Obviously it would be de-

cidedly unfair to compare the birth rate of a group of persons in the slums with that of a group of persons in, for instance, the Park Avenue section of New York City. In any comparisons we must stay as nearly as possible within social classes. We can't compare Roman Catholic coal miners with Unitarian ministers, nor Roman Catholic judges with Protestant coal miners. It must be groups of similar social and economic levels, such as Roman Catholic coal miners vs. Protestant coal miners, Roman Catholic judges vs. Protestant judges, etc.

Does religion really have any effect? We can start with the people listed in *Who's Who in America*, 1929-31 edition. Taking these names as a representative sample of high-grade people, we find data as shown in the subjoined table.

Now notice that there is considerable variation between the denominations represented in *Who's Who*. The Mormons are at the top (They are monogamous now, of course). The Universalists are at the bottom. The Lutherans, who have until recently said nothing to their communicants about contraception, are near the top. Among these high grade people we might conclude that, with the exception of the Mormons whom we shall consider later, religion has had no effect upon the size of their families. But perhaps even this is open to argument since high grade Roman Catholics are very seldom drawn into conversation concerning

this matter, by their priests. Havelock Ellis has shown the basis for this.

What has happened is that the church—always alive to sexual questions—has realized the importance of the modern movement, and has adapted herself to it by proclaiming to her more ignorant and uneducated children that incomplete intercourse is a deadly sin, while at the same time refraining from making inquiries into this matter among her more educated members.

The Encyclical, however, may change this attitude, and in the future high grade Roman Catholics too may hear a word of warning now and then. But will it avail the Catholic Church anything? Certain it is, that the other denominations of Christendom have not been influenced in their religion as to the number of children they have had. And we must conclude that neither have the Roman Catholics.

But let us take another example of our population, the great middle class. The section of New Haven in which I formerly lived was known to the Roman Catholics as St. Brendan's Parish. It was largely Roman Catholic. I knew a great many of these people. I was well acquainted with the neighborhood druggists who also knew them fairly well. I made a tabulation as to the size of family, and compared the Protestant and the Roman Catholic families. The sample was small but

Name of Denomination	Estimated Adherents in Thousands	Persons in Who's Who Per 100,000 Adherents	Per Cent Married	Children Per Father or Mother	Probable Great Grandchildren Per 1,000 Persons
Mormons	616	11	100	5.3	10,200
United Brethren	1,050	3	100	3.3	2,320
Lutherans	6,910	8	94	3.3	1,950
Evangelicals	1,420	5	92	3.0	1,730
Brethren	376	7	100	2.8	1,600
Reformed	1,530	13	96	2.9	1,580
Baptists	14,200	16	95	3.1	1,560
Methodists	19,750	18	98	2.9	1,455
Disciples	3,880	11	99	2.8	1,450
Christians	288	45	89	3.1	1,380
Roman Catholics	18,261	7	65	3.3	450
(Omitting priests)	—	—	92	3.3	1,310
Presbyterians	7,030	62	96	2.8	1,230
Adventists	392	11	88	3.0	1,190
Congregationalists	2,405	115	98	2.7	1,125
Unitarians	111	1,185	93	2.9	1,025
Episcopalians	3,160	156	91	2.8	910
Friends	325	31	84	2.9	855
Universalists	47	390	94	2.4	500

the size of family was almost exactly even. The Roman Catholics had no more children than the Protestants. The druggists told me that they sold just as many contraceptives to the Roman Catholics as to the Protestants.

When we investigate the slums we find conditions no different. It is the people of the slums, the poorest, and usually the most stupid who hear the utmost denouncement of birth control from their pastors and priests. Within their own denomination, the poor Roman Catholics have the largest families. We all realize that. But compare with them the poor Protestant families. They don't have large families because they are Roman Catholics but because they are stupid like their stupid Protestant neighbors. I made a study of the size of family of the type of people who furnish the majority of the children to our schools for sub-normals. 1613 families were studied. This group we call the borderline class. The average size of family was 7.09 children. The size of the average Roman Catholic and Protestant families in this group was practically the same although the Roman Catholics constituted a disproportionate percentage of the total. Contraception hasn't trickled down far enough from the top to reach them yet, but it will.

Now, if we want a sampling of all three classes combined, we can observe the religion of the people who attend the birth control clinics. There we shall find that they attend in practically the same proportion as their religion is proportionate to the other groups of the city. New York is about one-third Roman Catholic, one-third Protestant and one-third Jewish. Those are the proportions of the people who attend the clinics.

Then if the church does not have any appreciable effect on the birth rate by its threats of eternal damnation for those who use artificial means to limit their families, is there any way at its disposal for producing an effect? Indeed there is. During the past there have been times when the church was in power, as in the case of Spain. Under such conditions the church not only could but did effect the birth rate through persecutions. The worst effect of these persecutions was upon the quality of the people. No one has presented the case more poignantly than Francis Galton.

The extent to which persecution must have affected European races is easily measured by a few well-known statistical facts. Thus, as regards martyrdom and imprisonment, the Span-

ish nation was drained of freethinkers at the rate of 1,000 persons annually, for the three centuries between 1471 and 1781, an average of 100 persons having been executed and 900 imprisoned every year during that period. The actual data during those 300 years are 32,000 burnt, 17,000 persons burnt in effigy (I presume they mostly died in prison or escaped from Spain), and 291,000 condemned to various terms of imprisonment and other penalties. It is impossible that any nation could stand a policy like this without paying a heavy penalty in the deterioration of its breed, as has notably been the result in the formation of the superstitious, unintelligent Spanish race of the present day.

Here would be a way in which religion might effect the birth rate and especially that of the best, but let us hope the days of persecution are past. There is also another negative way, through which religion can and is effecting the birth rate in our own time, and it has been used for centuries of the past with disastrous results for the race. I refer to the celibacy enjoined by religious orders on their votaries.

ROMAN CATHOLIC CELIBACY

Consider the Roman Catholic Church, for example, with its 23,700 clergy in the United States. Professor S. S. Visher has estimated that *Who's Who* for 1922-23 lists one son for every 20 families of Protestant clergymen in the United States. The different denominations vary a good deal, for the Methodist ministers supply only one eminent son for every ninety-seven families and the Unitarians one for every seven. For the sake of argument, let us assume that the potential value of the average Roman Catholic priest as a father of eminent children is the same as that of the average Protestant clergyman. If that is so, Roman Catholic celibacy is responsible for the loss of 1,185 men who might be in *Who's Who*. Even a fifth of that number would be a frightful loss! The loss becomes still more serious when we remember that in addition to the 1,185 who might be in *Who's Who*, we must take account of all the other competent sons who might be born to the 23,700 priests if the custom of celibacy did not prevail. Practically all of the thirty or forty thousand who might thus be born would presumably be of high grade.

Then consider the celibate women, the 105,000 sisters, postulants and novices in the Roman Catholic Church and the smaller number in other communions. On the whole, they are splendid types

Although some may become nuns because of weakness or failure, three-fourths are probably of good stock. Something like two-thirds of these must belong to the generation between the ages of 20 and 50. Thus in a single generation, competent people are being eliminated from the race in this way alone at the rate of 55,000 women who might be the mothers of 200,000 children, who would average far above the median not only in biological importance, but in their training.

Now this depression of the birth rate among the high grade portions of a religious denomination is a serious matter. Just consider the Roman Catholics in *Who's Who*. Only 65 per cent of them are married. This low figure is caused by inclusion of the priests. If they are excluded ninety-two per cent of the remainder are married. This marriage rate effects directly the birth rate. If the present conditions continue, this would indicate, in looking ahead, that 1,000 Roman Catholics in *Who's Who* today, would produce only 450 great-grandchildren. While 1,000 of those not including the priests would produce 1,380 great-grandchildren.

Then there is another way in which religion can effect, negatively, the quality of the people by influencing the birth rate of a class. That is by organized opposition to eugenical sterilization legislation, and administration of existing laws. Before the Pope's Encyclical, many Catholic divines favored sterilization. Now all must oppose it. Instead of sterilization, they would have clergymen tell imbeciles, low grade morons, and other defectives who can often breed if they can't do anything else, "You must practice marital continence," which is equivalent to pouring water into a sieve, telling it not to run through and expecting results.

A CONSTRUCTIVE IDEAL

But there is a much more important effect which religion can have than through persecution, enforced celibacy, or opposition or favor of sterilization laws. We have but to contrast the appeal of the Mormon church and that of the Catholic to learn what it is.

Religion is a thing of the emotions. It produces its best effect in the realm of idealism. The golden rule typifies this spirit. All of human history tells us that an ideal is the one thing that mankind has held dearer than life itself. Prohibitions have never had the effect of making a man willing to die to defend them, but ideals have. So if religion will make the having of high grade children an ideal,

it will succeed. Ideals being concerned with the finer things of life, they would not be compatible with urging reproduction from the minus elements of a group.

The Mormon Church postulates unembodied spirits which are waiting to become reincarnated, and holds that there are several estates in heaven. Only certain spirits can achieve the highest state. It also holds that there is a great difference between the many spirits. "Among them were many of the great and noble ones," said Joseph Smith. This is in contrast to the Roman Catholic church's belief, which contends that one soul is as good as another.

So, in order to prepare for these unembodied spirits, many practices are encouraged. First, youthful marriage. This directly effects the birth rate. Secondly it encourages the marriage of all healthy persons, as Joseph Smith said, "We believe that every man holding the holy priesthood (this includes most Mormon men) should be married, with the very few exceptions of those who through infirmities of body and mind are not fit for marriage." Thirdly, no marriage is allowed defectives, for according to Parley P. Pratt, "The Law of God would not suffer the idiot (etc.) to possess or retain a wife." Fourthly, a large family is the ideal. According to Brigham Young, "It is the duty of every righteous man and woman to prepare tabernacles for all the spirits they can." Or again, "Prepare tabernacles for them, take a course that will not tend to drive those spirits into families of the wicked." Lastly, through its young people's organizations, it teaches and encourages better mate selection. It provides a better opportunity for acquaintance of its boys and girls than probably any other religion.

The reason that the Mormons are producing such large families is because they appeal to the idealism in this matter. Have a large family of fine children and you shall be rewarded in heaven. But the Catholic says, in effect, if you do anything artificial to prevent the birth of children, you may go to hell.

The churches of the world, if they will grasp the opportunity right at hand, can do more good than they have ever been able to do in the past. If they will ignore the negative side of contraception, consider it a social practice which it assuredly is, and then appeal to the intelligence of their flocks, they can make the world innately better. They have found by their losses in active membership that

some new appeal must be discovered to keep pace with the newer psychology but what is the appeal to be? Here at least is one possibility—to join with the forces interested in creating a better race through biology, which is not incompatible with religion, but working for the same end. Science shows us that preaching doesn't make the race better. To have education, you first must have educable people. To have religion, you must first have people who like your brand of religion and

since the number of church goers is dwindling, since these people are scarcely maintaining themselves, here is a chance for the church.

But it must not expect to achieve results through prohibitions, rather through the appeal to idealism. It must, like the Mormons, show the need, the recompenses, the social values of adequate sized families. It must become part and parcel of the eugenic movement, by teaching people to think of the ultimate racial consequences of their activities.

A Pastor Attacks the Sex Bogey

By JOSEPH L. CALDWELL

An interview with the Reverend Oliver M. Butterfield, in which the author of the booklet Marriage discusses the importance of pre-marital education

SEX has long been one of the most dreaded bogies in the life of the modern church. More than one minister has lost his position and social standing with his congregation and the appointive powers above him because he dared to speak frankly and openly concerning the treatment of sex problems. It is encouraging, therefore, to find a pastor who is brave enough and intelligent enough to write something which many authorities consider "the best brief treatment of the sexual aspects of marriage."

During the summer of 1929 there appeared in New York, and later elsewhere, a fifty-page booklet which discussed in detail the technique of sexual behavior for husbands and wives, *Marriage*, by Reverend Oliver M. Butterfield. It immediately met with favorable comment and during the two years which followed its circulation passed the 20,000 mark, and is still increasing with no other means of advertisement than the recommendations of satisfied readers.

Hundreds of couples have written the author their thanks and told how much it has meant for them to read a clear, brief, and intelligent explanation of the sexual aspects of marriage. Pastors, physicians, and social workers have added their appreciation that some one has furnished an effective and inexpensive tool for doing a most necessary piece of pre-marital education.

A glance into the author's files reveals letters like these:

A Bride "That booklet was certainly a life-

saver. Both of us were ignorant, and would have been helpless without it."

A Happy Couple "We want to tell you how much we appreciate the little book. We have loaned it to our close friends and they were helped a great deal."

A Grateful Bride "My husband and I were married" (four months previous) "by Rev. ———" (a very prominent minister) "and I wish we had been presented with your article at that time, it explains so much we did not know."

A College Girl "Our instructor let us use her personal copy of your booklet as one of our references and I feel that that little book helped more than all the other references put together. It has changed the attitude of many, not only toward their own lives but toward the lives of others as well."

A Prospective Bride "I am to be married the last of this month and I frankly admit that I have had a bit of fear of marriage. Before I read your book, which a doctor gave me when I went to him for an examination, I always thought such relations undesirable and improper."

Another Prospective Bride "I am a graduate of ——— college and have had five years of library and business training, but as I have lived a somewhat sheltered life, my ideas of some phases of life, I discovered, were all wrong and distorted. The two or three books I did try to read on the subject only seemed to make things more repulsive, but your book helped me to see where I may be

wrong about some things and that marriage could be beautiful and sacred as I had always hoped"

Let the pastor tell how he came to write the booklet in his own words "Some five years ago, after ten years in the pastorate, I became convinced that the Church had been most negligent in the matter of giving its bridal couples adequate pre-marital education. Much had been said about the sanctity of marriage but too little had been done to keep it sacred. I began to cast about for some means of helping the situation. I discovered that there were numerous books and other helps in the social and economic aspects of marriage but practically nothing of a satisfactory nature on the sexual aspects. A careful study of broken homes revealed that ignorance and misunderstanding of the sex lives of husband and wife was one of the greatest if not the very greatest cause for most divorces.

"My wife and I hardly felt prepared to deal with the sex problem by personal interviews and we found that few physicians were prepared to handle such matters. The majority could treat actual diseases but they had no preparation or skill when it came to instructing brides and grooms in the proprieties of sex conduct in marriage. When we sought for helpful books we could discover no single volume which proved satisfactory for this purpose. Some were too expensive, others included too much morbid and pathological material, and still others failed to meet the most ordinary standards of personal ethics. Finally we decided to prepare a manual of our own which, we determined, must meet five definite standards:

- 1 It must be brief, so that if presented to a couple on their wedding day they could easily read it through before retiring at night

- 2 It must be inexpensive enough so that pastors, judges, physicians, and others would feel they could afford to give it away

- 3 It must be accurate and scientific enough for physicians to use and at the same time not too technical to be understood by the average couple

- 4 It must avoid scaring the reader by presenting the unusual and pathological problems and seek rather to remove the fears which hinder many brides and grooms from getting a good start in marriage

- 5 Finally, it must present marriage as a fair, happy, and beautiful experience and show couples how to achieve mutual satisfaction in it

"To accomplish this purpose we read widely, securing many technical books through physicians, psychiatrists, sociologists, and educators. Finally a brief typewritten script was prepared and tried out on couples married for some years, asking them to report whether this material would have helped them when they were first married. Their replies were so encouraging that further revisions were made and some two hundred mimeographed copies distributed to physicians, pastors, sociologists, and married couples.

"While still engaged in this experiment it was discovered that some benevolent individuals, whose names are still unknown, had published the substance of the mimeographed edition somewhere in the East and had given it a wide circulation. Though the material was not exactly what we had planned, there was little to do but accept the situation. Letters began coming in at once from everywhere, New York, Denver, London, India, China, all asking for additional copies of the booklet, and commending the fearless venture in making available to married couples facts which were essential to married happiness."

The number and the variety of such letters might have flattered one less experienced than this pastor, for he thought that most persons could be helped by any physician who understood the problem. But when similar letters began to come from physicians and nurses, he felt that something worthwhile had actually been accomplished. Obstetricians, psychotherapists, missionary physicians were among those who emphatically stated that the booklet filled a definite need.

Opposition to the project on the part of local church officials has decreased and practically died down, and it is now only a few members of the older generation who feel that sex education is outside the province of pastoral work.

"What do you think the average pastor could do in this work if he had some little special training and understood the nature of marital maladjustments?" was asked.

"Besides the loaning of suitable books the pastor could have available, and frequently recommend to his people, pamphlets and magazines containing helpful information on all phases of family life. When it becomes known in the community that he has a fund of sane and useful knowledge of such problems he would no doubt find, as I have, that not only individuals but lodges, clubs, schools, and organizations of all sorts will desire

his help in dealing successfully with their problems of social morality and family life

"Then, too, he will adopt some definite program for dealing with each wedding couple which comes to him for the blessing of the Church on their marriage. He will not be content to bow them in and bow them out with no word of inquiry as to their attitude toward marriage or their ability to enter it with a reasonable certainty of success. Each pastor may have his own way of handling such matters but in every case he can do much to start his couples off on the road to a successful marriage.

THE CLERGYMAN'S OPPORTUNITY

"I prefer to have the couple come to me some days before marriage for a private chat, but if they insist on being married immediately I ask for the private interview just the same and relatives, friends, and even trains can wait until we get through. Hurry and carelessness at this stage of the game is a prostitution of the ministerial office.

"My first step is to make sure the couple know how and where to get their license, if it has not already been secured. From that I proceed to inquire whether either of them has been previously married and, if so, what were the circumstances. Each divorce must be treated on its own merit and as much consideration given to the future marriage as to the blunders of the past. I next inquire as to

prospective income, living arrangements, savings and insurance. It is no longer ethical to marry people without visible means of support and to do so is encouraging a broken home.

"From the economic and household side of marriage it is an easy step to inquire as to what thought they have given to the sexual aspects of marriage, what they have read and with whom they have discussed such matters, whether they have decided upon any practical method of family limitation or not. After this I present them with one of my marriage booklets which gives careful guidance in the technique of sex conduct in marriage. I do not attempt to discuss these intimate matters with them face to face for most couples are too embarrassed to do so comfortably, and more of them lack the vocabulary or experience to do so if they wished. I assure them of my willingness to give them any needed assistance any time, after they have read the booklet.

"These interviews do not take very long, as a rule, and may be easily concluded by an inquiry as to relatives, their religious preferences, and any necessary details of the wedding ceremony. The very fact that a pastor cares about all these things gives the young couple the assurance that here is some one who understands, and that if perplexities come they have in him a true shepherd, and a real friend."

A Plan for Peace*

By MARGARET SANGER

FIRST, put into action President Wilson's fourteen points, upon which terms Germany and Austria surrendered to the Allies in 1918.

Second, have Congress set up a special department for the study of population problems and appoint a Parliament of Population, the directors representing the various branches of science this body to direct and control the population through birth rates and immigration, and to direct its distribution over the country according to national needs consistent with taste, fitness and interest of the individuals.

The main objects of the Population Congress would be

a to raise the level and increase the general

intelligence of population

b to increase the population slowly by keeping the birth rate at its present level of fifteen per thousand, decreasing the death rate below its present mark of 11 per thousand

c to keep the doors of immigration closed to the entrance of certain aliens whose condition is known to be detrimental to the stamina of the race, such as feeble-minded, idiots, morons, insane, syphilitic, epileptic, criminal, professional prostitutes, and others in this class barred by the immigration laws of 1924

d to apply a stern and rigid policy of sterilization and segregation to that grade of population whose progeny is already tainted, or whose inheritance is such that objectionable traits may be transmitted to offspring

*Summary of address before the New History Society, January 17th, New York City

e to insure the country against future burdens of maintenance for numerous offspring as may be born of feeble-minded parents, by pensioning all persons with transmissible disease who voluntarily consent to sterilization

f to give certain dysgenic groups in our population their choice of segregation or sterilization

g to apportion farm lands and homesteads for these segregated persons where they would be taught to work under competent instructors for the period of their entire lives

The first step would thus be to control the intake and output of morons, mental defectives, epileptics

The second step would be to take an inventory of the secondary group such as illiterates, paupers, unemployables, criminals, prostitutes, dope-fiends, classify them in special departments under government medical protection, and segregate them on farms and open spaces as long as necessary for the strengthening and development of moral conduct

Having corralled this enormous part of our population and placed it on a basis of health instead of punishment, it is safe to say that fifteen or twenty millions of our population would then be organized into soldiers of defense—defending the unborn against their own disabilities

The third step would be to give special attention to the mothers' health, to see that women who are suffering from tuberculosis, heart or kidney disease, toxic goitre, gonorrhea, or any disease where the condition of pregnancy disturbs their health are placed under public health nurses to instruct them in practical, scientific methods of contraception in order to safeguard their lives—thus reducing maternal mortality

The above steps may seem to place emphasis on a health program instead of on tariffs, moratoriums and debts, but I believe that national health is the first essential factor in any program for universal peace

With the future citizen safeguarded from hereditary taints, with five million mental and moral degenerates segregated, with ten million women and ten million children receiving adequate care, we could then turn our attention to the basic needs for international peace

There would then be a definite effort to make population increase slowly and at a specified rate, in order to accommodate and adjust increasing numbers to the best social and economic system

In the meantime we should organize and join an International League of Low Birth Rate Nations to secure and maintain World Peace

Toward World Peace

By ALGERNON D BLACK

MALTHUS over a hundred years ago pointed out that war was one of the methods by which nature removed surplus population. When people are crowded and land hungry, dependent upon imports for their food supply, and pressed against the borders of neighboring nations, a friction is generated which may easily hurl the world into the maelstrom of war. The crowded Balkans are known as the tinder box of Europe, France fears Germany's growing numbers, and Japan has stirred up a veritable hornets' nest in her effort to find security for her sixty millions of people. The leaders of Japan, just as did Napoleon and the Kaiser, use arguments of over-population to justify their desire for expansion. In Italy Mussolini has gone so far as to urge large families in good old Biblical style perhaps in order some day to justify the claim and help him regain the domain of the old Roman Empire. So that the peace makers must sooner or later face the fact that to assure world peace they must deal with the population problems of mankind.

Professor John Maynard Keynes, eminent authority on post-war economic problems, speaks of contraceptive information as the most important aid on the political horizon and says that without it we might as well throw all treaties into the waste basket. In other words, the way to achieve world peace is to remove one of the causes of war which lies below the surface, and which is not talked of as much as national rights and national honor. This cause is uncontrolled birth rates. We must have a wide-spread dissemination of contraceptive knowledge throughout the world. We must have population control, a control which is guided through the plans laid down at international conferences on population and migration. Such a procedure will require much from the minds and wills of men. But if it can be accomplished we can hope for the removal of the danger spots of the world, we can hope for the elimination of a powerful cause of disturbance of the relations between nations. No program for world peace can hope to succeed which does not make place among its other provisions for the increasing use of birth control.

The Grim Facts in Porto Rico

By ANNIE G PORRITT

IT HAS long been known and accepted that Porto Rico is overpopulated, and it is also a well-known fact that the birth rate there far exceeds that in the United States or in any other country which can lay claim to modern civilization. But the people of the United States have not yet realized the desperate condition of the people in this portion of our great commonwealth, nor the responsibility of our country and government for much of this misery and distress.

With the appearance of the Report of the Committee of the American Child Health Association* which was appointed to study conditions in Porto Rico "from a health, nutritional and social point of view so far as these conditions affect children," apathy on the part of United States citizens and Government ought to disappear. This report is not a special pleading on behalf of birth control. In fact the writers of it carefully avoid all mention of this one and only means of controlling the situation and of gradually changing the condition of the Porto Ricans from the present misery, disease, starvation and high death rate to one of lower birth and death rate with comfort and decency in living conditions.

In spite of the fact that the Report nowhere mentions or recommends any kind of policy for controlling population, the necessity for such a policy simply shouts from its pages. Here are a few quotations:

"Professor Rosario reports that in 1824 the birth rate in Porto Rico was 56 per thousand. At that time 39.75 of the population were children from one to nine years of age. According to the United States Standard of Age Distribution in 1926, Porto Rico had 174,654 children too many.

"According to reports received in the Division of Vital Statistics this great increase through a high birth rate has decreased but little. The latest compiled records of births actually reported for 1928-9 give a birth rate of 38.4, although there is no organized effort or check for the promotion of birth reporting. There is good reason for the belief that the actual birth rate is considerably over 40 per thousand population."

How useless much of this burden is may be seen in the facts concerning infant mortality. A large proportion of the infants born each year survive only for a few months. A glance at the distribution of age groups shows this fact. The largest 5-year group is that under 5 years old and this group numbered in the 1920 census 200,255. With the children of the next five-year group the total number of children under ten years of age was 395,386, as compared with

the group from 20 to 30 which numbered 224,584, showing that about 175,000 of these children will probably never reach the age of 25.

Perhaps it may be thought that these figures are not valid for the present time—that the census of 1920 shows facts that belong to the past and that there has been improvement since they were tabulated. We get no such comfort from the Report. "Such burdensome economic and social conditions," we read, "always register a high infant mortality, which has been gradually mounting in recent years." The infant mortality figures given in the Report are—1925 148 per thousand, as compared with 71 in the United States, 1926 150, and 1929 179, as compared with 69 in the United States.

Porto Rico is an island. Its area is limited. Let us see what the Report says concerning the possibility of this expanding population finding accommodation on its surface and securing susten-

SOONER or later the question of our excessive population must be faced, faced sincerely and frankly and with common sense. In the present state of technical advancement in industry and agriculture, an agricultural island, much of which is mountainous, cannot maintain a population of 450 people to the square mile except on a scale of living entirely unacceptable to any one who has the welfare of the island at heart. The vicious circle of poverty—large birth rate, more poverty—must be broken somewhere, else Nature will remedy the situation by an increasing death rate. Adding approximately 100,000 to our population every two and one half years will bring us soon past the two million mark. We are not dealing with theories here but with grim facts. I know of no grimmer fact than to contemplate the addition of even 20,000 to our unemployed. I believe that we as citizens can no longer shut our eyes to this aspect of our economic life.

GOVERNOR JAMES R. BEVERLEY,
Inaugural address, San Juan, Jan. 30, 1932

*PORTO RICO: AN INQUIRY AS TO THE HEALTH OF THE CHILDREN. American Health Association. New York.

ance from its soil, its resources or its industries. The area of Porto Rico is 3435 square miles, about twice the size of Long Island. It has a population of 1,543,043, according to the 1930 census. This means that every square mile of the country must support some 400 people. Emigration offers no solution. For a scheme of emigration which could effect any result in alleviating overpopulation, the expense would be prohibitive, as families would have to be transported by sea some 1500 miles and supplied with funds to start existence elsewhere.

Porto Rico is an agricultural country, but agriculture there is not organized for the production of crops for home consumption.

Under these circumstances the high birth rate and the great increase in population is proving nothing short of a disaster. "An added burden on competitors for employment in this field of industrialized agriculture," continues the Report, "has come through the great increase in population. This increase, plus the people leaving the 30,000 farms for industrial employment means that more than half as many more people are seeking opportunity to earn a living wage. With the competition of labor-saving machinery in agriculture and a negligible increase in other industrial employment, one is led to expect a serious excess of labor, with low wages and prevalent unemployment as a consequence. The economic status of the population today is not a new development, for poverty was wide-spread prior to the coming of the Americans at the opening of the twentieth century. The limited economic status of the people, however, has probably been aggravated by the more recent industrialization of agriculture and the increase in population."

Low wages therefore mean semi-starvation, and throughout the Report stress is laid on the under-nutrition of the children. Under-nutrition of children means under-nutrition of the family as a whole and it may safely be said that the people of this fertile island—one of the "gems of the ocean" whose fate is in the hands of the people and government of the United States, are suffering all the time from semi-starvation, which in many cases is scarcely less acute than that prevailing in the worst parts of overpopulated China—with its recurrent famines.

The homes of Porto Rico bear a close relation to the poverty of the inhabitants. "Our observation of rural homes showed many small huts hardly giving protection from the rain, and almost al-

ways lacking even the most meager comforts. In a fairly typical group studied by us less than 20 per cent of the houses had a bed, cot or hammock for each member of the family. Only 37 per cent had any artificial light, not more than 50% had chairs, and only 7% had a bath tub." Overcrowding is the rule both in the towns and in the rural regions, for the tiny huts have to accommodate the average of eight persons, which in Porto Rico constitutes the family.

Much of the Report is taken up with surveys of the health conditions of the island especially with regard to tuberculosis, malaria and hook-worm—the chief enemies of the people. That the high mortality rates are largely due to these diseases is shown in the statistics of the island, and that the prevalence of tuberculosis is largely due to under-nourishment and overcrowding is self-evident. There exists a vicious circle of poverty, high birth rate, disease, high death rate and resultant poverty which perpetuates itself.

And what remedy does the Report recommend for this state of things? Does it boldly take the stand that there can be no hope of comfort, food, housing and a higher standard of living unless the problem of the control of population is attacked with determination and real earnestness? Not at all. Its recommendations are such as, if carried out, would enormously aggravate the basic problem of too many people, recommendations for saving thousands of Porto Ricans who now meet early death. It urges the creation of health units under the Insular Department of Health, of drainage areas for the control of malaria-bearing mosquitoes, and a frontal attack on tuberculosis by the hospitalization of all open infectious cases. "Sickness, poverty and ignorance are the vicious circle," states the Report in conclusion, "impeding national and racial progress. Physical and mental illnesses are an economic and social liability. Physical and mental health is our greatest national economical and social asset. Therefore physical and mental health are the sound foundation stones upon which our people may build for their children vigorous and healthy bodies, informed minds, and the opportunity to express the spirit within which is the right of every child."

Words! words! words! But what relation have they to the grim facts of overpopulation brought out by the Report. Will reducing the death rate—if it can be done—solve the population problem of Porto Rico?

Joyful Ignorance

By T SWANN HARDING

FROM time immemorial it has been the custom of the naive to generalize from their own limited experience and then to label that generalization Truth. Primitive man did this habitually. The mentally deficient do it constantly in modern civilization. In fact, an American governor recently explained the cause and cure of baldness, about which science knows nothing definite, yet it was apparent that he merely generalized from his own personal experience. In recent times, however, it is more customary for such naive generalizers to label their conclusions Science rather than Truth because Science is the more popular catchword of the era. Even then it is somewhat surprising to find this technic practised not alone by quacks and charlatans of sorts, but actually by very prominent physicians. At the moment I refer to Dr Logan Clendening who, in a recent issue of the *Kansas City Star*, passed along an empirical and shockingly unscientific letter from a chance lay correspondent to all readers of that paper as purporting to give sound treatment for so-called "ginger-jake" paralysis.

Dr Clendening has erred scientifically about many things. He has erred about nutrition science, he has erred about the use of tobacco, he has erred about the use of alcohol, he has erred about the use of meat in the diet, he has erred about the teaching of sex knowledge, it is therefore not surprising that he has erred about birth control. Almost universally he errs from the standpoint that his own frequently self-confessed ignorance proves beyond doubt that everyone else is, as ignorant as he himself professes to be. This is rather a large generalization from a somewhat disappointing personal experience but Dr Clendening regularly utilizes it.

Just recently Dr Clendening has gathered together into a book a number of his vagrant magazine essays which might better have died where they were born. This book is called *The Care and Feeding of Adults, with Doubts About Children**. The attitude of ignorance is manifest in such addenda as those to the chapter on "Meat," and on "Doubts About Birth Control," wherein the good doctor tries in his best genial, I-am-quite-as-ignorant-as-you-are-my-dear-fellow manner to explain away

unscientific statements he had made in his original articles and in which he had been caught flagrantly. His explanations are more obfuscating than clarifying. For Dr Clendening was wrong and no amount of skillful buck-passing can make it appear that he was right.

Dr Clendening's highly erroneous article on birth control initially appeared in *Plain Talk*, July, 1929. In this article and in the book chapter subsequently produced therefrom Dr Clendening's major contention was that, since he himself was not taught contraceptive methods in medical school, and since he proved too indolent mentally to learn about them subsequent to graduation, ergo no physician knew anything about them and there were no such methods of any value anyway. It is a comforting thought to the ignorant if they can convince themselves that their estate is not so bad because their own ignorance implies that everyone else is in the same boat. But it is exceedingly unfortunate that such easily comforted individuals gain wide prestige in this country and impose themselves upon the public. Quite naturally it becomes very easy for any sort of quack to pose as just as scientific as such medical doctors and there is nothing to be done about it so long as orthodox physicians persist upon excusing themselves by reason of their ignorance.

Dr Clendening held that doctors never withheld information about birth control, because they had none to withhold, that they knew nothing about contraceptive methods both because they were taught nothing regarding them in medical schools and because no one method was universally effective, that the American Birth Control League sponsored one method specifically which, however, was an old method he had heard of in the gutter, and that he himself was nobody knew just how terribly ignorant of the whole subject anyway, which obviously proved that everyone else must be quite as ignorant as he. His article was both prejudiced and facetious, in a sophomoric manner. His book chapter is the same.

In August, 1929, Dr Abraham Myers wrote in to *Plain Talk* to contend that birth control methods had already lowered birth rates and saying that "he [Clendening] ought to be able to see

*Alfred A. Knopf, publisher. New York, 1931. \$2.50

further than the merely facetious and the half-truth. Whatever may be said of birth control propaganda is, in a measure, true of his article, namely that prejudice is shown, the nose of the subject presented as if it were the whole truth." In September, 1929, Professor Malcolm H. Bissell of Los Angeles corrected some of Dr. Clendening's inaccuracies in his statements about claims of the American Birth Control League. The executive secretary of the League also reminded Dr. Clendening that the League never had claimed any contraceptive method to be 100 per cent perfect, though she admitted that too few doctors knew about such methods—this is not surprising in view of their conservatism and their ignorance of many other important matters—and that a book cited by Dr. Clendening was not written by the person he cited as the author but by another, an orthodox physician.

It became obvious from letters written to *Plam Talk* from August to November, 1929, that the League had never advised one single contrivance as universally effective, that several contraceptive methods can often be used simultaneously on a single case, that experts in contraceptive methods are much more reliable guides than confessedly ignorant practitioners, and that Dr. Clendening's contentions were overwhelmingly incorrect. It is a fact, as Dr. S. Adolphus Knopf discovered recently, that too few medical schools teach contraception or sterilization or give incidental instruction therein. Such negligence about putting modern knowledge into usage is quite common, as the present author discovered when writing his *Fads, Frauds, and Physicians*, and it is vastly encouraged by the attitude of militant ignorance assumed by such prominent physicians as Dr. Clendening.

However, Dr. Clendening's ignorance fortunately is not shared by all medical men. For there are sound contraceptive methods if they are individually prescribed and are used with intelligence. Dr. Clendening speaks from the standpoint of a physician familiar only with quack procedures for which blanket claims are made; he takes throughout the position of an ignorant lay bystander sufficiently impudent to express an opinion about a medical specialty regarding which he confessedly knows nothing, a most extraordinary thing to do. Yet even he, in the benighted ignorance which apparently fogs about him in the fastnesses of his Kansas castle, must know that reputable publish-

ing houses regularly produce thoroughly reliable physicians' manuals of birth control methods.

WHERE DO THE DOCTORS STAND?

It is true that doctors are at times reluctant to give information regarding birth control methods. This is because some of them are sufficiently ignorant to imagine that the law forbids the dissemination of such information, others are honestly and sincerely adherents of religious or moral creeds which tend to make them regard the deliberate control of contraception as a dark iniquity, others are simply too busy to learn anything new—in some cases they are so busy instructing the public that they have no time to supply themselves with accurate information and must continually remark, "O dear, you have no idea how ignorant I am of all this. I beg you forgive me." On the other hand it is not true that all physicians withhold such information. Dr. Clendening, and the rather too large class of doctors that he represents to the contrary notwithstanding (it is always to be remembered that he calls himself ignorant—the present author merely takes his own word for his nescience), there are very many physicians, and have been for at least twenty years past, who willingly do everything they can to prevent one pregnancy from following too rapidly upon another for maternal health to sustain them, or who will not hesitate to sterilize one party to the marriage contract when the entire stability of a family is menaced by repeated childbearing.

It appears that many primitive tribes were quite adept at techniques of offspring limitation which still elude Dr. Clendening. He might look up Etie A. Rout's article on "Sex Hygiene of the New Zealand Maori" in the *Medical Journal and Record* for November 17, 1926. There he will discover that not only were sex hygiene and eugenics far advanced, but that herbs, exercises, and artificial malposition of the uterus were all commonly utilized or performed for contraceptive purposes. Indeed many other measures were utilized by these natives who were so far advanced in their successful efforts to prevent procreation on the part of the unfit. If he will read the editorial on "New Studies in Birth Control," in the *Journal of the American Medical Association* for April 25, 1931, he will discover, of course, that newer methods involving the production of at least temporary sterility by the injection of certain glandular preparations are on the way. If he will look on

page 412 of the January 30, 1932, issue of this same journal he will discover that British doctors, at least, are not ignorant of contraceptive methods

So far, however, Dr Clendening can not even manage simple percentages. This rather rudimentary difficulty becomes apparent when he says on page 263 of his new book that "The Birth Control Society claims success in 98.6 per cent of cases, but that 1.4 per cent is an enormous figure. In a case of this kind one failure overbalances 99.9 successes." But let it be said that the 98.6 per cent successes simply means that 1.4 times out of 100 one woman met with failure, i. e., that 1.4 women out of 100 met with failure *once* during *all* possible times. Personally, and after many discussions with several specialists, the writer of these lines inclines to favor sterilization as advocated by Dr. A. J. Rony in *American Medicine* for December, 1929, at least in cases where it is imperatively necessary that contraception be absolutely and finally prevented.

Sir Thomas Horder, Bt., F.R.C.P., who is also a doctor, says that indiscriminate childbearing may be a true disease of the human body and is certainly a disease of the body politic. But before anything could be done to modify the British medical curriculum it would be necessary to convince society first that it had a disease and secondly that it wanted to be cured. He is anxious that birth control be included in the medical curriculum and held also that it was the duty of the medical profession to devise, improve, and teach the remedy. In the *New Republic* for February 3, 1932, James Rorty complained that no social or charitable agencies in this period of severe economic crisis had so far advocated birth control remedially. He said that \$20,000,000 would equip 2,000,000 unemployed families with complete contraceptive information in 1932, and that such expenditure for this purpose should be made at once. This assertion again goes beyond scientific warrant.

Nothing said here should be regarded as a generalization from the author's personal experience. He came of a family where there were only two children, these were not three but ten years apart. In later life he has remained childless. Yet his mother's health was permanently shattered by childbirth and the family was in a continual state of economic instability bordering on absolute privation of the basic necessities of life. Birth control would have been of no assistance in the solution of either problem in that family. The major

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difficulty of the family inhered in the fact that it wobbled about on the borderland of privation in an unplanned society. In a planned society, such as George S. Counts describes as coming into being in Soviet Russia, it is possible to advocate birth control as a social agency, and to do so rationally. In an anarchic and chaotic society such as ours it is impossible rationally to advocate any single reform as of paramount importance.

The writer inclines to the belief that social progress is not spurred so much by the passionate, evangelical advocacy of certain specific reforms, thrust forward to a chaotic society as panaceas, as by emphasis upon a form of universal social planning which would involve the essential demolition of the archaic profit system as we know it, and its replacement by economic sanity. In such a society birth control might or might not assume high importance, it would have its place in the plan. In any case there is no justification for the exhibitionistic pseudo ignorance of such physicians as Dr. Logan Clendening, and there can be no reason for medical conservatism acting to prevent the spread of this knowledge among the public.

Organizing for Birth Control

By MRS GEORGE A DUNNING

1 Why is it necessary to organize a state?

Birth control, as a welcome and accepted factor in our social structure, has emerged definitely and forever from the pioneer stage. There are more than one hundred clinics in the United States and their number is increasing steadily. In spite of this, there are many people who still consider birth control controversial. There are a great many more, supposedly intelligent, who do not know what it is all about and think they are opposed. Until clinics are numbered by many thousands, instead of hundreds, until the number of "doubters" is negligible, there will be continued need for state organizations carrying on educational work on a state-wide scale. If a state is so fortunate as to have no laws against birth control which need amending, it probably still has plenty of doubters. They can be reached and most easily converted through local activities and through their own friends.

If there is a state law to amend, it is an absolute necessity, as we see it, to influence the legislators through their own constituents. A legislator will listen more willingly to someone from his own home district, than to any outside person or group. If his home-town constituent has an organized group behind her or him, the legislator will listen still more receptively. We have found, in Pennsylvania, that organizing our local leagues by counties gives us the necessary machinery to get in touch with the members of the Legislature. We feel that using the political unit as a basis for organization is the most logical and effective procedure.

Pennsylvania is the second largest industrial state in the Union, with a very large number of workers of many nationalities. The need for birth control is acute, pressing and constant, and the requests for help are unceasing. Still we do not encourage a doctor to take patients or to head a clinical committee unless we have a group of responsible and interested people from his own community to stand behind him.

These three objectives of all states—the spreading of interest in and understanding of birth control by education, the amending of state laws when

necessary, and the establishing of birth control clinics under properly qualified physicians can best be attained by organizing, widening and strengthening state organizations.

2 How can this be done?

To organize a state optimism and a paid organizer are needed. Both the organizer and the group which directs the work must hang on to their optimism with both hands, for they will need it! There will be many disappointments. Just as you think you have a good committee, the members will begin to drop out, for one reason or another. But at the darkest moment, just as likely as not, the "key" person will be found and the job will be done. No state league and no smaller group of any size within the state will function with the greatest efficiency without headquarters, a salaried secretary and a telephone. I say this quite confidently from our own experience. For a number of years we had an organization of sorts, and once or twice a year we held meetings. We had quite a good membership and raised a little money from dues, but there was no real constructive, steady work done until five years ago, when we rented an office with a telephone and engaged a salaried executive. From that moment we began to grow and the same thing is true of our local leagues. Those with business headquarters go ahead much faster than those where the work is done entirely by volunteers—valuable and necessary as the volunteer work is.

3 How can the various local groups be coordinated, when organized?

If a state league has several organized groups, each group should have a member to represent it on the state Board and should be prepared with a written report of activities for each Board meeting. An excellent way of increasing the sense of mutual helpfulness is to call a sort of experience meeting, where each group will exchange ideas and plans with the others. If you encourage people to talk you will get them interested. It is this truth which makes the aftermath of a birth control meeting—the questions and answers—often the most important part of the meeting and the richest in results.

4 *How can State committees keep in touch with the local committees?*

A state league should have committees covering the different branches of the work. Local committees should be encouraged to appoint similar committees, whose chairmen will keep in touch with the state chairmen, through correspondence and visits. The exchange of visits is extremely necessary as the personal equation is still the most important factor to be considered in all relationships. The state headquarters should be a clearing house, from which the local groups draw their supplies of literature, their speakers, in most cases, and suggestions and advice. We have found that while we give help and encouragement to our local leagues, we receive just as much valuable help from them. It is a give and take which strengthens both groups.

The importance of large public meetings in coordinating activities should never be forgotten. We have successfully conducted a series of such meetings by making up an itinerary and sending an outstanding speaker to a number of points throughout the state. These meetings were arranged through state headquarters and the expenses were met by the local groups. Our Doctors' Committee followed this up by arranging addresses before the county medical societies.

5 *How can the necessary funds be raised?*

I wish I had the answer to this question, perhaps the most important of all. No general sug-

gestions are applicable in all cases. Each state knows its own conditions and has its own ideas for conducting a money-raising campaign or launching a money-raising stunt. Bear in mind that whether your community is large or small, rich or poor, *the money is there*, but only in the rarest instances will you get it if you don't ask for it.

Our state has a Finance Committee which sends out appeals once or twice a year, writes a constant stream of personal letters and makes many personal calls. We are constantly on the watch for new converts who may be persuaded to become contributors. The lack of sufficient funds is retarding the work all along the line, but is not stopping it.

In conclusion, let me emphasize once more that there is need everywhere for education through organized groups and for the actual work of medical clinics, both equally important, as I see it. I have in mind a state where there is a state committee and one excellent clinic, but no attempt to extend the state organization and to establish more clinics. That state is losing valuable time. I have in mind another state which has a well-organized state committee, but which will not open a clinic, believing that it would immediately be closed up by the authorities. How do they know until they try? Why not open another clinic, if the first is closed? This state is also losing valuable time. To succeed in this, as in any other worthwhile cause, firm faith and plenty of courage are needed. With these you are bound to win.

Permission Versus Prohibition

By BLANCHE AMES AMES

IF MASSACHUSETTS can be taken as an example, physicians throughout the nation have been led to believe erroneously that contraceptive aid to their patients is illegal under state statutes and court decisions. Those of us who have been working in Massachusetts have found that physicians as a group and the members of the community as a whole, who would be of the greatest help in making advance possible, are reluctant to act in the face of what they believe is the law. A great deal of confusion has surrounded the question of legality of contraceptive aid by physicians. If physicians can be made to realize that the giving of such aid in the *bona fide* practice of their profes-

sion is definitely *not* illegal, the greatest obstacle confronting us will be removed.

The statutes of Massachusetts which touch on this subject are among the strictest in the country, but even here, the legality of contraceptive advice by physicians is admitted by good legal authorities. This has been brought about in part by an intensive study of the exact terms of the statutes, by an analysis of their legislative history and of the privileges determined by court decisions pertaining to the rights and duties of physicians.

Our last legal opinion on this subject, by Mr. Murray F. Hall, of the firm of Goodwin, Procter and Hoar, of Boston, is here quoted in full. This

opinion may be helpful and suggestive to leagues in other states in showing their physicians that contraceptive work may be carried on within the law

"You have asked us for our opinion concerning the rights of physicians to prescribe in the cases of patients where contraceptives are medically indicated, in view of the provisions of Sections 20 and 21 of Chapter 272 of the Massachusetts General Laws which provide as follows

Section 20 Whoever knowingly advertises, prints, publishes, distributes or circulates, or knowingly causes to be advertised, printed, published, distributed or circulated, any pamphlet, printed paper, book, newspaper, notice advertisement or reference, containing words or language giving or conveying any notice, hint or reference to any person, or to the name of any person, real or fictitious, from whom, or to any place, house, shop or office where, any poison, drug, mixture, preparation, medicine or noxious thing, or any instrument or means whatever, or any advice, direction, information or knowledge, may be obtained for the purpose of causing or procuring the miscarriage of a woman pregnant with child or of preventing, or which is represented as intended to prevent, pregnancy, shall be punished by imprisonment in the state prison for not more than three years or in jail for not more than two and one-half years or by a fine of not more than one thousand dollars

Section 21 Whoever sells, lends, gives away, exhibits or offers to sell, lend or give away an instrument or other article intended to be used for self-abuse, or any drug, medicine, instrument or article whatever for the prevention of conception or for causing unlawful abortion, or advertises the same, or writes, prints or causes to be written or printed a card, circular, book, pamphlet, advertisement or notice of any kind stating when, where, how, of whom or by what means such article can be purchased or obtained, or manufactures or makes any such article, shall be punished by imprisonment in the state prison for not more than five years or in jail or the house of correction for not more than two and one-half years or by a fine of not less than one hundred nor more than one thousand dollars

Our examination of the law shows that the following propositions are established either by the provisions of the statutes or by the decided cases

1 A physician may perform therapeutic abortions to save life or to safeguard health, he had this right at common law and he has the same right under the statute prohibiting unlawful abortion (Massachusetts General Laws Chapter 272, Section 19) and the decided cases In *State vs Rudman*, 126 Maine 177 (1927) the Court said

It is well known that occasion arises where in the exercise of proper surgical advice and care it becomes necessary, in order to save the mother's life, to remove the unborn foetus To such highly honorable and proper acts, in accord with the highest ethics of the medical profession, the dictates of humanity, and all legal precepts, the statute has and can have no application But to the destruction of unborn life for reasons, whatever they may be, other than necessity to save the mother's life, the law is intended, we believe, to be an express and absolute prohibition

It is stated in text that it is always a valid defense to a charge of abortion that the procurement was necessary in order to save the mother's life or the life of her unborn child, and while this is generally true by virtue of exceptions contained in the statutes, it is true even though the

statute makes no express exception as to such necessity 1 C J 317 citing *Commonwealth vs Sholes*, 13 Allen 554, 558 To this statement we find no exception

2 A physician may give oral advice to any patient concerning contraceptives, this is not prohibited by either section quoted above

3 The statute relating to the registration of physicians and surgeons contains no provision that a physician's license will be taken away or suspended for doing any of the acts prohibited in Sections 20 or 21 quoted above There is a clause allowing the Board of Registration to revoke a license for violation of Section 29 of Chapter 272 relating to the distribution of literature concerning certain diseases

4 Medical treatises are not considered obscene publications within Section 28 of Chapter 272 forbidding obscene literature, though medical treatises are not expressly excepted No one has been prosecuted under this statute for circulating a book which was within the class of admittedly scientific or medical works, but a number of statements of the Courts indicate that such books are not within the prohibition See *Bowes vs U S* 229 Fed 960

5 It has been held by the U S Circuit Court of Appeals for the 7th Circuit in a case arising under the Federal Statute prohibiting (without any express exception) the mailing of information as to the place where or the person by whom an abortion will be performed, that a physician may lawfully use the mails to say that if an examination shows the necessity of an abortion to save life, he will perform such an operation

6 The purpose of the statutes quoted above has been clearly stated by Chief Justice Rugg in *Commonwealth vs Allison*, 227 Mass 57

Manifestly they are designed to promote the public morals and in a broad sense the public health and safety Their plain purpose is to protect purity, to preserve chastity, to encourage continence and self restraint, to defend the sanctity of the home, and thus to engender in the State and nation a virile and virtuous race of men and women The subject matter is well within one of the most obvious and necessary branches of the police power of the State

7 Complaints against sellers of contraceptive articles in the District Courts have resulted in findings of not guilty where it was shown that the sale was made for the prevention of disease and not for the purpose of preventing pregnancy

8 A complaint brought in the Municipal Court of the City of Boston against a doctor for exhibiting contraceptive articles at a lecture to the doctor's patients and their friends resulted in a find-

ing of not guilty on the ground that that was not "exhibiting" within the statute

9 There is no prohibition of sterilization in the law

10 In holding constitutional the Massachusetts statute providing for compulsory vaccination of adults without excepting those who may be unfit for vaccination, the Supreme Court of the United States said in the case of *Jacobson vs Massachusetts*, 197 U S 11

Extreme cases can be readily suggested. Ordinarily such cases are not safe guides in the administration of the law. It is easy, for instance, to suppose the case of an adult who is embraced by the mere words of the act, but yet to subject whom to vaccination in a particular condition of his health or body would be cruel and inhuman in the last degree. We are not to be understood as holding that the statute was intended to be applied to such a case, or, if it was so intended, that the judiciary would not be competent to interfere and protect the health and life of the individual concerned. "All laws," this court has said, "should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language which would avoid results of this character. The reason of the law in such cases should prevail over its letter." *U S vs Kirby* 7 Wall 482. *Lau Ow Bew vs U S* 144 U S 47, 58. Unless otherwise informed by the highest court of Massachusetts, we are not inclined to hold that the statute established the absolute rule that an adult must be vaccinated if it be apparent or can be shown with reasonable certainty that he is not at the time a fit subject of vaccination, or that vaccination, by reason of his then condition, would seriously impair his health, or probably cause his death.

The following propositions have not been settled by judicial decision, but are, in our opinion, correct in principle and follow logically from the decided cases

1 A physician is justified in giving contraceptive advice for the purpose of saving life, safeguarding health or preventing disease. He may give such advice whenever the condition of the patient would warrant the performance of a therapeutic abortion if she were pregnant or would justify a sterilization. He may give such advice whenever from the condition of the patient a contraceptive is medically indicated.

2 The statutes above quoted are included in the chapter dealing with crimes against chastity, morality, decency and good order and are intended to prohibit under the State police power certain acts (many of which were nuisances at common law without a statute) in order to "promote the public morals and in a broad sense the public health and safety." The statutes do not purport to regulate in any way the practice of physicians and should not be held to apply to physicians who are in the *bona fide* practice of their professions. The

physician's advice and service given for the purpose of saving life, safeguarding health, or preventing disease though involving the ancillary purposes of preventing pregnancy do not violate statutes the purpose of which is to protect the public health and safety.

3 A physician should, however, give this advice only in cases where in his professional opinion the patient should not at that time undergo pregnancy, for only in such cases can the advice be justified as given for the primary purpose of safeguarding the life or health of the patient or preventing disease.

4 Even if the above statutes can be construed as regulating the *bona fide* practice of physicians, their application to specific cases should be subject to the same qualifying exceptions as those referred to in the case of *Jacobson vs Massachusetts* 197 U S 11.

As to the practical details, in our opinion the physician should keep full records of his cases and should in person prescribe the treatment and fit the articles in order that there may be a record of the medical justification and a clear proof that the acts were done in the *bona fide* practice of the physician."

SUMMARY OF STATE LAWS

Following is a summary of existing state legislation throughout the United States concerning contraception as affecting physicians, with the emphasis on permissions instead of on prohibitions.*

Unless the statutes have specifically exempted physicians they are considered in this summary to be bound by whatever restrictions are expressed. But the marginal citations of the statutes of the various states disclose not a single decision of the highest courts of such states holding that the statutes in question apply to registered physicians. It is very unlikely that the restrictions which appear in the statutes of only seventeen states would be held to apply to physicians when acting in good faith for the preservation of the life or health of their patients.†

Twenty-four out of the forty-eight states of the United States do not mention prevention of

*This summary has been verified by a member of the Boston Bar, compiled by members of Legal Committee of the Birth Control League of Massachusetts.

†State statutes concerning Licensing of physicians, (Granting, Refusal and Revocation), "Unprofessional conduct" defined, Abortion, and Public Health should be noted and, in addition, the legislative history of such statutes traced.

conception in their obscenity statutes nor is it prohibited by other statutes. These states are

Alabama	Oklahoma
Arkansas	Oregon
Delaware	Rhode Island
Florida	South Carolina
Georgia	South Dakota
Illinois	Tennessee
Kentucky	Texas
Maryland	Utah
New Hampshire	Vermont
New Mexico	Virginia
North Carolina	West Virginia
North Dakota	Wisconsin

Seven other states expressly exempt physicians from the application of the laws dealing with the subject of the prevention of conception. These states are

Colorado	Iowa	Nevada	Wyoming
Indiana	Missouri	Ohio	

This makes a total of 31 of the 48 states where physicians are unquestionably free to exercise their best judgment and skill.

The seventeen remaining states permit oral information by physicians as to the prevention of conception, four of them, however, Minnesota, Mississippi, New Jersey and New York, restrict the right to give oral information as to where articles for the purpose may be procured. In three of these states contraceptive clinics are in operation.

The same seventeen states permit with varying restrictions (which deal largely with advertisements) the giving of written or printed information and providing of contraceptive articles and drugs.

The following detailed summary of (a) permissions, (b) restrictions, (c) prohibitions, based on a legal analysis of the wording of the statutes of the seventeen remaining states, is a classification with reference to the three necessary means of contraceptive aid by physicians.

1 In giving oral information on the prevention of conception

2 In giving written information on the prevention of conception

3 In providing contraceptive articles or drugs designed for contraception to their patients

1 (a) Oral information is permitted in all except

(b) Minnesota, where it is restricted as to where articles may be obtained, except for the cure and prevention of disease

New Jersey, where it is restricted as to where articles may be obtained, except for "just cause"

New York, where it is restricted as to where articles may be obtained, except for the cure and prevention of disease

Pennsylvania, where it is restricted as to where articles or recipes may be obtained, but expressly permitted in teaching in medical colleges

(Clinics are in operation in Minnesota, New York, New Jersey and Pennsylvania)

(c) Mississippi, where it is prohibited as to where articles may be obtained

2 (a) Written information is permitted in Connecticut

Kansas in standard medical books

Minnesota for the cure and prevention of disease

Nebraska in standard medical books

New Jersey for just cause

New York for the cure and prevention of disease

Pennsylvania in standard medical books

(b) Written information is restricted in the following ways

Arizona may not write, compose, publish any notice or advertisement nor offer services by notice, advertisement or otherwise

California, the same as Arizona

Idaho, the same as Arizona

Louisiana may not print or publish advertisement or description

Maine may not publish, sell, distribute circular, pamphlet or book containing recipes or prescriptions

Massachusetts may not print or write, publish or circulate any notice as to where any information or articles may be obtained

Michigan may not publish or sell circular, pamphlet or book containing recipes or prescriptions

Mississippi may not write or print any notice as to where articles can be obtained

Montana, the same as Arizona

Washington may not write or print notice of any kind as to where articles can be obtained

3 (a) Providing of contraceptive articles to patients is permitted in

Arizona	Louisiana
California	Maine
Idaho	Michigan
	Montana

Minnesota (for the cure and prevention of disease)

New York (for the cure and prevention of disease)

New Jersey (for just cause)

Connecticut (use of articles by patients prohibited)

(b) Providing of contraceptive articles to patients is restricted in the following ways
Nebraska may not keep for sale or gratuitous distribution

Kansas may not keep for sale

Massachusetts may not sell, lend, give away

Pennsylvania may not sell or keep for sale or give away

Washington may not expose for sale, loan or distribution

(c) Providing of contraceptive articles is prohibited in Mississippi

Some Legislative Aspects of the Birth Control Problem

Reprinted from the "Harvard Law Review," February, 1932

SINCE the enactment by Congress of the Comstock bill in 1873,¹ twenty-six states have passed laws relating to birth control. Varying and often conflicting policies are reflected in these statutes. With the social wisdom of such legislation this Note is not concerned. But there remains for consideration the purely legislative problem of how and to what extent the underlying policies can be effectuated.

The state legislation presents no regular pattern. Many of its vagaries are doubtless accidental, but the policies discernible permit classification of the states into four groups. Eight states attempt complete suppression of the practice of birth control, as indicated in one case by a provision making the use of contraceptives unlawful,² and in the other seven by provisions forbidding without exception the distribution of contraceptive materials.³ Two states sanction the use of contraceptives only "for preventing disease", accordingly physicians are permitted to prescribe materials for this purpose,⁴ though their distribution is otherwise prohibited.⁵ By implication, druggists may be supplied with materials,⁶ and perhaps information may be furnished to physicians to enable them to prescribe materials intelligently.⁷ A third group prohibit only publication of contraceptive information and advertisement of materials⁸ or offering advice or materials in any other manner.⁹ The purpose of these provisions is not necessarily to suppress the practice of birth control, since materials may be distributed on request.¹⁰ The provisions against advertising and offering services may be designed in part as protection against solicitation by fraudulent practi-

tioners,¹¹ but complete suppression of publicity with respect to methods may be motivated in part by a feeling that it is indecent and in part by the view that its prohibition will keep from the immature information likely to lead to immorality. Finally, the laws of several states seem definitely designed to protect the public from unreliable or harmful information and materials rather than to prohibit their use. They permit the publication of information only in "standard medical works," and distribution of materials only by licensed physicians and druggists.¹²

There remain twenty-two states in which there are no laws specifically mentioning prevention of conception. In all except New Mexico, however, there is legislation prohibiting the preparation, advertisement, and distribution of obscene literature,¹³ or obscene literature and "articles of indecent use."¹⁴ In how many of these contraceptive information or materials would be judicially classified as *per se* obscene or indecent is a matter of conjecture.¹⁵

Superimposed on this state legislation are federal laws prohibiting the importation,¹⁶ mailing,¹⁷ or interstate transportation,¹⁸ and, in all places subject to the exclusive jurisdiction of the United States, the preparation, advertisement, and distribution,¹⁹ of contraceptive information and materials. There are no exemptions.

The federal laws are indispensable to any state attempting complete suppression of birth control. Without them the states could not constitutionally

(Continued on page 124)

References on pages 125-127

Book Reviews

THE SCIENTIFIC OUTLOOK, by Bertrand Russell W W Norton, New York 1931 \$3

ANY ESTIMATE of the dozen best minds functioning today would have to include the name of Bertrand Russell. In his latest book, *The Scientific Outlook*, this famous mathematician, philosopher, and sociologist offers his ripest reflections on the world as he knows it and as he foresees its future. The book, like all books, is uneven, some of it is not new to devoted readers of Russell, and some of what is new—chiefly the author's forecast of a grotesque "scientific world"—is scarcely worth the printing. But with this little chaff there is an enormous amount of sound and nourishing wheat. And, as he has done so frequently before, Russell has something to say on our unscientific methods of population control and on the desirability of reforming them.

If, as Herbert Aptekar claims in his recent and most interesting work, *Anjea*, the attitude of many proponents of birth control is unscientific and sentimental, it is of first importance that we should learn to approach this vital question realistically. Russell is an excellent means to this end, except when, at the end of his book, he gives his fancy free play and projects an imaginary society in which all but 5 per cent of the men and 25 per cent of the women will be sterilized, in which impregnation will be artificial and birth prematurely induced by surgery. When the author is speaking of what is, instead of what might be but probably never will be, his approach is strictly and thoroughly that of the true scientist.

He points out, for example, how soaked with emotion and prejudice are many judgments on the subject at issue. "As soon as any strong passion intervenes to warp the expert's judgment he becomes unreliable, whatever scientific equipment he may possess. The views of medical men on pregnancy, childbirth, and lactation were until fairly recently impregnated with sadism. It required, for example, more evidence to persuade them that anaesthetics may be used in childbirth than it would have required to persuade them of the opposite." Similarly, the current attitude of Catholics and other orthodox religionists toward contraception is impregnated with superstition and cannot be removed by mere logic or reasoning.

With a scientific approach to social problems in general comes a scientific handling of the population program. "The most scientific races no longer increase much, and really rapid increases are now confined to countries in which the government is scientific while the population is unscientific" (Or—as in China and India—to countries in which the real government and the people are alike unscientific). Under present conditions, a stationary population is the most desirable, except in some instances where for a while a decreased population should be sought. The howls of theologians over "race suicide" cannot retard the normal trend toward adjustment of population to sustenance, but if they are too greatly heeded they may hurl us back to the bad old method of adjustment by famine, war, disease, and infant mortality, instead of leaving us subject to the good new method of adjustment by deliberate selective control.

Russell sums up this phase of the question. "Reproduction operated, until recently, as blindly as a natural force. This, at any rate, was the case among Europeans, though many savage and barbarous peoples employed various methods of artificial limitation of fertility [Aptekar, however, has shown us how restricted and unsatisfactory such methods have been]. During the last fifty years reproduction among the white races has become increasingly deliberate instead of accidental. As yet, this fact has not produced the political and social consequences that it is bound to entail sooner or later."

The old theory that "God brings the children, He will nourish them," has been definitely and permanently abandoned by our industrial civilization, unless retrogression takes place. What we must consider now are the political and social consequences of which Russell speaks, with a view to controlling their direction, nullifying their disadvantages, and nurturing their benefits. As Russell says:

It has hitherto been considered that any man and woman not within the prohibited degrees have a right to marry, and having married have a right, if not a duty, to have as many children as nature may decree. This is a right which the scientific society of the future is not likely to tolerate. In any given state of industrial and agricultural technique there is an optimum den-

sity of population which ensures a greater degree of material well-being than would result from either increase or a diminution of numbers. As a general rule, except in new countries, the density of population has been beyond this optimum, though perhaps France, in recent decades has been an exception. Except where there is property to be inherited, the member of a small family suffers almost as much from over-population as the member of a large family. Those who cause over-population are therefore doing an injury not only to their own children, but to the community. It may therefore be assumed that society will discourage them if necessary, as soon as religious prejudices no longer stand in the way of such action.

It is, of course, true that this condition of over-population would be temporarily relieved by a profound change in our methods of distribution and production. But it is a question whether such a change can be brought about in the principal industrial nations before our present suicidal methods bring on another devastating specimen of that ancient population-controller, war. Consider overcrowded Italy offering prizes for large families, and congested Japan punishing education for contraception. This being so, it is at least worthy of serious thought whether we should not meanwhile work directly on the social and economic control of population itself. In any event, Russell outlines a point of approach to the birth control problem which is at least as valuable as the individual efforts and arguments to which most birth control advocates have confined themselves, and which provides a new weapon in the eternal war against religious and social atavism.

MAYNARD SHIPLEY

READINGS ON THE FAMILY, edited by Edgar Schmiedeler. *The Century Co., New York* 1931 \$2.75

APPARENTLY the age of scholasticism with its subtle jugglery of logic is not dead yet. In *Readings on the Family* we have an illustration of what takes place when commonsense and dogma go hand in hand, every once in a while one lands the other a nasty blow! What we have in this book is a continuation of the age-old quarrel between arbitrary fiat and commonsense, which rests its authority upon such truth as the mind increasingly discovers. If one cannot accept the arbitrary position which the Church abrogates unto itself, then there is no other course left open but to be damned.

If the Church would consent to face the problems of marriage and divorce and birth control as it faces those of economics and chemistry, namely on the authority of such facts as men have discovered in the light of their highest judgments (and not according to some arbitrary dogma set up ages ago), then one could discuss this matter intelligently.

Several contributions to this symposium, however, give evidence of sound reasoning, and indicate that the writers are aware of what is going on in the world. But in others, especially those dealing with the problem of birth control from the standpoint of dogma, one marvels at the subtle manner in which the writers manage to put their logic in camphor bags, so to speak, where the moths of consistency will not eat holes in it. The major portions of the book are well written and give evidence of sound scholarship. This is particularly true of such contributors as John M. Cooper, Ernest R. Mowrer, William F. Ogburn, and Ernest R. Groves.

But there remain a few propagandistic chapters, with definite "preachy" purpose, which mar the value of the compilation. If these chapters had frankly been labeled "propaganda," it would have been possible to recommend the book as a valuable text for any college course, because of the wealth of historical material it contains.

W. WALDEMAR W. ARGOW

Books Received

PROTECTION OF WOMEN AND CHILDREN IN SOVIET RUSSIA, by Alice Withrow Field. *Dutton & Company, New York* \$3.00

THE FAMILY IN THE PRESENT SOCIAL ORDER, by Ruth Lindquist. *University of North Carolina Press, Chapel Hill, N. C.* \$2.50

THE SEXUAL SIDE OF MARRIAGE, by M. J. Exner, M.D. *Norton and Company, New York* \$2.50

THE MODERN AMERICAN FAMILY, Edited by Donald Young. *The Annals of The American Academy of Political and Social Science, March, 1932, Philadelphia* \$2.50

PAMPHLET

THE COOPERATION OF SOCIAL AGENCIES AND PHYSICIANS WITH REPRESENTATIVE AMERICAN BIRTH CONTROL CLINICS, by Norman E. Himes. (*Reprint from Hospital Social Service, XXV, 1932*)

News Notes

UNITED STATES

THE Population Association of America will hold its first annual meeting on April 22nd and 23rd at the Town Hall Club, New York City. The following program is scheduled

APRIL 22ND AT 2 30 P M

- Dr Louis I Dublin, *Chairman*
 O E Baker "Ratio of Children Under Five Years of Age to Women of Childbearing Age, Urban and Rural"
 L J Reed *Subject to be announced*
 Leon F Whitney "The Source of Feeble-mindedness"
 Warren B Thompson "Social Changes in Population Growth"

APRIL 22ND AT 7 P M DINNER

- Professor C G Dittmer, *Chairman*
 Professor Harold Clark "Occupational Planning in the Light of a Declining Rate of Population Growth"
 Professor Niles Carpenter Discussion, with special reference to school teachers
 Professor Ellsworth Huntington "Mental Activity, Literacy and Health in Russia"

APRIL 23RD AT 10 A M

Joint Meeting with the Eastern Conference of Sociology

- Professor H P Fairchild "The Possibility, Nature and Function of Applied Sociology"
 Discussion Professor Pitrim Sorokin, Professor H N Shenton, Professor R E Chaddock, Mr Frederick Osborn

The public is invited

A NEWS LETTER FROM MARGARET SANGER

MY RECENT experiences, while on a speaking tour, have shown me the extent to which the Roman Catholic Church dictates the policy of the municipal authorities in many of our cities. I was scheduled to speak in Albany, March 6th, at the Jewish Community Center. A week before the lecture, several Catholic officials tried to bring pressure to bear through the Albany social agencies to get the Jewish Community Center to rescind their invitation. Fortunately, the Auditorium be-

longed to the Jewish group and the Mayor was unable to revoke the license.

The same forces tried to break up the meeting at New Haven on March 8th. I was scheduled to speak at the Troup Junior High School under the auspices of the Young Men's and Young Women's Hebrew Association. Following a protest by the Reverend Joseph Mereto of Chicago, a missionary conducting a Lenten mission at St. Anthony's Roman Catholic Church, the permit for the use of the Auditorium was revoked at noon on Saturday. An informal protest committee was hastily formed, headed by Dr A N Creadick, president of the Connecticut Birth Control League. Among the many distinguished citizens who rallied to my support were Dean Milton C Winternitz, of the Yale Medical School, Dr Herbert Thomas, associate professor of obstetrics and gynecology at the Yale Medical School, Attorney Charles E Watrous, Professor James Wayne Cooper of the Yale Law School, Dr James R Miller of Hartford, Jacob Merviss, executive director of the Y M and Y W H A, and C P Ives, 2nd, associate editor of the *New Haven Journal-Courier*.

A large delegation called at the Mayor's office early Monday morning to demand a license for the meeting. This was finally granted for the Fox-College theater. In view of the widespread indignation, the opposition did not dare push the matter further. According to the newspaper reports, 2000 people were present at the meeting.

In Boston I addressed a group of medical students, under the auspices of the Lancet Club. The majority of those present were third year students, several had graduated and were doing internship, but my address was the first information on contraception that they had received.

On my West Virginia trip, it was again a story of Catholic opposition bringing pressure to bear. The result was that the Cabell County Medical Society of Huntington rescinded their invitation to me. However, thanks to the courage and fine spirit of Dr James S Klumpp, Dr William Strange and others, I was asked to speak under the auspices of an independent group of twenty physicians, and the meeting was held at the Pritchard Hotel and was open to the public. Fully 1000 people attended and approximately 400 were turned away. I have great hopes that the interest

aroused may shortly result in the establishment of a clinic

I also spoke to several mining groups in West Virginia and found there conditions that would horrify us were we living in a foreign land. The women were most interested and very intelligent. The men were more silent and opinion seemed somewhat divided among them. As a result of these meetings, however, another meeting was arranged the following week by the Catholic group to offset, no doubt, the favorable reaction toward birth control that a proper presentation of the subject arouses.

CONNECTICUT The Hartford Federation of Churches went on record at its annual meeting on February 23rd in favor of the dissemination of information about birth control to those who desire it. The following resolutions were adopted, as recommended by Dr. James R. Miller, chairman of the Federation's committee on social welfare, which had been requested to make a study of birth control:

Birth control is merely one phase of the eugenic problem. Protestant faiths claim not only the right but a duty for mankind to exercise intelligent supervision over this problem.

Sexual relations should be regarded as entirely natural, and sinful only as they are abused.

In our land, where free speech and free education have been made the foundation of our democracy, it is peculiarly false teaching that anyone should be denied by statute, access to any information which he may desire.

NEW JERSEY Mrs. F. Robertson Jones, president of the American Birth Control League, debated with Albert J. Shea, Hoboken attorney, on *Is Birth Control a Benefit to Humanity?* before the Forum of the American Legion of Se-caucus. A record attendance of over 500 followed the argument with interest and asked numerous questions. No vote was taken.

NEW YORK A comprehensive survey of Methodism in Manhattan, the Bronx and Westchester County has recently been published by the Methodist Episcopal Church City Planning Committee, and includes the results of a questionnaire on birth control. 740 laymen against 138 voted that they agreed with the action taken by the New York East Conference of the church in passing a resolution that "the law preventing doctors from

furnishing birth control information should be changed."

PENNSYLVANIA A Marriage Council service has been initiated by Mrs. Stuart Mudd at 1831 Chestnut Street, Philadelphia. It is offered "to help young married couples, or those contemplating marriage, to a better understanding of common requisites for a happy and healthy companionship in married life—to help them avoid some of the causes of marital difficulties." Among the distinguished sponsors are Dr. Frederick H. Allen, director, Philadelphia Child Guidance Clinic, Dr. Lovett Dewees, attending physician, Bryn Mawr Hospital and president of the Pennsylvania Birth Control Federation, Rabbi William H. Fine-shriber, Keneseth Israel Synagogue, Mrs. Philip Kind, vice president, Women's International League for Peace and Freedom, Mrs. George Bacon Wood, member of the Board of Directors, Y W C A.

NEWS FROM THE STATE LEAGUES

CONNECTICUT BIRTH CONTROL LEAGUE

Numerous and successful small parlor meetings are being held throughout the state in order to enroll all interested voters in the League. To carry this on, Mrs. G. K. DeForest, executive secretary, has been training speakers as well as speaking frequently herself. The prospective speakers make a thorough study of material at the New Haven headquarters and give their talks experimentally to members of the speakers' committee for helpful suggestions before conducting regular meetings. The League now has four official speakers.

INDIANA BIRTH CONTROL LEAGUE

The League completed its organization at a meeting held on March 3rd. The following officers were elected: Mrs. Lee Burns, president, Mrs. J. A. Goodman, vice president, Mrs. Theodore B. Griffith, secretary, Mrs. Benjamin D. Hitz, recording secretary, Mrs. Robert J. Masters, treasurer. The Board of Directors consists of Mrs. James O. Ritchey, Mrs. John S. Harrison, Mrs. Harry E. Barnard, Mrs. Meridith Nicholson, Jr., Mrs. Philip T. White, Mrs. Dorothy D. Goodrich, Mrs. Elias C. Atkins, and the officers.

MICHIGAN BIRTH CONTROL LEAGUE

The League announces the opening of a new contraceptive center, the Maternal Health Clinic at Royal Oak.

A citizens committee has been formed in Flint following a meeting at which Miss Elsie Wulkop and Mrs Morton Keeney spoke. Its first work will be to decide upon the best location for a clinic. On March 2nd a meeting was held in Grand Rapids at the home of Mrs Dudley E. Waters, at which Miss Wulkop, Dr Alexander Campbell, and Mrs Morton Keeney spoke. On March 3rd a supper for public health nurses was held at the Pantlind Hotel in Grand Rapids. Other meetings during the month were held in Pontiac, Hamtramck, and Detroit.

For April Dr Alexander Campbell will speak to a study group of the League of Women Voters on April 4. On the following day, Miss Wulkop will address the Social Service meeting of the Women's Alliance of the North Woodward Congregational Church. Dr Harrison S. Collis will speak to the members of the Michigan Conference of social workers, meeting in Grand Rapids on April 9.

MINNESOTA BIRTH CONTROL LEAGUE

The education division of the League under the direction of Mrs A. E. Selby, and the membership department, headed by Mrs F. Peavy Heffelfinger, assisted by Mrs Wendell Friday, report an active month. The League conducted a birth control meeting at the St. Paul Municipal Open Forum on March 20, Mrs G. S. Shafer spoke on the Minnesota organization and Dr Eleanor Hill on the work of the clinic. On March 24th Dr Frederick M. Elhot spoke on birth control before the Woman's Club of Minneapolis.

For April On the 6th Dr Eleanor Hill will speak at a tea given by Dr Richard E. Scammon, Dean of Medical Sciences at the University of Minnesota.

NEW JERSEY BIRTH CONTROL LEAGUE

On February 17, Miss Henriette Hart, executive director, spoke at the First Congregational Church in Newark. As a result of this meeting, a hearty recommendation was expressed that similar meet-

ings before other church bodies be encouraged. A young minister and also a prominent Y W C A worker volunteered their services for this work. On February 18, Dr Charles Francis Potter, founder of the Humanist Society of New York City, spoke before the Downtown Republican Club in Newark. A large audience followed Dr Potter's address with close attention and engaged in a lively discussion. On March 1st, Dr Clarence C. Little gave an address at the Woman's Club in Montclair, under the auspices of the Montclair Committee, and a large and very representative audience heard Dr Ira S. Wile, Reverend Sibley and Mrs Zachariah Belcher speak on Sunday afternoon, March 6th. The meeting was arranged by the Summit Birth Control Committee.

A correction The birth control service of East Orange was not established by the Board of Education, as reported in the March issue, but by the Board of Health.

PENNSYLVANIA BIRTH CONTROL FEDERATION

The Federation announces the organization of the Delaware County Birth Control League which opened a clinic in Chester on March 2nd. Another clinic has been opened in Kensington under the auspices of the Southeast Pennsylvania League. A committee headed by Mrs John L. Atlee of Lancaster visited the Philadelphia Clinic, preparatory to opening a clinic in Lancaster County in the near future.

THE NEW YORK CITY COMMITTEE

The New York City Committee is continuing its series of meetings for social workers. Two were held in March, one in Brooklyn for the Social Cooperation Committee of the Brooklyn Y W C A, and the other for a group of New York City social workers, including representatives from the League of Mothers Clubs, the Association of Day Nurseries, the Henry Street Visiting Nurses Association, Fellowship House, Stuyvesant House, University Settlement, and Bethlehem Day Nursery.

SOME LEGISLATIVE ASPECTS OF THE BIRTH CONTROL PROBLEM

(Continued from page 119)

prohibit the receipt of articles shipped from other states" or sent through the mails,²¹ or even their sale within the state in "original packages."²² On the other hand, they conflict with the policies of all other states by hampering the interchange of ideas and materials among members of the medical profession and thus impeding the development

and dissemination of new technique. Proponents of birth control have accordingly centered their efforts at modification on the federal laws. Various types of bills have been proposed.²³ None, however, suggests the enactment in this field of legislation similar to that which the Webb-Kenyon Act²⁴ established with respect to intoxicating liquors. By

making the legality of mailing or interstate transportation of liquor depend on the legality of its receipt in the state of destination, that act gave federal support to local prohibitive policies without interfering with the non-restrictive policies of other states. To seek the enactment of similar legislation in this field might be a shrewd move on the part of birth-control advocates. It would remove federal restrictions over a large part of the country, and by raising the issue of states rights might gain greater support than any of the bills providing for repeal or modification yet proposed.

Assuming federal cooperation, states attempting to suppress the use of contraceptives can diminish the reliability of information and materials available, but to hope for complete suppression would be far too sanguine. Oral information and some circulation of bootlegged publications can not be prevented. Suppression of materials is even more difficult because of the impossibility of defining the prohibited articles. Prohibiting all antiseptics which can be used for contraceptive purposes is out of the question. Under a less sweeping provision many materials usable for preventing conception remain perfectly legal, and materials intended primarily for contraceptive use may easily be advertised and sold camouflaged as antiseptics or preventives of disease.¹ The circuit court of appeals for the second circuit has recently interpreted the comprehensive federal statutes to exempt such bi-functional articles, thereby permitting virtual nullification.²

If the desirability of birth control is recognized, the best protection against unreliable or harmful materials or information is doubtless ready availability of the best there are. Further safeguards, however, may be thought desirable. Attempts to insure reliability by limiting the distribution of information and materials to reliable sources are not likely to be successful, any statutory definition of permissible sources, if broad enough not to hamper the distribution of good materials and information, is too broad to be selective. Thus, requiring that information, to be circulable, must be published, "in standard medical works"³ or "by a governmental agency, medical school, medical society or medical journal"⁴ leaves uncertain what comes within the sources defined, and the sources themselves provide no certain guaranty of quality. So, also, physicians and druggists vary widely in training and ethical standards, and the protection afforded by entrusting them with the distribution of materials⁵ is cor-

respondingly limited. Requiring the approval of men known to be competent presents an escape from such inevitably vague statutory definitions. Indorsement by any five licensed physicians, as suggested by the Cummins-Vaile bill,⁶ is too uncertain a test. Certification by the state board of health or board of medical examiners⁷ might give greater assurance. Unless the dicta of *Youngs Rubber Corp. v. C. I. Lee & Co.*⁸ are followed, no state program of this type can be very successful without modification of the federal laws. A federal statute requiring certification by a department of the national public health service⁹ for the mailing or interstate transportation of information and materials would tend to establish high standards even in states with no protective legislation.¹⁰ If such bureaucratic control be deemed undesirable, prescribing general standards of reliability by amending the Pure Food and Drug Act¹¹ and leaving enforcement to the criminal and penal measures there provided is another solution.

A further policy of making information and materials available only to certain classes of persons¹² is far less likely to be successful. Their distribution may be prohibited except to physicians and by physicians to members of the favored classes.¹³ But all the difficulties of complete suppression are here presented, greatly accentuated by the necessity of making good information and materials available to those who are entitled to them. Assuming that some laws are advisable, the real choice seems to lie between complete suppression and protective legislation such as that suggested.

REFERENCES

¹ Obscene literature was made non-mailable in 1865. 13 STAT. 507 (1865), 17 STAT. 302 (1872). Specific mention of prevention of conception, however, first appears in the comprehensive act of 1873, prohibiting the mailing, importation, and in places subject to the exclusive jurisdiction of the United States, the advertisement, sale, or gift of obscene literature or articles for preventing conception. 17 STAT. 599 (1873). For the part played by Anthony Comstock in the enactment of these laws, see BROUN AND LEECH, ANTHONY COMSTOCK (1927) 128-44, DENNETT, BIRTH CONTROL LAWS (1926), 9, 20 *et seq.* The state legislation is largely patterned after this act. See BROUN AND LEECH, *op. cit. supra*, at 132, DENNETT, *op. cit. supra*, at 9, 79-80. Attacks on the constitutionality of prohibitive or regulatory laws have been unsuccessful. *United States v. Popper*, 98 Fed. 423 (D. Cal. 1889), *Commonwealth v. Allison*, 227 Mass. 57, 116 N. E. 265 (1917), *People v. Sanger*, 222 N. Y. 192, 118 N. E. 637 (1918), *People v. Bryne*, 99 Misc. 1, 163 N. Y. Supp. 682 (1917).

² CONN. GEN. STAT. (1930) § 6246. Connecticut has no other laws specifically mentioning prevention of conception, but § 6244 prohibits the preparation, advertisement, and distribution of obscene literature and "articles of indecent use." Since the use of articles for the purpose of preventing conception is forbidden, this section might well be applied to birth-control literature and materials.

- ¹ The typical statute forbids the publication of contraceptive information, the advertisement, sale, loan, gift, exhibition, or possession with intent to sell, loan, give away or exhibit of published information or materials, and stating how information or materials are obtainable KAN REV STAT (1923) c, 21, § 1101, MASS GEN LAWS (1921) c, 272, §§ 20, 21, MISS CODE ANN (1930) § 1057, MO STAT ANN (1932) § 4275, NEB COMP STAT (1929) c 28, § 426, PA STAT ANN (Purdon, 1930) tit 18, §§ 777, 778, WASH COMP STAT (Remington, 1922) § 2460 Mississippi and Pennsylvania also forbid giving oral information, and Massachusetts prohibits the manufacture of contraceptive materials Kansas, Missouri, Nebraska, and Pennsylvania provide that the publication and sale of standard medical works shall not be affected Apparently this is not for the purpose of making birth-control information available, because distribution of the medical works containing some contraceptive information shall not on that account be excluded The exemptions in Missouri, Nebraska, and Pennsylvania also extend to teaching in medical schools
- ⁴ MINN STAT (Mason, 1927) § 10189, N Y PEN LAW (1909) § 1145, cf N J COMP STAT (1910) p 1762 ("without just cause") "Prevention of disease" is an elastic phrase, and in New York, a broad one See *People v Byrne*, *supra* note 1, at 8, 163 N Y Supp at 687 "the physician would be justified in prescribing the prohibited articles if in his opinion the health or condition of the patient required it"
- ⁵ MINN STAT (Mason, 1927) § 10188 (prohibits publishing birth-control literature, advertising or distributing literature or materials, or telling orally or in writing where they are obtainable), N J COMP STAT (1910) p 1762 (same), N Y PEN LAW (1909) § 1142 (same) Minnesota and New York also prohibit the transportation of contraceptive materials or information, and provide for the punishment of persons depositing information or materials in the mails or in the hands of another person for transportation MINN STAT (Mason, 1927) § 10189, N Y PEN LAW (1909) § 1143
- ⁶ See *People v Sanger*, *supra* note 1, at 195, 118 N E at 638, *Youngs Rubber Corp v C I Lee & Co*, 45 F (2d) 103, 107 (C C A 2d, 1930)
- ⁷ If supplying contraceptive materials to physicians is not illegal, it would be absurd to hold that it was illegal to supply them with contraceptive information Cf Ernst, *How We Nullify* (1930) 134 THE NATION 113, 114
- ⁸ ARIZ REV CODE (Struckmeyer, 1928) § 4646, Ark Acts 1931, p 413 (forbids possession, sale or gift of any publication barred from the United States mails), CAL PEN CODE (Deering, 1931) § 317, IDAHO COMP STAT (1919) § 8306, LA REV STAT ANN (Marr Supp 1926) p 385, ME REV STAT (1930) c 135, § 10, MICH COMP LAWS (1929) § 16884, MONT REV CODE (Choate, 1921) § 11142, NEV COMP LAWS (Hillyer, 1929) §§ 10133-37 (physicians excepted), N C CODE ANN (Michie, 1931) § 4349b (forbidding sale or gift of any publication barred from the United States mails)
- ⁹ See the Arizona, California, Idaho and Montana statutes cited in note 8, *supra*.
- ¹⁰ These statutes apply to materials and services for producing abortion as well as for preventing conception, which may indicate that they are intended to prevent the use of contraceptives Their deficiency for this purpose is obvious, however As protective rather than prohibitive statutes they are equally bad, since they make contraceptive information unavailable even to physicians
- ¹¹ The rationale appears to be that in matters relating to sex the danger of exploitation by fraudulent practitioners is particularly great, and that in view of the difficulty of discriminating between good advertising and bad it is safer to prohibit all advertising than to expose the public to the solicitation of quacks Compare the provisions against advertisement of cures for venereal disease, which exist in most states, usually with exceptions for advertisements of federal or state governments or medical journals *Eg*, CAL GEN LAWS (Deering, 1928) Act 90, § 1, COLO ANN STAT (Mills, 1930) § 1913, D C CODE (1929) tit 20, § 1191
- ¹² Colorado, Indiana, Iowa, Ohio, and Wyoming prohibit the manufacture of contraceptive materials and the publication of contraceptive information, their distribution, transportation, and advertisement, and stating orally or in writing how either is obtainable, but provide that teaching in medical schools, the publication and sale of standard medical works, the practice of physicians, and the business of druggists shall not be affected COLO ANN STAT (Mills, 1930) §§ 1910, 1911, 5728, IND ANN STAT (Burns, 1926) §§ 2569, 2570, 2572 (forbids also possession of materials or literature), IOWA CODE (1931) §§ 13190, 13191, 13195 (no provision against manufacturing materials or giving oral information), OHIO GEN CODE (Page, 1932) §§ 13033-37, WYO COMP STAT ANN (1920) §§ 7200-02 (forbids also possession of contraceptive materials or information) There are no restrictions on the circulation of birth-control literature after publication, or on the persons to whom physicians or druggists may supply materials
- ¹³ ALA CODE (Michie, 1928) § 5014, DEL REV CODE (1915) c. 70, § 40, FLA COMP LAWS (1927) §§ 7581-84, OKLA COMP STAT ANN (Bunn, 1931) § 1886, R I GEN LAWS (1923) c 399, § 13, S C CRIM CODE (1922) § 384, S D COMP STAT (1929) § 3884, TENN CODE (1932) § 11190, TEX REV PEN CODE (1928) art 526, UTAH COMP LAWS (1917) § 8144, VT GEN LAWS (1917) § 7021, VA CODE ANN (Michie, 1930) § 4549, W VA CODE (1931) c 61, art 8, § 11, WIS. STAT (1929) § 351.38 These acts do not violate constitutional guaranties of freedom of speech and press *United States v Harmon*, 45 Fed 414 (D Kan 1891), *State v McKee*, 73 Conn 18, 46 Atl 409 (1900), *State v Warren*, 113 N C 683, 18 S E 498 (1893), see Schofield, *Freedom of the Press in the United States* (1914) 9 PUB AM SOCIOL SOC 67, 82
- ¹⁴ GA PEN CODE ANN (1926) § 385, ILL REV STAT (Cahill, 1931) c 38, §§ 455-56, KY STAT (Carroll, 1930) §§ 1352, 1355, MD ANN CODE (Bagby, 1924) art 27, § 417, N D COMP LAWS ANN (1913) § 9654, N H PUB LAWS (1926) c 379, §§ 14-17, ORE CODE ANN (1930) § 14 729 England has no laws specifically mentioning birth control, but prohibits the importation, mailing, advertisement, sale or gratuitous distribution of indecent literature or articles 39 & 40 VICT c 36, § 42 (1876), 8 EDW VII, c 48, §§ 16, 63 (1908), 20 & 21 VICT c 83 (1857)
- ¹⁵ The determination of what constitutes obscenity rests primarily with judges through their power to reverse jury verdicts as unreasonable *Eg*, *United States v Dennett*, 39 F (2d) 564 (C C A 2d, 1930), see Note (1928) 28 COL L REV 950 Birth-control literature was held to be obscene in *Commonwealth v Allison*, 227 Mass 57, 116 N E 265 (1917), and *Potter v Smith*, 2 N S W St R 220 (1902), see *In re Besant*, 11 Ch D 508, 514 (1878), *Brenner v Walker*, 6 N S W St R 276, 281, 282 (1885), cf *Bradlaugh v The Queen*, 3 Q B D 607 (1878) It was held not to be *per se* obscene in *United States v One Book Entitled "Contraception"*, 51 F (2d) 525 (S D N Y 1931), and *Ex parte Collins*, 9 N S W St R 497 (1888), see *United States v One Obscene Book Entitled "Married Love"*, 48 F (2d) 821, 823 (S D N Y 1931) So determinative are the moral ideas of the individual judge that the cases of one jurisdiction are a poor basis for predicting results in another, or even in the same jurisdiction in a different court Each case is little more than a decision of particular judges upon the obscenity of a particular book
- ¹⁶ Section 305 of the Tariff Act of 1930 includes obscene literature and contraceptive materials among matters whose importation is forbidden, but does not specifically include birth-control information 46 STAT 688 (1930) Contraceptive information has been held not to be *per se* obscene, and hence not subject to forfeiture under this act *United States v One Book Entitled "Contraception"*, *supra* note 15 The applicability of § 245 of the Penal Code, which provides for the punishment of anyone who either brings or causes to be brought into the United States contraceptive articles or information was not involved 41 STAT 1060 (1920), 12 U S C § 396 (1926)
- ¹⁷ 36 STAT 1339 (1911), 18 U S C § 334 (1926) This section

is particularly comprehensive. Non-mailable matter includes every article "designed, adapted or intended for preventing conception" or "advertised or described in a manner calculated to lead another to use or apply it for preventing conception," and every description "calculated to induce a person to so use any such articles."

¹⁸ 41 STAT 1060 (1920), 18 U S C § 396 (1926)

¹⁹ 36 STAT 1149 (1909), 18 U S C § 512 (1926)

²⁰ *Bowman v Chicago & Northwestern Ry*, 125 U S 465 (1888), *Rhodes v Iowa*, 170 U S 412 (1898)

²¹ See ROGERS, POSTAL POWERS OF CONGRESS (1916) 146

²² *Leisy v Hardin*, 135 U S 100 (1890), *cf Austin v Tennessee*, 179 U S 343 (1900)

²³ See DENNETT, *op cit supra* note 1, at 200 *et seq*, Cummins-Vaile bill, *infra* note 30, Gillett bill, *infra* note 28

²⁴ 37 STAT 699 (1913) This act prohibited the shipment into any state of intoxicating liquor "intended by any person interested therein to be received, possessed, sold, or in any manner used, either in the original package or otherwise, in violation of any law of such state." Its constitutionality was upheld in *Clark Distilling Co v Western Maryland Ry*, 242 U S 311 (1917). Compare the Wilson Act, 26 STAT 313 (1890), which enabled states to prohibit the sale of liquor in original packages, but was held not to permit state interference with interstate shipments before they reached the consignee, or with personal use by the consignee, *Rhodes v Iowa*, 170 U S 412 (1898)

²⁵ See, e.g., (1932) 20 TRUE CONFESSIONS, No 115, 63, (1932) 87 LOVE STORY MAGAZINE, No 6, viii. The usual provision of the existing state laws is against advertising or selling articles "designed for preventing conception" or "to be used for the purpose of preventing conception." *E.g.*, COLO ANN STAT (Mills, 1930) § 1910, KAN REV STAT (1921) c 21, § 1101, MASS GEN LAWS (1921) c 272, §§ 20, 21. They might easily be held inapplicable to anything which might be used for a purpose other than preventing conception.

²⁶ See *Youngs Rubber Corp v C I Lee & Co*, *supra* note 6, at 108, where it is suggested that if articles can be used for preventing disease, their shipment is not illegal under the federal statutes unless an intent is proved on the part of the sender that they be used for contraception not necessary to prevent disease. Compare the definition of "prevention of disease" in *People v Byrne*, *supra* note 4. See Ernst, *loc cit supra* note 7.

²⁷ See Statutes, *supra* note 12.

²⁸ See Gillett bill (S 4582), Hearings Before a Subcommittee of the Committee on the Judiciary, 71st Cong, 3d Sess Feb 13, 14, 1931) 1. This recent proposal for amendment of the federal laws would permit free circulation of information published either within or without the United States by any governmental agency, medical society, medical school or medical journal, or reprinted after such publication. Information not so published would be importable, mailable, and transportable only if sent by one physician, hospital or clinic to another, or to a patient. Contraceptive materials would be importable, mailable, or transportable only if sent either to a *bona fide* dealer in medical supplies or a physician, hospital or clinic, or by a physician, hospital or clinic to a patient. The administrative objections to such a statute are obvious. Compare the earlier proposed bill discussed in DENNETT, *op cit supra* note 1, at 212 *et seq*.

²⁹ See statutes, *supra* note 12, and the Gillett bill, *supra* note 28.

³⁰ H R 6542, S 2290. See Joint Hearings Before Subcommittees of the Committee on the Judiciary, 68th Cong, 1st Sess (April 8, May 9, 1924) 1.

³¹ Certification by city health commissioners or county boards of health are other possibilities, though they may be less well informed. Of seventeen birth-control clinics in California, eleven are controlled by county public health departments. See Gillett bill, Hearings, *supra* note 28, at 24.

The Medical Woman's Journal

November, 1931

BOOK REVIEWS

PHYSICIANS' MANUAL OF BIRTH CONTROL

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³² *Loc cit supra* note 26.

³³ It has been suggested that the Department of Medical and Chemical Research might perform such a function. See DENNETT, *op cit supra* note 1, at 236.

³⁴ Information and materials which did not come up to federal standards, and hence could not be mailed or circulated outside the state, would have difficulty competing with those which did.

³⁵ 34 STAT 768 (1906), 37 STAT 736 (1913), 21 U S C §§ 1-15 (1926). This act, which prohibits the importation and interstate transportation of misbranded or adulterated drugs, would in its present form be applicable to all contraceptives containing drugs or chemicals. See DENNETT, *op cit supra* note 1, at 235. A bill providing that it be amended to apply to all contraceptives might meet with less opposition than one which would give the government so active a part in the distribution of materials as certification by a federal administrative body would require. States might effectuate protective policies by similar amendment of laws prohibiting the manufacture or sale of misbranded or adulterated drugs. *E.g.*, KAN REV STAT (1926), c 65, §§ 601-613, KY STAT ANN (Carroll, 1930) § 2060, N H GEN LAWS 1929, c 45. Protection against obscenely written information would then be afforded by obscene literature statutes. Protection against information which was merely unreliable would perhaps be unnecessary.

³⁶ See statutes, *supra* note 5.

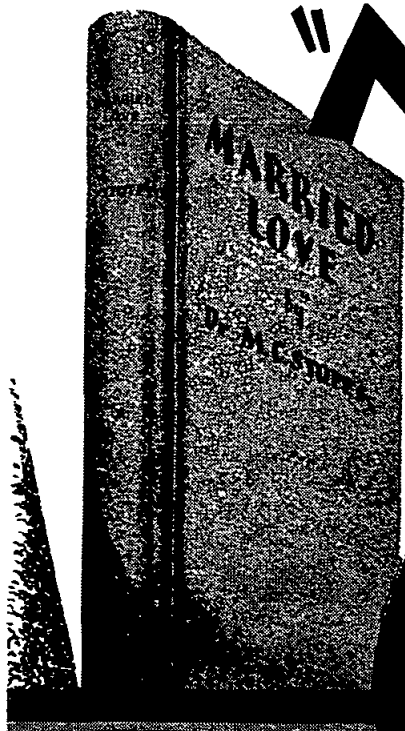
³⁷ Compare the statutes in notes 5 and 12, *supra*, the Gillett bill, *supra* note 28, DENNETT, *op cit supra* note 1, at 81.

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