

CHAPTER XV

LEGISLATING WOMAN S MORALS

ONE of the important duties before those women who are demanding birth control as a means to a New Race is the changing of our so called obscenity laws. This will be no easy undertaking, it is usually much easier to enact statutes than to revise them. Laws are seldom exactly what they seem, rarely what their advocates claim for them. The obscenity statutes are particularly deceptive.

Enacted avowedly to protect society against the obscene and the lewd they make no distinction between the scientific works of human emancipators like Forel and Ellis and printed matter such as they are ostensibly aimed at. Naturally enough, then, detectives and narrow minded judges and prosecutors who would chuckle over pictures that would make a clean minded woman shudder unite to

suppress the scientific works and the birth control treatises which would enable men and women to attain higher physical, mental moral and spiritual standards

Woman bent upon her freedom and seeking to make a better world, will not permit the indecent and unclean forces of reaction to mask themselves forever behind the plea that it is necessary to keep her in ignorance to preserve her purity In the birth control movement she has already begun to fight for her right to have, without legal interference all knowledge pertaining to her sex nature This is the third and most important of the epoch making battles for general liberty upon American soil It is most important because it is to purify the very fountain of the race and make the race completely free

The first and most dramatic of the three great struggles for liberty reached its apex as we know in the American Revolution It had for its object the right to hold such political beliefs as one might choose and to act in accordance with those beliefs If this political freedom is now lost to us it is because we did not hold strongly enough to those liberties

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fought for by our forefathers

Nearly a hundred years after the Revolution the battle for religious liberty came to a climax in the career of Robert G. Ingersoll. His championship of the much vaunted and little exercised freedom of religious opinion swept the blasphemy laws into the lumber room of outworn tyrannies. Those yet remaining upon the statute books are invoked but rarely and then the effort to enforce them is ridiculous.

Within a few years the tragic combination of false moral standards and infamous obscenity laws will be as ridiculous in the public mind as are the now all but forgotten blasphemy laws. If the obscenity laws are not radically revised or repealed few reactionaries will dare to face the public derision that will greet their attempts to use them to stay woman's progress.

The French have a saying concerning 'mort main' — the dead hand. This hand of the past reaches up into the present to smother the rising flame of modern ideals, to reforge our chains when we have broken them to arrest progress. It is the hand of such as have lived

on earth but have not loved humanity At the call of those who fear progress and freedom it rises from the gloom of forgotten things to oppress the living

It is the dead hand that holds imprisoned within the obscenity laws all direct information concerning birth control It is the dead hand that thus compels millions of American women to remain in the bondage of maternity

Previous to the year 1868 the obscenity laws of the various states in the Union contained no specific prohibition of information concerning contraceptives In that year, however the General Assembly of New York passed an act which specifically included the subject of contraceptives The act made it exactly as great an offense to give such information as to exhibit the sort of pictures and writings at which the legislation was ostensibly aimed

In 1873 the late Anthony Comstock who with a list of contributors most of whom did not realize the real effects of his work constituted the so called Society for the Suppression of Vice succeeded in obtaining the passage of the federal obscenity act This act was pre

sented as one to prevent the circulation of pornographic literature and pictures among school children. As such it was rushed through with two hundred sixty other acts in the closing hours of the Congress. This act made it a crime to use the mails to convey contraceptives or information concerning contraceptives. Other acts later made the original law applicable to express companies and other common carriers as well as to the mails.

With this precedent established — a precedent which a majority of the congressmen could hardly have understood because of the hasty passage of the act — Comstock secured the enactment of state laws to the same effect. Meanwhile the provisions regarding contraceptives had been dropped from the amended New York State law of 1872. In 1873 however a new section said to have been drafted by Comstock himself was substituted for the one enacted in 1872, and that section is essentially the substance of the present law. None of these acts made it an offense to prevent conception — all of them provided punishment for anyone disseminating information concerning the prevention of conception. In the

federal statutes the maximum penalties were fixed at a fine of \$5,000 or five years imprisonment, or both. The usual maximum penalty under a state law is a fine of \$1,000 or one year's imprisonment or both.

Comstock has passed out of public notice. His body has been entombed but the evil that he did lives after him. His dead hand still reaches forth to keep the subject of prevention of conception where he placed it — in the same legal category with things unclean and vile. Forty years ago the laws were changed and the chief work of Comstock's life accomplished. Those laws still live legal monuments to ignorance and to oppression. Through those laws reaches the dead hand to bring to the operating table each year hundreds of thousands of women who undergo the agony of abortion. Each year this hand reaches out to compel the birth of hundreds of thousands of infants who must die before they are twelve months old.

Like many laws upon our statute books, these are being persistently and intelligently violated. Few members of the well to do and wealthy classes think for a single moment of

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obeying them They limit their families to one two or three well cared for children Usually the prosecutor who presents the case against a birth control advocate trapped by a detective hired by the Comstock Society has no children at all or a small family The family of the judge who passes upon the case is likely to be smaller still The words It is the law sums it all up for these officials when they pass sentence in court But these words, so magical to the official mind have no weight when these same officials are adjusting their own private lives They then obey the higher laws of their own beings — they break the obsolete statutes for themselves while enforcing them for others

This is not the situation with the poorer people of the United States however Millions of them know nothing of reliable contraceptives When women of the impoverished strata of society do not break these laws against contraceptives they violate those laws of their inner beings which tell them not to bring children into the world to live in want disease and general misery They break the first law of nature, which is that of self preser

vation Bound by false morals, enchained by false conceptions of religion, hindered by false laws, they endure until the pressure becomes so great that morals, religion and laws alike fail to restrain them Then they for a brief respite resort to the surgeon's instruments

For many years the semi official witch hunting of the Comstock organization had a remarkable and a deadly effect Everyone, whether it was novelist, essayist, publicist, propagandist or artist, who sought to throw definite light upon the forbidden subject of sex, or upon family limitation, was prosecuted if detected Among the many books suppressed were works by physicians designed to warn young men and women away from the pitfalls of venereal diseases and sexual errors The darkness that surrounded the whole field of sex was made as complete as possible

Since then the feeling of the awakened women of America has intensified The rapidity with which women are going into industry, the increasing hardship and poverty of the lower strata of society, the arousing of public conscience, have all operated to give force and volume to the demand for woman's right to

control her own body that she may work out her own salvation

Those who believe in strictly legal measures, as well as those who believe both in legal measures and in open defiance of these brutal and unjust laws, are demanding amendments to the obscenity statutes, which shall remove information concerning contraceptives from its present classification among things filthy and obscene

An amendment typical of those offered is that drawn up for the New York statutes under the direction of Samuel McClure Lindsey, of Columbia University. The words and sentences in italics are those which it proposed to add

(Section 1145) Physicians' instruments *and information*. An article or instrument used or applied by physicians lawfully practicing, or by their direction or prescription, for the cure or prevention of disease, is not an article of indecent or immoral nature or use within this article. The supplying of such articles to such physicians or by their direction or prescription, is not an offense under this article. *The giving by a duly licensed physician or reg-*

istered nurse lawfully practicing of information or advice in regard to or the supplying to any person of any article or medicine for the prevention of conception is not a violation of any provision of this article"

This proposed amendment should without doubt include midwives as well as nurses. There are thousands of women who never see a nurse or a physician. Under this section even as it now stands, physicians have a right to prescribe contraceptives, but few of them have claimed that right or have even known that it has existed. It does exist, however, and was specifically declared by the New York State Court of Appeals, as we shall see when we consider that court's opinion in the Sanger case, farther on in the book. It can do no harm to make the intent of the law as regards physicians plainer, and it would be an immense step forward to include nurses and midwives in the section. With this addition it would remove one of the most serious obstacles to the freedom and advancement of American womanhood. Every woman interested in the welfare of women in general should make it

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her business to agitate for such a change in the obscenity laws

The above provision would take care of the case of the woman who is ill, or who is plainly about to become ill, but it does not take care of the vast body of women who have not yet ruined their health by childbearing and who are not yet suffering from diseases complicated by pregnancy. If this amendment had been attached to the laws in all the states, there would still remain much to be done.

Shall we go on indefinitely driving the now healthy mother of two children into the hands of the abortionist, where she goes in preference to constant ill health, overwork and the witnessing of dying and starving babies? It is each woman's duty to herself and to society to hasten the repeal of all laws against the communication of birth control information. Now that she has the vote, she should use her political influence to strike, first of all, at these restrictive statutes. It is not to her credit that a district attorney, arguing against a birth control advocate, is able to show that women have made no effort to wipe out such laws in states where they have had the ballot for years.

It is time that women assert themselves upon this fundamental right, and the first and best use they can make of the ballot is in this direction. These laws were made by men and have been instruments of martyrdom and death for unnumbered thousands of women. Women now have the opportunity to sweep them into the trash heap. They will do it at once unless like men, they use the ballot for those political honors which many years of experience have taught men to be hollow.

It is only a question of how long it will take women to make up their minds to this result. The law of woman's being is stronger than any statute and the man made law must sooner or later give way to it. Man has not protected woman in matters most vital to her — but she is awaking and will sooner or later realize this and assert herself. If she acts in mass now it will be another cheering evidence that she is moving consciously toward her goal.