

Chapter Twenty-four

LAWS WERE LIKE COBWEBS

*"And heard great argument,
About it and about, but evermore
Came out by the same door wherein I went"*

EDWARD FITZGERALD



PROMPTLY at nine the morning after the wretched Town Hall affair Miss Winsor and I appeared before Magistrate Joseph E. Corrigan and the case was dismissed in five minutes. Neither Monsignor Dineen nor Captain Donohue was in court. Here was a ridiculous thing—the Catholic Church held such power in its hands that it could issue orders to the police, dissolve an important gathering of adult and intelligent men and women, and send them home as though they were naughty children—and then not feel called upon to give any accounting.

The papers expressed the greatest indignation. Even the most conservative were placed in the trying situation of defending birth control advocates or endorsing a violation of the principle of free speech, which "must always find defenders if democracy is to survive." It was to be expected that the *World* would be up in arms, but the *Times* carried a headline that Archbishop Hayes had closed the meeting, and the *Tribune* was spurred on by the indignation of Mrs. Ogden Reid, who had been present at the Town Hall.

Apparently the Church had not expected to render any explanation whatsoever. Then, faced with a battery of reporters, Monsignor Dineen made a statement:

The Archbishop had received an invitation from Mrs. Margaret Sanger to attend the meeting, and I went as his representative. The Archbishop is delighted and pleased at the action of the police, as am

I, because I think any one will admit that a meeting of that character is no place for growing children The presence of these four children at least was a reason for police action

He had not improved his position The scoffing was redoubled when it was learned that the four "children" were students of Professor Raymond Moley's class in sociology at Columbia University, Monsignor Dineen had not seen beyond their bobbed hair

Only a small section of the public had been aware of our modest little conference, even fewer had known of the proposed Town Hall meeting Now the publicity was tremendous Many Catholics themselves condemned Church tactics, and Archbishop Hayes had to defend himself

As a citizen and a churchman, deeply concerned with the moral well-being of our city, I feel it a public duty to protest in the interest of thousands of distressed mothers, who are alarmed at the daring of the advocates of birth control in bringing out into an open, unrestricted, free meeting a discussion of a subject that simple prudence and decency, if not the spirit of the law, should keep within the walls of a clinic The law was enacted under the police power of the Legislature for the benefit of the morals and health of the community The law of God and man, science, public policy, human experience, are all condemnatory of birth control as preached by a few irresponsible individuals

The seventh child has been regarded traditionally with some peoples as the most favored by nature Benjamin Franklin was the fifteenth child, John Wesley the eighteenth, Ignatius Loyola was the eighth, Catherine of Siena, one of the greatest intellectual women who ever lived, was the twenty-fourth It has been suggested that one of the reasons for the lack of genius in our day is that we are not getting the ends of the families

This statement appeared synchronously with our second meeting The Town Hall had been booked ahead for several weeks, consequently, we had engaged the big Park Theater in Columbus Circle It was packed fifteen minutes after a single door was opened Dr Karl Reiland of St George's Church was a new recruit on the platform, otherwise our program was the same as before, and a balanced and poised discussion proceeded without acrimony or excitement Outside, however, two thousand people were clamoring to get in, even climbing

up the fire escapes Orators were haranguing from soapboxes, men were pounding each other with their fists, Paulist fathers were selling pamphlets against birth control

In my open letter of reply to Archbishop Hayes I said

I agree with the Archbishop that a clinic is the proper place to give information on birth control I wish, however, to point out the fact that there are two sides to the subject under consideration—the practical information as distinct from the theoretical discussion The latter rightly may be discussed on the public platform and in the press as the Archbishop himself has taken the opportunity to do

And then, citing Scripture

If the Archbishop will recall his Bible history, he will find that some of the more remarkable characters were the first children, and often the only child as well For instance, Isaac was an only child, born after long years of preparation Isaac's only children were twins—Jacob, the father of all Israel, and Esau Samuel, who judged Israel for forty years, was an only child John the Baptist was an only child, and his parents were well along in years when he was born

Archbishop Hayes delivered his final pronouncement in his Christmas Pastoral

Children troop down from Heaven because God wills it He alone has the right to stay their coming, while He blesses at will some homes with many, others with but few or with none at all Even though some little angels in the flesh through moral, mental, or physical deformity of parents may appear to human eyes hideous, misshapen, a blot on civilized society, we must not lose sight of this Christian thought that under and within such visible malformation there lives an immortal soul to be saved and glorified for all eternity among the blessed in Heaven

Heinous is the sin committed against the creative act of God, who through the marriage contract invites man and woman to co-operate with him in the propagation of the human family To take life after its inception is a horrible crime, but to prevent human life that the Creator is about to bring into being is satanic In the first instance, the body is killed, while the soul lives on, in the latter, not only a body, but an immortal soul is denied existence in time and in eternity It has been reserved to our day to see advocated shamelessly the legalizing of such a diabolical thing

A monstrous doctrine and one abhorrent to every civilized instinct, that children, misshapen, deformed, hideous to the eye, either mentally or constitutionally unequipped for life, should continue to be born in the hope that Heaven might be filled!

General opinion was that controversy gave us free publicity, and it did, column after column, but to my mind it was of the negative kind. The truths falsified and motives aspersed had to be debated, corrected, and argued away, and this took time from constructive work. The press wanted to keep up the excitement and manufacture news, but I did not. As a matter of fact the hullabaloo was usually done for me, the blundering of the opposition often saved my voice.

The correspondence through the press was dropped, but meanwhile the American Civil Liberties Union, spurred on by Albert de Silver, from whom we had previously sought advice and who had helped us raise funds, had urged me to institute action for false arrest. This I knew would be a fruitless task, but I did consent to the demand for an investigation. Commissioner Enright was said to be out of the city, but Chief Inspector Lahey, acting in his place, was to determine whether charges should be preferred against Captain Donohue for having stopped the meeting.

On December 2nd, in a small room closed to the press, Mr. Lahey sat at the head of a long table. On his right was a chair to which I was called. On his left, opposite me, was a heavy man with a big bulldog head, wearing a black alpaca coat. He fixed his eyes straight on mine as though he intended to hypnotize me and influence by sheer terror what I was to say. His features were so set, his expression so immobile, that I sensed animus. I refused to return his gaze but faced the Inspector instead.

The interrogation, prompted by this sinister individual, who bent over occasionally to murmur into Mr. Lahey's ear, held bitter malice. Nevertheless, I answered every query as completely and as honestly as I was able. I had nothing to hide, and still believed that my interlocutor could arrive at no decision unless he heard the truth in its entirety. I was all for telling it.

But never throughout any of the hearings could either the examiners or police be kept to the point. They were not genuinely trying to find out who had given the orders and why, but attempting to justify the

illegal proceedings, and always they went off into vague irrelevancies extraneous to the issue, such as trying to embarrass dignified, elderly witnesses by asking, "What are you doing with birth control?"

Chiefly the investigation focused around the Brownsville clinic raid I denied emphatically that certain contraceptives for use by men only had ever been there, they were of a type which I did not recommend, and had been brought in by the police themselves

"Do you mean to say, Mrs Sanger," went on Mr Lahey, "that this statement of the police officer as written into the records was untrue?"

"I do"

Mr Lahey lifted an official finger to an attendant The door of the anteroom opened and Mrs Whitehurst, who had been the leader of the raid, was dramatically framed before us

"Do you say that if she," he waved to her, "made the statement referred to in the police records, she lied?"

"She did," I affirmed This was the first time in all my life that I had ever called a person a liar I felt as though I had stepped down into the lower brackets of common decency, but the police are accustomed to such words, and I had to meet the circumstances

Mrs Whitehurst was instantly dismissed I, too, was dismissed, and Juliet took my place She had learned from her husband and other lawyers how witnesses could protect themselves, and tossed off her answers readily, now and then returning, "I don't know," and, frequently, "I don't remember" The black-coated gentleman who had hoped to trip her up but was getting nowhere, became exasperated and said roughly to Mr Lahey, "Oh, stop this! Ask her if she's read the law"

Juliet admitted she had read Section 1142, but, to further questioning, replied she did not recall when, she had not read it in my presence, she might or might not have talked it over with me

Mr Lahey rose and left the room Then the Unknown shouted to a young Irishman who had been busily taking notes, "Arrest that woman!"

We could not have been more astonished if a thunderbolt had struck the place For a few seconds, which seemed longer, everyone was

paralyzed At last Mr Marsh asked, "On what grounds is Mrs Rublee arrested?"

"She has violated Section 1142 "

"She said she had read the law—is that a crime?"

No answer

Mr Marsh then inquired, "On whose authority is Mrs Rublee arrested?"

Dead silence No reply while the Unknown and the stenographer muttered together Finally, when Mr Marsh repeated the question, the latter replied, "I do I arrest her on my own authority Patrolman Thomas J Murphy "

Mr Marsh said to the Unknown, "It's customary for brothers of the law to give each other their names Mine is Robert Marsh, practicing attorney May I not know with whom I am speaking?"

"I'm just a bystander "

"Well, Mr Bystander, won't you instruct the police officer to be more explicit in his statement of facts?"

"Look here, Marsh, I'm telling you the officer is arresting this witness on his own initiative "

He, too, left the room

Juliet, Mr Marsh, and I entered her car and young Stenographer-Patrolman Murphy, obviously ill at ease, sat beside the chauffeur At the Elizabeth Street Court, Magistrate Peter A Hatting smiled cheerfully at us from behind his desk, "Well, where's the prisoner?"

Murphy made a feeble gesture in Juliet's direction and said in a whisper which we could overhear, "It's a birth control case "

"Oh, I see Well, what was she selling—where are the articles?"

Murphy could produce none

"Well, well, where is the evidence?"

Murphy looked even more embarrassed, mumbled that he didn't have any

"Well, the court is adjourned anyway, and we'll have to wait until this afternoon "

I was turning my back on Murphy, very cross at him, but Juliet asked him to lunch with us "He didn't want to arrest me, did you, Mr Murphy?" And Mr Murphy shook his head most decidedly

While we ate, he explained that our Unknown was Assistant Corporation Counsel Martin W. Dolphin, with offices in the Police Department, that he himself was Mr. Dolphin's private secretary, that he had been brought to the inquiry merely to take dictation, that he had been only ten months on the force, that he had never arrested anybody before, and that when Mr. Dolphin had said to arrest Mrs. Rublee he had protested, "Why, I can't arrest her. I haven't seen her do anything to be arrested for!"

"I'm awfully sorry," he went on, addressing Juliet, "but I had to obey orders. If I didn't, I'd be in an awful mess. Gee, why didn't they get some of the old fellows down there to do it?"

When we returned to court, Assistant District Attorney Wilson said to Magistrate Hatting, "Your Honor, I have no evidence in this case. The police have furnished nothing to the District Attorney's office. If I have not sufficient evidence by three-thirty I'll dismiss the whole thing."

Then we waited. Eventually the expected "minutes and statement" arrived. Murphy swore that they were true—to Juliet's wholehearted disgust. Her faith in human nature had been betrayed, she did not see why he preferred to keep his job rather than his self-respect. Magistrate Hatting seemed anxious to make everybody comfortable—Juliet, the Catholics, the police, and the public—and to convey the impression nobody was really to blame.

Since the wife of a prominent lawyer had become involved, people in high places in New York had an obligation to protect their own. Publicity had been great before, now it was multiplied tenfold. A letter was addressed to Mayor Hylan:

The action of the Police Department constitutes such a wilful violation of the right of free speech as to cause grave alarm to the citizens of New York, who have a right to know why such outrages have taken place, what motives and influences are behind them, and whether any conspiracy exists in the Police Department to deny the right of free speech and the equal protection of the law to citizens of New York. This obviously is a matter of the gravest concern.

We, therefore, ask an immediate and full investigation to be followed, if the evidence warrants, by such disciplinary measures against the officials found to be guilty as will discourage similar offenses hereafter.

This demand was signed by Henry Morgenthau, Sr, Herbert L Satterlee, Paul D Cravath, Lewis L Delafield, Charles C Burlingham, Samuel H Ordway, Pierre Jay, Paul M Warburg, Charles Strauss, Montgomery Hare

As a result, Mayor Hylan delegated David F Hirshfield, Commissioner of Accounts, to supervise an investigation into the previous investigation. The first session was diverted into a discussion of the merits of birth control. The Commissioner was facetious, and, when Mr Marsh kept after him for interrupting witnesses and getting off the subject, finally said he had been insulted and refused to continue as long as Mr Marsh represented us.

At the three subsequent hearings Emory R Buckner took charge of our interests. Dolphin, although summoned, did not appear at any of them. Captain Donohue testified that Desk Lieutenant Joseph Courtney had received the information over the telephone, and had passed it on to him. So far as he knew it was the telephone operator who had given the orders to close the meeting. But he would, he said, have done so anyhow.

"What law did Mrs Sanger violate?" asked Mr Buckner.

"She was disorderly. I requested her several times to leave the platform and she defied me and said she would not do it. She caused quite a commotion and people were all hollering and yelling, a general commotion."

"You think it was a crime for her to commence to speak after a Captain of Police had told her not to?"

"Yes."

"Was Miss Winsor also arrested because she attempted to speak after being told to keep quiet?"

"She said she knew a woman who had nine children and the audience commenced to holler and try to pull the policemen off the stage."

Even the Commissioner was becoming annoyed at Donohue's inanities. He said to Mr Buckner, "You do not have to put any witnesses on to show the intelligence and the lack of sight or foresight of the Captain. You and I, I think, will agree on that point." And then he turned to Donohue. "Now, Captain, will you tell me the reason for acting in the Hall as you did to prevent that meeting? You see, I do not know whether you understand me or not. You policemen, you do not

usually understand ordinary language I want to know what was in your mind, why did you act as you did, that is all "

"Because I had orders to do so " But he would not admit they came from any further back than the Desk Lieutenant

Officer Murphy was put on the stand next, and the Commissioner gave him a chance to explain what had prompted him to make the arrest "I figured this way If it would be a crime to run such a meeting or hold such a meeting in the City of New York according to the Penal Law, if Mrs Rublee was an assistant with Mrs Sanger or anybody else in running such a meeting, and there were distributed circulars regarding prevention of conception, Mrs Rublee was just as much responsible for the distribution of these circulars as anybody else "

"The circulars stated there would be a public mass meeting at Town Hall on birth control," said Mr Buckner promptly "Is that a crime?"

The Commissioner interrupted "Mr Buckner, you do not expect this young man to be interested in that He is too young to know about birth control The old, bald-headed ones are the only ones that are interested in it "

And late in the afternoon he said, "I am too busy and have too much work to do, so we won't have any summing up "

At the concluding session Desk Lieutenant Courtney disclaimed all liability, saying the only order given to Captain Donohue was to take a number of policemen to the meeting and see that the law was not violated, thereafter the Captain had acted on his own responsibility

As far as I was concerned the final scene in the farce took place before the elderly and firm Judge John W Goff, one of the official referees of the Supreme Court who was to hear the charges before the New York Bar Association as to whether Dolphin should be disbarred He was summoned again in vain until Judge Goff said angrily, "Unless he comes within the hour, I'll subpoena him," and at last, still in his alpaca coat, he put in an appearance I was on the stand almost an entire afternoon during which the attorney representing Dolphin was attacking me personally instead of inquiring into Juliet's arrest

"Do you know Carlo Tresca?"

"Yes "

"Do you know Alexander Berkman?"

"Yes "

I could now see what was coming, radicals were always made the whipping boys and, in lieu of specific charges, any acquaintance with them was made to seem incriminating

"Do you know Emma Goldman?" Here the attorney's voice rose in outrage, and he looked at Judge Goff as though to say, "There you have it"

"Yes," I reiterated, "but I also know Mrs Andrew Carnegie and Mr John D Rockefeller, Jr My social relations are with people of varying ideas and opinions"

The next attempt was a subtle sort of third degree, aiming to confuse me and imply I was an inaccurate witness "What was the precise time you entered the room where Mrs Rublee was arrested? How large was it? How long, how wide, how high, how many windows were there? Who was called first? Where were you sitting? How far was Inspector Lahey from your chair? Were you second, third, or fourth on the right side or left side? How wide was the table, how long? Where was the door located relative to the table?"

Usually I could not have remembered one such immaterial and unnecessary detail But that afternoon I was given second sight I could visualize the room, my mind seemed to be projected into it so that every particular stood out with the utmost clarity It was an excellent lesson to me, thereafter I observed much more carefully

After hours of this cross-examination I was physically exhausted, as though I had been flung back and forth, beaten and pounded from the bottom of my feet to the top of my head I almost looked at my arms to see whether they were black and blue, they ached so

It was all useless The police went unreprimanded, Donohue was promoted when things had quieted down, and Dolphin, though Judge Goff recommended prosecution and the Court of Appeals stated that his conduct was "arbitrary and unlawful," was not disbarred because he had not been acting in an official capacity when he had ordered the arrest In spite of the inconvenience, the humiliation of halls closed, covenants broken—exactly nothing happened