

# The Unlikely Victory

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The changing tide of public opinion was reason enough for new tactics. Although great progress had been made over the years, the old statutes remained on the books, an affront to modern views and a constant threat to the future. The time seemed right for repeal.

Formerly, because Mrs. Dennett's Voluntary Parenthood League had focused on federal legislation, Margaret had left that field to her, although she had made some efforts to change state laws. After all, it was the New York laws that had interfered with the Brownsville clinic. As early as 1921 she had visited Albany where she had found a few legislators privately sympathetic to her purposes, but all of them certain that her bill was political dynamite. Finally, in 1924, young Samuel Rosenman, later to become a distinguished judge and then adviser to President Roosevelt, introduced it, but it never had a chance.

Connecticut also had offered a special challenge because there the very use of contraceptives was a crime. To enforce that law would have taken "a policeman under every bed." Furthermore, in this state Margaret had two outstanding aides, Mrs. George H. Day and Mrs. Thomas Hepburn.

Of all her friends, her shared memories ran deepest with Mrs. Hepburn. Daughter of the owner of Corning's glassworks, Kathy Houghton's background had discouraged early intimacy, but as a young matron, she had become an active suffragist. In 1916 she had reentered Margaret's life to pay her tribute at the Brevoort dinner. Kate Hepburn, now the wife of a well-known physician, mother of

the future star—and equally attractive—added the popular word “glamour” to the birth control movement. She and Mrs. Day became perennial lobbyists at Hartford, but in spite of their efforts, reinforced by Margaret’s occasional appearances, the archaic law remained intact. No logic affected the politico-theological agreements of the state establishment.

On the national level, Mrs. Dennett, resting her case on the freedoms of the First Amendment, had always asked for a straight repeal of the Comstock laws. This seemed reasonable, but Margaret believed that until contraceptive techniques had been simplified, medical supervision was essential. A simple repeal would flood the mails with quack remedies which would be harmful both to mothers and the movement. Furthermore, an amendment based on the Crane decision exempting the medical profession would probably have a better chance of passage.

Certainly Mrs. Dennett’s “open” bill had frightened legislators. During her first sessions every one of the fifteen men whom she had asked to introduce it, had pleaded that he was either “too busy, too ignorant or too old!” In her fifth year, when the bill had been finally introduced and killed in committee, she may have agreed with Congressman Volstead, who had told her that the Comstock laws could only be expunged through a complete revision of the penal code. In any case, she ceased her Washington activities, although not her opposition to Margaret Sanger, and the “open” bill was never again introduced.

In 1926 Margaret asked Mrs. Day and Anne Kennedy to explore a new congressional approach. After many interviews, they were convinced that the “doctors’ bill” might have a chance. By that time, however, Margaret was abroad preparing for the World Population Conference and afterward recovering from it. When at last she came home, her thoughts were on the upcoming legislative campaign. The fact that the league’s board viewed this plan with alarm helped reconcile her to a parting of the ways. The five board members who resigned with her, including Mrs. Day and Mrs. Hepburn, joined in the new enterprise, which they hoped would bring final victory.

Since congressmen listen to local, not to Washington appeals, Mar-

garet appointed regional, state, and district officers, utilizing many experienced suffrage organizers, such as Kate Hepburn as legislative chairman and Mrs Timme as vice president Frances Ackermann cooperated on finances with Noah

There had to be a replacement, however, of Margaret's staunchest aide When Dwight Morrow was named Ambassador to Mexico, George Rublee went along as adviser With a new outlook, his wife conceived the idea of a film, *The Flame of Mexico*, to promote international good will During the production of this, she shuttled between Mexico City and Hollywood Eventually, her amateur movie was no more successful than Margaret's a decade earlier, and it was far more costly In fact, she lost her personal fortune and although her intimacy with Margaret always continued, her role in the birth control movement receded Into her place as confidante and traveling companion gradually moved a younger woman, who, in partnership with her husband, had helped build an excellent clinic in Cleveland When widowed, Dorothy Brush moved to New York, where she became secretary of the National Committee on Federal Legislation

Even before the committee had opened Washington headquarters at the close of the twenties, they had done much of their spade work For years Margaret or one of her aides had regularly attended the national conventions of most of the large women's organizations At her own expense Margaret had often traveled hundreds of miles to speak for five minutes at a meeting It was not by chance, therefore, that the General Federation of Women's clubs, which endorsed the principle of birth control in 1930, shortly afterward supported the "doctors' bill" by a vote of 393-17

The much respected George Norris, who had supported Mrs Dennett's bill, encouraged the committee with his belief that the new bill would fare better than the former one Nevertheless, absorbed as he was in Muscle Shoals and the Lame Duck Amendment, he wanted someone else to take the initiative Senator Gillett of Massachusetts, the former Speaker of the House, finally consented Since this urbane gentleman was about to retire from public life, he had nothing to lose and introduced the legislation at the close of the 1930 session When Congress reconvened, the bill was sent

to the Judiciary Committee, whose chairman, Norris, named a subcommittee with the famous Borah of Idaho, serving with Gillett and with Bratton of New Mexico

For the first hearing, Margaret assembled an able and balanced group of witnesses, leading off with the obstetrician-in-chief of Johns Hopkins University. He was followed by a well-known sociologist, a minister, a rabbi and, for press appeal, the president of the Junior League.

Next day Representative Mary T. Norton, for many years the only woman in the House, played the stellar role. A motherly type, although she had never had a child, she spoke with euphoria on the blessings of large families even when penalized by poverty, which she called the spur to achievement. John Sumner, Comstock's successor as head of the Society for the Suppression of Vice, came next, and was followed by spokesmen for the Purity League, the Clean Books League, the Patriotic Society, the Southern Baptists, the Knights of Columbus and a barely extant professor emeritus of gynecology. One after another they reiterated that birth control was a Bolshevik invention, that it was against nature, God, and female decency. Indeed, it was a diabolical idea.

In *My Fight for Birth Control*, the author sums up the opposition: "It was as though we were in some antediluvian age, some kingdom out of *Gulliver's Travels*. Under these words, these exposures of medieval mental processes, one could only sit in amazement, enduring as best one could, the flood of personal abuse, misrepresentation, deliberate prevarication, and false statement. At the beginning I had waited expectantly, anxious to learn what honest objections could be presented. At last I closed my ears to this monotonous, repetitious chant of medieval dogmas. I sat back to collect my own thoughts. I was aroused by the voice of my friend, Kate Hepburn. It was time for the rebuttal."

Margaret stepped forward, a youthful figure in her blue knit suit and matching hat, but with new tired lines on her face. She had only ten minutes, but began by answering some lies. Birth control was an American innovation of 1914, before there was a Bolshevik government. Neither the American Federation of Labor nor the American Medical Association had taken any stand on the bill. In

reply to Mrs Norton's paean to large families, she launched the verbal sensation of the day "Jesus Christ," she observed, "was said to be an only child" At this point the opposition crossed themselves and muttered, "Blasphemy!"

Since most of the antagonists were Catholic, Margaret pointed out that only one sixth of the 120 million Americans were of that faith No one tried to impose birth control on them and they might continue to practice self control But non-Catholics also had their rights and wanted to have "children conceived in love, born of parents' conscious desire and with healthy and sound bodies and minds"

In the end, Gillett supported his bill, Bratton opposed it, and Borah, who had not come to the hearings, cast the decisive, negative vote The bill was killed for 1931 Before returning to New York, the indomitable leader drafted a letter to her cohorts, asking them to start their next year's campaign

By this time there were few persons brash enough to debate with Margaret Sanger, but one did Chief Justice Richard Russell of Georgia's Supreme Court had fathered eighteen children, fifteen of whom had survived birth For this reason he felt himself an authority on procreation, as well as law Articulate about a man's right to paternity, he seems never to have thought of a woman's right to decide her maternity

When Margaret reached Atlanta's Erlanger Theater, she found it filled with two thousand people, the first rows being Russell's progeny and their in laws The Chief Justice himself, an erect, white-haired patriarch, looked as though he had stepped out of the Old Testament His main argument was, "I have followed God's command to increase and multiply"

"That command," Margaret informed him, "was given to Noah after the flood The earth had just been depopulated"

"We don't need birth control in Georgia," Russell shifted his attack "We need more voters because we have just lost two congressional seats Besides, our people can't afford those contraptions"

"If they can't afford birth control," answered Margaret, "they are too poor to raise large families"

In spite of the Russell claque down front, the New York *Herald Tribune*, which covered the meeting, reported that Margaret received the most applause. Perhaps her final rebuttal was the next generation. Russell's famous namesake and thirteenth child, soon started his long senatorial career, but remaining a bachelor, he did not follow the paternal practice of multiplying.

Margaret was pleased at one congressional session when Representative Gassaway, father of fourteen, introduced her bill. He did so, believing that birth control might have spared the lives of his first wife and seven children. He used an earthy argument: "If we were as reckless to the interests of our cows, sows, and mares, it wouldn't be long before they became a scrub bunch of stock."

Since Senator Gillett had retired in 1932, Margaret had to find a new sponsor. For two years the bill was killed in committee. In 1934 the highlight was the testimony of the famous Nazi-enthusiast, radio priest, Father Coughlin. As a representative of the church, he refused to stand before a body of the state, and seated, ruddy-faced, cocksure of himself, he began facetiously: "You gentlemen are married and know more about this than I ever will." He arched his eyebrows and leered significantly. Then becoming serious, he shouted, "But I know how these materials are bootlegged in the corner drugstores near high schools. To teach children to fornicate and not get caught! All this bill means is how to commit adultery and not get caught!"

At one point a congressman interrupted to speculate as to whether any member of the House had ever used such horrible devices. Statistics suggested that they had. Out of 225 families, only a dozen had six or more children, 80 had two children and 46 a single child.

During the depression it seemed that economics would be the ultimate persuader. As Margaret kept repeating, the nation spent eight billions to support the mentally and physically degenerate. Furthermore, there were fifteen million jobless, whose birth rate was the highest in the country. Even employers who had always wanted a reservoir of cheap labor, shuddered at the thought of taxes to prevent starvation. Better perhaps to turn off the spigot of this profligate fertility than to keep on with government doles!

The main opposition was suddenly fortified. In 1931, the year after the Anglican Bishops had acted and the very year that the Federal Council of Churches endorsed birth control, Pope Pius XI issued an Encyclical. The message condemned as a "sin against nature" and a "deed shameful and intrinsically vicious" any deliberate frustration of the purpose of the conjugal act. The message was inspired by the words of St. Augustine, another bachelor, dead for fifteen centuries.

As Margaret often recalled, the celibate always glorifies undisciplined fertility. Even Luther, the onetime monk and father of Protestantism, had said, "What if a woman dies in childbirth?" After all, she was created to bear children! Priests, who talked in mystical abstractions, never consulted the mothers of the race. Neither did governments consider their needs. In the year of the Encyclical and in Rome, as though in collaboration with the pope, Mussolini launched a Five Year Baby Marathon among his poorest people—those with incomes under \$1,000. He posted prizes for those producing three or more children in three years. The idea traveled around the world, finally climaxed by Toronto's "Stork Derby." There, a half million dollars was offered to the mother bearing the most babies in ten years. Margaret called it a race reducing mothers to the role of animals. When the New York Assembly voted a \$75 bonus for every birth, she called for a two year moratorium on all babies. Instead, let the nation, in depression days concentrate on care of its millions of neglected children.

At the peak of the legislative campaigns a thousand organizations, representing more than twelve million women, endorsed the bill and the committee blanketed the country with hundreds of speeches. Even some Catholics were sympathetic enough to bring Margaret into a conference with Dr. Joseph J. Mundell, Professor of Obstetrics at Georgetown University. He offered to drop some objections, if she would delete a few points. The proponents believed that they had agreed upon a bill, and at the hearings they felt betrayed. Instead of supporting the revised measure, Dr. Mundell announced that there was no longer any need of legislation. Recent discoveries had shown the right solution.

The new insights were based on studies of the reproductive cycle,

popularized in a book, *The Rhythm of Fertility and Sterility in Women* by L J Latz, issued with "ecclesiastical approval" This knowledge made it possible to assess a period safe from pregnancy with "almost mathematical precision" Since the recent Papal encyclical had condemned sexual intercourse except for the purpose of progeny, this guide to frustrate that purpose through "calendar contraception," in itself sounded paradoxical

In rebuttal, Dr Prentiss Williams testified that the rhythm theory had no medical standing Dr C C Little held that there had been no dependable tests on human beings or animals Margaret summed up the pros and cons as the one favoring a scientific method under the guidance of doctors, while the other upheld "an untested method, which could be tried by any literate boy and girl"

In 1934 the Senate committee voted the bill out and it was put on the unanimous consent calendar In the rush of the session's last day, it was passed by a voice vote For a few minutes the supporters thought it was as good as law Then Pat McCarran of Reno, the Catholic divorce lawyer, asked unanimous consent to recall the "doctors' bill" With senatorial courtesies, the sponsor granted the request and the bill went back to committee Never again did it advance that far In the next two years neither House nor Senate acted on it

In the midst of these rebuffs, came the unexpected victory After long delay the case of the United States *v* One Package reached Judge Grover Moscovitz, presiding over the Federal District Court of Southern New York This was the suit challenging the seizure of materials sent two years earlier to Dr Stone The government's case was based on Section 305 of the Revenue Act, which barred the importation of articles for the purpose of "preventing conception" Morris Ernst, again relying on the Crane decision, reinforced by his case before Justice Rosenbluth, argued for a broader interpretation of the law Once more he presented former Health Commissioner Harris and other doctors who testified that contraceptives could save the lives of mothers and children Judge Moscovitz, accepting this view, said, "We cannot assume that Congress intended to interfere with doctors prescribing for the health of the people"

The government at once appealed the case, which finally reached

the Circuit Court of Appeals. Speaking for the court, Judge Augustus N. Hand not only upheld the opinion, but added that Section 305 and similar statutes had a common origin in the Comstock Law. "Its design, in our opinion, was not to prevent the importation, sale or carriage by mail of things which might intelligently be employed by conscientious and competent physicians for the purpose of saving life or promoting the well-being of their patients."

Since the unanimous opinion of this court, which included Learned Hand and Thomas Swan, was seldom reversed by the Supreme Court, birth control supporters were jubilant. Only Margaret Sanger, who had been disappointed too often, grimly went on preparing for the next legislative fight. The government still had time to appeal when at the close of January 1937, Attorney General Homer Cummings announced that it would accept the court's decision. This was the greatest single victory of the movement, and was known as the One Package Victory.

What did the victory achieve? Once and for all, wrote Dr. Stone for the *Nation*, "it established contraception as a recognized part of medical practice and removes the last legal barriers to the dissemination of contraceptive knowledge." It opened up the mails, domestic as well as from abroad, for the carriage of materials and literature from doctors and other qualified persons. This meant that the Comstock walls were irretrievably breached.

From his own experience, Morris Ernst wrote: "In the United States we almost never repeal outmoded legislation in the field of morals. We either allow it to fall into disuse by ignoring it or we bring persuasive cases to the courts and get the obsolete laws modified by judicial interpretation." Twenty years of effort to change the laws had failed, but most of the restrictions were now modified by judicial interpretation.

Margaret said that the decision closed one epoch, bringing in a new one. The sixty-three year tyranny of the Comstock Law was ended with the rights of physicians clarified. At last even the medical profession recognized this. Margaret was at Willow Lake one June morning when she read that the American Medical Association had endorsed birth control. The *Autobiography* says that she was so excited that she fell downstairs. "Here was the culmination

of unremitting labor ever since my return from Europe in 1915, the gratification of seeing a dream come true" It was also the culmination of a decade of effort on the part of Dr Dickinson and of organizational work by Dr Prentiss Wilson

The court decision had immediate as well as long-time effects on Margaret It may have saved her life For two years doctors had been urging a gall bladder operation, but she would never take time off for her own care, when her cause needed her Now she had the operation, but was still convalescing when her conscience stirred again From the Harkness Pavilion, she wrote a memorandum to all her field workers and supporters "Make known to hospitals, relief agencies, philanthropic, and public health officials that the decision

frees their hands Call on public health officials and ask that birth control instruction be included in their services Establish clinics There are today approximately 320 birth control centers in America I look forward to seeing not twice that number, but ten times that number at the close of 1937"

The year's victories did not mean that any more women were being helped, but merely that it would be easier to help them Now was the time for wholesale action by the states Margaret meant to use her own army of workers and her four hundred country and congressional committees to spur the program

There were two areas of special opportunity In the South, where Catholic opposition was minimal, the birth rates among poor whites, as well as Negroes, were very high Since a doctor on North Carolina's Board of Health had been converted to birth control and since Doris Duke, the tobacco heiress, would finance a pilot project, Margaret cooperated on a program of state services, which finally spread to other southern states

The second neediest area was the "Okie" camps of the West Uprooted and dispossessed, these migrants continued to breed Here the Federal Security Agency offered to set up clinics, actually establishing twenty-five in the Arizona and California camps, advertising the services along with square dances and typhoid vaccinations

On her visits to these centers, as in the South, Margaret was dissatisfied The women were so pitifully ignorant, even of their own

anatomy, that they needed other techniques. Where was the pill or hypodermic that would one day supplant them? How could she speed their development?

Before Margaret could chart the next phase of her work, she had to settle some unfinished business. The government's decision had cut short the legislative campaign that for six years had taken most of her time and taxed her strength more than any former effort. She never regretted the work, since it had been an important educational program, but it had been expensive, costing more than \$150,000 in depression days. She could always raise money for special projects, but left with a deficit, she found that no one wanted to contribute for past efforts.

For twenty years Margaret had scanned obituary columns, vainly hoping that someone had left a million dollars for her cause, but she could never have foreseen the first bequest for birth control. Once, after a Los Angeles meeting, a thin, shabbily dressed woman had introduced herself as Viola Kauffman. She knew the name because there had always been a small donation since her earliest campaigns from this hard working school teacher. A year later Miss Kauffman wrote that she was leaving whatever she possessed for Margaret's work. As a courtesy, the latter asked her former secretary, Anna Lifshiz, now living in Los Angeles, to give a personal thanks to Miss Kauffman. After she had done so, Anna wrote that she doubted that the poor woman had money to keep body and soul together.

Two years later the Salvation Army notified Margaret of Miss Kauffman's death. She seemed to have only some change tied up in a handkerchief, but since Mrs. Sanger was her designated beneficiary, she must order the specified cremation, after which she would receive the remains. Margaret held a little ceremony with her staff before scattering the ashes on Willow Lake. Eventually, she learned that Viola Kauffman had invested \$30,000 in real estate. It was the lifetime savings of a teacher who had lived in poverty that liquidated the congressional venture.

Meanwhile, the American Birth Control League was harassed with problems. Their affiliates, the state and local leagues, had developed a sense of territorial imperative, which instinctively repelled

invasions of their areas by Margaret's zealous field workers, eager to open clinics. Furthermore, fund raisers had learned that they got nowhere without the Sanger name. Finally, a professional insisted that the two groups reunite. Under new leadership, negotiations were possible and the merger took place in 1939. Margaret, living at that time in the West, accepted the title of Honorary President. A few years later when the same fund raiser persuaded the board to change the organization's name to Planned Parenthood, she regretfully wondered if her child was again repudiating her.

By this time, however, Margaret Sanger's efforts were irretrievably committed to the world movement. Moreover, her spirits were buoyed by widespread recognition. The first great honor had come back in 1931 with the Medal of Achievement from the American Women's Association under Ann Morgan's chairmanship. Its citation said that she had "fought a battle single-handed . . . a pioneer of pioneers." Pioneer she remained above all and having crossed the last frontier in her own land, she turned to new horizons.

Sixteen years after the raid on her Town Hall meeting, Town Hall gave her their annual medal "for contributing to the enlargement and enrichment of life." Pearl Buck, the recent Nobel Prize winner, had written that Margaret Sanger's name would go down in history "as one of the company of pioneers"—again that word—"who have not been afraid to do what was to be done. . . . Such men and women live in the life of humanity to come."