Law, Literature, and Libel: Victorian Censorship of "Dirty Filthy" Books on Birth Control

Kristin Brandser Kalsem

Follow this and additional works at: https://scholarship.law.wm.edu/wmjowl

Part of the First Amendment Commons

Repository Citation

Copyright c 2004 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository, https://scholarship.law.wm.edu/wmjowl
LAW, LITERATURE, AND LIBEL: VICTORIAN CENSORSHIP OF "DIRTY FILthy" BOOKS ON BIRTH CONTROL

KRISTIN BRANDSER KALSEM*

I. INTRODUCTION

Feminist jurisprudence is about breaking silences. It is about identifying topics that are "unspeakable" in law and culture and raising questions about why that is. It is about exposing ways in which silencing works to regulate.1 This Article presents a case study of the feminist jurisprudence of three early birth control advocates: Annie Besant, Jane Hume Clapperton, and Marie Stopes.

In the late nineteenth and early twentieth centuries, the subject of birth control was so taboo that serious efforts were made to keep John Stuart Mill from being buried in Westminster Abbey because of his sympathies with the idea of limiting family size.2 Despite this cultural climate, Annie Besant published a tract on birth control and defended herself in court against charges of obscene libel for doing so,3 Jane Hume Clapperton advocated the use of birth control in a novel,4 and Marie Stopes wrote two runaway bestsellers on the topic and opened the first birth control clinic in England.5

While the actual practice of birth control was not illegal in England, as this case study will show, it was highly dangerous to

* Assistant Professor of Law, University of Cincinnati College of Law. J.D. 1987, University of Chicago Law School; Ph. D. (English) 2001, University of Iowa. I am grateful to Laura Jenkins, Annulla Linders, and Donna Nagy for their helpful comments on earlier drafts of this article.

1. See generally MARTHA CHAMALLAS, INTRODUCTION TO FEMINIST LEGAL THEORY 1-14 (2d ed. 2003) (discussing specific approaches to legal issues from a feminist perspective, including focusing on women's experiences to identify exclusions and biases in the law and identifying ways in which language may be used to conceal and maintain gender hierarchies); Lucinda M. Finley, Breaking Women's Silence in Law: The Dilemma of the Gendered Nature of Legal Reasoning, 64 NOTRE DAME L. REV. 886, 907 (1989) (discussing the necessity of acknowledging how and why women have been silenced in law and listening to the "instances of dissonance, of resistance, and of wondering," of those whose voices and experiences may not inform legal meanings and understandings). For collections that display the breadth of the field of feminist jurisprudence, see FEMINIST JURISPRUDENCE (Patricia Smith ed., 1993); FEMINIST LEGAL THEORY: AN ANTI-ESSENTIALIST READER (Nancy E. Dowd & Michelle S. Jacobs eds., 2002); FEMINIST LEGAL THEORY: FOUNDATIONS (D. Kelly Weisberg ed., 1993); FEMINIST LEGAL THEORY: READINGS IN LAW AND GENDER (Katharine T. Bartlett & Roseanne Kennedy eds., 1991).

2. ANGUS MCLAREN, BIRTH CONTROL IN NINETEENTH-CENTURY ENGLAND 93 (1978).

3. See discussion infra Part II.

4. See discussion infra Part III.

5. See discussion infra Part IV.
advocate it in print. The larger the audience of readers, the greater the "crime." Thus, the threat of being charged with obscenity and immorality, whether in a legal indictment, a literary review, or the court of public opinion, effectively silenced much public discourse on this important and pressing social issue. Besant, Clapperton, and Stopes, however, refused to be censored.

These three women used legal and literary forums to publicize women's experiences and to expose the devastating real-life effects of denying women access to knowledge about family limitation. An analysis of their work and the myriad attempts to keep them quiet illuminates the ways in which indirect control of access to information on birth control served to regulate women's bodies and maintain traditionally held cultural beliefs about 'good' mothering and female sexuality.

6. For a discussion of the illegality relating to the use and distribution of contraceptives and contraceptive information in the United States at this time, see Mary L. Dudziak, Just Say No: Birth Control in the Connecticut Supreme Court Before Griswold v. Connecticut, 75 IOWA L. REV. 915, 915-21. In 1873, Congress passed the Comstock Law, making it "a crime to send through the mails any contraceptives, any information about contraceptives, or any information about how to find out about contraceptives." Id. at 918. Dudziak describes how federal and most state courts read into applicable laws a medical exception such that "doctors could prescribe contraceptives to prevent diseases associated with pregnancy and childbirth." Id. at 919. However, the state of Connecticut did not recognize such an exception and actually made use of contraceptives illegal. Id. at 920-24. For a detailed historical analysis of the origins and impacts of the Comstock Law, specifically in connection with birth control, see Margaret A. Blanchard, The American Urge to Censor: Freedom of Expression Versus the Desire to Sanitize Society- From Anthony Comstock to 2 Live Crew, 33 WM. & MARY L. REV. 741, 744-68.

7. For information relating to birth control advocates in the United States who were active during this same period, see Blanchard, supra note 6, at 754-56, 766-68, 775-78 (discussing Ezra Heywood, D.M. Bennett, Margaret Sanger, and Mary Ware Dennett).

8. Reva Siegel's insightful analysis of the nineteenth-century campaign in the United States to criminalize abortion makes clear the connections between the regulation of reproductive rights and the regulation of women's roles: "Those who advocated restricting women's access to abortion in the nineteenth century were interested in enforcing women's roles, an objective they justified with arguments concerning women's bodies. Analyzing the historical record reveals how social discourses concerning women's bodies as two distinct but compatible ways of reasoning about women's obligations as mothers." Reva Siegel, Reasoning From the Body: A Historical Perspective On Abortion Regulation and Questions Of Equal Protection, 44 STAN. L. REV. 261, 265. While Siegel's primary focus in this article is on abortion, much of her analysis similarly applies to nineteenth-century efforts to restrict women's access to contraception: "Doctors attacked both abortion and contraception as violations of marital obligation, and, to prove this, emphasized the danger they posed to women's health. In elaborating these physiological objections to birth control practices, the medical profession redefined marital obligation in therapeutic terms. As doctors repeatedly asserted, the purpose of marriage was to perpetuate the species. Any effort to interfere with this purpose amounted to what Pomeroy called "physiological sin" - a concept that fused the two forms of cultural authority doctors used to indict birth control practices." Id., at 293.
Part II of this article focuses on Annie Besant, who was arrested and charged in 1877 with obscene libel for publishing Charles Knowlton's *Fruits of Philosophy*, an informational tract on birth control. She advocated for both herself and birth control in a highly publicized trial in which she served as her own defense counsel. Highlighting stories of women whose health had suffered from excessive childbearing and recounting scenes of families of twelve living together in one small room, Besant called into question the law's knowledge or 'truth' about the dangers of birth control. Besant brought neglected perspectives into the courtroom and insisted on their legal relevance.

Part III discusses the writer Jane Hume Clapperton, who chose a novel as the public forum for her advocacy of birth control, publishing *Margaret Dunmore; or, A Socialist Home* in 1888. In this utopian novel, Clapperton redefines legal and cultural rules relating to women's roles in society. Moreover, she identifies women's rights to control their own bodies as central to women's equality. Most uniquely Clapperton explicitly advocates for the use of artificial birth control.

Part IV of the Article discusses the work in law and literature of Marie Stopes. Like Besant, Stopes was involved in a highly publicized trial that brought the topic of birth control to the front pages of the newspapers. Like Clapperton, she was a writer, specifically of two very popular books that discussed the importance of family planning, *Married Love* (1918) and *Wise Parenthood*.

---

10. See CHARLES KNOWLTON, FRUITS OF PHILOSOPHY: AN ESSAY ON THE POPULATION QUESTION (London, Freethought Publishing 1884), reprinted in CHANDRASEKHAR, supra note 6, at 87-147.
11. DINNAGE, supra note 9, at 41.
12. Law, with its claim to universality and objectivity, its reliance on established form and pleadings, and its exclusionary rules of evidence, is a mode of analysis and argument that may attempt to maintain an “exclusive hold on the truth.” Martha Minow, *Stories in Law, in Law’s Stories: Narrative and Rhetoric in the Law* 35 (Peter Brooks & Paul Gewirtz eds., 1996). As Minow explains, “[s]tories disrupt these rationalizing, generalizing modes of analysis with a reminder of human beings and their feelings, quirky developments, and textured vitality.” Id. at 36.
14. See McLAREN, supra note 2, at 205.
Perhaps Stopes is most well-known, however, for the opening of her birth control clinic in Holloway, North London in 1921.17

It is important to study the work of these early advocates because, as Carol Smart explains, historically specific analyses allow us to examine "the ways in which social regulation is productive of both subjects (of regulation) and of resistance."18 Studies like this one that detail the approaches of key figures in the birth control movement illustrate women's complex and active engagement with the law. Moreover, as issues relating to the regulation of women's bodies, roles, and rights continue to be pressing societal concerns, there is much to be learned about the process of effectuating change from studying how these issues have been shaped and resisted in the past.19 Historians Linda Kerber and Jane Sherron DeHart explain that "[t]o study women's history, then, is to take part in a bold enterprise that can eventually lead us to a new history, one that, by taking into account both sexes, should tell us more about each other and, therefore, our collective selves."20 In their work, they have been impressed by the "vigor and subtlety with which

17. Id. at 125.
19. As this article is going to press, hundreds of thousands of people marched in Washington, D.C. to protect women's reproductive rights against "an ideological agenda on abortion and family planning, both at home and abroad." Robin Toner, Abortion Rights Marchers Vow to Fight Another Bush Term, N.Y. TIMES, April 26, 2004, at A1. This March for Women's Lives, sponsored by major women's rights organizations, made clear that issues of reproductive rights and health cross lines of class, race, ethnicity, sexual orientation, and age. Id. at A15. Moreover, these issues remain of primary importance and concern to feminist legal scholars. In her Introduction to Feminist Legal Theory, Martha Chamallas writes:
The substantive topics that continue to attract the most attention from feminist legal writers — particularly rape, sexual harassment and domestic violence — all involve the general subject of the sexual subordination of women. Often inspired by Catharine MacKinnon's writings, feminists have examined and reexamined legal regulations governing sexual conduct with the twin goals of reducing sexual violence and exploitation and increasing women's sexual autonomy and integrity.

CHAMALLAS, supra note 1, at 219. Chamallas also notes that "[f]eminist scholars have set about deepening their analysis of how the law has constructed mothers and motherhood and have intensified their critique of the dominant ideology and cultural images of the family that seem to drive public policy." Id. at 284.

women have defined the terms of their existence.\textsuperscript{21} Besant, Claperton, and Stopes directly addressed the issue of the regulation of women's bodies through the legal and cultural censorship of information on birth control. In doing so, they directly changed the course of history.\textsuperscript{22}

\section*{II. Annie Besant Defends a Dirty, Filthy Book}

In 1877, Annie Besant and her partner Charles Bradlaugh published a tract on birth control and sold it for sixpence in order to make it available to the poor.\textsuperscript{23} They were arrested and charged with obscene libel for publishing an "indecent, lewd, filthy, bawdy, and obscene book, titled \textit{Fruits of Philosophy}.\textsuperscript{24} The indictment accused them of inciting and encouraging "obscene, unnatural, and immoral practices," and bringing youth and others "to a state of wickedness, lewdness, and debauchery."\textsuperscript{25} At a time in history when women played no official roles in the enactment, administration, enforcement, or adjudication of the law,\textsuperscript{26} the defendants served as their own attorneys, with Annie Besant arguing her case in open court.\textsuperscript{27}

Before focusing on Besant's climactic courtroom performance, it is appropriate to briefly situate the 1877 trial within nineteenth-century Britain's narrative of birth control, beginning with the ideas that the Reverend T. R. Malthus set forth in his 1798 \textit{Essay on Population}. In this essay, Malthus argued that the population would outstrip available food supplies if "moral restraint, vice, and misery\textsuperscript{28} did not check its growth. He identified the cause of poverty as the "reckless over-breeding of the poor."\textsuperscript{29} This "scientific"

\begin{itemize}
\item \textsuperscript{21} \textit{Id.}
\item \textsuperscript{22} See infra text discussing the rapid decline in the birth rate after 1877.
\item \textsuperscript{23} Sripati Chandrasekhar, "A Dirty, Filthy Book": The Writings of Charles Knowlton and Annie Besant on Reproductive Physiology and Birth Control and an Account of the Bradlaugh-Besant Trial 36-37.
\item \textsuperscript{24} See \textit{The Queen v. Charles Bradlaugh and Annie Besant} 322 (London, Freethought Publishing 1877).
\item \textsuperscript{25} \textit{Id.} The full indictment is reprinted in \textit{id.} at 322-23.
\item \textsuperscript{26} See Kristin Brandser, \textit{Alice in Legal Wonderland: A Cross-Examination of Gender, Race, and Empire in Victorian Law and Literature}, 24 \textit{Harv. Women's L.J.} 221, 252-53 (2001).
\item \textsuperscript{27} Chandrasekhar, \textit{supra} note 23, at 36-37.
\item \textsuperscript{29} See McLaren, \textit{supra} note 2, at 44.
\end{itemize}
analysis was popular with conservatives because it blamed the working class for their own misery and concluded that charity would only exacerbate the problem.  

Malthus identified two types of checks on the population: positive and preventive. Positive checks were influences that increased the death rate such as wars and famines, while preventive checks were influences that decreased the birth rate. Malthus recommended that the poor postpone marriage and exercise moral restraint as a means of solving overpopulation.  

While Malthus advocated late marriages, he specifically opposed artificial birth control: “I should always particularly reprobate any artificial and unnatural modes of checking population, both on account of their immorality and their tendency to remove a necessary stimulus to industry.” John Wade, one of Malthus’ followers, agreed and commented that “any artifice to frustrate conception, might be positively mischievous, since, by the disgust it would excite, like an indecent attack on the established religion, it would prevent the temperate investigation of a subject of national importance.” Interestingly, Wade speaks of this “disgusting” and “indecent” topic in the very language of playful eroticism using the terms “mischievous” and “excite”.

McLaren summarizes the basic ideology of the Malthusians as follows:

Their concern was that the preaching of birth control could completely undermine both the economic and moral foundation of their argument. They saw in it a new optimistic ideology that ran counter to their own which held that civilisation was based on self-denial and progress on competition resulting from pressure of numbers. The Malthusians did not seek to abolish population pressures. At the very heart of their doctrine lay the belief that such a force was necessary to drive man - at least working-class man - from his naturally lethargic state.

30. See id. at 44-45 (quoting Malthus).
31. MALTHUS, supra note 28, at 7.
32. Id. at 7-8.
33. Id.
34. CHANDRASEKHAR, supra note 23, at 11 n.16 (quoting MALTHUS, supra note 28, at 543).
36. Id.
37. McLAREN, supra note 2, at 51. For a detailed analysis of Malthusianism and its progeny, see id. at 43-58.
Others who were concerned with population control, however, did not espouse Malthus' conservative views or politics. In 1823, for example, Frances Place, a tailor and political advocate for the working class, printed and distributed handbills addressed "To the Married of Both Sexes of the Working People," recommending the use of a sponge placed in the vagina prior to intercourse, and afterwards withdrawn by means of an attached string or bobbin as a birth control method. The handbill stated that the use of the sponge would neither cause injury nor diminish the enjoyment of either party.

In 1826, Richard Carlile published Every Woman's Book; or, What is Love?, also advocating the use of the sponge, as well as a type of condom known as "the glove." Robert Dale Owen, an American reformer and the oldest son of Robert Owen, published Moral Physiology; or, A Brief and Plain Treatise on the Population Question in 1831 (reprinted in England in 1833). This book recommends coitus interruptus, complete withdrawal, as opposed to any artificial method of birth control. Owen's earlier American editions included discussions of the sponge and the condom; however, he later rejected both of these methods. Owen's book argues, however, that family limitation is moral, as well as economically and socially beneficial. The American physician, Charles Knowlton, incorporated many of Owen's arguments in his 1832 book, Fruits of Philosophy, the contested text in the 1877 Besant trial.

In Fruits of Philosophy, Knowlton emphasizes the political and social benefits of not always being fruitful and multiplying. He cites the prevention of hereditary diseases, as well as reductions in poverty, profligacy of young men, and infanticide as benefits of contraception. Knowlton also is particularly concerned with women's health, querying, "How often is the health of the mother,

39. Id. at 43.
40. Id. at 43 (quoting the handbill). A copy of this handbill is located in The British Museum as part of The Place Collection. Id.
41. Id. at 76-77. For a discussion of the vicious attacks on Place and Carlile in such radical journals as Black Dwarf and Cobbett's Weekly Register, see id. at 79-86.
42. Id. at 92-93.
43. Id. at 93.
44. See generally ROBERT DALE OWEN, MORAL PHYSIOLOGY; OR, A BRIEF AND PLAIN TREATISE ON THE POPULATION QUESTION (1831).
45. See CHANDRASEKHAR, supra note 23, at 87-147.
giving birth every year to an infant . . . and compelled to toil on, even at those times when nature imperiously calls for some relief from daily drudgery--how often is the mother’s comfort, health, nay, even her life thus sacrificed? Specifically countering Malthus’ proposal of late marriages, Knowlton argues that celibacy is both ineffectual and somewhat demoralizing. He contends that birth control is only unnatural if all efforts of civilization to control nature (to stop disease, to subdue the forest) are considered as such. The birth control method Knowlton advocates consists of douching the vagina with a solution that will act chemically on semen. He expresses a clear preference for keeping contraception in the hands of women.

Fruits of Philosophy originally was reprinted in Britain in 1834, with approximately 1000 copies sold each year from 1834 to the time of the Besant trial. The book slipped into the foreground in 1877 when a Bristol publisher, Henry Cook, published the book with illustrations alleged to be obscene. Cook was arrested and sentenced to two years of hard labor. The original publisher of Fruits of Philosophy, Charles Watts, also was arrested and ultimately pleaded guilty to the charges of publishing an obscene book. In order to counter Watts’ admission that such a book was obscene, and to establish the right to publish contraceptive information, despite warnings from friends that such actions would mean “ruin to you as a lady,” Besant persuaded Bradlaugh to join her in setting up the Freethought Publishing Company so that they could publish Fruits of Philosophy themselves. After publishing

46. Id. at 101.
47. Id.
48. Id. at 137-38. Fruits of Philosophy describes very specific chemical solutions which Knowlton prefers over the withdrawal method and the sponge, both of which he believes are unreliable. Id. at 137. He also dismisses the condom, morally tainted as the known method for protection against syphilis, as "by no means calculated to come into general use." Id. at 137.
49. Id. at 138.
51. Id. at 239.
52. Id.
53. Id.
55. Bradlaugh was wary of taking on the cause because there was disagreement amongst his fellow free-thinkers on the issue of Neo-Malthusianism. Id. at 104. Neo-Malthusianism is a theory that accepts Malthusian fears about overpopulation, but advocates birth control rather than moral restraint. LUCY BLAND, BANISHING BEAST 199-200 (1995). Personally, Bradlaugh did not like Knowlton’s book. While Bradlaugh’s name will forever be associated
the book and then notifying the police where and when they would be selling it, they were arrested as they had anticipated.\textsuperscript{56} Thus began one of the landmark events in British social history, the Besant-Bradlaugh trial.

The trial began on June 18, 1877, and contemporary witnesses estimated that 20,000 people gathered outside the Guildhall on each of the four days of the trial.\textsuperscript{57} After the scathing indictment had been issued, a magistrate at an early hearing offered to dismiss Besant from the case.\textsuperscript{58} This strong-minded woman, who had separated from her husband four years earlier and pressured Bradlaugh into taking on this cause in the first place, not unexpectedly refused.\textsuperscript{59}

with the famous trial, as he certainly played a major role in the proceedings, it was truly Besant's cause. Her biographer, Anne Taylor, describes her pivotal role as follows:

She insisted that the book was defensible, that it must be defended, and that the free-thought party would respond to an appeal. . . . Bradlaugh argued with her for some hours. . . . Watt's plea of guilty to an offence Annie felt to be disgraceful was a violation of her integrity; her fiery sense of honour was aroused. She told Bradlaugh she would never allow her work to appear over the imprint of a man who pleaded guilty to publishing obscene literature. Bradlaugh had rarely encountered a stronger will; he bent before its force.

TAYLOR, supra note 54. For more information on Bradlaugh, the famed free-thinker, orator, secularist, and publisher of the \textit{National Reformer}, see FRYER, supra note 38, at 141-50.

56. CHANDRASEKHAR, supra note 23, at 36.

57. Id. at 38.

58. TAYLOR, supra note 54, at 112.

59. Annie Besant's determination to champion widespread dissemination of birth control information was very much in keeping with the strong-minded nature she exhibited throughout her life. Born Annie Wood in 1847, the only daughter of Emily Roche Morris and William Wood, Annie was five when her father died, leaving the family destitute. BLAND, supra note 53, at 151. At the age of eight, she went to live with a wealthy, unmarried woman, Ellen Marryat, who provided her with an extensive private education over the course of eight years. ANNE BESANT, ANNIE BESANT: AN AUTOBIOGRAPHY 33-35 (1893) [hereinafter BESANT, AUTOBIOGRAPHY]. Trained, among other things, in Latin, German, French, history and geography, she also was very influenced by Marryat's strong Evangelical beliefs. Id. at 43. At the age of twenty, she married the Reverend Frank Besant. Id. at 80. Writing years later in her Autobiography, she comments that she feels "a profound pity for the girl standing at that critical point of life, so utterly, hopelessly ignorant of all that marriage meant, so filled with impossible dreams, so unfitted for the role of wife." Id. at 65. She also reflects on the devastating effects of her complete sexual ignorance: "My dreamy life, into which no knowledge of evil had been allowed to penetrate, in which I had been guarded from all pain, shielded from all anxiety, kept innocent on all questions of sex, was no preparation for married existence, and left me defenseless to face a rude awakening . . . ." Id. at 71. She sees it as a mother's duty to educate her daughters about the facts of married life: "Many an unhappy marriage dates from its very beginning, from the terrible shock to a young girl's sensitive modesty and pride, her helpless bewilderment and fear. . . . [N]o mother should let her daughter, blindfold, slip her neck under the marriage yoke." Id. Her own marriage turned out to be disastrous, the yoke too much to bear, and after great suffering and a complete loss of her religious faith, she separated from Besant in 1873. TAYLOR, supra note 54, at 59-60.
At the trial, the Solicitor-General's argument was in keeping with the terms of the indictment, the basic premise of which was as follows:

I say that this is a dirty, filthy book, and the test of it is that no human being would allow that book to lie on his table; no decently educated English husband would allow even his wife to have it, and yet it is to be told to me, forsooth, that anybody may have this book in the City of London or elsewhere, who can pay sixpence for it! . . . The object of it is to enable persons to have sexual intercourse, and not to have that which in the order of Providence is the natural result of that sexual intercourse. That is the only purpose of the book, and all the instruction in the other parts of the book leads up to that proposition.

Throughout his case, the Solicitor-General was reluctant to actually read passages from the book aloud, preferring to have the jury read to themselves to save them "the pain and trouble" of hearing it. Several times he professed it "really extremely painful to me, (hesitating) very painful, to have to read this." The Lord Chief Justice, seemingly irritated by the Solicitor-General's extreme delicacy, insisted that the "book must be read, sooner or later, either by you, Mr. Solicitor, or the officer of the court."

When Besant presented her defense in the courtroom, she employed a feminist method that was strategic and understated.

Under the terms of a separation agreement, her husband obtained custody of their son, Digby, while she obtained custody of their daughter, Mabel. Id. at 60. This type of custody arrangement had only become possible six months earlier with passage of the Custody of Infants Act. Id. For additional information about Besant's childhood and her unhappy marriage to the Reverend Frank Besant, see BESANT, AUTOBIOGRAPHY, supra note 59, at 11-119; see also TAYLOR, supra note 53, at 1-60.

60. THE QUEEN v. CHARLES BRADLAUGH AND ANNIE BESANT, supra note 24, at 251.

61. Id. at 18.

62. Id. at 19.

63. Id. at 18.

64. This was in sharp contrast to the combative tone and stance she often took in her written narratives such as in the 1876 article in the National Reformer entitled The Legislation of Female Slavery in England. ANNIE BESANT, THE LEGISLATION OF FEMALE SLAVERY IN ENGLAND 1 (1885) [hereinafter BESANT, THE LEGISLATION OF FEMALE SLAVERY]. This article advocated the repeal of the Contagious Diseases Acts, acts which attempted to curb the spread of venereal disease by registering and sometimes incarcerating prostitutes. Id. in Besant's article, reprinted in 1885 as a pamphlet, she is defiant in her denunciation of patriarchal law by stating, "[i]n the name, then, of Liberty outraged, in the name of Equality disregarded, we claim the repeal of these one-sided Acts, even if the bond of Fraternity prove too weak to hold men back from this cruelty inflicted on their sisters." Id. at 6.
She did not, for example, articulate the gendered implications of this ‘neutral’ application of the law of obscene libel; nor did she highlight the subordination of women implicit in the (presumed right of the law and the “decently educated English husband”) to ‘allow’ women access to information on birth control. Instead, Besant told stories, bringing women’s real-life experiences into the courtroom. Young wives of all classes, she argued, wanted to know about family limitation. She explained that birth control information was available in more expensive books such as Dr. Chavasse’s *Advice to a Wife,* a book she had been given by her doctor as a young wife, and thus brought the class implications of this lawsuit to the forefront by claiming that since that book had not been deemed obscene, no fair-minded English jury would suggest that the problem with the Knowlton book was that it was sold for sixpence, and thus made available to the poor:

I will ask you not to allow it to go out from this court as the verdict of twelve English jurymen that you measure indecency by the price at which it may be bought, and that you would allow that to pass at a high price which you count worthy of condemnation at a low.

After clarifying that information on family limitation was available to those who could afford it, she proceeded to narrate the tragic lives of those living in families too large to sustain.

Citing the appalling ramifications of overcrowding as one of the justifications for the checks advocated in Knowlton’s book, Besant offered personal anecdotes as evidence. Reminiscent of Engels’ descriptions in *The Condition of the Working Class in England,* she reported:

I have myself seen four generations of human beings crowded together into one small room, simply divided into two or three beds, and I will ask you if, after such an experience as that, you wonder that I risk even prison and fine if I can bring some salvation to those poor whose misery I have seen.

She corroborated her own stories with those of other witnesses to the devastating effects of unchecked population growth. She

65. *Id.*
67. *Id.*
68. *Id.* at 147.
69. *Id.* at 89.
quoted George Godwin, from an essay he had presented to the National Association for the Promotion of Social Sciences: "It was but the other day that a child was found dead in Brownlow Street, and, on inquiry, it was learnt that the mother, a widow, and six children slept in one bed in a small room. The death of the child was attributed to the bed clothes." Similarly, she related the words of the Bishop of Manchester:

Modesty must be an unknown virtue, decency an unimaginable thing, where, in one small chamber, with the beds lying as thickly as they can be packed, father, mother, young men, lads, grown and growing up girls—two and sometimes three generations—are herded promiscuously; where every operation of the toilette, and of nature—dressing, undressing, births, deaths—is performed by each within the sight or hearing of all. . . . It is a hideous picture; and the picture is drawn from life.

With these and other life stories, Besant translated the abstract concept of "obscene libel" into the real-life contexts of unplanned, undesired, and unsupportably large families.

She also presented evidence of the disadvantages to women of keeping practical birth control information from them. Arguing the dangers to a woman's health in having too many children, she tells the following tale:

I have often myself seen a poor woman, a mother of a large family, standing over the wash-tub three or four days after having borne a child, and upon my representing to her the utter ruin to her health which was involved in such a proceeding I would get the reply: "What am I to do? There is another mouth to feed; the children are there and must be provided for, and I must get about."

Besant brought the voices of women who had no opportunity to speak out against their oppression into the courtroom, insisting that the law take their experiences into account. Feminist legal scholar Kathryn Abrams explains, "[n]arratives are more likely to reveal a neglected perspective or theme that needs to play a role in legal decisionmaking, or to establish a new context or backdrop for legal"
discussions." In Besant's story, the woman's simple question—"What am I to do?"—presented against the backdrop of the wash-tub, sign and site of the toil from which she has no rest, is a powerful plea for justice.

In addition to bringing neglected perspectives and stories into the courtroom, in what proved to be a stunning obfuscation of societal norms, Besant revised traditional narratives of female sexuality and good mothering. Speaking openly about sexuality, she commented matter-of-factly that "there is nothing wrong in a natural desire rightly and properly gratified." Possibly making reference to the extreme modesty exhibited by the Solicitor-General, she claimed that "it is only a false and spurious kind of modesty, which sees harm in the gratification of one of the highest instincts of human nature."

Moreover, she explained that "good" mothers wanted their daughters to be educated in sexual matters and to understand how to limit the size of their families. Speaking to the jury "as mother of a daughter whom I love," she applauded what she argued was a recent effort by the government to encourage both boys and girls to study physiology at a school in South Kensington. Referring to her daughter, she commented, "I believe it will tend to her happiness in her future, as well as to her health, that she shall not have made to her that kind of mystery about sexual functions that every man and woman must know sooner or later." On the matter of birth control, she reported that among the hundreds of the poor who were her "clients," were "mothers who beg me to persist in the course on which I have entered—and at any hazard to myself, at any cost and any risk—they plead to me to save their daughters from the misery they have themselves passed through during the course of their married lives." Besant made the most of the fact that the public was watching this trial, and that "the people" were not only on her side, but whom she was representing. Besant stated, "I speak as counsel for hundreds of the poor, and it is they for whom I defend this

74. THE QUEEN V. CHARLES BRADLAUGH AND ANNIE BESANT, supra note 24, at 61.
75. Id.
76. Id. at 128.
77. Id.
78. Id. at 128.
79. Id. at 29.
The crowds of many thousands gathered outside of the courtroom no doubt made this a powerful argument.

Speaking out in this forum, Besant became a public woman; moreover, she was publicizing the most intimate aspects of private life. Indeed Besant herself may have been as inflammatory as her topics. No ordinary speaker, she was known for the passion she inspired in her audiences. One young man, who heard a speech she delivered for the National Secular Society in 1875, described the impact she had had on him as follows:

She still seems incomparably young and attractive, her face alive with emotion and expression, her voice full and sonorous, but musical and not unfeminine. . . . She was, or we thought she was, a martyr; she had won freedom from domestic and clerical oppression at the cost of social proscription. She faced a hostile world on behalf of liberty and truth. We young men, who had a passion of these things in our souls, responded readily to the passion with which she pleaded for them. We were carried away.81

She pleaded with this same intensity in the courtroom, and her ability to "carry men away" may have intensified her associations with other "public" women like prostitutes. Throughout the trial, however, she strategically presented her arguments and herself in such a way as to resist that cultural construction. Rhetorically moving the boundaries of respectable womanhood, she never appeared to cross them.

Besant emphasized, for example, the self-sacrifice involved in her support of this cause:

I had nothing to gain in publishing this work--I had much to lose. It is no light thing for a woman, whose ambition is bound up in the name which she hopes to make, to have the imputation thrown upon her of publishing indecent books and of disseminating obscenity amongst the young. I risk my name, I risk my liberty; and it is not without deep and earnest thought that I have entered into this struggle.82

80. Id. at 28.
81. DINNAGE, supra note 9, at 31 (discussing Besant's position as the "heroine of free-thought", which is the title her biographer Anne Taylor gives to the chapter covering these years in Besant's life).
82. THE QUEEN V. CHARLES BRADLAUGH AND ANNIE BESANT, supra note 24, at 29.
She understood that her reputation was on the line, but she underscored that in keeping with the ideal of Victorian womanhood—for the sake of others—she decided to put her own interests aside.

A model of the proper and caring woman, she expressed concern at the amount of the jury’s time she was taking in presenting her case. At one point, she requested that the lighting be changed so that it did not fall directly on the jury-box, commenting amiably that it “is a great point to me to keep the jury in good temper.” In her personal anecdotes, she emphasized her own position as wife and mother. Moreover, while the judge and jury may have been aware of her estrangement from her husband, inside the courtroom, she went by and was always referred to as Mrs. Besant.

She also exhibited a mastery of traditional legal argument. Vast amounts of preparation familiarized her with the legal precedent. She referenced relevant case law not only in her prepared defense, but also in response to specific questions from the judge and during the cross-examinations of witnesses. She provided statistics, studies, and references to support all of her factual assertions. The judge commended the clear presentation of her argument several times throughout the proceedings.

Sometimes critiquing society’s gender roles and rules, other times reifying more traditional ideas about wives and mothers, Besant performed in the way that best supported her case. In her closing remarks, in what appears to be an appeal to the chivalry and nationalism of the jury, she masterfully manipulated gender roles to her advantage, summarizing the case in such a way that what was truly at stake was her reputation. Arguing that a guilty verdict would mean that the jury believed her speech to be one mass of falsehoods, that her intent in publishing the book was to corrupt the morals of youth, and that she was the worst character of woman, she pleaded:

83. Id. at 43.
84. Id. at 46.
85. Id.
86. Id.
87. While at times sympathizing with them as victims of a system that promotes vice, she makes a clear distinction between “depraved and dissolute women” (with whom birth control commonly was associated) and the wives and mothers for whom she is pleading. Id. at 103, 241.
Unless you are prepared, gentlemen, to brand me with malicious meaning, I ask you, as an English woman, for that justice which it is not impossible to expect at the hands of Englishmen—I ask you to give me a verdict of 'Not Guilty,' and to send me home unstained.  

In her plea for her reputation, she was completely successful; she was less so on the issue of the obscenity of the book.  

At the end of the trial, the jury returned the following verdict: "We are unanimously of the opinion that the book in question is calculated to deprave public morals, but at the same time we entirely exonerate the defendants from any corrupt motives in publishing it." Everyone, including the judge, seemed surprised at this verdict, which the judge stated must then stand as a verdict of guilty. The defendants were released on their own recognizances until sentencing.  

At the sentencing hearing, Besant argued that the verdict could not be interpreted as guilty, because with no corrupt motive, there could be no crime. The Lord Chief Justice, however, did not agree. Moreover, he was angry with the defendants because, in the time between the decision and the sentencing hearing, they continued to sell copies of Fruits of Philosophy and they also had claimed to a full house at the Hall of Science that they were sure that the Lord

---

88. Id. at 151.  
89. Id.  
90. Id. at 267.  
Bradlaugh's daughter "Hypatia, who was present then in the court", wrote the following about the peculiarities of this verdict:  
The jury, however, were by no means so decided at heart and so unanimous as the prompt bow of the foreman led one to believe. . . . two jurors returned each their guinea fee to be put down to the defence; one wrote that he did not agree with the verdict, subsequently stating that six of the jury did not intend to assent to a verdict of guilty, and that it had been arranged that if the Lord Chief Justice would not accept their special verdict they should again retire and consult. During the time they were locked in they discussed so loudly that they were heard outside, and their discussion was found to be by no means confined to the offence which they were supposed to be considering, as it included amongst other things the heretical views of the defendants.  

Id. (quoting HYPATIA BRADLAUGH BONNER & J. M. ROBERTSON, CHARLES BRADLAUGH, A RECORD OF HIS LIFE AND WORK BY HIS DAUGHTER (1894)).  
92. Id.  
93. Id. at 153-54.  
94. Id. at 154.
Chief Justice supported their cause. While he originally had planned to let Besant and Bradlaugh off with a warning, because they had defied the jury's verdict by the continued sale of the book, the Lord Chief Justice sentenced them to six months imprisonment and a large fine. He did temporarily release them, however, until the time of their appeal.

In February 1878, the judgment was reversed on a technicality. Besant and Bradlaugh had "won" the case, although not on the principles that they had set out to establish. Bradlaugh recovered the seized copies of Fruits of Philosophy, which were sold stamped with the words "Recovered from Police." They continued to sell the book "till all prosecution and threat of prosecution were definitely surrendered." During the time between the verdict and the appeal, Besant published her own treatise, Law of Population: Its Consequences, and Its Bearing Upon Human Conduct and Morals.

In the end, this was a spectacularly self-defeating prosecution, only serving to facilitate the widespread distribution of information about birth control. All of the major newspapers carried extensive coverage of the trial, moving the discussion of birth control from the publications of the radicals to the headlines of the mainstream press. Many newspapers printed lengthy speeches from the defendants, and others printed actual excerpts from "that lewd, filthy, bawdy, and obscene book." An estimated 125,000 copies of Fruits of Philosophy were sold between March and June of 1877, and more than 200,000 copies in the three and one-half years following the trial. Besant's Law of Population sold over 175,000 copies before she withdrew it from circulation in 1891.

95. Id.
96. Id. at 154-55.
97. Id. at 155-56/
98. CHANDRASEKHAR, supra note 23 at 40-41.
99. Id. at 41.
100. BESANT, AUTOBIOGRAPHY, supra note 59, at 310.
101. See ANNIE BESANT, LAW OF POPULATION: ITS CONSEQUENCES, AND ITS BEARING UPON HUMAN CONDUCT AND MORALS (1877) [hereinafter BESANT, LAW OF POPULATION].
102. CHANDRASEKHAR, supra note 23, at 41-44.
103. See J.A. Banks & Olive Banks, The Bradlaugh-Besant Trial and the English Newspapers, 8 POPULATION STUDIES 22,23 (1954) (discussing in detail the newspaper coverage of the trial).
104. Id. at 24.
105. CHANDRASEKHAR, supra note 23, at 45.
106. HIMES, supra note 50, at 249-50.
In this respect, the Knowlton trial was most definitely a victory for birth control, and a personal triumph for Besant. This success, however, came at a high cost. While her dazzling performance at trial momentarily opened up the possibility of a sexualized domestic ideal of womanhood, “the law” soon came to its senses and, reaffirming traditional narratives of woman as mother, found Annie Besant unfit to be one. Besant lost custody of her eight-year old daughter Mabel in a custody battle tried before Sir George Jessel. Jessel cited Besant’s conviction of publishing an obscene book as a ground for removal of the child, stating that “although the conviction was set aside on a technicality, no Judge, so far as I am aware, has doubted the propriety of that conviction,” and that “[o]ne cannot expect modest women to associate with her.” He was particularly outraged that she served as her own counsel in his courtroom: “‘Appear in person? A lady appear in person? Never heard of such a thing! Does the lady really appear in person?’” As advocate for birth control and for herself, Besant was too unsettling. Her feminist jurisprudence was disciplined by taking away her child.

A few years later, Besant became a Fabian Socialist still adhering to her advocacy of birth control despite widespread socialist opposition to it. She wrote “The Law of Population and its Relation to Socialism” to make clear that birth control was not a ploy of the upper classes. She saw socialism as offering the possibility of complete equality for women, and it was her conviction that women ultimately would be the ones to implement effective family planning:

I believe that one of the strongest arguments in favour of the limitation of the population will come from women.... They will

---

107. TAYLOR, supra note 54, at 128-32.
108. Id.
109. Id. at 131-32.
110. Id. at 129.
111. McLAREN, supra note 2, at 162 (explaining that The Social Democratic Federation (SDF), under the leadership of H.M. Hyndman, opposed birth control). McLaren states that “[t]here was always a strong misogynist current evident in the writings of the SDF and it followed that birth control, which was already suspect because of its Malthusian connotations, would be open to further attack when viewed as a means by which women sought to escape their natural duties.” See id. at 174 (showing that McLaren identifies, however, several socialists or “men and women on the English left,” who like Besant, argued for family limitation). Id. For a discussion of birth control advocates, including Daniel Chatterton, Stewart Headlam, John M. Robertson, Sidney and Beatrice Webb, George Bernard Shaw, and H.G. Wells, see generally, McLAREN, supra note 2.
112. McLAREN, supra note 2, at 178.
be willing to give all the care that is necessary for two or three children, but will refuse to have their health ruined, and the whole of public life shut to them, by having families of ten or twelve....

In 1891, Besant gave up both socialism and Neo-Malthusianism when she embraced Theosophy. At this juncture in her life, she silenced herself on the issue of birth control. However, having already made arguably the nineteenth-century's “strongest arguments in favour of the limitation of the population,” her message had been heard. The next part of this article discusses the work of one of the women who continued Besant's line of argumentation: the author Jane Hume Clapperton. Seeking more of a “jury of her peers” than Besant had faced in the courtroom, Clapperton chose to perform her advocacy of birth control in a novel-middle-class women's literature of choice.

III. MARGARET DUNMORE; OR, A SOCIALIST HOME: JANE CLAPPERTON'S LITERARY TRIAL OF FAMILY PLANNING

Three years prior to the publication of her utopian novel Margaret Dunmore; or, A Socialist Home, Jane Clapperton wrote a treatise in 1885 entitled Scientific Meliorism. Many of Clapperton's arguments for family limitation in this treatise echo those of Besant, whose Law of Population Clapperton footnotes as having been received with gratitude by many overburdened mothers. In the 1880s, however, birth control remained a subject matter against which moral and proper women needed to be protected, as the following “compliment” in a review of Clapperton's treatise illustrates:

113. Id. at 179 (quoting ANNIE BESANT, IS SOCIALISM SOUND? 98 (1887)).
114. BESANT, AUTOBIOGRAPHY, supra note 59, at 237. Besant explains in her Autobiography that she renounced Neo-Malthusianism after two years' instruction from Madame H.P. Blavatsky, “who showed me that however justifiable Neo-Malthusianism might be while man was regarded only as the most perfect outcome of physical evolution, it was wholly incompatible with the view of man as a spiritual being, whose material form and environment were the results of his own mental activity.” Id.
115. CLAPPERTON, MARGARET DUNMORE, supra note 13.
117. Id. at 101.
However repulsive her subject [birth control] may be, her treatment of it is never open to the charge of indelicacy, while at the same time it is absolutely frank and unreserved. Indeed, we may go so far as to say, that if we except her perilous doctrine of Neo-Malthusianism, there is nothing in this book which would be unwholesome for persons of either sex who approach it sober-mindedly.\footnote{118}

Such was the climate in which Clapperton chose to open a dialogue on this “perilous doctrine” in a novel.

Judging from her comments in \textit{Scientific Meliorism}, Clapperton made a conscious decision to use the novel as a forum for her politics. She saw fiction as playing a vital role in education. Preferring the best light literature of her own day to the ancient classics, which she believed carried “moral ideas completely out of date,”\footnote{119} Clapperton argued that people may see in contemporary fiction “the standpoint average humanity has reached, and the confusion of ideas upon the subject of right conduct, natural to a transitional epoch.”\footnote{120} Clapperton saw the novel as a place to critique unequal laws and an unjust society and to promote discussion of revisions and alternatives. Like many other late nineteenth-century women writers, she specifically chose to write a utopian novel, a popular and highly marketable form of fiction.\footnote{121} Darby Lewes identifies several reasons why this genre was so attractive to women writers, including “its unique correlation to nineteenth-century women’s own alienated, ambiguous situation.”\footnote{122} In their fictional utopias, women were able to “spurn the grim uniformity of woman’s place in men’s texts”\footnote{123} and “the very possibility of change began to emerge.”\footnote{124} Jane Baron, in discussing the value of stories today to considerations of law, writes that “stories can depict or construct a ‘reality’ in tension with the one portrayed in law’s

\begin{footnotes}
\item[119] \textit{Clapperton, Scientific Meliorism}, supra note 116, at 186.
\item[120] \textit{Id.} at 134.
\item[121] \textit{Darby Lewes, Dream Revolutionaries: Gender and Genre in Women’s Utopian Fiction} 1870-1920, 12 (1995) (citing Lyman Tower Sargent’s bibliography as listing 593 British and American utopian texts written between 1889 and 1920).
\item[122] \textit{Id.} at 10-11. After noting the attractions to women of writing novels generally, Lewes specifically comments that utopian novels were accessible to the amateur because there were few daunting “monumental supertexts.” \textit{Id.} at 11. Lewes also argues that utopian novels served consolatory and cathartic functions. \textit{Id.} at 10-11. For an in-depth analysis of why nineteenth-century women were so drawn to the utopian genre, see \textit{id.} at 10-19.
\item[123] \textit{Id.} at 19.
\item[124] \textit{Id.}
\end{footnotes}
dominant tales." In the nineteenth-century, Clapperton's novel performed feminist jurisprudence by presenting, through a utopian narrative, a different set of rules for women, a less alienated "reality," an alternative textual place, and an alternative social text.

Guided by the philosophy of scientific meliorism, which provided that through a process of controlled evolution, ultimately it would be possible to "create conditions under which no suffering can exist," Clapperton believed that social activists could begin to effect an evolutionary movement toward socialism. In *Scientific Meliorism*, she argued that real reform could begin with "socially localized . . . groups," living under conditions of voluntary socialism. In her novel, this abstract theoretical idea is translated into the concrete "reality" of a communal home named La Maison, which is peopled with a wide range of characters including an heiress, a retired governess, two newly-married couples, in-laws, widows, a fallen woman, children, widowers, socialist activists, and a doctor.

La Maison is the brainchild of Margaret Dunmore, an intellectual young woman who is discontented with her life as an heiress, and her friend Miss José, a committed socialist. These two women conceive of socialism much differently than the radical Monsieur Martin, for example, who advocates violence and large-scale revolution. Their new-era socialism emphasizes that true progress must begin with a change in home life. The novel's revolutionary ideas about domestic arrangements, specifically regarding marriage, divorce, and adultery, provoked *The Saturday...

126. LESTER FRANK WARD, 2 DYNAMIC SOCIOLOGY 468 (Johnson, 1968) (1883).
127. Thomas Hardy also identified his philosophy as evolutionary meliorism. After quoting the following line from his earlier poem In Tenebris, "If way to the Better there be, it exacts a full look at the Worst," Hardy clarifies this philosophy as "the exploration of reality, and its frank recognition stage by stage along the survey, with an eye to the best consummation possible: briefly, evolutionary meliorism." Thomas Hardy, *Apology, in Late Lyrics and Earlier* at viii (1922). While I am unaware of any direct associations between Hardy and Clapperton, they both were influenced by George Eliot who originally coined the term 'meliorism'. See generally Sarah A. Boris, "Till They Fashion All Things Fair": Evolutionary Meliorism and Generic Practice in the Works of George Eliot and Thomas Hardy (1992) (unpublished Ph.D. dissertation, Brandeis University).
128. CLAPPERTON, *SCIENTIFIC MELIORISM*, supra note 116, at 427 (analyzing and critiquing State Socialism, the Democratic Federation, and Christian Socialism). Id. at 389-408. She believes that "crude socialism in method has gone astray, and real socialism is yet in an early stage." Id. at 396. For Clapperton, "the only definition [of socialism] wide enough to be scientifically correct is this—concerted action for social ends." Id.
Review to accuse it of showing "contempt of the law.""

Within La Maison, the patriarchal structure of the traditional British home is dismantled. Emphasizing from the beginning that they are a reconstituted family, Dunmore explains, "We are deposing, man . . . from headship in our family group. Ours is not a family despotism. . . ." Instead, La Maison is run by committee. The Executive Committee, composed of two men and two women, is elected by ballot every six months; it organizes work arrangements. Other committees, also with elected members, include the Finance Committee, the Amusement Committee, the Education Committee, and the Public Service Committee.

The novel covers a four-year period and the narrative progresses in what Clapperton might term a series of displacements. In speaking of real-life character development in *Scientific Meliorism*, she makes the following observation:

Changes within ourselves occur in similar fashion to changes without. Old laws give way to new; old institutions are replaced by institutions of a better kind, but nowhere do we see a clean sweep (if we may call it) of what is old, leaving a blank and arid waste unfulfilled with what is new. And so it is with human sentiment. The changes are displacements.

In La Maison, everything is in a state of transition and much of the "plot" takes the form of literally and figuratively negotiating change. One of the important "changes without" is the rejection of traditional gender and class-based work roles. Men perform many of the domestic tasks, including cooking, and, despite objections from some of the members, this middle-class family, which does not have servants, does their own "dirty housework." Also, there is equal opportunity in education at La Maison, with all of the classes taught in the associated day school being open to boys and girls of all social classes.

Clapperton clearly understood, however, that reproductive control for women was key to lasting displacements. So while other

130. *Clapperton, Margaret Dunmore*, supra note 13, at 91.
131. *Id.* at 88.
132. *Id.* at 90.
134. *Clapperton, Margaret Dunmore*, supra note 13, at 88.
types of "family planning"—decisions about who should do the
dusting and who work in the garden, and where the kitchen should
be located in relationship to the nursery—merit serious discussions,
birth control is acknowledged as foundational to this "homely"
experiment.

The subject of birth control is first broached in the context
of reevaluating the institution of marriage, specifically the
inequalities between husband and wife. One of the young husbands,
Joe Ferrier, who had only reluctantly agreed to live at La Maison,
remains steeped in patriarchal values. While he submits to the
'house rules' in most instances, he tries to maintain husbandly
authority. After a few months, his wife Vera has had enough. When
Joe accuses her of not behaving as a good and affectionate wife, of
not considering his wishes and desires, she angrily retorts: "You
command me to do this and that! Why am I to consider your wishes
always, and you not consider mine?" They storm off in different
directions, with their fight continuing into the next day. That
evening, Vera takes a serious fall and loses the baby that Joe was
unaware was on the way.

While she is convalescing, Joe "flung his notions of sex
distinctions in work to the wind" and helped to nurse her. He still
was upset, however, that she had talked back to him: "She was
bound to honour her husband; indeed, the Church says obey! He
would waive the obedience--some women are touchy on that point;
but Vera had clearly dishonoured him that night..." When he
makes reference to their argument, however, he is amazed to learn
that she is unhappy with him. Rebuking him for being cold and
harsh to children, she explains that she is not sorry they lost the
child because "it cannot be right to bring a child into the world if
one of the parents does not desire it." Initially, Joe is shocked and
full of resentment. As time passes, however, some of his ideas about
marriage and fatherhood become displaced.

It is in connection with Joe and Vera that Clapperton explicitly
raises the issue of artificial birth control. This discussion is set

135. Id. at 92.
136. Id. at 121-22.
137. Id. at 122-23.
138. Id. at 123.
139. Id. at 125.
140. Id.
141. Id. at 126.
within the context of allusions throughout the novel that excessive childbirth ruins women's health and happiness. The mother of Rose, one of the young women who lives at La Maison, provides a striking example of a woman miserable from over-childbearing. Early in the novel, the narrator comments, "Within the Rectory of Westbrook a babe was born at intervals of never more, sometimes less, than eighteen months; the normal state of the gentle mother was one of feeble health, and Rose had been her prop and stay from very tender years." The Rector, father of this ever-increasing family, is described as "a man who applied all his logic to the squaring and fitting of practice to old dogmas under new conditions, rather than to the examination of new doctrines in the light of simple truth." Near the end of the novel, Rose's mother matter-of-factly tells her husband, "Oh, marriage disappoints every woman." She responds to his surprise by clarifying that she is not complaining about him specifically; rather she explains that "the position tries a woman in every way, and when the family is large-- --." Although her voice trails off, she does not stop short of speaking the simple and tragic truth of her experience, just as the novel does not stop short of holding out hope for "new doctrines" in the experience of Joe and Vera.

Joe is much like the Rector in his desire to square and fit old dogmas to new conditions. However, he agrees to the use of artificial birth control to protect Vera's health after the miscarriage. After she is up and about, the narrator comments that "a new phase of married life began for the young couple. Both were to some extent altered, and Joe had, strange to say, submitted himself voluntarily to authoritative dictation on a matter of purely personal conduct." In light of organized religion's opposition to birth control in general, see McLAREN, supra note 2, at 207-08, it is not surprising that Clapperton presents a Rector as a perpetrator of the population problem. The Rector's dogmatic response to his wife, "Lo, children are an heritage of the Lord: and, the fruit of the womb is His reward," is cruel in the casual way it dismisses the realities of her feeble health and disappointing and trying life. Clapperton, Margaret Dunmore, supra note 13, at 165. Annie Besant also emphasized that wives of the clergy were supportive of her cause. "[t]here was the passionate gratitude evidenced by letters from thousands of poor married women--many from the wives of country clergymen and curates--thanking and blessing me for showing them how to escape from the veritable hell in which they lived." Besant, Autobiography, supra note 59, at 223-24.

Id. at 14.
Id.
Id. at 15.
Id. at 164.
Id. at 16.

142. Id. at 14.
143. Id.
144. Id. at 15.
145. Id. at 164.
146. Id.
147. Id.
148. CLAPPERTON, MARGARET DUNMORE, supra note 13, at 126.
I believe this novel to be unprecedented in nineteenth-century fiction in its explicit clarification of this conduct as the practice of birth control:

In La Maison the power of bringing fresh human life into existence is bound to be controlled in unfavourable conditions by unhurtful scientific methods. No massacre of innocents is permitted there, and the birth of unhealthy infants is pronounced nothing else, in an epoch of conscious evolution.

For unhealthy persons to become parents is a crime against Humanity. Vera for the present is delicate. The responsibilities, the joys of parenthood, must be guarded against, deliberately relinquished till health is fully restored.  

The last sentence suggests that just as the responsibilities and joys of parenthood go together, so too do the ideas that parenthood sometimes of necessity ‘must’ literally be guarded against (as with birth control) and figuratively relinquished (given up as a right). While phrases such as “conscious evolution” and “crime against Humanity” suggest the eugenic-like practices Clapperton espouses in Scientific Meliorism, the emphasis in the novel is on the health of mothers, the necessity of providing a loving and nurturing environment for children, and the right of women to control their own bodies. Soon, Joe and Vera are studying physiology together. A class for instruction has been organized at La Maison and outsiders are welcome. On the issue of sex education, the novel takes up Besant’s arguments that women, as well as men, should be fully aware of their bodies and sexuality.

149. Id. at 126-27.

150. Clapperton, like Mona Caird, Sarah Grand, and other feminist writers of the late nineteenth century, was fascinated by the new field of eugenics. Unlike Sir Frances Galton, however, she did not espouse celibacy for those “unfit” to have children. Instead, she advocated the use of artificial checks. Parentage should be avoided, not marriage or sex. Also, Clapperton did not see population control as only an issue for the working classes. Many of her arguments are framed in terms of the ruin to women’s health and the foreclosure of women’s happiness from having too many children. While Clapperton was a proponent of eugenics, she was also interested in birth control for other reasons. Specifically, she saw voluntary motherhood as key to women’s emancipation. For discussion of the voluntary motherhood movement in the United States, see Siegel, supra note 8 at 304-319. Regarding nineteenth-century eugenics arguments in the United States, see Siegel, supra note 8, at 297-301, 299 (discussing the efforts to curb abortions by middle-class “native” American women so as to stave off “miscegenous decay.”).

151. Clapperton, Margaret Dunmore, supra note 13, at 127.

152. Id.
More radical than Besant's defense is the way in which this novel recasts the traditional roles of wife and mother. While there are married couples living at La Maison, close relationships among persons of all ages and sexes are encouraged. People are drawn to each other because of mutual interests, as opposed to filial or marital connections. Moreover, parenting is just another one of the group's shared tasks, albeit a most important one. When a widowed mother of two sons first joined the group, for example, she had to give "a solemn pledge to resign her maternal freedom in the management of her boys. Their training and discipline must be under the authority of the Unitary Home." Joe learns to love all of the children in the house, not just his own. In fact, it is difficult for the reader to tell which child belongs to which biological parents as the children are seen in the hands of a myriad of care-givers. The cultural constructions of mothering become those of parenting.

In Margaret Dunmore, Clapperton not only adopted the novel form, she adapted it to her own purposes. In her communal home, a place of transition and revision, the women--spinsters, wives, fallen women, widows, and mothers--are given new stories. The reader immediately is aware that this is a different kind of novel when Dunmore, an unmarried, attractive heiress, announces immediately that she is done with romance and chooses instead to nurture her socialist dreams for the future. The "plots" of the couples are focused on the difficult negotiations of married life, including family planning. The fallen woman suffers no tragic fate, instead finding acceptance and happiness in her new family. And the two widows play key roles in organizing a conference for mothers, the first event sponsored by the communal family in their efforts to educate others in an enlightened way of living.

Having nurtured their domestic socialism, the participants in the Unitary Home feel ready to "assume the grave responsibilities of extended public action." The conference for mothers, the dramatic climax of the novel, emphasizes that women's rights to control their own bodies and their own lives must be of primary

153. The *Saturday Review* found the close relationship based on mutual interests between Margaret and Frank, Rose's husband, and Rose's reaction to it particularly objectionable. See *Review of Margaret Dunmore*, supra note 129, at 235-36.

154. CLAPPERTON, MARGARET DUNMORE, supra note 13, at 65.

155. Id. at 127.

156. Id.

157. Id. at 200.
concern in bringing about social change.\textsuperscript{158} As one of the widows, Mrs. Plimsol, explains:

These are delicate matters for mothers alone. They must limit their families. They must learn what their duty is to their own health, the health of their children, and the health of the nation. We women will instruct them in self-respect, and show them how to support one another in cases where men are brutal and ought to be resisted.\textsuperscript{169}

As they assemble, these mothers are released from an isolating domestic system that has offered a false sense of duty and protection.\textsuperscript{160} Moreover, there is a displacement of earlier novelistic representations which tended to elaborate and reinforce women's debilitating confinement, either by ignoring the tragic lives of women, like the mother of Jane Austen's Fanny Price in \textit{Mansfield Park} (1814) who gladly sends one of her daughters to a new family\textsuperscript{161} as she prepares for her ninth lying-in,\textsuperscript{162} or by presenting their situations as comic, such as Dickens's passing reference to Sophy Traddles' mother in \textit{David Copperfield} (1850), who has ten children and has "lost the use of her limbs."\textsuperscript{163} In Clapperton's novel, mothers are no longer defined by and confined within narrow and idealized conceptions of home and family.

With the establishment of La Maison and the important first step of the mothers' conference, Margaret Dunmore accomplishes the goal she had set out for herself at the beginning of the novel. Having traced the defects of English character to the "defects in the English home," she had committed to "accomplish something, however small, in the exposure of these defects, the inauguration of a remedial system."\textsuperscript{164} With \textit{Margaret Dunmore}, Clapperton, too, took an important first step. Daring to show contempt for the law, risking charges of inciting and encouraging "obscene, unnatural, and immoral practices," and bringing youth and others "to a state of wickedness, lewdness, and debauchery," Clapperton advocated for

\begin{flushright}
\textsuperscript{158} See \textit{id.} at 203.
\textsuperscript{159} Id.
\textsuperscript{160} See \textit{id.}
\textsuperscript{161} Jane Austen, \textit{Mansfield Park} 11 (London, Martin Secker 1939) (1814).
\textsuperscript{162} Id.
\textsuperscript{163} Id. at 3.
\textsuperscript{165} CLAPPERTON, MARGARET DUNMORE, \textit{supra} note 13, at 72.
\end{flushright}
artificial birth control in the public forum of the novel.165

In its review of this novel, The Saturday Review accurately called Margaret Dunmore the "history of a scheme."166 The communal home in the novel was more than a fictional representation; it was a blueprint. More than a setting, La Maison was a site for the reconstruction of the cultural meanings of home, family, and the 'duties' of women.167 So, too, was the novel itself. In situating her alternative domestic system within this literary forum, Clapperton created an imaginary space in which her political ideas could be 'tried', treated, and tested, not as utopian fantasies, but as real possibilities.

IV. FROM THE OBSCENE TO THE OFFENSIVE:
BIRTH CONTROL ADVOCATE MARIE STOPES SUES FOR LIBEL

In 1921, Marie Stopes took another first step, making Clapperton's "utopian" idea of teaching women practical knowledge about contraception a reality with the opening of the first birth control clinic in Britain.168 Just as Margaret Dunmore used her money to finance the Unitary Home, Stopes and her husband Humphrey Roe used their own funds to set up and run this clinic in Holloway, North London.169 Already the author of two enormously successful books on marriage and contraception, Married Love and Wise Parenthood, Stopes wanted to reach those women who might not have access to her books,170 just as Clapperton earlier had turned to the novel as a more accessible forum than her treatise Scientific Meliorism. As Stopes explained, "the very overburdened working-class mother does not read our literary reviews; she does not read these books of health, and she has not the time to read them, even if she had the money and wished to buy them."171

165. THE QUEEN V. CHARLES BRADLAUGH, supra note 24, at 322 (discussing the charges brought against Besant and Bradlaugh).
166. Review of Margaret Dunmore, supra note 129, at 236.
167. See generally ARDIS, supra note 12, at 118-19 (describing Margaret's new life as being quite a departure from traditional Victorian ideas).
169. Id.
170. Id. at 133-34.
Hundreds of women came to the clinic to receive information and advice on birth control, as well as for the fitting of contraceptives by qualified nurses.\textsuperscript{172} Everything was free except for the birth control devices themselves (small rubber cervical caps called check pessaries), which were sold to the women at cost.\textsuperscript{173} In light of the success of this clinic, Stopes proposed to Prime Minister Lloyd George that the government set up birth control clinics around the country as a public service.\textsuperscript{174} Not opposed to the idea, but fearing adverse political consequences, George wanted Stopes to provide evidence that public opinion had become more favorable to this taboo subject.\textsuperscript{175}

In the spirit of Clapperton's mother's conference, Stopes organized a large meeting at the Queen's Hall, where birth control was openly discussed in a very public forum.\textsuperscript{176} Speakers included prominent politicians and doctors,\textsuperscript{177} with the arguments echoing many of the same ideas that Besant had presented over forty years before. The Rt. Hon. G.H. Roberts, P.C.M.P. proclaimed, "It is a deplorable fact today that while the better-to-do possess this knowledge, and are, in my opinion, ordering their lives so as to give their children greater and fairer opportunities, the class to which I belong, groveling in their ignorance, are still producing in excessive numbers."\textsuperscript{178} Dr. Jane Hawthorne, much like Besant, presented real-life examples of the hardship resulting from the lack of availability of practical birth control information: "I am here today to represent those who have neither the opportunity nor the power to make their own appeal, and therefore I am anxious to put before you as clearly as possible the position of the very poor, hardworked

\textsuperscript{172} Trial of Marie Stopes (Box ed.), supra note 171. at 22.
\textsuperscript{173} Id.
\textsuperscript{174} Id.
\textsuperscript{175} Id. at 22-23. For additional support that the Prime Minister himself suggested this meeting, see Briant, supra note 168, at 143. See also Maude, supra note 17, at 147. Ruth Hall, however, introduces some uncertainty on this point, noting that Stopes "always claimed" that the meeting was George's idea. Ruth Hall, Passionate Crusader: The Life of Marie Stopes 191 (1977). Hall professes that her 1977 biography is a more critical and objective view of Stopes' life than those authored by Briant and Maude. Id. Hall comments that much of Maude's biography was dictated by Stopes herself and the rest scrupulously supervised and that Briant, although more objective, was too influenced by his close personal acquaintanceship with Stopes. Id. at 11.
\textsuperscript{176} Trial of Marie Stopes, supra note 171, at 23.
\textsuperscript{177} Id. at 23-24.
\textsuperscript{178} Id. at 23.
wife and mother." When Stopes finally began to speak, highlighting the harmful effects of lack of sexual knowledge and sexual repression, Labour Party leader J.R. Clynes became "conscious of a spiritual fire somehow beginning to blaze up."

Within a few weeks of this successful public debate on birth control, Dr. Halliday Sutherland attended a lecture given by a noted gynecologist, Dr. Anne McIlroy, in which she referred to the rubber check pessary as "the most harmful method of contraception she had encountered in her experience." A Scotch Catholic doctor much opposed to the idea of birth control, Sutherland knew that this type of pessary was the one in use at Stopes' clinic. A year later, Sutherland published an anti-birth control book, Birth Control, that included the following passage in the chapter entitled "Evils of Artificial Control":

The ordinary decent instincts of the poor are against these practices, and indeed they have used them less than any other class. But, owing to their poverty, lack of learning and helplessness, the poor are the natural victims of those who seek to make experiments on their fellows. In the midst of a London slum, a woman who is a doctor of German Philosophy (Munich) has opened a birth control clinic where working women are instructed in a method of contraception described by Professor McIlroy as 'the most harmful method of which I have had experience'.

When we remember that millions are being spent by the Ministry of Health and by local authorities - on pure milk for necessitous, expectant and nursing mothers, on maternity clinics to guard the health of mothers before and after childbirth, for the provision of skilled midwives, and on infant welfare centers - all for the single purpose of bringing healthy children into the world, it is truly amazing that this monstrous campaign of birth control should be tolerated by the Home Secretary. Charles Bradlaugh was condemned to jail for a less serious crime.
Outraged by this attack on her work and herself, Stopes challenged Sutherland to a public debate.\textsuperscript{184} When she received no response, she had a writ for libel issued against him and his publishers.\textsuperscript{185} Thus, birth control became the subject of yet another highly publicized trial -only this time it and one of its most outspoken advocates were on the offensive.

In a trial lasting nine days, from February 21st to March 1st, 1923,\textsuperscript{186} issues were argued ranging from the Catholic Church's position on contraception, the implications of specifying Stopes' degree from a German University at a time in post-World War I England when anti-German sentiments were rife, to whether there was sufficient medical knowledge about the rubber check pessary to consider it non-experimental. There also were passionate and explicit arguments concerning whether Stopes' books were indeed more obscene than \textit{Fruits of Philosophy} (thus making true Sutherland's comment that Bradlaugh had been condemned to jail for a less serious crime).\textsuperscript{187}

After deliberating for four hours, the jury answered the following four questions put to them by the Lord Chief Justice as follows:

1. Were the words complained of defamatory of the plaintiff?
   Answer: Yes.
2. Were they true in substance and in fact?
   Answer: Yes.
3. Were they fair comment?
   Answer: No.

\textsuperscript{184} \textit{TRIAL OF MARIE STOPE}, supra note 171, at 28.
\textsuperscript{185} \textit{Id.}
\textsuperscript{186} \textit{Id.}\textsuperscript{186}; BRIANT, supra note 168, at 154.
\textsuperscript{187} \textit{TRIAL OF MARIE STOPE}, supra note 171, at 201-05. The attorney for Sutherland, for example, after making the rather odd and seemingly gratuitous comment that Bradlaugh "had a co-defendant, Mrs. Annie Besant - as clever a woman, perhaps, as Mrs. Stopes," offered the following examples of the ways in which Knowlton's book came nowhere near the obscenity of Stopes':

\begin{quote}
[Knowlton] specifically says that in the interests of decency, he does give no full description of the man's organ of generation or its action. . . . [Dr. Stopes] has no such reticence at all that Dr. Knowlton had, and she sets out in full with the most horrible detail, exactly how that organ acts under certain circumstances. Now, it is not a physiological treatise only, there are pages and pages of common erotic stuff, so I suggest to you, what if this matter is directed to the goal to which she says her energies are directed? Why do you want pages of intimate, stimulating, exciting descriptions of the act of copulation, and how it takes place?
\end{quote}

\textit{Id.} at 204.
4. Damages, if any? 
   Answer: £100.188

Seeming to ignore the answers to questions one, three, and four, the judge found for Sutherland, basing his judgment on the fact that the jury determined the alleged libel to be true in substance and in fact.189

This interpretation of the jury's verdict is less surprising in light of the Lord Chief Justice's far from impartial summation of the case. After explaining the law of libel and the applicable defenses, he continued to lecture at length about the details presented at this particular trial. Stating that there obviously were those who believed in a "sort of public duty to spread abroad, on the widest possible scale, without discrimination of sex, or age, or marriage, or absence of marriage, the truth about the check pessary,"190 he asked whether it did not also occur to the gentlemen of the jury that others held stoutly to an opposite view:

   Contraceptives may be, as more than one of these witnesses have said, in some cases a deplorable necessity, always at the best a second best; but, for heaven's sake, do not let this information be published broadcast to all and sundry, to persons of all ages and of all circumstances as to marriage or non-marriage. And if they are to be published in that way, let us be very careful as to the language, the tone, the manner, the style, in which the publication is made. . . . Sex teaching, yes, but in cold scientific language, not mixing up physiology with emotion, not teaching such truths as need to be taught in the language of adjective and rhetoric, but with austerity, with coldness, stating the facts and no more.191

The judge emphasized and seemed most concerned about the literary presentation of this information - the language, tone, manner, style, the use of adjective and rhetoric. In light of his admission that birth control may be "a deplorable necessity,"192 he most likely feared the effectiveness and persuasiveness of this type of written word.

188. Id. at 391.
189. BRIANT, supra note 168, at 156.
190. THE TRIAL OF MARIE STOPES, supra note 181, at 363.
191. Id.
192. Id.
In protecting "unfair comment" about birth control, the law itself came under attack. In a letter to the Daily News about the ruling, George Bernard Shaw commented as follows:

What has just happened in a case quite as important in its way as the trial of the seven bishops makes it unnecessary to say anything more except that if jury men are not better instructed in their rights and duties than they are at present, the continuous pressure of the Bench to usurp their functions will end in nothing being left to the jury but the responsibility for the Judge's decision.\textsuperscript{193}

The Westminster Gazette concluded, "Women who desire to know how to prevent unwanted children are bad women. Such is the law as it stands. The law is not functioning usefully."\textsuperscript{194} Stopes acknowledged the verdict as a victory:

The result of the trial is indeed remarkable, but I feel absolutely vindicated as I obtained a clear finding for damages from the British public as represented by a Jury, though this is withheld as a legal technicality. Even this has worked for good and led to many public expressions of sympathy and indignation.\textsuperscript{195}

Moral victory not being enough, however, Stopes appealed the decision and in July of 1923, the Court of Appeal reversed the judgment and ordered Sutherland to pay Stopes £100 damages, plus half the costs of the action.\textsuperscript{196} Supported and funded by Catholic newspapers and a committee to counteract the evils being perpetrated by the advocates of birth control, Sutherland appealed to the House of Lords who overturned the decision of the Court of Appeal.\textsuperscript{197} The House of Lords ordered Stopes to repay the damages and costs, and determined that there were no grounds for a new trial.\textsuperscript{198}

\textsuperscript{193} HALL, supra note 175, at 237 (quoting DAILY NEWS, Mar. 3, 1923).
\textsuperscript{194} Id. (quoting WESTMINSTER GAZETTE, March 3, 1923).
\textsuperscript{195} Id. at 238 (quoting MCS duplicated letter, March 5, 1923).
\textsuperscript{196} HYDE, supra note 183, at 275.
\textsuperscript{197} Id. at 275-276.
\textsuperscript{198} Id. at 276. This is a landmark case in the law of libel for differentiating between a plea of justification (which requires that all facts and comments be true) and a plea of fair comment (which requires that facts be true and expressions of opinion be fair). Id. at 277; see also CLEMENT GATLEY, GATLEY ON LIBEL AND SLANDER IN A CIVIL ACTION 492-95 (Richard
As with the Besant prosecution, the tremendous publicity these trials received did a great deal to spread the word about birth control. While ultimately losing the case, at a steep cost of approximately £10,000 in damages, Stopes admitted that her defeat had "roused so much more enthusiasm for me than simple success would have done that I cannot regret it." The number of women visiting the clinic in 1923 was more than double the number who had visited in 1922. One postal delivery alone in 1923 brought 350 letters to the clinic, and newspapers around the world carried coverage of the trials. "Stopery" had become the talk of the town.

V. CONCLUSION

To speak openly about birth control, let alone to publish books on the topic, threatened what to many Victorians were culturally-defining gender boundaries. It is clear from those who did speak out that the risks were high. Annie Besant was ostracized from "decent" society and unwelcome in many feminist groups because of her Neo-Malthusian views. Most shockingly, her outspoken views were "proof" in a court of law that she was unfit to raise her own child. Jane Clapperton's novel was dismissed as "didactic," and she has slipped into such obscurity that we do not know what ramifications she may have suffered on account of her contemptuous views. In

199. HYDE, supra note 183, at 178.
200. HALL, supra note 175, at 243 (quoting MCS letter to publisher, undated).
201. Id. at 243.
202. ""Stopery" was a term frequently used when referring to "Dr. Stopes' activities or to the advocacy of birth control in general." AYLMER MAUDE, MARIE STOPES: HER WORK AND PLAY 187 (1933).
203. BLAND, supra note 55, at 193,196.
204. Id. at 151, 193.
205. Review of Margaret Dunmore, ATHENÆUM 177 (Feb. 25, 1888). Although Clapperton is briefly mentioned in a few books dealing with birth control. See BLAND, supra note 126; MCLAREN, supra note 2. See generally ROY PORTER & LESLIE HALL, THE FACTS OF LIFE: THE CREATION OF SEXUAL KNOWLEDGE IN BRITAIN, 1650-1950 (1995). See also ANN L. ARDIS, NEW WOMEN, NEW NOVELS: FEMINISM AND EARLY MODERNISM (1990); PENNY BOUMELHA, THOMAS HARDY AND WOMEN: SEXUAL IDEOLOGY AND NARRATIVE FORM (1982); and Chris Waters, New Women and Socialist-Feminist Fiction: The Novels of Isabella Ford and Katherine Bruce Glasier, in REDISCOVERING FORGOTTEN RADICALS: BRITISH WOMEN WRITERS 1889-1939 (Angela Ingram & Daphne Patai, eds., 1993) I was unable to locate her name in any biographical dictionaries or similar sources. An 1889 interview with her that appeared on the front page of the Women's Penny Paper provides some facts about and insights into the life and beliefs of this forward-thinking writer. Born in Scotland in 1832, she was the tenth of
the early twentieth century, Stopes' personal trials included the receipt of many life-threatening letters, the refusals of newspapers to advertise her books (The Times even refused to print the announcement of the birth of her son), and arson at one of her birth-control clinics. These myriad legal and illegal forms of censorship illustrate just how much was at stake in controlling women's access to information on contraception.

Statistical evidence on the birth rate, however, suggests that these efforts at silencing commentary on birth control were far from 100 percent effective. In 1876, one year before the Besant trial, the birthrate in Britain peaked at 36.3 births per thousand. Then it began to plummet. Richard Soloway explains in his study *Birth Control and the Population Question in England, 1877-1930* that "[B]y 1901, fertility had dropped more than 24 percent," over the course of fifty years, "the average size of British families fell nearly two-thirds." Soloway explains that by the early twentieth century,

[I]t was widely acknowledged that the decided shift toward smaller families was not a result of later marriage, alterations in diet, or the diminished fecundity of an evolving, or, as the more pessimistic suggested, a decaying race. On the contrary, the decline was the effect of the rapid spread of family limitation, or birth control. . . .

---

twelve children. 1 WOMEN'S PENNY PAPER 1, (1889). Unmarried, she remained at home to care for her ailing mother, "daily and hourly suffering from isolation". Id. at 1. When her mother died in 1872, Clapperton devoted her leisure time to the study of social questions and in 1881 began to write *Scientific Meliorism*. She brought the ideal home she described in that treatise into fictional reality in *Margaret Dunmore* in response to requests from her readers. Id. at 1-2. Clapperton explained that she was "in entire sympathy with the movement for women's advance all along the line from rational education in every branch to professional activities and sharing with men public duties and responsibilities, as they fit themselves for these." Id. at 1. Clapperton also commented that the women's books that had most influenced her were those of Mary Wollstonecraft, Harriet Martineau, and George Eliot. Id. at 2. In 1904, Clapperton published a third major work, *A Vision of the Future*. This treatise updates the ideas set forth in *Scientific Meliorism*.


207. SOLOWAY, supra note 206, at xi.

208. Id.

209. Id.

210. Id. at xii. Himes estimates that millions of people learned about more effective methods of birth control after the Besant trial. HIMES, supra note 49, at 243. He concludes this from two circumstances: (i) "the enhanced circulation of works containing instruction on contraception; (ii) the halving of the English birth rate since 1876." Id. at 243.
While it may be impossible to measure the influence of any one person or event, after Annie Besant raised her voice in court, thousands of people purchased pamphlets providing practical guidance on birth control. In the same year as the Besant trial a Malthusian League was formed that openly promoted the discussion and use of contraception throughout the Victorian and Edwardian periods.\textsuperscript{211} The explicit discussion of birth control in Clapperton’s ‘lost’ novel suggests that this taboo subject may have been explored in literature much more than has been previously considered.\textsuperscript{212} In the early twentieth century, Stopes made actual birth control available to women in her clinic and information about family planning widely available with her writing, activism, and famous trials.\textsuperscript{213}

Studies of the advocacy in law and literature of women such as Besant, Clapperton and Stopes impress on the historical record that, despite all efforts to censor and censure those who were publicizing contraceptive information, word was getting out.

\textsuperscript{211} BLAND, supra note 55, at 202. The Malthusian League had two objectives: “To agitate for the abolition of all penalties in the public discussion of the Population Question . . .” and “To spread among the people, by all practicable means, a knowledge of the law of population, and of the consequences, and of its bearing upon human conduct and morals.” \textit{Id}. Neo-Malthusian feminist members of this League, like Alice Vickery, also worked to provide practical birth control advice to working-class women. \textit{Id}. at 207-09.


\textsuperscript{213} HALL, supra note 175, at 244. Stopes' books were hugely successful. In Britain, 406,000 copies of \textit{Married Love} had been sold by December 1923. \textit{Wise Parenthood} sold more than 305,000 copies. \textit{Id}. Stopes also led a movement that sought to reach a much wider audience than the Malthusian League by focusing on the right to sexually-fulfilling marriages and desired children. MCLAREN, supra note 2, at 107. For the most part, the Malthusian League retained a very conservative emphasis on the economic consequences of overpopulation. \textit{Id}. Stopes, like Clapperton, however, was influenced by the eugenics movement. As McLaren notes, “[e]ven Marie Stopes who in the 1920s freed birth control from the grip of the neo-Malthusians could not, as the name of her organisation testifies—The Society for Constructive Birth Control and Racial Progress”—escape the eugenicists.” \textit{Id}. at 254. Finally, in her study of the Stopes trials, Box describes the effects of the trials as follows:

Whatever [the trials] cost her was repaid a thousand-fold by the effect the case had on men and women, not only in her own country, but all over the world. The sales of her books on birth control soared and were instrumental in fostering a social revolution in a few short years, which otherwise might have taken a lifetime to accomplish.

\textit{Box, supra} note 171, at 38.