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THE SOCIAL AND LEGAL STATUS OF CONTRACEPTION

PART I

ABRAHAM STONE†

I

The rapid acceptance and diffusion of contraceptive knowledge in this country is one of the most significant social phenomena of our day. It was less than thirty years ago that Margaret Sanger first began her epochal campaign for voluntary parenthood and coined the trenchant and expressive term "birth control." At that time, the idea of the voluntary control of procreation was still under a cloud of moral and social taboos and legal prohibitions. The Comstock Law of 1873 had classified contraception with obscenity and made the dissemination of contraceptive knowledge a Federal offense. Margaret Sanger was indicted for merely publishing a paper on the sociological aspects of family planning and family limitation. There was little support for her ideas and her work at the time. The law was against her; the church was indifferent, if not hostile; the medical profession was apathetic, and there was little favorable public opinion.

Yet, within a quarter of a century the practice of birth control has become an accepted and integral part of our national and family mores. The law has been re-defined and re-interpreted so that today it no longer serves as a serious barrier to the dissemination of contraceptive information. The church has fully recognized the moral and spiritual values of planned parenthood and its importance for family stability and family welfare. The medical profession has recognized the therapeutic and public health values of contraception and is progressively assuming its share of responsibility in this field of medical science. Public opinion, too, has become crystallized, and contraceptive practices are now generally regarded as an essential factor in family life.

II

The changes in the legal attitudes towards contraception which have taken place in the United States are ably described in Part II of this article. As a result of a number of federal and state court decisions a more liberal and rational legal viewpoint now prevails in this country.

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2 SANGER, AN AUTOBIOGRAPHY (1938).
It is now presumed that, except in the States of Connecticut and Massachusetts, a physician has the legal right to give contraceptive information to his patients when in his opinion this is indicated for their health or well-being.

As the author points out in Part II, however, the continuance on the statute books of the antiquated and prohibitive laws remains a source of possible future difficulties. If potential interference with the social and medical progress in this field is to be avoided, the laws will have to be brought into greater harmony with the realities of the day.

III

Planned parenthood has received the increasing support and approval of the church, and this has been expressed in a number of statements and resolutions by many leading religious groups. These have endorsed the view that the marital sex relation is morally right in itself as an expression of mutual conjugal affection and without relation to procreation, and that the use of measures for the prevention of conception when this becomes necessary for the welfare of mother and child is both ethical and moral.

The Committee on Marriage and the Home of the Council of the Churches of Christ in America, for example, in a statement published in 1931, stated, among other things, that:

"As to the necessity for some form of effective control of the size of the family and spacing of children, there can be no question. It is recognized by all churches and all physicians. . . . A majority of the Committee holds that the careful and restrained use of contraceptives by married people is valid and moral. They take this position because they believe that it is important to provide for the proper spacing of children, the control of the size of the family, and the protection of mothers and children; and because intercourse between the mates, when an expression of their spiritual union and affection, is right in itself."3

The Roman Catholic Church, too, while condemning the use of medically approved contraceptives, has, nevertheless, recognized the medical as well as the social needs for family planning and family limitation, and, by approving the resort to the "safe period" for the prevention of conception, it has accepted the principle that sex relations in marriage are moral even though no conception can follow the act.

An excellent and enlightened statement on the importance of family limitation is given in a booklet on the "safe period," which was published with "ecclesiastical approbation" and must therefore be considered to be at least not contrary to Catholic teaching. The author speaks

of the good that may be expected to follow the prevention of conception through resort to the "safe period," and says as follows:

"Burdens that test human endurance to the utmost limit, to which all too many succumb, will be lightened. I speak of economic burdens of poverty, of inadequate income, of unemployment, which make it impossible for parents to give their children and themselves the food, the clothing, the housing, the education and the recreation they are entitled to as children of God. I speak of physiological burdens, the burdens of depleted physical energies and exhausted vitality resulting from a previous birth or miscarriage, the burden of chronically or temporarily adverse conditions of the heart, the kidneys, or other organs, or of conditions that threaten the life of the mother in case of pregnancy. I refer to psychic burdens, not infrequently more difficult to bear than any I have so far mentioned, burdens of uncontrollable fear, anxiety, irritability, of rebellion against God and His Church for seeming to make demands beyond human nature, beyond human powers to endure."4

This certainly constitutes a liberal definition of the social and medical indications for family regulation. It interprets the practically universal need for making procreation voluntary and parenthood planned.

Clearly, then, while there may be a difference of religious opinion as to the methods that may morally be employed for the control of conception, the medical and social needs for voluntary control of human fertility is accepted by all religious faiths. This has recently been emphasized by the National Clergymen's Advisory Council of the Planned Parenthood Federation of America, a body which now consists of one thousand leading clergymen from practically every State in the Union, and represents nearly every religious denomination (except the Roman Catholic Church). In a number of official statements this Council has given expression to the view that the use of medically approved measures for family planning and child spacing is fully in accord with religious and moral beliefs.

IV

The progressive recognition by the medical profession of the importance of conception control as a therapeutic and public health measure has been one of the most significant developments in this field. A number of eminent medical men and several medical societies had long recognized that contraception was a necessary and vital part of preventive medicine and that the public was entitled to expert counsel and information on the subject from the medical profession. Later, in 1935, the American Medical Association appointed a "Committee to Study Contraceptive Practices and Related Problems" and in its report, submitted in 1937, this Committee stated in part as follows:5

In view of the frequent occurrence of medical indications for the prevention of conception, and in view of the medical complications that arise from ill-advised contraceptive practices resorted to by women on their own initiative and without medical advice, which call for medical care, medical students should, in the opinion of your committee, be instructed fully concerning fertility and sterility and taught the clinical considerations and therapeutic application of contraceptive methods. . . .

"In view of the admitted medical necessity for avoiding conception in certain cases and of the general use of contraceptive preparations and devices, your committee finds no reason why the American Medical Association should not investigate such substances and devices. Such investigations for medical purposes seem to constitute a logical part of the activities of the Association in the field of therapeutic research."

The recommendations of the committee concerning the medical teaching of human fertility and sterility and the investigation of contraceptive methods were then adopted by the House of Delegates of the American Medical Association. A large number of other national, state and county medical societies later passed resolutions pointing out the many indications for contraception and endorsing the use of contraceptive measures when medically indicated.

The increasing medical acceptance of planned parenthood has been expressed concretely in the growth of clinical contraceptive services, of medical education in this field, and of the technical developments of methods and procedures.

Twenty-five years ago there was not a single clinical service in this country where contraceptive information was available. In 1919 a special committee, organized by Margaret Sanger and Dr. Mary Halton, visited nearly every hospital in New York City and inquired of the medical superintendent whether patients suffering from a disease which would make child-bearing hazardous for them would be given instruction at the hospital in conception control. With but a single exception, no hospital would accept such patients claiming that under the law no such information could be given to any patient. Some superintendents even went on to explain that if such information were given, the charter of the hospital could be revoked and the doctor who gave the advice would be subject to arrest.6

This happened in 1919. Four years later, in 1923, the Birth Control Clinical Research Bureau, now known as the Margaret Sanger Research Bureau, was opened in New York. This was the first birth control center to be established in this country. Today, twenty years later, there are about 800 contraceptive services located in practically every state. Many of these services have been initiated through the stimulus and assistance of the Planned Parenthood Federation of Amer-

6 SANGER, My Fight for Birth Control (1931).
ica and its affiliated state organizations. All of these centers are under medical direction. Thirty-eight per cent of them are supported by local lay committees and are located in settlement houses, church centers and other extra-mural quarters; 34 per cent are integrated into state, county and city public health services, while 28 per cent function in hospitals as a part of the obstetrical and gynecological departments.

The inclusion of child-spacing services in state public health programs is a particularly important recent development. In 1929, the Birth Control Review, in commenting editorially on the public health programs of county health departments, stated in part as follows:

"Doubtless it would be utopian to advocate that a county health service should be enlarged in scope as well as in quantity, and that its maternal and infant health work should include a complete birth control service. But the time will come, we predict with confidence, when such services will seem an entirely obvious and logical and integral part of public health work."

Within a very few years this editorial prediction actually came to pass, and what appeared to be utopian in 1929 is today a reality. In 1937 the State of North Carolina officially incorporated contraception into its county health services, and in 1939, South Carolina, and later, Alabama, took similar steps to provide advice on pregnancy spacing by the county health departments as a part of their maternal and infant health work. An additional five states have since then adopted, and several more states are now in the process of adopting, similar health programs.

There still is a wide gap between the public need of child-spacing services and the available sources of information. Large sections of our population are as yet unable to secure adequate medical assistance in family planning. The under-privileged in urban areas, farm families in remote sections where medical aid is limited, the millions of women now engaged in industry, the wives of service men—these are a few of the groups which still lack ready access to information on conception control. With increasing public support, however, and the inclusion of child-spacing services in public health programs this gap should gradually diminish.

V

The growing medical interest in contraception has also stimulated the teaching of the subject in medical schools. A quarter of a century ago conception control was never mentioned in any of the medical

1 The Planned Parenthood Federation of America resulted from an amalgamation in 1939 of the American Birth Control League and the Birth Control Clinical Research Bureau. First known as the Birth Control Federation of America, the organization adopted its present name in 1942.

8 Pierce, Contraceptive Services in the United States (Sept. 1943), 8 Human Fertility 91.
courses, and the graduate physician knew no more—and often less—about it than the corner druggist. With the increase in public and medical attention to family planning and with the development of modern contraceptive techniques, the need arose for the physician to obtain more authoritative information on the technical aspects of contraception. Gradually the subject was introduced into many medical schools and became an accepted part of the curriculum. A recent survey\(^9\) showed that nearly 60 per cent of the approved medical colleges today provide some instruction in contraceptive techniques. While the amount and type of instruction in most of the schools is still inadequate,\(^10\) a good beginning has already been made, and the insistent public demand on the medical profession for better guidance in the problems of human reproduction will stimulate improved medical teaching in the various aspects of human fertility.

Undergraduate and postgraduate instruction has been greatly facilitated and aided by the publication of a number of authoritative textbooks on the control of conception.\(^11\) Twenty years ago no reference to the subject could be found in any of the texts used by the medical students nor would the medical journals publish any articles dealing with the techniques of contraception. Today there are a number of excellent texts on the subject and articles dealing with the prevention of conception regularly appear in the best medical periodicals. There is even a special journal published, *Human Fertility*, which is devoted primarily to the biological and clinical aspects of human fertility and its control.

At the same time the technical aspects of contraception have been considerably furthered. Older methods have been studied and evaluated and newer and simplified techniques developed. Medical and scientific laboratories have begun to take an increasing interest in the subject and are now conducting various research studies in this field. Beginnings have been made, but more extensive and intensive investigations are urgently needed. We are still far from possessing the ideal contraceptive, one that would at the same time be harmless, reliable, simple and inexpensive, yet the increasing amount of research work in this field holds forth the promise of early improvements in methods and techniques.

Significant also is the fact that the American Medical Association is now taking an active interest in the evaluation of the efficacy and

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\(^{10}\) Upham, *The Teaching of Contraceptive Measures in Medical Colleges* (Sept. 1943), *Journ. of the Assoc. of Am. Med. Colleges*.

\(^{11}\) Copies of Dr. Dickinson's *The Technique of Conception Control* have now been sent by the Planned Parenthood Federation to nearly 15,000 physicians in this country at their request.
reliability of contraceptive products. In 1942 the Council on Pharmacy and Chemistry of the Association declared contraceptives eligible for consideration on the same basis as other therapeutic agents and it recently authorized the publication of a survey of conception control methods in the *Journal of the American Medical Association.* An Advisory Committee of authorities in this field was named to assist the Council, and this Committee has prepared a set of criteria for the evaluation of contraceptive materials. The Council on Physical Therapy has also decided to receive for consideration and investigation contraceptive appliances aside from drugs. These actions by official bodies of the American Medical Association will help to provide the medical profession with authoritative information on the multitude of contraceptive products which are now being offered by various manufacturing concerns.

VI

The crystallization of public opinion on planned parenthood has been demonstrated by a number of polls taken in recent years. In 1936, for example, *Fortune* Magazine put the question: "Do you believe in the teaching and practice of birth control?" to a varied sample of our national population, both men and women. Sixty-three per cent of all those questioned, and 43 per cent of the Roman Catholics, answered in the affirmative. "It seems," said the magazine, "that the Federal law against the transportation of contraceptives and information thereon and the laws of the several states that in any way or nature attempt to limit the teaching or practice of birth control, represent the will of only 23 per cent of the public."

A second survey was conducted in 1938 by the *Ladies Home Journal,* and it showed that 79 per cent of American women were in favor of contraception. "From farm and village and city," the article read, "and from every geographical section of the nation rose the affirmative chorus for birth control."

In a 1943 survey, again by *Fortune,* in which a large number of women throughout the country in the ages of 20 to 35 were polled, nearly 85 per cent of those questioned, and 69 per cent of the Catholic women, answered yes to the question: "Do you believe that knowledge about birth control should be made available to all married women?"

The present status of contraception in this country is therefore one of practically universal approval and acceptance. A tabooed and prohibitive topic a quarter of a century ago, planned parenthood is now

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13 *Fortune,* July, 1936, p. 158.
emerging as a vital factor in our national and family life and as a public
health and medical measure of far-reaching importance.

PART II

MRS. HARRIET F. PILPIL†

Nowhere is the lag between the law on the books and the mores of
the American people more obvious than in the field of the legal re-
strictions touching on birth control. Although, as estimated elsewhere,¹
over 90 per cent of the American people use contraceptive techniques
of one sort or another without regard to applicable legal canons, the
federal government and more than half of the states have enacted vari-
ous laws regulating the distribution of contraceptives and of informa-
tion about them. These laws range from prohibitions outright, at least
on their face, to salutary attempts to assure a better product by means
of licensing. Because of the peculiar properties of contraceptives and
by reason of the intimate aspect of the whole problem, the chief result
of the most restrictive laws has been to put a premium on the use of
inferior methods free from the supervision of the medical profession
while in those states where doctors are not in constant danger of prose-
cution, intelligent programs utilizing contraception as a therapeutic tech-
nique have been worked out. It is impossible to understand the present
anomalous situation in which the states with the most rigid laws are
least able to cope with the problem of wholesale trafficking in inadequate
contraceptives without a glance backwards at the genesis and develop-
ment of the birth control laws.

I

Until 1873 the legislatures of the country made no real attempt to
superimpose repressive laws on what is after all the most intimate kind
of personal choice. In that year Anthony Comstock descended upon
Congress with a large supply of obscene post cards and a host of good
intentions. He persuaded the legislators by means of his exhibits and
obvious sincerity that they had to do something if the nation was not
to slide as an entity into the clutches of organized vice. Accordingly, a
bill was introduced which made it criminal to import, mail or transport
in interstate commerce “obscene literature and articles of immoral use.”
The bill included in this category “any article or medicine for the pre-
vention of conception or for causing abortion” but it made an express
exception for such articles when circulated etc. “on the prescription of
a physician in good standing given in good faith.” For some reason

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¹ Rock, Medical and Biological Aspects of Contraception (1943) CLINICS,
which has never come to light, perhaps because it was thought unnecessary, this exception was dropped in subsequent versions of the bill and the law as finally passed did not contain it.\(^2\)

Apparently the legislators who passed the bill had only the foggiest notion of what it contained. Senator Conkling remarked disgustedly in the Senate at the time:

"For one, although I have tried to acquaint myself with it [the bill], I have not been able to tell . . . and if I were to be questioned now as to what this bill contains, I'd not aver anything certain in regard to it. The indignation and disgust which everybody feels in reference to the acts which are here aimed at may possibly lead us to do something which when we come to see it in print will not be the thing we would have done if we had understood it and were deliberate about it."\(^3\)

No one paid any attention to Senator Conkling's well-founded premonitions, and on the day after they were uttered the Senate passed the bill with no further discussion.\(^4\)

II

The Federal Act started a fashion and a host of states followed suit by enacting little "Comstock" laws of their own, designed to prevent everything from the distribution of "secret drugs and nostrums" for contraception\(^5\) to the use of any article for contraceptive purposes.\(^6\)

Some of the more moderate states like New York sought to stamp down on every phase of the traffic in contraceptives, but declared an exception for the medical profession while others like California turned their wrath against the circulation of information about contraceptives but did not specifically restrict their distribution and use.\(^7\)

It is an interesting commentary that only one of these laws has ever been changed, although many of them are archaic in the way they totally ignore the impact of the science of medicine on the subject they deal with. The change in that one was apparently the brain child of some enterprising codifier who put through unnoticed an amelioration of the statute presented along with several thousand other changes looking toward greater unity and simplicity in the whole structure of the state's laws.\(^8\)

No organized effort to obtain the repeal of any of the laws has


\(^{4}\) Id. at 1571.


ever been successful. In fact, despite the predominance of public opinion in favor of birth control, the sponsors of legislation modifying some of the more absolute bans have often found that their sponsorship was tantamount to political suicide.

However, despite the presence of these restrictive laws on the statute books of the land, there was until recently very little effort made to enforce them. Their chief effect was to cloak with an aura of sneakiness and suspicion a subject which was increasingly throughout the whole period coming medically of age. There were sporadic attempts made to enforce some of the less obviously unenforceable of the statutes, for example that in New York which recognizes an exception for contraceptives prescribed by physicians for the "cure or prevention of disease." One such attempt was made in 1917 when Margaret Sanger attempted almost single-handed to set up a birth control clinic in New York City. While the case ended in her conviction because she was not a doctor, it did have the happy result of eliciting from the Court of Appeals, the highest Court of New York State, a definition of "disease," the prevention or cure of which permitted the use of contraceptive techniques, which was so broad that thereafter doctors in New York State acting pursuant to the dictates of their professional conscience had little to fear in the way of a criminal prosecution.9

Sporadically, too, efforts were made to enforce the federal laws. Most of the cases, however, showed up the absurdity of the laws so clearly that the strict prohibitions of the Act of Congress were fortunately liberalized by judicial interpretation. Thus in 1930 despite the absolute words of prohibition in the federal law, the Court of Appeals of the Second Circuit implied that the law would be invoked only against the transmission of contraceptives "for illegal contraception," and would not be construed "to prevent" their "proper medical use."10 Three years later the Sixth Circuit Court of Appeals held that obviously druggists who act as the source of supply for the medical profession were not intended to be included in the ban.11 In December of 1936 these early cases came to full fruition when in a case involving the importation of pessaries by Dr. Hannah M. Stone, a pioneer in the field of medical contraception, the Second Circuit Court of Appeals in clarion terms read an exception into the federal statutes to permit "the importation, sale or carriage by mail of things which might intelligently be employed by conscientious and competent physicians for the purpose of saving life and promoting the well-being of their patients."12

9 People v. Sanger, 222 N. Y. 192, 118 N. E. 637 (1918).
The *Stone* Case gave rise to a generally more forthright approach to the whole problem of the legal shackles on birth control, and there were tentative head pokings out toward a saner attitude from a variety of different sources. The American Medical Association which until that time had intentionally avoided the subject (although some specialized medical groups had previously acted to recognize contraception as a medical technique) passed a resolution at its Atlantic City convention to the effect that the Association should "take such action as may be necessary to make clear to physicians their legal rights in relation to the use of the contraceptives." *Fortune* Magazine published an article on the contraceptive industry which despite its picturing of devices and the description of techniques in meticulous detail, went through the mails unmolested. Consumers' Union distributed to its members a somewhat similar comparative study of the contraceptives for sale in the market place. Simultaneously, two of the states which in many respects have been regarded as backward, astounded their more progressive sisters by adopting state subsidized child spacing programs as part of their general health services. When a few years after the decision in the *Hannah Stone* Case, the question came up in Puerto Rico whether doctors could properly prescribe contraceptives for the prevention and cure of disease, the Federal Court's categorical answer that they could did not come as a surprise. Nor was the ruling in a subsequent case in the New York Federal Court unexpected, when the Court held that doctors and other qualified persons such as college professors could import contraceptive information. The Court, speaking through Justice Learned Hand, said: "We have twice decided that contraceptive articles may have lawful uses and that statutes prohibiting them should be read as forbidding them only when unlawfully employed. . . . Contraceptive books and pamphlets are of the same class and those at bar

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23 See e.g., the Resolution of the American Gynecological Society adopted in 1935.
24 Resolution adopted by House of Delegates of the American Medical Association, June 8, 1937.
26 *Report on Contraceptive Materials*, *Consumers Union* (1937). For several years this pamphlet was sent through the mails and used by physicians, clinics and social workers and by individuals who certified that they were married and had been advised by their physicians to use contraceptive products. The Report was then barred from the mails. Appeals to the Post Office Department were unavailing and Consumers Union brought an action in the District Court of the District of Columbia against the Postmaster General. On January 17, 1944, the suit was dismissed by Judge T. Alan Goldsborough. This case is not yet reported, but Consumers Union has announced its intention to appeal. See 9 *Consumers Reports* 31 (February, 1944).
27 North and South Carolina. Subsequently five other states adopted similar programs.
were therefore lawful in the hands of those who would not abuse the information they contained."²⁰

III

The judicial and administrative forward march which promised to cancel out much of the absurdity in the Comstock laws was not, however, to go unchecked. The Roman Catholic Church in particular had been viewing with alarm the steady headway being made by the advocates of planned parenthood. In the summer of 1938, the State of Massachusetts, which is forty per cent Catholic, witnessed a series of raids on the birth control clinics there which closed every one of them up tight. In criminal prosecutions against a doctor, a nurse and two social workers, the Massachusetts court steeled itself against what must have been the strong appeal of the federal decisions and held that the flat interdict of the Massachusetts law did not permit a ruling that physicians could prescribe contraceptives to protect the health or even to preserve the lives of their patients.²¹ An appeal to the United States Supreme Court was dismissed for want of a substantial federal question,²² a technical basis not involving the merits. Some years later as a result of the valiant efforts of a militant minority the question of modifying the Massachusetts law was thrown open to the electorate in a referendum. The Catholic opposition was, however, so great and the misrepresentation of the issue presented so frightening and enormous, that the law remained unchanged by a vote of 683,059 to 495,964.

Meanwhile, however, the Massachusetts judges were turning mental handsprings in an effort to avoid the logic of their former ruling in which they held that the ban on birth control appliances in Massachusetts was absolute. Faced with a prosecution of a druggist who had sold one of the many kinds of appliances which clearly have a contraceptive purpose but which may serve other purposes, such as the prevention of disease, as well, the Court held that in each such case the prosecution must show that the intent of the sale was that the appliances were to be used for the contraceptive purpose.²³ Since the technique of the use is precisely the same whether the purpose behind it is the prevention of conception or the prevention of disease, the result of the holding is that practically speaking only the best type of contraceptives—which are the type that require medical intervention as a prerequisite to use—are effectively barred from use in Massachusetts. For the disease-preventing properties of the vaginal diaphragm which averts disease

²⁰Id. at 512.
and often death of mother and child by preventing conception, are less obvious than the preventive properties of the condom, for example, which specifically prevents the transmission of venereal disease. Consequently, the distribution of diaphragms has been banned despite the fact that they represent the safest, surest and most satisfactory, aesthetically and psychologically, method of contraception and possess the additional advantage of having to be fitted by a physician. Yet in Massachusetts today a doctor fits or prescribes a diaphragm at his peril, while condoms, vaginal jellies, douches, etc., of far less efficacy are sold with impunity except in the virtually impossible case where the seller or buyer says "look here—this is intended for purposes of contraception and not to prevent disease."

IV

The State of Connecticut has unfortunately patterned its actions after those of its older sister. The Connecticut statute, unique among all other contraceptive bans, prohibits the use of any device, etc., for the purpose of preventing conception.\textsuperscript{24} Such a statute is subject to all the practical objections made to the Massachusetts statute plus the overweening one that proof of the crime of use is just about impossible to obtain. The Connecticut prosecuting authorities have got around this by proceeding against doctors and nurses as accessories to the crime of use and they have unfortunately been so far successful in this approach.\textsuperscript{25} With all the clinics closed and the need for contraceptive advice growing constantly greater in Connecticut, because of the concentration of population, a courageous doctor brought an action for a declaratory judgment to determine whether the statute would be construed to interfere with his prescription of contraceptives for patients to whom pregnancy meant almost certain death. The Connecticut Court, by a vote of 3 to 2, came to the conclusion previously reached in Massachusetts, and held that total abstinence was the only solution.\textsuperscript{26} Like the Massachusetts Court it showed itself completely blind to the realities of the situation which permits of free trafficking in inferior products and bars only the best method and the method endorsed by the medical profession. Again, the attempt to get the United States Supreme Court to pass on the question whether a state could thus consistently with the due process clause of the Federal Constitution close an avenue of preventive and therapeutic medicine to persons whose very lives depend on access to it, was foiled by technical difficulties.\textsuperscript{27}

In a per curiam opinion, the Court held that the proceedings in the state

\textsuperscript{24} Conn. Gen. Stats. (1930) §6246.
\textsuperscript{25} State v. Nelson, 126 Conn. 412, 11 Atl. (2d) 856 (1940).
\textsuperscript{26} Tileston v. Ullman, 129 Conn. 84, 26 Atl. (2d) 582 (1942).
\textsuperscript{27} Tileston v. Ullman, 318 U. S. 44, 63 Sup. Ct. 493, 87 L. ed 603 (1943).
courts presented no constitutional question which appellant physician has standing to assert. "The sole constitutional attack upon the statutes under the Fourteenth Amendment is confined to their deprivation of life—obviously not appellant's but his patients. . . . His patients are not parties to this proceeding and there is no basis on which we can say that he has standing to secure an adjudication of his patient's constitutional right to life, which they do not assert in their own behalf." The initial willingness of the Court to consider the case, however, gives ground for the belief that if, as and when the question is properly presented to its complete satisfaction, it will hold that under present circumstances of medical knowledge an absolute prohibition is unconstitutional as an unreasonable deprivation of life and liberty without due process of law.

V

Thus the matter stands at the present time. The continued presence on the books of repressive laws stands as a threat of possible future difficulties. But the legal outlook is on the whole nonetheless encouraging. Several states have recently exhibited a whole new approach to the problem. By legislation designed to assure decent contraceptives, properly distributed under the auspices of the medical profession and the drug trade, they have evinced a recognition that no law can stay the march of progress in the field of medicine. Their forthright approach plus the liberalizing trend of the federal decisions and the realistic attitude of intelligent administrators in the field of public health, gives reason to believe that despite the temporary setbacks in Connecticut and Massachusetts and the anomalous situations which exist there as a result, the lawmakers' approach to planned parenthood in the future will be divested of its taboo character, and that legislation will be directed to sensible regulation of a vital need rather than to futile efforts at suppression which so far have led only to inferior products, bootlegging and crime. More and more, intelligent persons are coming to realize that the techniques of planned parenthood represent an invaluable social weapon which can be used for the betterment of the American people rather than as a means of making their lives more difficult.

28 Id. at 46, id. at 494, id. at 604.