

The Canadian Birth Control Movement on Trial, 1936-1937*

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A birth control movement emerged in Canada in the 1930s with the formation of several clinics and agencies devoted to the dissemination of information on birth control. The arrest of Dorothea Palmer, a social worker employed by one of these agencies, the Parents' Information Bureau, resulted in a precedent-setting trial during which the new movement argued for the benefits of birth control. In light of the economic situation of the 1930s, the argument that birth control could have an ameliorative effect on poverty, unemployment, social distress and genetic impurity convinced the court that birth control offered a solution to these economic and social problems. That women had a right to birth control was heard from many of the women actively involved in the movement, but this view was overshadowed by the economic and social arguments of the movement's political leaders.

Un mouvement en faveur de la limitation des naissances a vu le jour au Canada dans les années 1930, quand furent mises sur pied de nombreuses agences et cliniques qui se consacraient à la diffusion de l'information sur ce sujet. Lorsque Dorothea Palmer, travailleuse sociale à l'emploi de l'une de ces agences, le Parents' Information Bureau, a été arrêtée et traduite en justice, un précédent fut créé, ce qui donna au nouveau mouvement l'occasion de plaider en faveur du contrôle des naissances. Compte tenu de la situation économique du temps, la cour se laissa gagner à l'idée que la limitation des naissances pourrait porter remède à des maux tels que la pauvreté, le chômage, la misère et la reproduction des tarés. Bien que des femmes activement engagées dans la diffusion de l'information sur la contraception furent alors réceptives à l'argument selon lequel la femme a droit au contrôle des naissances, ce furent toutefois des considérations à caractère économique et social mises de l'avant par les leaders politiques du mouvement qui l'emportèrent.

Prior to 1929 birth control was an obscenity in Canada, a subject broached only by the occasional left-wing or feminist group. It was not a matter taken up by respectable middle-class men or women. Unlike the United States where Margaret Sanger spearheaded a political movement to legalize birth control, or Great Britain where the equally colourful Marie Stopes worked, Canada lacked a birth control movement through the years 1900-1929. Yet by 1939, an active and aggressive birth control movement had taken hold in Canada. That movement had to its credit a birth control clinic in Hamilton,¹ a birth control society in Winnipeg,² an organization

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1. Thomas Melville BAILEY, *For The Public Good; A History of The Hamilton Birth Control Society* (Hamilton: Planned Parenthood, 1974).

2. Winnipeg Family Planning Association, Winnipeg, Manitoba; *Annual Reports of the Winnipeg Birth Control Society* (hereafter WBCS), 1939-65.

devoted to the nation-wide dissemination of birth control information through home visitation,³ a sterilization referral service⁴ and an active political lobby. Prominent individuals and groups—doctors, clergymen, women's groups, social workers and eugenisists—began to urge governments to make the dissemination of birth control to the poor a part of its social service function, and to legislate in favour of the sterilization of the unfit.

By examining the views of birth control proponents and opponents, aired in a major trial that clarified the legal position of birth control, one can see the effect of the depression in fostering the acceptance of birth control on a social level. While everyone seems to agree that birth control had long been practised by individuals and families,⁵ the 1930s mark a decisive break, in that they saw the first attempt to gain public acceptance and endorsement of the practice. Under the influence of an economic crisis that put thousands of unemployed people on relief and raised fears among the middle class of social unrest and turmoil, certain groups of Canadians began to perceive the economic and social benefits of curtailing the fertility of socially dependent people.

Although many views on the merits of birth control were aired at the trial, those which seemed to sway the magistrate, and public opinion, stressed birth control's potential to contain poverty and social unrest while preserving both the economic system and the prevailing family structure. The views of those women who may have seen birth control as a woman's right, or as a means of lessening dependency within the family were largely ignored. Ultimately it was economic motives which helped legitimize birth control.

Since 1892 the advertising, sale or disposal of contraceptives, and the advertising of the means of preventing conception were punishable under a Section of the Criminal Code dealing with obscenity. There was, however, a clause allowing that if it could be proved that the public good was served, and that there was no excess beyond what the public good required, no conviction was possible.⁶ The birth control movement worked under the protection of the public good clause, admittedly not a very secure position since that clause was meant to protect the medical profession from prosecution. It was not until 1937 that the movement's legal position was tested in the courts.

One of the most active organizations disseminating birth control information in Canada was the Parents' Information Bureau. Behind this organization was Alvin R. Kaufman of the Kaufman Rubber Company in Kitchener, Ontario, who began his birth control work in 1929 when he

3. Alvin R. KAUFMAN, "The Parents' Information Bureau of Canada", *The Journal of Contraception*, 3 (March 1938): 54-55.

4. Ibid. The referrals were conducted through the Parents' Information Bureau.

5. See Angus McLAREN, "Birth Control and Abortion in Canada, 1870-1920", *Canadian Historical Review*, LIX (September 1978): 319-40. See also Linda GORDON, *Woman's Body, Woman's Right* (New York: Penguin, 1977).

6. CANADA, LAWS, STATUTES, ETC., *Revised Statutes, 1892*, Criminal Code, Sec. 179, ch. 29, p. 80.

“discovered” poverty among his laid-off workers. He found that their poverty was often associated with large families, and sometimes feeble-mindedness, and proceeded to provide the poor with both birth control and sterilization services, obtaining medical advice through American birth control clinics.⁷ The huge demand generated by that initial step led to the forming of the Parents’ Information Bureau and its expansion throughout Canada. Kaufman also opened two clinics, one in Toronto and another in Windsor, which he soon closed due to their higher per-patient cost compared with the visitation method.⁸

Kaufman was perhaps key to the entire Canadian birth control movement, devoting considerable time, energy and money to promoting birth control and sterilization, both politically through agitation and propaganda, and practically through the Parents’ Information Bureau. By 1936 this agency had approximately fifty-three nurses/social workers employed in various Canadian cities, who visited the homes of poor mothers.⁹ These nurses offered the poor a chance to obtain contraceptives through the mail, at reduced cost and without seeing a doctor. Women to be visited with this service were referred by a growing number of doctors, clergymen, and social welfare agencies, including very often municipal relief officers.¹⁰

In 1931 Mary Elizabeth Hawkins, a Hamilton widow and active charity worker, formed the Hamilton Birth Control League which immediately established the first Canadian birth control clinic.¹¹ She saw the need for birth control through her work with various local charities where one often saw unwanted children in poor circumstances. Like the Parents’ Information Bureau, the Hamilton clinic enjoyed the unofficial support of many prominent individuals and organizations, and by 1937 was being provided with a list of names from the relief office¹² in addition to referrals from private social service agencies.

Another birth control organization emerged in Winnipeg which provided a home visitation service similar to that of the Parents’ Information Bureau. It was formed by a group of socially prominent women, active in social work; they too undertook the dissemination of birth control information with the unofficial support of sympathetic doctors, clergymen and social workers. The main target of their concern was also poor women.¹³

In addition to these practical efforts in the dissemination of birth control, some people were promoting birth control on an ideological level. Many of the Protestant churches, at least those active in social reform,

7. KAUFMAN, “Parents’ Information Bureau”, p. 54.

8. Ibid.

9. Ibid.

10. “No Rush of Clinics Seen from Birth Control Trial” [interview with A.R. Kaufman following the trial], *Toronto Star*, 20 March 1937, p. 1.

11. BAILEY, *For the Public Good*, p. 7.

12. Mrs Thelma Will, interview with author, Hamilton, Ontario, 22 January 1982. Mrs Will worked at the Hamilton clinic from 1937 to 1970.

13. Jessica SWAIL, “Woman of the Century Radio Letter”, typescript of broadcast, August 1967, on *CBC* (Winnipeg: Planned Parenthood Manitoba, 1967). See also WBCS, *Annual Reports*, 1939-65. The nature of support for the organization is discussed in “No Rush of Clinics”, *Toronto Star*, 20 March 1937.

began to speak guardedly in favour of birth control.¹⁴ Some doctors broke through the silence and indifference of their profession on this issue and advocated birth control as preventive medicine; and social workers, from volunteers to professionals, saw in birth control a way of preventing a vast array of social problems which threatened family and societal stability.¹⁵

Finally, the popular eugenics movement seized upon it, along with sterilization, as a means of controlling the alleged higher fertility of socially undesirable and dependent groups and races.¹⁶ The Eugenics Society of Canada was formed, with Dr William Hutton, Brantford Medical Officer of Health, as its president; and such prominent individuals as the lieutenant-governor of Ontario spoke in favour of eugenic sterilization.¹⁷ Brantford authorities allowed Dr Hutton to dispense birth control information¹⁸ and many other municipalities discussed allowing relief officers and public health nurses to disseminate birth control information along with relief funds and other social services.¹⁹

By the mid-1930s the birth control movement was gaining strength; it had succeeded in elevating birth control from a "dirty word" to an issue suitable for public discussion. Yet the new movement had to work within the shadows of the law; no one knew for sure if the public good clause, which was designed to protect medical practitioners and their suppliers, would protect organizations like the Hamilton clinic or the Parents' Information Bureau.

In September 1936, Dorothea Palmer, one of Kaufman's nurses (she was in fact not a fully qualified nurse but a social worker) was arrested for distributing birth control information in Eastview (now Vanier) just outside Ottawa. The opportunity to test the "public good" clause had presented itself. Kaufman, interested in clarifying the legal position of birth control work in Canada, provided the \$500 bail. In the face of this unexpected opposition, the Eastview police offered to withdraw the charges, provided that Miss Palmer conduct her activities elsewhere. Eastview authorities had assumed that the young woman was working on her own, trying to pick up extra cash.²⁰ Ottawa lawyer A. W. Beament refused the offer, the charges stood and the trial began on 21 October 1936.

14. University of Waterloo Library, Waterloo, Ontario, Dorothea Palmer Papers (hereafter Palmer Papers), file 40, "Official Statement of Churches and Religious Bodies on Birth Control", and "Voluntary Parenthood: A Statement Presented by the Board of Evangelism and Social Service, and adopted by the General Council of the United Church of Canada" (1936). These papers were donated by A. R. Kaufman, not by D. Palmer.

15. Palmer Papers, file 28, "The Social Service Council of Canada".

16. Palmer Papers, file 43, "The Aims and Objects of the Eugenics Society of Canada".

17. The Hon. H. A. Bruce, MD, FRCS, Lieutenant-Governor of Ontario, address to Canadian Club of Hamilton, 23 April 1933, as quoted in Helen MACMURCHY, *Sterilization? Birth Control? A Book For Family Welfare and Safety* (Toronto: MacMillan, 1934), p. 38.

18. *Mail and Empire* (Toronto), 12 December 1932.

19. Planned Parenthood, Hamilton, Ontario, Hamilton Planned Parenthood Papers, uncatalogued, "Suggested Resolutions to be Passed or Rejected by Municipal Council", n.d.

20. Bill STEPHENSON, "The Great Birth Control Trial", *MacLean's*, 23 November 1957, p. 76.

Dorothea Palmer, a twenty-eight year old social worker and employee of the Parents' Information Bureau, was stopped by Police Constable Martel after leaving an Eastview home where she had been interviewing a local mother on methods of birth control. She is reported to have flared at the officer: "A woman should be master of her own body! She should be the one to say if she wants to become a mother."²¹ She apparently calmed down when she found herself under arrest, charged under Section 207 (formerly 179) of the Criminal Code with unlawfully and knowingly, a) offering contraceptives for sale in Eastview, b) advertising by pamphlet etc. various methods of contraception, and c) having for disposal some contraceptives.²²

It seems that Palmer had been under the impression that her work was entirely within the law, as Kaufman had informed his workers that the public good clause would protect them from prosecution.²³ Although it could be argued that Kaufman was working on the best legal advice he could obtain,²⁴ it is hard to imagine his being naive enough to suppose the matter that clear-cut. He had also been in correspondence with American birth control advocates²⁵ and was undoubtedly aware of precedent-setting trials there. Whatever the case, Kaufman welcomed the opportunity. The trial provided a grand forum for the birth control movement to express its views and the many "experts" whom Kaufman brought in for the defence aggressively argued the social value of birth control. The magistrate presiding, the reporters covering the trial and those involved all were in agreement that the trial would set a legal precedent. The crown's later unsuccessful appeal of the decision only served to confirm the trial's importance for the birth control question. It was a trial in which the defendant, a lending-library owner and part-time social worker, was completely overshadowed by the larger issue she had provoked.

The trial opened with the testimony of some twenty-one Eastview housewives whom Palmer had visited. They all testified that Palmer had come to their homes uninvited (the women had been referred by individuals unknown to them), asked them if they wanted contraceptives, and proceeded to fill out an application card with information as to family size, age of parents, husband's occupation and salary (if not on relief), the number of abortions and/or miscarriages the women had had, and so on. Most of the women had later received a box of contraceptives (jelly with a nozzle applicator, condoms and a pamphlet detailing a number of contra-

21. STEPHENSON, p. 22.

22. *The Eastview Case* (Kitchener: The Parents' Information Bureau, 1938), p. 5.

23. Francis A. Countway Library of Medicine, Boston, Gamble Papers, Kaufman to Dr Clarence Gamble, 5 July 1934, "Instructions to Social Service Workers". Kaufman's instructions contained a sheet with section 207 reproduced in full with the words, "No one shall be convicted . . . if he proved that the public good was served by the acts alleged . . .", underlined. See also Palmer's comments as quoted in the testimony of Constable Martel, Palmer Papers, file 19, Examinations, vol. 1, p. C 77.

24. Mary Bishop (of Vancouver Planned Parenthood), letter to author, 10 December 1981.

25. See Gamble Papers and James READ, *From Private Vice to Public Virtue* (New York: Basic Books, 1977), pp. 218-22.

ceptive techniques, including homemade remedies). These boxes were later confiscated by the police officer investigating the case.²⁶

During the women's testimony it became clear that Palmer had not actually sold contraceptives, or even had them for disposal since she only carried samples for demonstration. Two of the three charges were therefore dropped and she was charged only with advertising the means of preventing conception.²⁷ It was now up to the defence to prove that Palmer's acts served the public good. If it could be shown that the spreading of birth control information was in the public good, and that there was no excess beyond what the public good required, then Section 207 as it pertained to contraceptives would essentially be invalidated. This Kaufman and his two lawyers, A. W. Beament of Ottawa and F. W. Wegenast of Toronto, set out to do.

Very early in the trial the defence obtained a ruling which allowed more than the customary five expert witnesses and a battery of prestigious experts was brought in, mostly from outside Ottawa. The prosecution, on the other hand, called only one expert witness, Dr De Haitre, an Ottawa physician, and thereby forfeited its right to call any more than five expert witnesses.²⁸

It is often risky making any definitive statement about a whole movement through one event, in this case a trial. Given the immediate objective of obtaining an acquittal for Palmer, the defence may well have overstated the case in favour of birth control. Moreover, the legal requirement which made it necessary to advocate birth control in terms of the public good, rather than as a civil or human right, no doubt influenced the kinds of arguments presented. Yet, judging from the general literature on birth control in the 1930s outside of the Eastview case, I would contend that all the major arguments in favour of birth control were more than adequately covered during the long trial. Arguments against birth control were not as vehemently presented.

From the testimony of the twenty-one housewives one can surmise a few things. Many of the women, when asked by defence lawyer Wegenast if they thought they were doing anything wrong in taking the contraceptives—and he made a point of asking them all—replied in the negative. In fact they seemed to think it was a silly question, even though a small minority did state that it was against the dictates of their religion.²⁹ Several women said they took them out of curiosity³⁰ and one woman scandalized the court by admitting to having joked about the boxes with the other women. One of the women was unmarried although she had one child and admitted to taking abortifacients on several occasions. She had initially

26. Palmer Papers, file 19, Examinations, vol. 1, pp. D 2-D 114, testimony of the housewives.

27. *The Eastview Case*, p. 5.

28. STEPHENSON, "Birth Control Trial", p. 24.

29. Palmer Papers, file 19, Examinations, vol. 1, pp. D 53, D 77.

30. *Ibid.*, p. D 82.

lied to Palmer about being married but later confessed she was not.³¹ Some of the women did not understand Palmer's English, mistook her for a public health nurse, gave her the information and signed the card without even knowing what it was for.³² But many of them admitted to wanting the contraceptives, saying that they had had enough children, especially when they could not afford to feed and clothe them properly.³³

The question of abortions arose, but there seemed to be considerable confusion over what an abortion was. It seems that many of the women called a miscarriage an abortion and did not distinguish between a self-induced miscarriage and a natural one.³⁴ For this reason, perhaps, the application cards showed a high number of abortions, while the women who testified denied having so many. The defence attributed the discrepancy to a reluctance on the part of the women to admit to an abortion while on the witness stand; abortion was, after all, a crime. But there were cases of the use of abortifacients, and it seems that these women knew about and practiced abortion.

Many of the women's families were on relief and almost all were very poor. Most were French Canadian and Roman Catholic. Their views on birth control seem to be far more practical than those expressed by religious and social experts, and they probably did not divorce abortion from birth control as the birth control movement definitely did. The defence made much of the women's liberal views on birth control in light of their church's emphatic condemnation of it.

Dorothea Palmer had been hired by the Parents' Information Bureau through another nurse, a Miss Todd, who worked in the Ottawa area for Kaufman. Todd had apparently come into Palmer's bookstore one day, upset because "they" wanted her to go into Eastview; she was afraid to take birth control into a Catholic area. It is not clear who "they" were; Palmer later referred to them as the doctors she worked with.³⁵ Neither is it clear how much pressure Miss Todd was under to go to Eastview but nonetheless Palmer volunteered to undertake the job, working there only a few months before her arrest.

Palmer did not testify for the defence but some insight into her motivation can be gained through the testimony of the Eastview police. Before taking her to the station, the constable had led her to believe that no charges would be laid. Palmer then made a detailed and incriminating statement to the police, showing them her material, describing her methods of contacting the women and even telling them of her belief in a woman's right to control her own body. Only then, after a call to the Crown pro-

31. *Ibid.*, p. D 19.

32. *Ibid.*, pp. D 47, D 86.

33. *Ibid.*, p. D 65.

34. *Ibid.*, p. D 100-D 105.

35. Jean HOLLOBON, "Did Dirty Work For Men At Trial, Pioneer of Birth Control Says" [interview with Dorothea Palmer Ferguson], *Globe and Mail* (Toronto), 30 November 1978, p. T 3.

secutor, were charges laid.³⁶ She found herself in more trouble than she had anticipated when she took the job, for she expected trouble in Eastview from the clergy, not the law.

Under questioning from the prosecution, Palmer declared that she regarded her work as a great service to women and that she intended to continue it even if she had to go to jail first.³⁷ In fact she did neither as Kaufman let her go after the trial.³⁸ She got little thanks for her part in the six-month trial and she later remarked that she did the "dirty work" for the men at the trial.³⁹ Neither did she get much support during the trial, being harassed by obscene calls, snubbed by friends and relatives, and assaulted sexually by the husband of one of the women she visited.⁴⁰ Her only support seems to have come from the women who, according to Palmer, went out of their way to be kind to her.⁴¹

The first witness for the defence was Anna Weber, director of the Parents' Information Bureau and industrial nurse for the Kaufman Rubber Company. She described the founding of the Bureau as a result of her investigation of poverty in the homes of workers laid off from Kaufman's footwear plant. She found that the families were growing, and in some cases discovered feeble-mindedness. Under Kaufman's instructions, she arranged for the sterilization of some of these women. Weber testified that the system of visiting nurses was more effective than dissemination of birth control information through clinics, as it tended to reach the poor who, she said, "needed birth control the most". She declared that she thought all mothers should have the privilege of voluntary motherhood.⁴²

Dr Margaret Batt, medical director of the Toronto Birth Control Clinic, described the work of the clinic, stating that for health reasons there should be an interval of two years between births and she cited several studies which showed reduced infant/maternal mortality with such an interval. She also claimed, in reply to crown prosecutor Raoul Mercier's questioning, that within a family, the woman and not the man should have the final say about whether to have another child.⁴³ She also stated that despite Catholic opposition to birth control, many Catholic women had attended the clinic.

Mrs Mary Hawkins, president of the Hamilton Birth Control League and director of the Hamilton Birth Control Clinic, testified to her belief that Catholic mothers "above all" should have birth control information. One of the teachings of the Catholic church, she said, was that the mother's life

36. Palmer Papers, file 19, Examinations, vol. 1, pp. C 19-C 78, testimony of Constable Martel and Chief Manion of the Eastview Police.

37. Palmer Papers, file 19, Examinations, vol. 1, pp. C 75-C 77.

38. Palmer Papers, file 46, Dorothea Palmer to F. W. Wegenast, 26 June 1937.

39. HOLLOBON, "Dirty Work for Men at Trial".

40. Ibid. He reportedly wanted to show her "what it's like without birth control". She escaped shaken but unharmed.

41. Ibid.

42. *Ottawa Journal*, 1936, October 23, p. 18.

43. Palmer Papers, file 23, Examinations, vol. 5, pp. J 109-J 124, testimony of Dr Batt.

could not be saved at the expense of the life of an unborn child. "This inherent risk in motherhood should be made clear to Catholic mothers and they should have the option of birth control open to them".⁴⁴

Although other arguments were used, the women who testified and who actively worked in disseminating birth control information, tended to show a concern for women: that birth control was a woman's right rather than a means to some other social or economic end. But these women, and such views, were in a minority and they were drowned out not only by the men who testified but by the prosecution itself.

Crown prosecutor Mercier, for example, frequently inferred that birth control threatened male authority in the family. He asked all the defence witnesses, especially the "experts", what they thought would happen if there was a disagreement between husband and wife on whether to use birth control, or to have another child. As most of the defence witnesses were active promoters of the cause, they generally answered that the wife should have the veto power, although some did so only reluctantly.⁴⁵ Often Mercier left this question to the end of his cross examination, for the effect it would create. He played on the fear that birth control could alter power relations within the home, and thus pointed out an important contradiction within the birth control movement. In terms of expediency, one had to focus on the woman, addressing the birth control message to her, yet in doing so male authority in the home was threatened. In this vein Kaufman and other birth control workers were repeatedly asked whether the contraceptives they distributed could be used without the husband's knowledge and consent. Kaufman's answers stressed that such methods (i.e., condom and contraceptive jelly) would be difficult to use without the husband's knowledge but evaded the underlying question of whether male authority would be undermined.⁴⁶

The most cautious and conservative advocates of birth control, such as the United Church for example, preferred to call it "voluntary parenthood", and many stressed the need for a couple to consult their doctor, clergyman, and their "christian conscience" before deciding to use contraceptives.⁴⁷ Many of the proponents of birth control were in fact Protestant clergy. One Salvation Army officer, Ernest Simms, testified that birth control would be a great help in dealing with those in conditions of distress, especially the feeble-minded.⁴⁸ The Reverend T. Summerhayes, secretary of the Toronto Anglican Social Service Council, affirmed a woman's right to refuse to have children, if her health were not sufficient or if financial circumstances were prohibitive. He quoted from the report of the Lambeth Conference of Anglican Bishops in London in 1930, to give guarded ap-

44. Palmer Papers, file 24, Examinations, vol. 6, pp. N 69-N 84, testimony of Mrs Hawkins.

45. See, for example, Rev. Summerhayes's testimony as reported in the *Toronto Star*, 4 November 1936.

46. *Ottawa Journal*, 24 October 1936, p. 7.

47. Palmer Papers, file 40, "Voluntary Parenthood", and "Official Statements of Churches and Religious Bodies on Birth Control".

48. *Ottawa Journal*, 24 October 1936, p. 7.

proval of the use of birth control.⁴⁹ The report endorsed birth control under circumstances of extreme ill health, poverty or in extenuating family circumstances such as an alcoholic husband or a feeble-minded partner, but it clearly conveyed the message that abstinence was still the ideal method of birth control.⁵⁰ The acceptance of this controversial resolution was a reluctant recognition of the impossibility, for most people, of attaining that ideal.

Reverend Roy Essex, director of the Memorial Institute, the Baptist Social and Welfare Settlement House in Toronto, testified that large families presented one of the greatest difficulties for social service work. Juvenile delinquency was traceable, he thought, to family crowding, where there are large families in poor circumstances. In his experience, he said, "where the number of children ran from 6 to 10, the juvenile delinquency rate was the highest, especially among the foreign element." He had not been impressed with the mentality of the witnesses from Eastview who had testified. They seemed to him like good candidates for birth control.⁵¹ Reverend John Coburn of the United Church testified that in his experience of social work in the slums he had found a real need for birth control. "Every child had the right to come into the world wanted", he said.⁵²

Reverend Maurice Zeidman, a worker in the Scott Institute in Toronto, enthusiastically endorsed birth control and condemned the idealism of the Lambeth Conference resolution on birth control for its cautiousness. Those gentlemen, he said, are up in the clouds. "If they had to deal with the problems I have, on the ground, they would take a more practical view."⁵³

Reverend Dr C. E. Silcox of Toronto, the general secretary of the Social Service Council of Canada, was perhaps the most comprehensive of all, suggesting that birth control would reduce infant and maternal mortality, promote infant and maternal health, prevent abortions, reduce prostitution, reduce the spread of venereal disease, promote mental and physical health, marital happiness and economic equality, reduce taxation, improve the quality of the race, reduce inter-cultural friction, improve the standard of living and reduce unemployment.⁵⁴

There also seems to have been a general re-evaluation of the traditional Christian view of sexuality since many of these clergymen no longer justified sexual relations solely in terms of procreation. The Protestant churches were slowly coming to view sexuality as a creative expression of marital love and to see it as having a legitimate, though subordinate function, to that of procreation.

What all of these clergymen had in common was a social-service commitment in the tradition of the social gospel. Their support of birth

49. *Toronto Star*, 4 November 1936, p. 1.

50. Palmer Papers, file 40, "Moral Aspects of Birth Control: Some Recent Pronouncements of Religious Bodies".

51. *Toronto Star*, 6 November 1936, p. 14.

52. *The Eastview Case*, pp. 8-9.

53. *Ibid.*, p. 10.

54. *Ibid.*, p. 7.

control was motivated by work with the poor and was accompanied by a strong commitment to family values. Most said they were recent converts to birth control.

This social gospel support for birth control, however, was by no means the dominant view among Christians or even Protestants. Many Christians at this time would have adopted the view of Rev. Whalley, a witness for the prosecution who saw birth control as perverting the true function of marriage. Rev. Whalley, canon of St Alban's Anglican Church in Ottawa, read from the Book of Common Prayer of the Church of England in support of his assertion that birth control was contrary to the whole spirit of the marriage service: "It seems rather a farce for people to pray that they will be fruitful in the procreation of children and then use artificial means to prevent it". He condemned the Lambeth Conference's recent endorsement, stating that birth control would promote immorality.⁵⁵

The Catholic church was not formally represented at the trial. The prosecution did not want to lend credibility to the defence's aggressive and somewhat arrogant assertion that opposition to birth control was merely an obsession of the Roman Catholic church, and that prosecution of Palmer was a Catholic attempt to force its canon law on the state.⁵⁶ The defence exploited Protestant prejudice against the alleged superstition and backward traditionalism of the Catholic church, even to the point of forcing the prosecution into a defensive position.

Because of that anti-Catholic tactic, Crown prosecutor Mercier limited his argument to non-religious issues, calling mostly medical witnesses. But the medical case against birth control was fairly weak and merely repeated moral, religious or political objections. The prosecution called no witnesses to argue sociological or economic factors and Mercier's case was doomed. Rather than stressing the wider social issue of birth control, Mercier stuck to the Eastview case and dwelt upon Palmer's "excesses" by pointing out her rushed and abrupt approach and her lack of communication skills. He also insisted that she was motivated by the \$1.00 commission per approved application rather than by any commitment to serve women.⁵⁷ According to Mercier, the "peddling" of birth control in a Catholic town was an invasion of privacy and indicated disrespect for the faith of its inhabitants.

The Ottawa newspaper, *Le Droit*, was more emphatic and described the trial as a Toronto-based plot to choke off the French-Canadian race at the womb.⁵⁸ This was more than empty rhetoric. The anti-Catholic and anti-French sentiment that emerged from the trial was often stark. The local feeling of resentment against the Toronto "experts" was strong. Even the Protestant Rev. Whalley said "they do strange things in Toronto".⁵⁹ If anyone was justified in sniffing a plot it was the French Catho-

55. *Ottawa Journal*, 11 December 1936, p. 2.

56. *The Eastview Case*, p. 17.

57. *Ottawa Journal*, 11 February 1936, p. 12.

58. STEPHENSON, "Birth Control Trial", p. 23.

59. *The Eastview Case*, p. 16.

lics of Eastview and vicinity who were suddenly being told by English-Canadian Protestants that their fertility must now be controlled "for the public good". There was a strong suspicion that the trial was actually a move by English-Canadian birth control propagandists to impose fertility control on French Canadians for political reasons.

The Catholic church opposed birth control because it allowed the separation of sexuality from procreation and that, according to the Church, was immoral and unnatural. Catholics, even in English Canada, portrayed birth control advocates as decadent and hedonistic.⁶⁰

The views of doctors on birth control were quite ambivalent. Four of the five expert medical witnesses testified for the Crown and condemned the practice of birth control, although several agreed with it on principle and all insisted on a medical monopoly over the practice. Dr Léon Gérin-Lajoie, a witness for the prosecution and professor of gynaecology at the University of Montreal, gave his medical opinion against birth control, saying that in no case was contraception desirable, but if it must be used it should be administered by a doctor. He also felt that the public was being given too much free medical information;⁶¹ no doubt the Parents' Information Bureau pamphlet fell into this category. He would prescribe only the rhythm method.⁶² Under cross-examination it became clear that his opposition to birth control was not based on medical knowledge, but on religious faith and that his knowledge of contraception was extremely limited.

Dr Ernest Couture, an Ottawa obstetrician and gynaecologist testified for the Crown that, although he was a Roman Catholic, his opposition to birth control was biological. Control of the organs of the body, he stated, was above man's laws and attempts to change them would result in pathological conditions. "Such pathological conditions would also result if the rhythm method were resorted to for long periods of time".⁶³ Like Gérin-Lajoie and others, Couture was forced to admit that he knew little about contraceptives and that there were motivations other than medical behind his insistence on the rhythm method as the only reasonable method of contraception.

Dr Cargill and Dr De Haitre, both Ottawa physicians, testified that they approved of the principle of contraception for reasons of health but stressed that contraception must be practised only under medical supervision. Both agreed that the spacing of children was beneficial to the mother's health and that artificial contraception was more effective than the rhythm method.⁶⁴

60. "Herrings and Tricks", *London Catholic Record*, 27 March 1937, and "For a Legion of Decency", *L'Unité* (Montreal), 21 March 1937, as translated and quoted in *The Eastview Case*, pp. 23, 25. See also "A Report on Devilry", *The Catholic Register* (Toronto), 3 November 1938, p. 4.

61. *The Eastview Case*, p. 14.

62. *Toronto Star*, 8 December 1936, p. 2.

63. *Ibid.*, 10 December 1936, p. 19.

64. *Ottawa Journal*, 10 December 1936, p. 17, and 11 December 1936, p. 2.

Most of the doctors, as the defence was able to demonstrate, knew little about contraceptive techniques; contraception was not taught in medical schools and most doctors were either indifferent or hostile to it. Their ignorance did little to substantiate their claim to the right to monopolize contraceptive information, and in fact it may have been the threat of having some para-medical group take over the control of contraceptive technology which ultimately prompted the medical profession to accept it at a later date.

Dr William Scott, professor of obstetrics and gynaecology at the University of Toronto, gave birth control the medical seal of approval, stating that the spacing of children was best for the health of mothers and their children. He was sincerely concerned about infant and maternal mortality, as well as about the deaths caused by self-induced or illegal abortions.⁶⁵ The possibility that birth control could be used by women to choose *not* to become mothers was not seriously considered by birth control advocates. Dr Scott even suggested that, through the innate love of mothers for children, birth control would not even cause the birth rate to drop. He claimed that if a couple were to use contraceptives continually, they would feel a sense of frustration because they would have no children.⁶⁶ Some doctors stated this belief more strongly, warning against severe nervous disorder as a result of avoiding parenthood.⁶⁷

When birth control was endorsed by doctors, it was only to be used to "space children" in order to ensure the good health of a mother, not to give women a choice regarding motherhood. In fact, even whole-hearted supporters felt birth control was justified only after a woman had a certain number of children. In the Hamilton clinic, for example, only married women with two children were given birth control;⁶⁸ and considerable scandal resulted from discovering one unmarried woman among the birth control recipients of Eastview.

Another group which was represented at the trial can be loosely termed social workers or social reformers. These people included a sociologist, philanthropists and volunteers. The social workers' acceptance of birth control seems to be less qualified than the conservative medical profession's. Like the Protestant social gospellers (in fact there is considerable crossover between the two groups), their advocacy of birth control stemmed from a faith in its ameliorative effect on poverty and social unrest. Dr Silcox who saw himself primarily as a sociologist is a good example of this group.

Rev. Dr C. E. Silcox took up three days of the trial with his controversial testimony and seems to have been the defence's star witness. He

65. There seems to have been general concern over the infant and maternal mortality rate in the 1930s. Both Dr Couture and Dr Scott (a defence witness) were involved in a Dominion Council of Health committee studying the matter. See Public Archives of Ontario, RG 10, 15-A, "Dominion Council of Health—Maternal Mortality, 1936-1938".

66. *Toronto Star*, 4 November 1936, p. 1.

67. See MACMURCHY, *Sterilization? Birth Control?*, pp. 113-28.

68. Will interview cited in n. 12.

contended that the "only alternative to birth control was the acceptance of communism or socialism".⁶⁹ There were too many people bringing children into the world whom they could not support and the state had to take on the burden. There were more unskilled labourers than the economy needed, and most workers could not afford to retrain themselves. "Children in large families didn't get the same economic opportunities."⁷⁰ Silcox was echoing a common theme of the birth control movement: the neo-malthusian doctrine that poverty is caused by wrecklessly fecund workers who reproduce without thought of providing for their offspring. Silcox suggested that birth control for the poor would help eliminate the problem.

Reverend Silcox also contended that birth control would eliminate racial tensions between the English and French. He made reference to the "extraordinary fecundity" of French Canadians; there was a suspicion, he claimed, that "the French were deliberately trying to outbreed the English, even though doing so would lower the standard of living".⁷¹ Birth control would remove that suspicion and improve French-English relations. Silcox believed that the English were already using birth control while the French were not. Presumably as long as English Canadians continued to do so they must convince the French to control their fertility. Otherwise the English would no longer dominate. At the same time Silcox admitted that he would resent someone coming into his home advocating views of which he did not approve but he thought he would have a more open mind than a Catholic, because his religion permitted him to decide on the basis of conscience rather than simply obey set-down rules.⁷²

The one economist who testified at the trial concurred with the social theories expressed by Dr Silcox and others that large families caused poverty and that birth control could alleviate the problem. D. R. Kemp, an economics professor from the University of Toronto, supported Silcox's testimony with figures from the Eastview Relief Officer which illustrated the relationship between poverty and large (and French) families.⁷³ The relief figures were broken down between French and English but in fact the relationship between being French and being poor was not great. While over 70 percent of the population of Eastview was French, roughly the same proportion of families on relief was of French origin.⁷⁴

Kemp attempted to show the correlation between poverty and large families by emphasizing the predominance of large families in the group that was on relief. 752 children were dependent on relief; approximately one-half of the families on relief had an average of 5.5 children and the population was growing, he said.⁷⁵ He even had a chart detailing the relief

69. *Toronto Star*, 29 October 1936, p. 17.

70. *Ibid.*

71. *Ottawa Journal*, 29 October 1936, p. 17.

72. *Toronto Star*, 29 October 1936, p. 1.

73. Palmer Papers, file 22, Examinations, vol. 4, pp. F 232-F 290, testimony of D. R. Kemp.

74. *Ibid.*, file 28, Exhibit 89B.

75. *Ibid.*, file 22, Examinations, vol. 4, p. F 242.

families who were still fecund. Kemp testified that there were three families with 13 members, one with 12, three with 11, six with 10 and ten with 9 members. Yet he failed to point out that the average family size from the figures presented (5.1) was not much higher than the national average (4.7) in 1937.⁷⁶

Kemp also pointed out that 17.6 percent of the population of Eastview was on relief (compared with 10 percent of Canada as a whole), and that the town could contribute only \$5,000 of its \$130,000 annual relief bill. "If the people of Eastview continued to have more children than they could afford to support", Kemp continued, "this would mean the burden would have to be carried in the form of higher taxes by the rest of the community". When Crown prosecutor Mercier asked Kemp if he knew of other methods besides birth control to alleviate the conditions alleged to exist in Eastview, Kemp answered that "where the evil existed of an excessively rapid production of children whose parents were poor or on relief, birth control was the best method."⁷⁷ He expressed confidence that the government was doing everything it possibly could to deal with the present economic crisis.⁷⁸ He also pointed to the high infant mortality rate in Eastview, and said that evidence indicated a close relationship between a high birth rate and high infant mortality. Birth control would help alleviate this severe health problem.⁷⁹

Dr William Hutton, Brantford Medical Officer of Health, and president of the Eugenics Society of Canada, provided ample statistics to prove his contention that the average national intelligence was deteriorating because less intelligent people were reproducing at a faster rate than their more intelligent compatriots. His rather crude surveys consisted of examining the family sizes of university students compared with those of inmates of Ontario hospitals for the feeble-minded. He found that the students came from small families, while the inmates came from larger families, although in fact the difference was not large. Hutton cited another of his own studies in which he used the Toronto police force as a group which he felt possessed both physical vigour and intelligence, and found that they indeed had smaller families.⁸⁰ Hutton concluded that "birth control is common among the higher classes of intelligence, and that can lead to a lowering of general average intelligence unless the same information on birth control be given to the poorer classes."⁸¹

Dr George Chisholm, a psychiatrist and psychologist from the University of Toronto, testified that a biological crisis faced Canada because people of the lowest intelligence usually have the largest families and many of their children have a "low degree of mentality".⁸²

76. *Ibid.*, file 28, Exhibit 89B; CANADA, STATISTICS CANADA, *Canada's Population* (Ottawa: Statistics Canada, 1979), chart 4.

77. *Toronto Star*, 3 November 1936, p. 1.

78. Palmer Papers, file 22, Examinations, Vol. 4, p. F 272.

79. *Ibid.*, p. F 251.

80. *Toronto Star*, 5 November 1936, p. 12.

81. *Ibid.*

82. *Ibid.*, 6 November 1936, p. 1.

Kaufman himself testified at the trial, but not as an "expert". He merely described the work of the Parents' Information Bureau and continually stressed the philanthropic nature of his work. Elsewhere, however, Kaufman detailed his eugenic interest in birth control as well as his desire to alleviate poverty and forestall related social unrest:

We must choose between birth control and revolution. We are raising too large a percentage of the dependent class and I do not blame them if they steal and fight before they starve. I fear that their opportunity will not be so long deferred as some day the governments are going to lack the cash and perhaps the patience to keep so many people on relief. Many of these people are not willing to work but I do not criticize them too harshly for their lack of ambition when they are the offspring of parents no better than themselves.⁸³

Kaufman was in fact a member of, and contributor to, the Eugenics Society of Canada.

Eugenics was a fairly popular middle-class notion both before and during the 1930s. In its finer form, the notion entailed improvement of the human race through the breeding out of certain ailments and deficiencies such as mental retardation and inheritable diseases. However, as we can see from the above testimonies, eugenics easily degenerated into racism and class warfare, as one group attempted to improve the race at the expense of another.

J. W. Buckley, secretary of the Toronto District Labour Council, was the only witness to testify on behalf of labour and the weakness of his endorsement of birth control may reflect the middle-class nature of the birth control movement. He testified that Canada's surplus population could not be absorbed in industry and this caused unemployment. He endorsed birth control but admitted that labour had not been well informed on the issue. He also said that Canada could maintain a population of 200 million under better conditions, but "not under the present system". When asked by Mercier which he would prefer, birth control or better economic conditions, he replied "both".⁸⁴ While the other witnesses seemed eager, willing and well-informed advocates of birth control, Buckley seemed hesitant and ill-informed, and one is left with the impression that the defence called upon him at the last minute and persuaded him of the importance of birth control in order to have a voice from labour.

The ambivalence of the left's position on birth control has been dealt with in a recent article by Angus McLaren.⁸⁵ While the Canadian left did take a position on birth control prior to the 1930s, that position ranged from an uneasy support for birth control as a means of restricting labour supply and thus enhancing labour's bargaining position, to a largely unqualified support for birth control by women within the labour movement, to its later position of opposing birth control. That opposition seems to

83. Alvin R. Kaufman, as quoted in READ, *Private Vice to Public Virtue*, p. 219.

84. *Ottawa Journal*, 5 November 1936, p. 18.

85. Angus McLAREN, "'What Has This To Do With Working Class Women?' Birth Control and the Canadian Left, 1900-1939", *Histoire sociale—Social History*, XIV (November 1981): 435-54.

have stemmed from the endorsement of birth control by middle-class reformers who sought to use birth control as a means of forestalling economic reform by ameliorating unemployment and poverty.

We can see from the evidence that there was a wide divergence of opinion on birth control. The housewives who took advantage of the birth control information Palmer distributed clearly recognized birth control's potential to relieve them of the burdens of uncontrolled reproduction and they were largely indifferent to the moral issue which so concerned their "social superiors". Dorothea Palmer professed a feminist view of birth control, claiming that women should control their reproductive destiny. Even the middle-class women philanthropists and reformers—Mrs Hawkins of the Hamilton clinic, Dr Batt of the Toronto Clinic, and Miss Weber, R.N. and director of the Parents' Information Bureau—stressed the right of women to control their childbearing function. It is here, among the women of the birth control movement, that we see a feminist motivation for the dissemination of birth control information. When we look at the male "experts" who testified we do not find that type of motivation; at the upper level of the movement social, economic and eugenic factors are stressed and the tendency was to uphold traditional family values rather than attempt to subvert them.

The clergymen who testified on behalf of birth control were largely of the "social gospel" variety, stressing service to the community and a commitment to Christian values. Their endorsement of birth control was motivated by a concern for the effects of poverty on the family. If birth control would reduce infant and maternal mortality and juvenile delinquency, and generally keep families happy, healthy and in one piece, then they were prepared to endorse it. They also tended to put qualifications on its use out of fear that it might lead to promiscuity.

The doctor who supported birth control did so for many of the same reasons, above all a concern for family health and stability. But he stressed qualifications which would keep it out of the hands of such undeserving people as the unmarried and couples with no children. Considerable ambivalence was seen in the many doctors who opposed birth control, as they seemed to insist on a medical monopoly even though hostility and indifference to birth control in the profession led most doctors to be entirely ignorant of contraceptive technology.

Social workers and reformers supported birth control for a number of reasons. In addition to those advanced by doctors and clergy, their support was based on an analysis of the causes of poverty. They continually stressed the relationship between poverty and large families, implicitly if not explicitly expressing the view that the excessive fertility of the poor and marginal groups caused all their hardships. With such notions, the reformers could easily sidestep criticism of the prevailing economic system. Birth control was to save the poor from themselves and incidentally would reduce taxes for the middle class.

The eugenists had a similar view, in that they chose to blame the individual for social problems. Individuals who were diseased, mentally

deficient, alcoholic, criminal or insane were accused of excessive reproduction which in turn led to increased social unrest. This doctrine also served to dispel criticism of the economic system. If the number of insane, deficient, and criminal elements seemed to be increasing in the 1930s, it was probably due to the pressures of poverty, unemployment and dislocation and not the excessive fertility of marginal people. The association of poverty with disease and mental deficiency is also apparent in these doctrines. Birth control and sterilization provided a means of combatting poverty and social unrest while leaving social inequality untouched.

It would seem that these economic and eugenic arguments in favour of birth control carried the day. It was necessary, of course, to modify the endorsement of birth control by stressing its pro-family aspects and downplaying its potential to liberate women. On 17 March 1937 the decision in the Palmer case was read. The charge against Dorothea Palmer was dismissed; the defence had successfully proven that the public good was served by Palmer's acts. In his statement Magistrate Clayton made reference to the economic conditions in Eastview,

where 1,000 out of a population of 4,000 are on relief and where the Province of Ontario has to provide \$125,000 out of \$130,000 annual relief bill . . . An examination of birth statistics reveals that the poorer classes are generally breeding large families. Several of the witnesses in this case had 9 or 10 children and were 30-35 years old, husbands on relief or on small salaries. What chance had these children to be properly fed, clothed and educated? They are a burden to the taxpayer. They crowd the Juvenile Court. They glut the competitive labour market.⁸⁶

Clayton noted in his judgement that this particular case presented "an opportunity for the Courts of law to keep abreast of the social developments of the community, and to break away from the criticism that the law is rigid and at times obsolete".⁸⁷ His judgement consciously reflected the birth control movement's preoccupation with the economic and social benefits of birth control.

86. "Rex vs. Palmer", *Dominion Law Reports*, 17 March 1937, p. 616.

87. *Ibid.*, p. 618.