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### Birth Control Legislation

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## *Birth Control Legislation*

*Jack H. Hudson\**

ONE OF THE MOST CONTROVERSIAL SUBJECTS of the day is the so-called population explosion. Because of the moral, political, and economic connotations of the subject, almost every person is aware of the problem and its social significance. Religious denominations have expressed or reaffirmed their policy on birth control,<sup>1</sup> presidential candidates have been questioned as to their views on the dissemination of birth control information and devices,<sup>2</sup> and sociologists have expressed the opinion that raising of living standards will be virtually impossible if the world's population continues to grow at the present rate.<sup>3</sup> Whatever the solutions proposed, and they differ greatly, there is complete agreement that a difficult, perhaps even dangerous, problem exists; for every twenty-four hours the population of the world increases by 150,000.<sup>4</sup>

Ironically enough, medical science is primarily responsible for this huge increase; the same science that accepts contraception as proper medical practice. Control of infectious diseases in backward countries by the use of sulfa drugs, antibiotics, and insecticides has cut death rates to approximately 10 per 1,000 population per year, while most of these same underdeveloped countries have birth rates of more than 40 per thousand per year.<sup>5</sup>

### **Historical Background**

In view of all the controversy generated by the current birth control issue, it is interesting to review the history of the birth control movement and the present status of the laws governing the distribution and use of contraceptives in the United States.

The birth control movement had its beginnings in the writings of T. R. Malthus, a British minister and economist, whose principal thesis was:

The power of population is indefinitely greater than the power of the earth to produce subsistence for man.

Malthus calculated that unchecked human population tended to double every twenty-five years in a geometric ratio, while

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<sup>1</sup> U. S. News and World Report, September 5, 1958.

<sup>2</sup> Newsweek, December 7, 1959.

<sup>3</sup> Hauser, speech before The American Association for Advancement of Science, December 27, 1959.

<sup>4</sup> Newsweek, December 14, 1959.

<sup>5</sup> Notestein, Poverty and Population, Atlantic Monthly, November, 1959.

food production could increase in only an arithmetic ratio. In other words, there is a population increase by multiplication—1, 2, 4, 8, 16, 32, etc., . . . against a corresponding increase in food production, by addition—1, 2, 3, 4, 5, 6, . . .<sup>6</sup> The results of such a situation, if correctly predicted, were obvious. Malthus and his followers advocated moral restraint or late marriage to resolve the situation. His contemporaries realized that more effective means of contraception must be found than moral restraint and coitus interruptus. When Goodyear discovered the vulcanization process for rubber, the invention of satisfactory instruments and devices for contraception became a possibility.

Malthusian Leagues gained momentum in England when in 1877 the *Bradlaugh-Besant*<sup>7</sup> decision went far toward making legal the free distribution of contraceptive information. Thus, the birth control movement had its beginnings in a Malthusian climate of opinion.

Yet, a couple practicing planned parenthood is hardly thinking in terms of the Malthusian Theory, but rather in terms of their own situation. Therefore, the material disseminated by birth control advocates emphasizes the health and convenience of planned parenthood, rather than the more general social considerations that Malthus advanced.<sup>8</sup>

### Present Legal Status

Unfortunately, American advocates of birth control were not to enjoy the same legal climate for the dissemination of contraceptive information or devices as their British cousins.

The Federal Comstock Law of 1873 was the result of a crusade by Anthony Comstock, militant head of the Society for Suppression of Vice. This law classified contraception and obscenity together. The bill made it criminal to import, mail, or transport in interstate commerce obscene literature and objects of immoral use, including any article or medicine for prevention of conception or for causing abortion.<sup>9</sup>

Many states followed suit and passed statutes very similar to the federal Comstock Laws. All except Massachusetts and Connecticut,<sup>10</sup> however, made a statutory exception for physicians and pharmacists in the practice of their professions. In New York<sup>11</sup> exception was made to permit physicians to give advice or use articles or instruments for the cure or prevention of disease.

<sup>6</sup> Malthus, *An Essay on the Principle of Population as it Affects the Future Improvement of Society*, (1798).

<sup>7</sup> 3 Law Reports, Queen's Bench Div. p. 509 (1877).

<sup>8</sup> Bates, *The Prevalence of People*, 105 (1955).

<sup>9</sup> 17 Stat. 599 (1873), 18 U. S. C. A. Sec. 334 (1927).

<sup>10</sup> Conn. Gen. Stat. (1930) Sec. 6246; Mass. G. L. (Ter. Ed.) c. 272, Sec. 21.

<sup>11</sup> N. Y. Penal Law, Sec. 1142.

In 1912 Margaret Sanger, a nurse and social worker in poorer sections of New York City, injected her personality into the birth control issue. She was convinced, after seeing the misery and poverty of large families in these sections, that something should be done about bringing contraceptive information to these mothers. In 1916 she opened a birth control clinic in the Brownsville section of Brooklyn. This clinic was closed by the authorities, and the case ended in her conviction, as she was not a licensed physician. The result, however, was actually a victory for birth control advocates. The Court of Appeals, the highest court of the State of New York, placed such a broad definition on the word "disease" in the statute, that physicians could prescribe contraceptives with impunity and with little fear of criminal prosecution.<sup>12</sup> In fact, the leeway given the physician is so broadly interpreted by the medical profession of that state, that at one of New York City's private hospitals all recently-delivered mothers are offered contraceptives.<sup>13</sup> However, due to a recent ruling by the hospital commissioner, New York City's public hospitals do not provide birth control information or devices, even when those are prescribed by a physician to save a woman's life. This issue, fraught with many social and political undertones, has elicited much comment, pro and con, from interested groups, but has yet to be resolved.<sup>14</sup>

The most famous or infamous, depending upon the viewpoint, cases on the subject of birth-control have occurred in Connecticut and Massachusetts.

In Massachusetts, in 1938, a physician, who had admittedly prescribed contraceptive devices to his patients, relied on the *Sanger* case. The Massachusetts Supreme Court held, first: the law was constitutional, under the police powers of the state to control the morals of its people; and second: that it was not within the court's judicial prerogative to read an exception into the statute.<sup>15</sup>

Two years later, in 1940, this same Massachusetts Court held, that where an appliance, in this case a sheath type rubber condom, had the dual capacity of being a contraceptive and at the same time preventing venereal disease, the prosecution must show that the seller is aware that the buyer intends to use the device for a contraceptive purpose. In this case the item the pharmacist sold was marked, "sold for the prevention of disease," and the inspector who made the purchase made no statement to the pharmacist of the intended usage.<sup>16</sup> It would appear that the Court thus did read an exception into the statute.

As a result of these decisions the rubber diaphragm with

<sup>12</sup> *People v. Sanger*, 222 N. Y. 192, 118 N. E. 637 (1918).

<sup>13</sup> *Consumer Reports*, August 1958.

<sup>14</sup> *U. S. News and World Report*, August 22, 1958.

<sup>15</sup> *Commonwealth v. Gardner*, 300 Mass. 372, 15 N.E. 2d 222 (1938).

<sup>16</sup> *Commonwealth v. Corbett*, 307 Mass. 7, 29 N.E. 2d 151 (1940).

cream and jelly, which is accepted by physicians as the best contraceptive method, is illegal, since it does not possess the properties of preventing venereal disease.<sup>17</sup> This results in the incongruity that any married couple practicing birth control in the State of Massachusetts cannot legally seek the advice of their physician, but must depend on their pharmacist to supply an inferior device under the subterfuge of preventing disease.

It is interesting to note, in passing, that in spite of these laws against contraception and the fact that forty per cent of the population of Massachusetts is Catholic, the birth rate of Massachusetts for the years 1936-1940 was 14.7 per 1,000 while the national average for the same period was 17.3 per 1,000.<sup>18</sup>

The Connecticut Statute on contraception is unique inasmuch as it prohibits the use of any contraceptive device, and prosecutes physicians as accessories to the crime of use.<sup>19</sup> In one case, a Protestant physician had prescribed a contraceptive device for a Protestant patient, the physician's defense being that the statute interferes with the free exercise of conscience and pursuit of happiness. The court answered, in upholding his conviction, that a like claim could be made for the statutes against fornication and adultery.<sup>20</sup>

It is inconceivable that a married couple, having sought and practiced the advice of their physician, such advice being acceptable to their religious belief, would be classified in any respect with fornicators or adulterers. Yet this is the construction placed upon the Connecticut Statutes by the courts.

In Massachusetts, birth control advocates have twice forced a referendum on amending the statutes. On both occasions, in 1942 and in 1948, after bitter campaigns in which the Protestant and Catholic Churches aligned themselves against each other, the referendum lost in a vote of the electorate by approximately a 7 to 5 margin. Catholics do not feel that they can afford to let the anti-birth control laws pass from the books without seeming to approve contraception, and as long as they are on the books Protestants regard them as a symbol of Catholic dominance.<sup>21</sup>

Although the issues have never been properly presented to the United States Supreme Court, so that the issue of the constitutionality of the Connecticut and Massachusetts states could not be considered, federal courts have consistently acted to liberalize the federal Law on the subject. In 1930, the Court of Appeals of the Second Circuit implied that the law could be invoked only against the import of contraceptives "for illegal contraception," and could not prevent their "proper medical use."<sup>22</sup> In 1933, the Sixth Circuit Court of Appeals held a trial court in error for

<sup>17</sup> Rock and Loth, *Voluntary Parenthood*, 48 (1949).

<sup>18</sup> Sax, *Standing Room Only*, 184 (1955).

<sup>19</sup> Conn. Gen. Stat. (1930) Sec. 6246.

<sup>20</sup> *State v. Nelson*, 126 Conn. 412, 11 A. 2d 582 (1942).

<sup>21</sup> *Cogley, Controversy in Connecticut*, 67 *The Commonwealth*, No. 26 (1948).

<sup>22</sup> *Young's Rubber Co. v. Lee & Co.*, 45 F. 2d 103 (C. C. A. 2d, 1930).

refusing to admit evidence tending to show good faith and absence of criminal intent, where a pharmacist received and stocked contraceptive devices to supply the medical profession.<sup>23</sup> Any restrictions the statute imposed upon duly licensed medical practitioners in the practice of their profession were swept away when the Second Circuit Court of Appeals literally defined 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."<sup>24</sup>

The best known United States Supreme Court case, involving a physician's right to disseminate contraceptive advice or prescribed contraceptive devices to his patients, originated in Connecticut in 1942. A courageous doctor brought an action for a declaratory judgment to determine if a licensed physician was not excepted from the prohibition of the statute, where another pregnancy would likely result in the death of the mother. The Connecticut Supreme Court, by a vote of 3 to 2, held that the law was constitutional, under police powers of a state to control the morals of its people. After determining that it was constitutional, they reasoned that the legislative intent was to exclude everyone, not excepting physicians. The court came to this conclusion because there were no statutory provisions for a physician prescribing or a pharmacist distributing contraceptive devices. Therefore, the court stated, the legislature inferred that sexual abstinence could be practiced where life was endangered.<sup>25</sup> Upon appeal, the Supreme Court of the United States dismissed the case on the ground that the appellant physician had no standing in the court to litigate the constitutional question of whether or not the Connecticut Statute was in derogation of the Fourteenth Amendment. If there was a deprivation of life it was obviously not the physician's life but the patient's.<sup>26</sup>

A pharmacist's sole right to distribute contraceptives was tested in New Jersey by a vending machine owner who located his machine in men's toilet rooms of service stations. The rubber condoms dispensed were labeled—"for prevention of disease." Defendant argued that the article had two uses, prevention of disease, and contraception. The Superior Court of New Jersey held that the words of the statute were "designed for prevention of conception"<sup>27</sup> and not designed exclusively for that purpose. The vendor was convicted.<sup>28</sup>

<sup>23</sup> Davis v. U. S., 62 F. 2d 473 (C. C. A. 6th., 1933).

<sup>24</sup> United States v. One Package, 86 F. 2d 737, (C. C. A. 2d, 1936).

<sup>25</sup> Tileston v. Ullman, 129 Conn. 84, 26 A. 2d 582 (1942).

<sup>26</sup> Tileston v. Ullman, 318 U. S. 44, 63 Sup. Ct. 493 (1943).

<sup>27</sup> N. J. S. 2A: 170-76, N. J. S. A.

<sup>28</sup> State v. Tracy, 29 N. J. Super. 145, 102 A. 2d 52 (1953).

TABLE I. STATUTES GOVERNING ABORTION

State	Abortion		Soliciting Abortion		Advertising Abor. or Abortifacient		Sale of Abortifacient	
	Statute	Penalty	Statute	Penalty	Statute	Penalty	Statute	Penalty
Ala.	Tit. 14, § 9	\$500, 2-5 years						
Alaska	§ 65-4-6	1-20 years						
Ariz.	§ 13-211	2-5 years	§ 13-212	1-5 years	§ 13-213	\$300, 6 months		
Ark.	§ 41-301 <sup>a</sup>	\$1000, 1-5 years			§ 41-302	\$1000, 6-12 months		
Calif.	§ 41-2224 <sup>b</sup>	2-7 years						
	P. C. 274	2-5 years	P. C. 275	1-5 years	B. P. 601	6 months-5 years or fine 6-12 months plus		
Colo.	§ 40-2-23	\$1000, 3 years			§ 40-9-17	\$100-2000, 1-12 months	§§ 66-3-65 through 66-3-67	\$25-100
Conn.	§ 53-29	10 years-life, or death						
Del.	§ 11, § 301	\$1000, 5 years	§ 53-30	\$500, 2 years	§ 53-31	\$500, 1 year		
Ill.	§ 22-201	\$100-500, 1-5 years			11, § 302	\$50-200, 1 year		
Ind.	§ 22-201 <sup>d</sup>	5 years						
	§ 797.01	3-20 years			§ 797.02	\$1000, 1 year		
Iowa	§ 782.10 <sup>d</sup>	\$1000, 7 years						
		20 years or \$5000, 1 year						
Ga.	§ 26-1101 <sup>e</sup>	2-10 years						
Hawaii	§ 26-1102 <sup>f</sup>	\$1000, 6-12 months			C. 155, § 73 <sup>h</sup>	\$50-250		
	C. 309, § 3	\$1000, 5 years						
Idaho	C. 309, § 3 <sup>g</sup>	\$500, 2 years	§ 18-602	1-5 years	§ 16-603	\$500, 5 years		
Ill.	§ 18-601	2-5 years			C. 38, § 6	\$1000, 1-3 years	Ch. 38, §§ 4-5	\$50-200, 30 days to 6 months
	Ch. 38, § 3	1-10 years						
	Ch. 38, § 3 <sup>c</sup>	14 years to life, or death	§ 10-106	\$10-500, 30 days- 1 year	§ 10-2806	\$5-500, 10 days- 6 months	§ 10-2803	\$10-500, 10 days- 6 months
Ind.	§ 10-105	\$100-1000, 3-14 years					§ 10-2804 <sup>i</sup>	\$5-500, 10 days- 6 months
Iowa		\$1000, 5 years					§ 205.1-205.3	\$10-100, 30 days
Kan.	§ 701.1	5-21 years			§ 21-1102	\$5-300, 30 days	§ 21-1101	\$50-1000
	21-409 <sup>c</sup>	3-5 years						
	21-410 <sup>b</sup>	\$500, 1 year						
	21-437 <sup>a</sup>	\$500-1000,						
	436.020 <sup>a</sup>	1-10 years						
	436.030 <sup>b</sup>	2-21 years						
Ky.	§ 436.040 <sup>c</sup>	2-21, or life or death						

TABLE I. cont'd.

State	Abortion		Soliciting Abortion		Advertising Abor. or Abortifacient		Sale of Abortifacient	
	Statute	Penalty	Statute	Penalty	Statute	Penalty	Statute	Penalty
La.	§ 14.87	1-10 years			§ 14.88	\$200, 6 months	§ 14.88	\$500, 6 months
Me.	c. 134, § 9 <sup>a</sup>	\$1000, 1 year			c. 134, § 11	\$50-100, 3 months		
Mo.	c. 134, § 9 <sup>b</sup>	\$1000, 5 years						
Md.	Art. 27, § 3	\$500-1000			Art. 27, § 3	\$500-1000	Art. 27, § 3	\$500-1000
Mass.	C. 272, § 19 <sup>a</sup>	\$2000, 7 years			C. 272, § 20	\$1000, 3 years	C. 272, § 21	\$100-1000, 5 years
	C. 272, § 19 <sup>d</sup>	5-20 years			§ 28:205	\$100, 90 days	§ 28:229	\$100, 90 days
Mich.	§ 28:204	\$2000, 4 years			§§ 28:223-28:225	\$500, 1 year		
	§ 28:204 <sup>d</sup>	\$7500, 15 years			§ 617.25	\$500, 1 year		
Minn.	§ 612.18	4 years	§ 617.19	1-4 years			§ 617.20	\$1000, 7 years
							§ 617.26	\$100, 3 months
Miss.	§ 2222 <sup>b</sup>	\$500, 1 year or 2-20 years					§ 2289	\$25-200, 3 months
	§ 2223 <sup>c</sup>	1-10 years, life or death						
Mo.	§ 559.100 <sup>a</sup>	\$1000, 1 year or 3-5 years			§ 563.300	\$1000, 6 months		
	§ 509.090 <sup>b</sup>	2-10 years						
	§ 559.100 <sup>c</sup>	2-10 years						
Mont.	§ 94-401	2-5 years						
Nebr.	28-405 <sup>a</sup>	\$500, 1 year	§ 94-402	1-5 years	§ 94-3609	\$500, 6 months		
	28-404 <sup>b</sup>	1-10 years			§ 28-423	\$1000, 6 months		
Nev.	§ 201.120	5 years					§ 201.130	\$500-1000, 6-12 months
N. H.	§ 585:12 <sup>a</sup>	\$1000, 1 year						
	§ 585:13 <sup>b</sup>	\$1000, 10 years						
	§ 585:14 <sup>c</sup>	Life						
N. J.	2A:87-1 <sup>a</sup>	\$2000, 7 years						
	2A:87-1 <sup>d</sup>	\$5000, 15 years					§ 2A:170-76	\$1000, 1 year
N. M.	40-3-1	\$500-1000, 1-5 years						
	40-3-2 <sup>c</sup>	3 years-life						
N. Y.	P. C. 80	4 years	P. C. 81	1-4 years			P. C. 82	\$1000, 7 years
N. C.	§ 14-44 <sup>e</sup>	1-10 years						
	§ 14-45 <sup>f</sup>	1-5 years						
N. D.	§ 12-2501	3 years	§ 12-2504	\$1000, 1 year				
	§§ 12-2502-12-2503 <sup>d</sup>	5-15 years			§ 2905.33	\$1000, 6 months	§ 2905.32	\$1000, 6 months
	§ 2901.16 <sup>d</sup>	1-7 years					§ 2905.34	\$200-2000, 7 years
Ohio							§ 2905.36 <sup>i</sup>	\$50-1000, 1 year



TABLE I. cont'd.

State	Abortion		Soliciting Abortion		Advertising Abor. or Abortifacient		Sale of Abortifacient	
	Statute	Penalty	Statute	Penalty	Statute	Penalty	Statute	Penalty
Cal.	21, § 861	3 years	21, § 862	\$1000, 1 year				
Col.	§ 163.060 <sup>d</sup>	\$5000, 15 years						
Del.	Tit. 18, § 4718 <sup>a</sup>	\$3000, 5 years						
Fla.	Tit. 18, § 4719 <sup>d</sup>	\$6000, 10 years						
Ill.	T. 33, § 1081-1052 <sup>e</sup>	5-10 years; 10 years <sup>2</sup>	T. 33, § 1084	1-5 years	T. 33, § 1055	5 years	Tit. 18, § 4525	\$500, 1 year
Ind.	T. 33, § 1053 <sup>f</sup>	2-5 years						
Iowa	11-3-1	1-7 years						
Kan.	11-3-1 <sup>c</sup>	5-20 years			§ 11-3-4	\$1000, 2 years		
La.	16-82 <sup>d</sup>	5-20 years	§ 16-84	\$1000, 2 years				
Me.	16-83 <sup>a</sup>	\$5000, 5 years						
Md.	13.6101 <sup>a</sup>	1-3 years	§ 13.3102	\$1000, 1 year	§ 13.1508	\$25-100		
Mass.	13.2014 <sup>d</sup>	4 years						
Mich.	39-301 <sup>e</sup>	1-5 years						
Minn.	39-302 <sup>f</sup>	1-3 years						
Miss.	P. C. 1191-1192 <sup>b</sup>	2-5 years, without consent 4-10 years						
Mo.	P. C. 1193 <sup>a</sup>	\$100-1000						
Mont.	P. C. 1194 <sup>c</sup>	Life or death						
N.H.	76-2-1	2-10 years	§ 76.22	1-5 years				
N.J.	T. 13, § 101	3-10 years			T. 13, § 104	3-10 years	T. 13, § 104	\$200-500, 1-3 years
N.Y.	T. 13, § 101 <sup>c</sup>	5-20 years			§ 18-68	\$100-500, 1-12 months		
Pa.	18-8 <sup>a</sup>	5 years						
R.I.	18-68 <sup>b</sup>	3-10 years						
S.C.	9.02.010 <sup>a</sup>	5 years	9.02.020	\$1000, 5 years				
Tenn.	9.48.080 <sup>d</sup>	\$1000, 20 years						
Texas	5923 <sup>b</sup>	3-10 years						
Va.	5923 <sup>c</sup>	5-18 years						
Wash.	940.04 <sup>b</sup>	\$5000, 3 years			§ 131.15	\$100-500, 6 months	9.02.030 9.68.030	\$1000, 1 year \$250, 90 days
W. Va.	6-77 <sup>d</sup>	14 years	§ 6-78	\$500, 6 months	§§ 6-103-6-105	\$100, 6 months	§ 143.075	\$25-100
Wis.								
Wyo.								

<sup>a</sup> Attempt  
<sup>b</sup> Child dies  
<sup>c</sup> Mother dies  
<sup>d</sup> Either dies  
<sup>e</sup> Abortion

<sup>f</sup> Miscarriage  
<sup>g</sup> Women not pregnant  
<sup>h</sup> Outdoor advertisements  
<sup>i</sup> Mailing

**TABLE II. STATUTES REGULATING OBSCENE BOOKS, ETC.**

State	General Statute		Special Statutes		Special Coverage
	Statute	Penalty	Statute	Penalty	
Ala.	Tit. 14, § 373	\$50-1000	Tit. 14, § 374 Tit. 14, § 372	\$50-500 \$10-500, 1 year	Nude pictures display Posting or leaving prints, etc.
Alaska					
Ariz.	§ 13-532	\$300, 6 months			
Ark.	§ 41-2704	\$100-300; \$500- 1000 <sup>2</sup>	§§ 41- 2702- 2703 §§ 41- 2707- 2708	\$50 \$50-100	Exhibiting pictures  Possessing obscene items
Calif.	P. C. 311	\$5000, 6 months; 1-5 years <sup>2</sup>	B.P. 5290	\$500, 6 months	Displaying obscene items
Colo.	§ 40-9-17	\$100-2000, 1-12 months	§ 40-9-16 § 40-9-18	\$100-2000, 1-12 months \$20-2000, 1-12 months	Importing books, etc. Mailing books, etc.
Conn.	§ 53-243	\$1000, 2 years			
Del.	§§ 11- 711- 712	\$250-2500, 30 days- 3 years; \$500- 5000, 6 months- 5 years <sup>2</sup>			
D. C.	§ 22-2001	\$50-500, 1 year			
Fla.	§ 847.01	5 years or \$100, 1 year			
Ga.	§ 26-6301	\$1000, 6 months, or 15 years	§ 26-6305	\$1000, 6 months or 1-5 years	Transporting obscene items
Hawaii	C. 267, § 8	\$500, 6 months	C. 154, §§ 14-15	\$25-500, 1 month	Billboards
Idaho	§ 18-4101	\$300, 6 months			
Ill.	Ch. 38, § 468	\$100-1000, 6 months	Ch. 38, § 469	\$100-1000, 6 months	Mailing obscene items
Ind.	§ 10-2803	\$10-500, 10 days- 6 months	§ 10-2804 § 10-2805	\$5-500, 10 days- 6 months \$5-500, 10 days- 6 months	Mailing obscene items Selling pernicious books
Iowa	§ 725.4	\$1000, 1 year	§ 725.5 § 725.6	\$50-1000, 1 year \$50-1000, 1 year	Selling obscene items Mailing obscene items
Kan.	§§ 21- 1101- 1102	2-5 years	§ 21-1103 § 21-1105 § 21- 1115- 1118	2-5 years 2-5 years \$50, 30 days	Distributing pamphlets Selling obscene post cards Possessing obscene items
Ky.	§ 436.100	\$50-1000, 10 days- 1 year			
La.	§ 14:106	\$500, 2 years			
Me.	134, § 24	\$100-1000, 5 years			
Md.	Art. 27, § 418	\$200, 1 year	Art. 27, § 417	\$20-100, 10 days- 1 year	Publication of obscene items
Mass.	C. 272, § 28A	\$100-1000, 2 years	C. 272, § 28B	\$100-1000, 2 years	Selling obscene books
Mich.	§ 28:575	\$100, 90 days; \$500, 1 year; <sup>2</sup> \$2000, 4 years <sup>3</sup>			
Minn.	§ 617.24	\$100-500, 90 days			

TABLE II. cont'd.

State	General Statute		Special Statutes		Special Coverage
	Statute	Penalty	Statute	Penalty	
Miss.	§ 2288	\$500, 6 months	§ 2280	\$10-100, 30 days	Selling obscene magazines
			§ 2286	\$25-100, 60 days	Selling obscene movies
Mo.			§ 563.270	2-5 years	Selling obscene newspaper
			§ 563.280	\$50-1000, 1 year	Circulating obscene items
			§ 563.290	\$50-1000, 1 year	Mailing obscene items
Mont.			§§ 94-3601-3602	\$500, 6 months	Selling obscene literature to minors
			§ 94-3603	\$500, 6 months	Distributing obscene literature
Neb.	§ 28-921	\$50-1000, 1 year	§ 28-922	\$50-1000, 1 year	Mailing obscene items
			§ 28-924	\$50-500, 6 months	Selling obscene books
Nev.	§ 201.250	\$500, 6 months			
N. H.	§§ 571:14-19	\$300, 6 months			
N. J.	§ 2A:1152	\$1000, 3 years			
N. M.					
N. Y.	P. C. 1141	\$50-1000, 10 days-1 year	P. C. 1141-a	\$500, 1 year	Placing posters
N. C.	§ 14-189	Fine or county jail	§ 14-194	Fine or county jail	Mailing obscene items
N. D.	§ 12-2109	\$5-100, 30 days			
Ohio	§ 2905.34	\$200-2000, 7 years	§ 2905.36	\$50-1000, 1 year	Mailing obscene items
			§ 2905.38	\$25-100, 30-100 days	Delivering obscene items
			§ 2905.39	\$50-500; \$50-500, 30 days-6 mo. <sup>2</sup>	Posting obscene prints, etc.
Okla.	21, § 1021	\$10-1000, 30 days-10 years			
Ore.	§ 167.150	\$500, 6 months			
Pa.	§ 4527	\$500, 1 year	§ 4530	\$500, 1 year	Exhibiting obscene items
P. R.					
R. I.	§ 11-31-1	\$100-1000, 2 years			
S. C.	§§ 16-414-415	\$1000, 2 years			
S. D.	§ 39-3001	\$1000, 1 year			
Tenn.	P. C. 527	\$1000, 6 months	P. C. 526	\$100	Selling indecent publications
Texas					
Utah	§ 76-39-1	\$300, 6 months; \$1000 for violation by corporation			
Vt.	T. 13, § 2801	\$200, 1 year	T. 13 § 2802	\$200, 3 months	Posting posters
			T. 13 § 2803	\$200, 3 months	Showing movies
Va.	§ 18-113	\$500, 12 months			
Wash.	§ 9.60.010	\$1000, 1 year			
W. Va.	§ 6066	\$1000, 1 year			
Wis.	§ 944.21	\$5000, 5 years	§ 944.22	\$1000, 1 year	Possessing obscene items
Wyo.	§ 6-103	\$100, 6 months	§ 6-104	\$100, 6 months	Mailing obscene items

**TABLE III. STATUTES REGULATING SALE OF CONTRACEPTIVES**

State	Advertising		Selling		Section of Code
	Statute	Penalty	Statute	Penalty	
Ala.					
Alaska					
Ariz.	§ 13-213	\$300, 6 months			Criminal Code— Advertising Public Health & Safety Food and Drugs
Ark.*	§§ 82- 944- 946 <sup>a</sup>	\$200, 60 days	§§ 82- 947- 950	\$200, 6 days	
Calif.	B. P. 601	6 months-5 years or 6-12 months and fine			Healing Arts— Illegal Adv.
Colo.*			§ 40-9-17	\$100-2000, 1-12 months	Offenses against the Person
Conn.	§ 53-31	\$500, 1 year	§ 53-31	\$500, 1 year	Offenses against the Person
			§ 53-32 <sup>b</sup>	\$50, 60 days- 1 year	
Del.	16, § 2502	\$25-100	16, § 2501	\$25-100	Health and Safety
D. C.	§ 22-2001	\$50-500, 1 year	§ 22-2001	\$50-500, 1 year	Obscenity
Fla.					
Ga.					
Hawaii	C. 155, § 43	\$50-250	C 302A, §§ 1-3 <sup>c</sup>	\$100-500, 30-100 days	Crimes— Prophylactics
Idaho*	§ 18-603	\$300, 5 years	§§ 39- 801- 808 <sup>a</sup>	\$300, 6 months	Health and Safety
Ill.			Ch. 38, § 468	\$100-1000, 6 months	Criminal Code— Obscenity
			Ch. 38, § 469 <sup>d</sup>	\$100-1000, 6 months	
Ind.	§ 10-2806	\$5-500, 10 days- 6 months	§ 10-2803	\$10-500, 10 days- 6 months	Criminal Offenses —Obscenity
			§ 10- 2804 <sup>d</sup>	\$5-500, 10 days- 6 months	
Iowa*			§ 725.5	\$50-1000, 1 year	Obscenity and Indecency
			§ 725.6 <sup>d</sup>	\$50-1000, 1 year	
Kan.	§§ 21- 110- 112	\$10-100, 1 year			Crimes & Punishments Advertisements and Publications
Ky.*			§§ 214- 190- 250	Lose license	Communicable diseases
			§ 436.090	\$50-1000, 10 days- 1 year	Offenses against Morality
La.	§ 14:88	\$500, 6 months			Offenses—Public Generally
	§ 14:106 <sup>e</sup>	\$500, 2 years			General Peace and Order
Me.*	c. 134, § 11	\$50-100, 3 months	c 25, §§ 114- 126 <sup>a</sup>	\$100, 30-90 days	Crimes against Chastity, Moral- ity & Decency — Sunday Ac- tivities
					<sup>a</sup> Department of Health and Welfare
Md.	Art. 27, § 417	\$20-100, 10 days- 1 year	Art. 27, § 417 <sup>f</sup>	\$1000	Crimes and Punishment— Contraceptives; Obscenity
Mass.	c. 272, § 20	\$1000, 3 years	C. 272, § 21	\$100-1000, 5 years	Crimes against Chastity, Moral- ity, Decency and Good Order
Mich.	§ 28:229	90 days, \$100			Penal Code— Advertising

TABLE III. cont'd.

State	Advertising		Selling		Section of Code
	Statute	Penalty	Statute	Penalty	
Minn.*	§ 617.27	\$50-500, 6 months	§ 617.25 § 617.26 <sup>d</sup>	\$500, 1 year \$100, 3 months	Offenses against Chastity, Morals and Decency
Miss.			§ 2289	\$25-200, 3 months	Crimes and Misdemeanors
Mo.	§ 563.300	\$1000, 6 months			Offenses against Morals
Mont.*	§ 99-3617	\$500, 6 months	§ 94-3616 <sup>c</sup>	\$500, 6 months	Indecent Exposure—House of Ill Fame—Prohibition of Certain Advertisements
Neb.*	§ 28-423	\$1000, 6 months	§§ 71-1104-1114	\$200, 60 days	Offenses against a Person <sup>a</sup> Public Health and Welfare—Venereal Diseases
Nev.	§ 202.190	\$1000-3000, 6-12 months			Crimes against Health and Safety
N. H.			§§ 571:14-19	\$300, 6 months	Offenses involving Minors
N. J.			§ 2A:170-76	\$1000, 1 year	Disorderly Persons
N. M.			P. C. 1142	\$50-1000, 10 days-1 year	Indecency
N. Y.*			P. C. 1143 <sup>d</sup>	\$500, 1 year	
N. C.			§ 12.2109	\$5-100, 30 days	Offenses against Religion and Conscience
N. D.					Offenses against Chastity
Ohio*	§ 2905.33	\$1000, 6 months	§ 2905.32	\$1000, 6 months	
Okla.			§ 2905.34 <sup>d</sup>	\$50-1000, 1 year	
Ore.			§§ 435.-010-990	\$200, 60 days	Public Health, Safety & Morals
Pa.			Tit. 18, § 4525	\$500, 1 year	Public Morals & Decency
P. R.	T. 10, § 315	\$10-100			Commerce Regulation
R. I.					
S. C.					
S. D.*	§ 13.1726	\$100, 30 days	§ 13.1726 <sup>e</sup>	\$100, 30 days	Crimes against Public Morals
Tenn.			P. C. 740	\$50-500, 30 days	Public Health-Medicine
Texas*			§§ 58-19-1-12 <sup>a</sup>	\$299, 6 months	Registration Department—Prophylactics
Utah*					
Vt.					
Va.			§ 9.68.-010	\$1000, 1 year	Obscenity
Wash.			§ 9.68.-030 <sup>g</sup>	\$250, 90 days	
W. Va.					
Wis.	§ 143.075	\$25-100	§ 151.15 <sup>b</sup>	\$100-500, 6 months	Public Health, Communicable Diseases
Wyo.	§§ 6-103-105	\$100, 6 months			Miscellaneous offenses

\* Exceptions made for physicians and pharmacists

<sup>a</sup> Licensing statutes

<sup>b</sup> User of contraceptive punished

<sup>c</sup> Vending machines prohibited

<sup>d</sup> Mailing prohibited

<sup>e</sup> May not be displayed

<sup>f</sup> Vending machines prohibited except when alcoholic beverages sold to be consumed on the premises

<sup>g</sup> Sale of drugs

<sup>h</sup> Cannot be sold to single person

### **Comparison of Laws Relating to Abortion, Obscenity and Contraceptives**

All but thirteen states have laws in some way regulating the sale or advertisement of contraceptives. (See Table 3.) The religious background which has resulted in many of these laws is easily ascertained by a study of the titles to the Code Sections under which they appear. By far, the majority of the statutes are found in the section of the Code dealing with either abortion or obscenity.

A comparison of the statutes of those states which impose a penalty for selling abortifacients and contraceptives reveals the fact that almost every state prohibiting the sale of both places precisely the same penalty on the sale of either one. Thus, these states place no greater value on a life already created than they do on one not yet even conceived.

Many other states prohibit the sale of contraceptives, by a general obscenity statute which provides that the sale of any article for an immoral or indecent purpose is prohibited. This classing of the sexual act, even in marriage, with obscenity, is a hold-over from the Victorian era, which would appear to have no basis of support in today's world.

### **Summary**

In summary, it would seem that sociologists have given the birth control problem a new dimension. What was once a subject fit only for the Victorian drawing rooms of intellectuals is now being given a public hearing, with all of its political, moral, and economic aspects being aired. It would be interesting to note, however, how many of the people who are being apprised of the problems of expanding birth rates and decreasing death rates are aware of the archaic legislation that governs the use of birth control devices in our own country. For example, do advocates of a policy of having our government supply foreign aid for birth control information and devices, realize that in two of our own United States a practicing physician cannot legally give birth control information or prescribe contraceptive devices, even when his patient's life is endangered, and that in a third, he can technically do so only for prevention or cure of disease? Do they realize that, but for exceptions made by judicial interpretation, the federal statutes of the United States would not allow the use of the mails for shipment of birth control information or devices?

Obviously many of our laws on the subject are antiquated in the light of social considerations. It would seem wise to re-vamp them before we can so strongly advocate that the government spend tax dollars to accomplish in foreign countries what is illegal in some areas of the United States.