When Sue Bridehead, heroine of Thomas Hardy's 1895 novel *Jude the Obscure*, tries to explain to her stepson Little Father Time that she and Jude are expecting yet another child, their third in three years, he angrily upbraids her:

“O you don’t care, you don’t care!” he cried in bitter reproach. “How ever could you, mother, be so wicked and cruel as this, when you needn’t have done it till we was better off, and father well!—To bring us all into more trouble! No room for us, and father a-forced to go away, and we turned out to-morrow; and yet you be going to have another of us soon! . . . 'Tis done o’purpose!—‘tis—‘tis!” (407–8)

His fury is directed specifically against Sue; she, the mother, is the “you” who doesn’t care, who is wicked and cruel. She is the “you” who purposefully acts against the “we” of the family, the “us” of the children, and the father who is forced away and ailing. To Little Father Time, that Sue is and
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will again be “mother” is entirely her fault and failing. Much affected by the accusatory “you,” Sue stumbles for an appropriate response:

“Y-you must forgive me, little Jude!” she pleaded, her bosom heaving now as much as the boy’s. “I can’t explain—I will when you are older. It does seem—as if I had done it on purpose, now we are in these difficulties! I can’t explain, dear! But it—is not quite on purpose—I can’t help it!” (408)

While Sue’s hesitant and ambiguous declaration (“But it—is not quite on purpose—I can’t help it!”) has been discussed in terms of her sexuality, its meaning and significance in light of her probable views on family limitation have been largely unexamined. Similarly scant attention has been paid to the relevance of birth control to the chilling suicide note that Little Father Time writes the following morning before hanging himself and his half-brother and half-sister: “Done because we are too menny” (410). With the subjectless verb, Little Father Time claims no agency nor admits any responsibility for this act; rather his language accuses: the murder/suicide is done because of what Sue has “done o’purpose” (408; emphasis added).

As a well-read New Woman, Sue would have been familiar with the topic of birth control, one of “the common talking points of the new womanhood” (Cunningham 2). She (like Hardy) was also an admirer of John Stuart Mill, who as early as 1848 was writing about the benefits to women of family limitation:

> It is seldom the choice of the wife that families are too numerous; on her devolves (along with all the physical suffering and at least a full share of the privations) the whole of the intolerable domestic drudgery resulting from the excess. To be relieved from it would be hailed as a blessing by multitudes of women who now never venture to urge such a claim, but who would urge it, if supported by the moral feelings of the community. (Principles of Political Economy, qtd. in McLaren 97–98)

While birth control is never explicitly mentioned in Jude, Sue’s concerns with closely related topics such as a husband’s “right” to sexual access to his wife and the importance of sex education suggest that family limitation is one of the many “modern” ideas to which Sue has been exposed. Sue’s desire to control her own body is one of the central themes of the novel. In speaking of her marriage to Phillotson, she explains, “What tortures me so much is the necessity of being responsive to this man whenever he wishes . . .” (273–74). Early in her marriage, she literally removes her body (to the closet, out the window) in dramatic attempts to evade this
enforced responsiveness (sex) and its possible consequences (pregnancy). When she finally, in an exchange of notes, explicitly asks Phillotson to let her live in his house “in a separate way,” she writes, “I implore you to be merciful! . . . I would not ask if I were not almost compelled by what I can’t bear! No poor woman has ever wished more than I that Eve had not fallen, so that (as the primitive Christians believed) some harmless mode of vegetation might have peopled Paradise” (287; emphasis added). Sue’s desire to abstain from sexual relations with Phillotson is motivated by more than “a physical objection” (271) to him personally; part of what she fears is the offspring that she cannot bear to bear. While arguing that a marital separation would be morally right, she adds, “especially as no new interests, in the shape of children, have arisen to be looked after” (285). Sue conceives of the potential issue of her marriage to Phillotson, born of a legal not a loving union, not as children, but as mere legal “interests.”

This, then, raises the question of what Sue thinks about the children born of her loving relationship with Jude, those children she has “not quite on purpose.” If one agrees with the critics who read Sue as essentially passionless, sleeping with Jude primarily to keep him, then her response to Little Father Time seems almost a personal defense, emphasizing that the children have resulted from a painful situation to her, not really of her own making—“I can’t help it” (emphasis added).

On the other hand, this same statement could be an acknowledgment of the real passion she feels for Jude—that despite the possibility of children, she cannot help having a sexual relationship with him. This reading is supported by Sue’s earlier comment to Arabella that “it seems such a terribly tragic thing to bring beings into the world—so presumptuous—that I question my right to do it sometimes!” (382). Her use of the phrase “my right” suggests a voluntariness that works to negate the idea of coercion by Jude and that also suggests the idea of family limitation as a counter-obligation. In telling Little Father Time that she is having another child “not quite on purpose,” Sue may be suggesting that while she and Jude did not plan to have all of these children, they were the inevitable result of their sexual desires. Bolstering this argument is Sue’s later description of the years in which the children were conceived as a time when she and Jude were “indulging ourselves to utter selfishness with each other” (413), not considering the consequences of their actions.

But what about artificial forms of birth control that would have allowed Sue and Jude to act on their sexual passions while also limiting the size of their family? One possibility is that, like other feminists of her time, Sue is against artificial birth control because it might have the effect of allowing men to overindulge their passions. Even if Sue is sexually attracted to
Jude, she does often accuse him of being much more passionate than she. Another possibility is that her failure to put methods of birth control into practice is yet another example of her not having “the courage of [her] opinions” (303). Throughout the novel, the readers are told of Sue’s independent views, only to watch her act in the most conventional of ways. Therefore, it would not be out of character for her to be a proponent of birth control and still find herself pregnant on a yearly basis. In this scenario, Sue’s comment to Little Father Time would be one of her many after-the-fact expressions of remorse: “But it—is not quite on purpose” (emphasis added), meaning “I realize ‘now we are in these difficulties’ that I could and should have done something about it, but ‘I can’t help it!’; my ‘theoretic unconventionality’ (284) always seems to break down.” Similarly, Sue’s comment to Arabella about feeling “presumptuous” about bringing all of these children into the world also suggests some belated regret on Sue’s part for not having acted more responsibly.

While we cannot be certain of Sue’s specific views on family limitation, there is no denying that “too menny” children played a significant role in the tragic climax of this novel. Little Father Time, so often read as merely a symbolic figure, asks questions and expresses concerns of a real and practical nature. He knows the family has very little money, that his father is sick and out of work, and that they are being turned out of their lodging. While Sue and Jude cogitate on the meanings and effects of their unconventional union (they never marry each other), Little Father Time focuses on the realities he sees and hears. Typical of children, he takes things literally. So why is it that so little attention has been focused on what he literally has to say—“Done because we are too menny”?

I would argue that the neglect of this obvious issue in the novel is symptomatic of a larger problem—that history has painted nineteenth-century feminist thinkers as having little interest in the issue of birth control. The classic statement of this view is set forth in a 1964 study by J. A. and Olive Banks, *Feminism and Family Planning in Victorian England*, in which they argue that “neither feminism as such nor the emancipation of the middle-class woman from her traditional role of home-maker were important causal factors in the decline of family size” (qtd. in McLaren). Fortunately, work has been done to refute this view, with Angus McLaren’s study, *Birth Control in Nineteenth-Century England* (1978), presenting a powerful case against the Banks’ thesis.

McLaren traces the link between feminism and family planning throughout the nineteenth century, arguing that “all the birth controllers could be called feminists to the extent that they took an unprecedented interest in the health of women and in their right to control their own
bodies” (94–95). While most of the writings on birth control in the early part of the century were by men, McLaren produces evidence showing that women not only approved of these writings, but were often influential in their composition. With respect to the latter part of the century, McLaren provides a thoughtful analysis of why few leading nineteenth-century feminists publicly defended birth control (including concerns about alienating supporters from their more specific goals), and others actively opposed it (particularly those social purity reformers who associated birth control with activities such as prostitution). His analysis of the writings of such women as Josephine Butler, Christabel Pankhurst, and Elizabeth Blackwell, however, leads him to conclude that the women’s movement “was far from indifferent to the question of fertility control, that its interest is indeed one of the lost dimensions of Victorian and Edwardian feminism” (197).

Feminists may have disagreed on the method of family limitation (advocating methods as diverse as complete chastity, periodic abstinence, “natural” and “artificial” means of birth control); however, McLaren concludes that “the goal—to win for a woman the right to control her own body—was the same” (198). Considering the extremely controversial nature of this topic, it is not surprising that Hardy’s novel does not directly address it. But in more subtle ways, Jude does speak to this issue. Reading late-century texts with more of an awareness of this important cultural context should help to illuminate this lost dimension of nineteenth-century feminism.

While many feminist advocates did not speak out explicitly on family limitation, a few dared to make birth control central to their work for women’s rights. In this chapter, I focus on two Victorian women who broke the silence on this taboo subject: one in law and the other in literature. Their work and the resistance to it are evidence that much was at stake. Annie Besant defended birth control in a courtroom in 1877; Jane Clapperton chose a novel as her public forum, publishing Margaret Dunmore; or, A Socialist Home in 1888. In these unprecedented “trials,” with Besant acting as her own attorney, advocating for both herself and birth control, and with Clapperton presenting a utopian or “trial” society in which artificial birth control is an integral aspect of domestic life, both women embrace the power of storytelling to challenge the silencing judgments of law and society. I conclude with a discussion of the early-twentieth-century reformer Marie Stopes, who sued a vocal opponent of birth control for libeling her and who helped make Clapperton’s utopian vision of increased education about, and access to, birth control a reality with her books Married Love and Wise Parenthood and the opening of the first birth-control clinic in Britain.
Annie Besant Defends “A Dirty, Filthy Book”

In 1877, Annie Besant and her partner Charles Bradlaugh published a tract on birth control and sold it for sixpence so that it would be available to the poor. They were arrested and charged with obscene libel for publishing an “indecent, lewd, filthy, bawdy, and obscene book, called ‘Fruits of Philosophy’” (Freethought 322). The indictment accused them of inciting and encouraging “obscene, unnatural, and immoral practices,” and of bringing youth and others “to a state of wickedness, lewdness, and debauchery.” At the trial, Besant and Bradlaugh served as their own attorneys, with Besant arguing her case in open court. At a time when women played no official roles in the enactment, administration, enforcement, or adjudication of the law, amidst all the gentlemen of the jury, the Lord Chief Justice, the three male attorneys for the prosecution, and Mr. Bradlaugh, sat Mrs. Besant.

Before focusing on Besant’s climactic courtroom performance, I will briefly situate the 1877 trial within nineteenth-century Britain’s narrative of birth control, which begins with the ideas set forth by the Reverend T. R. Malthus in his 1798 Essay on Population. In this essay, Malthus argues that the population will outstrip available food supplies if its growth is not checked by vice, misery, or self-restraint; he identifies the cause of poverty as the reckless overbreeding of the poor. This “scientific” analysis was popular with conservatives because it blamed the working class for their own misery and concluded that charity would only exacerbate the problem. Malthus identified two types of checks on the population: positive and preventive. Positive checks were influences that increased the death rate, such as wars and famines; preventive checks decreased the birth rate. His recommended “solutions” to overpopulation were postponement of marriage and moral restraint on the part of the poor.

While Malthus advocated late marriages, he specifically opposed artificial birth control: “I should always particularly reprobate any artificial and unnatural modes of checking population, both on account of their immorality and their tendency to remove a necessary stimulus to industry” (qtd. in Chandrasekhar 11). John Wade, one of Malthus’s followers, commented that “any artifice to frustrate conception, might be positively mischievous, since, by the disgust it would excite, like an indecent attack on established religion, it would prevent the temperate investigation of a subject of national importance” (327). It is interesting that Wade speaks of this “disgusting” and “indecent” topic in the very language of playful eroticism (“mischievous,” “excite”). McLaren summarizes the basic ideology of the Malthusians as follows:
Their concern was that the preaching of birth control could completely undermine both the economic and moral foundation of their argument. They saw in it a new optimistic ideology that ran counter to their own which held that civilisation was based on self-denial and progress on competition resulting from pressure of numbers. The Malthusians did not seek to abolish population pressures. At the very heart of their doctrine lay the belief that such a force was necessary to drive man—at least working-class man—from his naturally lethargic state. (51)

Others who were concerned with population control, however, did not espouse Malthus’s conservative views or politics. In 1823, for example, Frances Place, a tailor and political advocate for the working class, printed and distributed handbills addressed “To the Married of Both Sexes of the Working People.” Recommending as a birth control method the use of a piece of sponge placed in the vagina prior to intercourse, and afterwards withdrawn by means of an attached string or bobbin, the handbill states that no injurious consequences result from the use of the sponge; “neither does it diminish the enjoyment of either party.”  

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

In *Fruits of Philosophy*, Knowlton emphasizes the political and social benefits of not always being fruitful and multiplying. He cites the prevention of hereditary diseases, as well as reductions in poverty, profligacy of young men, and infanticide, as benefits of contraception. Knowlton also is particularly concerned with women’s health, querying, “How often is the health of the mother, giving birth every year to an infant . . . and compelled to toil on, even at those times when nature imperiously calls for some relief from daily drudgery—how often is the mother’s comfort, health, nay, even her life thus sacrificed?” (101). Specifically countering Malthus’s proposal of late marriages, Knowlton argues that celibacy is both ineffectual and of a demoralizing tendency. He contends that birth control is unnatural only if all efforts of civilization to control nature (to stop disease, to subdue the
forest) are considered as such. The birth control method Knowlton advocates consists of douching the vagina with a solution that will act chemically on semen. He expresses a clear preference for keeping contraception in the hands of women.

*Fruits of Philosophy* was originally reprinted in Britain in 1834, with approximately 1000 copies being sold each year from 1834 to the time of the Besant trial (Himes 243). The book slipped into the foreground in 1877 when a Bristol publisher, Henry Cook, published it with illustrations alleged to be obscene. Cook was arrested and sentenced to two years of hard labor. The original publisher of *Fruits of Philosophy*, Charles Watts, was also arrested and ultimately pleaded guilty to the charges of publishing an obscene book. In order to counter Watts’s admission that such a book was obscene, and to establish the right to publish contraceptive information, despite warnings from friends that such actions would mean “ruin to you as a lady” (A. Taylor 109), Besant persuaded Bradlaugh to join her in setting up the Freethought Publishing Company so that they could publish *Fruits of Philosophy* themselves. After publishing the book and then notifying the police where and when they would be selling it, as they had anticipated, they were arrested. Thus began one of the landmark events in British social history, the Besant–Bradlaugh trial.

The trial began on June 18, 1877, and contemporary witnesses estimated that 20,000 people gathered outside the Guildhall on each of the four days of the trial (Chandrasekhar 38). After the scathing indictment had been issued, a magistrate at an early hearing offered to dismiss Besant from the case. This strong-minded woman, who had separated from her authoritarian husband four years earlier and pressured Bradlaugh into taking on this cause in the first place, not unexpectedly refused.

At the trial, the Solicitor-General’s argument was in keeping with the terms of the indictment, the basic premise of which was as follows:

I say that this is a dirty, filthy book, and the test of it is that no human being would allow that book to lie on his table; no decently educated English husband would allow even his wife to have it, and yet it is to be told to me, forsooth, that anybody may have this book in the City of London or elsewhere, who can pay sixpence for it! . . . The object of it is to enable persons to have sexual intercourse, and not to have that which in the order of Providence is the natural result of that sexual intercourse. That is the only purpose of the book, and all the instruction in the other parts of the book leads up to that proposition. (Freethought 251)

Throughout his case, the Solicitor-General was reluctant to actually read
passages from the book aloud, preferring to have the jury read to themselves to save them “the pain and trouble” of hearing it (18). Several times he professed it “really extremely painful to me, (hesitating) very painful, to have to read this” (19). The Lord Chief Justice, seemingly irritated by the Solicitor-General’s extreme delicacy, insisted that the “book must be read, sooner or later, either by you, Mr. Solicitor, or the officer of the court” (18).

When Besant presented her defense in the courtroom, her feminist method was strategic and understated. This was in sharp contrast to the combative tone and stance she often took in her written narratives, such as in the 1876 article in the National Reformer entitled “The Legislation of Female Slavery in England.” At the trial, rather than directly taking on the gender bias in this application of the law of obscene libel, highlighting the subordination of women implicit in the law’s (and the husband’s) presumed right to “allow” women access to birth-control information, Besant told stories. Law, with its claim to universality and objectivity, its strict reliance on established form and pleadings, and its exclusionary rules of evidence, is a mode of analysis and argument that tries to maintain an “exclusive hold on the truth” (Minow, “Stories in Law” 36). As Martha Minow explains, “Stories disrupt these rationalizing, generalizing modes of analysis with a reminder of human beings and their feelings, quirky developments, and textured vitality” (37). With narratives of her own personal experiences and those of other women, Besant disrupted and called into question the law’s knowledge or “truth” about birth control, female sexuality, and good mothering.

Young wives of all classes, she argued, wanted to know about family limitation. Explaining that birth-control information was available in more expensive books such as Dr. Chavasse’s Advice to a Wife, a book she had been given by her doctor as a young wife (Freethought 139), she brought the class implications of this lawsuit to the forefront: “I will ask you not to allow it to go out from this court as the verdict of twelve English jurymen that you measure indecency by the price at which it may be bought, and that you would allow that to pass at a high price which you count worthy of condemnation at a low” (147). After clarifying that information on family limitation was available to those who could afford it, she proceeded to narrate the tragic lives of those living in families too large to sustain.

Citing the ramifications of overcrowding as one of the justifications for the checks advocated in Knowlton’s book, Besant offered personal anecdotes as evidence. Reminiscent of Engels’s descriptions in The Condition of the Working Class in England, she reported: “I have myself seen four generations of human beings crowded together into one small room, simply divided into two or three beds, and I will ask you if, after such an experi-
ence as that, you wonder that I risk even prison and fine if I can bring some salvation to those poor whose misery I have seen” (Freethought 89). She corroborated her own stories with those of other witnesses to the devastating effects of unchecked population growth. She quoted George Godwin, from an essay he had presented to the National Association for the Promotion of Social Sciences: “It was but the other day that a child was found dead in Brownlow Street, and, on inquiry, it was learnt that the mother, a widow, and six children slept in one bed in a small room. The death of the child was attributed to the bed clothes” (85).22 Similarly, she related the words of the Bishop of Manchester:

Modesty must be an unknown virtue, decency an unimaginable thing, where, in one small chamber, with the beds lying as thickly as they can be packed, father, mother, young men, lads, grown and growing up girls—two and sometimes three generations—are herded promiscuously; where every operation of the toilette, and of nature—dressings, undressings, births, deaths—is performed by each within the sight or hearing of all. . . . It is a hideous picture; and the picture is drawn from life. (89)

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

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

I have often myself seen a poor woman, a mother of a large family, standing over the wash-tub three or four days after having borne a child, and upon my representing to her the utter ruin to her health which was involved in such a proceeding I would get the reply: “What am I to do? There is another mouth to feed; the children are there and must be provided for, and I must get about.” (117)

Besant brought into the courtroom the voices of women who had no opportunity to speak out against their oppression, insisting on the legal relevance of their experiences. In discussing the positive aspects of feminist narrative scholarship, Kathryn Abrams explains, “Narratives are more likely to reveal a neglected perspective or theme that needs to play a role in legal decisionmaking, or to establish a new context or backdrop for legal discussions” (1031). In Besant’s story, the woman’s simple question—“What am I
to do?”—presented against the backdrop of the washtub, sign and site of the toil from which she has no rest, is a powerful plea for justice.

In addition to bringing neglected perspectives and stories into the courtroom, in what proved to be a stunning obfuscation of societal norms, Besant revised traditional narratives of female sexuality and good mothering. Speaking openly about sexuality, she commented matter-of-factly that “there is nothing wrong in a natural desire rightly and properly gratified” (Freethought 61). Possibly making reference to the extreme modesty exhibited by the Solicitor-General, she claimed that “it is only a false and spurious kind of modesty, which sees harm in the gratification of one of the highest instincts of human nature” (61).

Moreover, she explained that “good” mothers wanted their daughters to be educated in sexual matters and to understand how to limit the size of their families. Speaking to the jury “as mother of a daughter whom I love,” she applauded what she argued was a recent effort by the government to encourage both boys and girls at a school in South Kensington to study physiology. Referring to her daughter, she commented, “I believe it will tend to her happiness in her future, as well as to her health, that she shall not have made to her that kind of mystery about sexual functions that every man and woman must know sooner or later” (128). On the matter of birth control, she reported that among the hundreds of the poor who were her “clients” (28) were “mothers who beg me to persist in the course on which I have entered—and at any hazard to myself, at any cost and any risk—they plead to me to save their daughters from the misery they have themselves passed through during the course of their married lives” (29). Besant made the most of the fact that the public was watching this trial, and that “the people” were not only on her side, but whom she was representing (“I speak as counsel for hundreds of the poor, and it is they for whom I defend this case” [28]). The crowds of many thousands gathered outside of the courtroom no doubt made this a powerful argument.

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

She still seems incomparably young and attractive, her face alive with emotion and expression, her voice full and sonorous, but musical and not un feminine. . . . She was, or we thought she was, a martyr; she had won freedom from domestic and clerical oppression at the cost of social proscription. She
faced a hostile world on behalf of liberty and truth. We young men, who had a passion of these things in our souls, responded readily to the passion with which she pleaded for them. We were carried away.23

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

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

I had nothing to gain in publishing this work—I had much to lose. It is no light thing for a woman, whose ambition is bound up in the name which she hopes to make, to have the imputation thrown upon her of publishing indecent books and of disseminating obscenity amongst the young. I risk my name, I risk my liberty; and it is not without deep and earnest thought that I have entered into this struggle. (29)

She understood that her reputation was on the line, but she underscored that, in keeping with the ideal of Victorian womanhood—for the sake of others—she had decided to put aside her own interests.

Careful to present herself as a caring and proper woman, she expressed concern at the amount of the jury’s time she was taking in presenting her case. At one point, she requested that the lighting be changed so that it did not fall directly on the jury box, commenting amiably that it “is a great point to me to keep the jury in good temper” (46). In her personal anecdotes, she emphasized her own position as wife and mother. While the judge and jury may have been aware of her estrangement from her husband, inside the courtroom she went by and was always referred to as Mrs. Besant.

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

Sometimes practicing feminist jurisprudence, other times reifying more traditional ideas about wives and mothers, as in most courtroom performances, Besant acted in the way that best supported her case.24
In her closing remarks, in what appears to be an appeal to the chivalry and nationalism of the jury, she masterfully manipulated gender roles to her advantage, summarizing the case in such a way that what was truly at stake was her reputation. Arguing that a guilty verdict would mean that the jury believed her speech to be one mass of falsehoods, that her intent in publishing the book was to corrupt the morals of youth, and that she was the worst character of woman, she pleaded, “Unless you are prepared, gentlemen, to brand me with malicious meaning, I ask you, as an English woman, for that justice which it is not impossible to expect at the hands of Englishmen—I ask you to give me a verdict of ‘Not Guilty,’ and to send me home unstained” (151). In her plea for her reputation, she was completely successful; she was less so on the issue of the obscenity of the book.

At the end of the trial, the jury returned the following verdict: “We are unanimously of the opinion that the book in question is calculated to deprave public morals, but at the same time we entirely exonerate the defendants from any corrupt motives in publishing it” (267). Everyone, including the judge, seemed surprised at this verdict, which the judge stated must then stand as a verdict of guilty. The defendants were released on their own recognizances until sentencing.

Bradlaugh’s daughter Hypatia, who was present in the courtroom, wrote the following about the peculiarities of this verdict:

The jury, however, were by no means so decided at heart and so unanimous as the prompt bow of the foreman led one to believe. . . . two [jurors] returned each their guinea fee to be put down to the defence; one wrote that he did not agree with the verdict, subsequently stating that six of the jury did not intend to assent to a verdict of guilty, and that it had been arranged that if the Lord Chief Justice would not accept their special verdict they should again retire and consult. During the time they were locked in they discussed so loudly that they were heard outside, and their discussion was found to be by no means confined to the offence which they were supposed to be considering, as it included amongst other things the heretical views of the defendants.25

At the sentencing hearing, Besant argued that the verdict could not be interpreted as guilty, because with no corrupt motive, there could be no crime. The Lord Chief Justice, however, did not agree. Moreover, he was angry with the defendants because, in the time between the decision and the sentencing hearing, they had claimed to a full house at the Hall of Science that they were sure that a new trial would be declared and that the Lord Chief Justice had supported their cause in his summing up of
the case. Copies of *Fruits of Philosophy* also were sold at this meeting. While he originally had planned to let Besant and Bradlaugh off with a warning, because they had defied the jury’s verdict by the continued sale of the book, the Lord Chief Justice sentenced them to six months’ imprisonment and a large fine. He did release them, however, until the time of their appeal.

In February 1878, the judgment was reversed on a technicality. Besant and Bradlaugh had “won” the case, although not on the principles that they had set out to establish. Bradlaugh recovered the seized copies of *Fruits of Philosophy*, which were then sold stamped with the words “Recovered from Police” (Chandrasekhar 41). They continued to sell the book “till all prosecution and threat of prosecution were definitely surrendered” (Besant, *Autobiography* 220). During the time between the verdict and the appeal, Besant published her own treatise, *Law of Population: Its Consequences, and Its Bearing Upon Human Conduct and Morals* (1877).

In the end, this prosecution was self-defeating, serving only to facilitate the widespread distribution of information about birth control. All of the major newspapers carried extensive coverage of the trial, moving the discussion of birth control from the publications of the radicals to the headlines of the mainstream press. Many newspapers printed lengthy speeches from the defendants, and others printed actual excerpts from “that dirty, filthy book.” It is estimated that 125,000 copies of *Fruits of Philosophy* were sold between March and June of 1877 (Banks and Banks 24), and more than 200,000 copies in the three and one-half years following the trial (Chandrasekhar 45). Besant’s *Law of Population* sold over 175,000 copies before she withdrew it from circulation in 1891 (Himes 243–44).

In this respect, the Knowlton trial was most definitely a victory for birth control and a personal triumph for Besant. This success, however, came at a high cost. While her dazzling performance at trial momentarily opened up the possibility of a sexualized domestic ideal of womanhood, “the law” soon came to its senses and, reaffirming traditional narratives of woman as mother, found Annie Besant unfit to be one. Besant lost custody of her eight-year-old daughter Mabel in a custody battle tried before Sir George Jessel. Jessel cited Besant’s conviction of publishing an obscene book as a ground for removal of the child, stating that “although the conviction was set aside on a technicality, no Judge, so far as I am aware, has doubted the propriety of that conviction,” and that “[o]ne cannot expect modest women to associate with her” (qtd. in A. Taylor 131–32). He was particularly outraged that she served as her own counsel in his courtroom: “Appear in person? A lady appear in person? Never heard of such a thing! Does the lady really appear in person?” (Besant, *Autobiography* 214). As advocate
for birth control and for herself, Besant was too unsettling. The law disciplined her feminist jurisprudence by taking away her child.

A few years later, Besant became a Fabian Socialist, still adhering to her advocacy of birth control despite widespread socialist opposition to it. She wrote “The Law of Population and its Relation to Socialism” to make clear that birth control was not a ploy of the upper classes. She saw socialism as offering the possibility of complete equality for women, and it was her conviction that women ultimately would be the ones to implement effectively family planning: “I believe that one of the strongest arguments in favour of the limitation of the population will come from women. . . . They will be willing to give all the care that is necessary for two or three children, but will refuse to have their health ruined, and the whole of public life shut to them, by having families of ten or twelve . . . .” In 1891, Besant gave up both socialism and Neo-Malthusianism when she embraced Theosophy. At this juncture in her life, she silenced herself on the issue of birth control. However, having already made arguably the nineteenth century’s “strongest arguments in favour of the limitation of the population,” her message had been heard. One of the women who continued Besant’s line of argumentation was the author Jane Hume Clapperton. Seeking more of a “jury of her peers” than Besant had faced in the courtroom, Clapperton chose to perform her advocacy of birth control in a novel—middle-class women’s literature of choice.

*Margaret Dunmore; or, A Socialist Home*

_Jane Clapperton’s Literary Trial of Family Planning*

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

> However repulsive her subject [birth control] may be, her treatment of it is never open to the charge of indelicacy, while at the same time it is absolutely frank and unreserved. Indeed, we may go so far as to say, that if we except
her perilous doctrine of Neo-Malthusianism, there is nothing in this book which would be unwholesome for persons of either sex who approach it sober-mindedly. (Westminster 251)

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

Judging from her comments in Scientific Meliorism, I believe that Clapperton’s use of the novel as a forum for her politics was a most conscious decision. She saw fiction as playing a vital role in education. Preferring the best light literature of her own day to the ancient classics, which she believed carried “moral ideas completely out of date” (Meliorism 186), Clapperton argued that people may see in contemporary fiction “the standpoint average humanity has reached, and the confusion of ideas upon the subject of right conduct, natural to a transitional epoch” (Meliorism 134). Recognizing what Bakhtin theorized, that the novel is “structured not in the distanced image of the absolute past but in the zone of direct contact with inconclusive present-day reality” (“Epic and Novel” 39), Clapperton saw the novel as a place to critique unequal laws and an unjust society and to promote discussion of revisions and alternatives.

Like many other late-nineteenth-century women, she specifically chose to write a utopian novel, a popular and highly marketable form of fiction.31 Darby Lewes identifies several reasons why this genre was so attractive to women writers, including “its unique correlation to nineteenth-century women’s own alienated, ambiguous situation” (10–11).32 In their fictional utopias, women were able to “spurn the grim uniformity of woman’s place in men’s texts,” and “the very possibility of change began to emerge” (19). Jane Baron, in discussing the value of stories today to considerations of law, writes that “stories can depict or construct a ‘reality’ in tension with the one portrayed in law’s dominant tales” (“Resistance to Stories” 268). In the nineteenth century, Clapperton’s novel performed feminist jurisprudence by presenting, through a utopian narrative, a different set of rules for women, a less alienated “reality,” an alternative textual place, and an alternative social text.

Guided by the philosophy of scientific meliorism, which provided that through a process of controlled evolution, ultimately it would be possible to “create conditions under which no suffering can exist” (L. Ward 468), Clapperton believed that social activists could begin to effect an evolutionary movement toward socialism.33 In Scientific Meliorism, she argued that real reform could begin with “socially localized . . . groups,” living under conditions of voluntary socialism (427).34 In her novel, this abstract theoretical idea is translated into the concrete “reality” of a communal
home named La Maison, which is peopled with a wide range of characters including an heiress, a retired governess, two newly married couples, in-laws, widows, a fallen woman, children, widowers, socialist activists, and a doctor.

La Maison is the brainchild of Margaret Dunmore, an intellectual young woman who is discontented with her life as an heiress, and her friend Miss José, a committed socialist. These two women conceive of socialism much differently than the radical Monsieur Martin, for example, who advocates violence and large-scale revolution. Their new-era socialism emphasizes that true progress must begin with a change in home life. The novel’s revolutionary ideas about domestic arrangements, specifically regarding marriage, divorce, and adultery, provoked The Saturday Review to accuse it of showing “contempt of the law” (236).

Within La Maison, the patriarchal structure of the traditional British home is dismantled. Emphasizing from the beginning that they are a reconstituted family, Dunmore explains, “We are deposing, man . . . from headship in our family group. Ours is not a family despotism” (91). Instead, La Maison is run by committee. The Executive Committee, composed of two men and two women, is elected by ballot every six months; it organizes work arrangements. Other committees, also with elected members, include the Finance Committee, the Amusement Committee, the Education Committee, and the Public Service Committee.

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

Changes within ourselves occur in similar fashion to changes without. Old laws give way to new; old institutions are replaced by institutions of a better kind, but nowhere do we see a clean sweep (if we may call it) of what is old, leaving a blank and arid waste unfulfilled with what is new. And so it is with human sentiment. The changes are displacements. (135)

In La Maison, everything is in a state of transition, and much of the “plot” takes the form of literally and figuratively negotiating change. One of the important “changes without” is the rejection of traditional gender- and class-based work roles. Men perform many of the domestic tasks, including cooking, and, despite objections from some of the members, this middle-class family (which has no servants) does its own “dirty housework” (88). An admirer of the work of Wollstonecraft, Clapperton put the ideas on education that Wollstonecraft advocated in A Vindication of the Rights of
Woman into place at La Maison. Boys and girls are educated together in
the associated day school, which also is open to all social classes.

Clapperton clearly understood, however, that reproductive control for
women was key to lasting displacements. So while other types of “family
planning”—decisions about who should do the dusting and who should
work in the garden, and where the kitchen should be located in relation-
ship to the nursery—merit serious discussions, birth control is acknowl-
edged as foundational to this “homely” experiment. It is in the context of re-
evaluating the institution of marriage, specifically the inequalities between
husband and wife, that the subject of birth control is first broached. One of
the young husbands, Joe Ferrier, who had only reluctantly agreed to live at
La Maison, remains steeped in patriarchal values. While he submits to the
“house rules” in most instances, he tries to maintain husbandly authority.
After a few months, his wife Vera has had enough. When Joe accuses her of
not behaving as a good and affectionate wife, of not considering his wishes
and desires, she angrily retorts: “You command me to do this and that! Why
am I to consider your wishes always, and you not consider mine?” (121–22).
They storm off in different directions, with their fight continuing into the
next day. That evening, Vera takes a serious fall and loses the baby that Joe
was unaware was on the way.

While she is convalescing, Joe “flung his notions of sex distinctions in
work to the wind” and helped to nurse her (125). He still was upset, how-
ever, that she had talked back to him: “She was bound to honour her hus-
band; indeed, the Church says obey! He would waive the obedience—some
women are touchy on that point; but Vera had clearly dishonoured him
that night” (125). When he makes reference to their argument, however, he
is amazed to learn that she is unhappy with him. Rebuking him for being
cold and harsh to children, she explains that she is not sorry they lost the
child because “it cannot be right to bring a child into the world if one of
the parents does not desire it” (126). Joe, initially, is shocked and full of
resentment. As time passes, however, some of his ideas about marriage and
fatherhood begin to be displaced.

It is in connection with Joe and Vera that Clapperton explicitly raises
the issue of artificial birth control. This discussion is set within the context
of allusions throughout the novel to excessive childbirth ruining women’s
health and happiness. The Rector’s wife, the mother of Rose, one of the
young women who lives at La Maison, is one such example. Early in the
novel, the narrator comments, “Within the Rectory of Westbrook a babe was
born at intervals of never more, sometimes less, than eighteen months; the
normal state of the gentle mother was one of feeble health, and Rose had
been her prop and stay from very tender years” (14). The Rector, father of
this ever-increasing family, is described as “a man who applied all his logic to the squaring and fitting of practice to old dogmas under new conditions, rather than to the examination of new doctrines in the light of simple truth” (15). In light of organized religion’s opposition to birth control (McLaren 207–8), it is not surprising that Clapperton presents a Rector as a perpetrator of the population problem. Annie Besant also emphasized that wives of the clergy were supportive of her cause: “there was the passionate gratitude evidenced by letters from thousands of poor married women—many from the wives of country clergymen and curates—thanking and blessing me for showing them how to escape from the veritable hell in which they lived” (Autobiography 223–24).

In Margaret Dunmore, when Rose’s mother matter-of-factly tells her husband, “Oh, marriage disappoints every woman,” she responds to his surprise by clarifying that she is not complaining about him specifically; rather she explains that “the position tries a woman in every way, and when the family is large—” (164). The Rector’s dogmatic response to his wife, “Lo, children are an heritage of the Lord: and, the fruit of the womb is His reward” (165), is cruel in the casual way that it dismisses her simple truth—that her large family has resulted in poor health being her “normal” state. Although her voice trails off, she does not stop short of speaking her experience. And Clapperton, the tenth of twelve children herself, who spent years tending to her ailing mother, does not stop short in her novel of holding out hope for “new doctrines” in the experience of Joe and Vera.

Joe, as the reader has seen, is much like the Rector in his desire to square and fit old dogmas to new conditions; however, he agrees to the use of artificial birth control to protect Vera’s health after the miscarriage. After she is up and about, the narrator comments that “a new phase of married life began for the young couple. Both were to some extent altered, and Joe had, strange to say, submitted himself voluntarily to authoritative dictation on a matter of purely personal conduct” (126). I believe this novel to be unprecedented in nineteenth-century fiction in its explicit clarification of this conduct as the practice of birth control:

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

For unhealthy persons to become parents is a crime against Humanity. Vera for the present is delicate. The responsibilities, the joys of parenthood, must be guarded against, deliberately relinquished till health is fully restored. (126–27)
The syntax of the last sentence suggests that just as the responsibilities and joys of parenthood go together, so too do the ideas that parenthood sometimes of necessity (“must”) literally be guarded against (as with birth control) and figuratively relinquished (given up as a right). While phrases such as “conscious evolution” and “crime against Humanity” echo the eugenic-like practices Clapperton espouses in *Scientific Meliorism*, the emphasis in the novel is on the health of mothers, the necessity of providing a loving and nurturing environment for children, and the right of women to control their own bodies. Soon, Joe and Vera are studying physiology together; a class for instruction has been organized at La Maison, and outsiders are welcome. Joe and Vera thus grow into the kind of marriage that Wollstonecraft described as possible only when women are educated with men, “prepared to be their companions rather than their mistresses,” and when “the affections common to both are allowed to gain their due strength by the discharge of mutual duties” (*Vindication* 165). Specifically on the issue of sex education, the novel takes up Besant’s discourse that women, as well as men, should be fully aware of their bodies and sexuality.

Even more radical than Wollstonecraft’s proposals or Besant’s defense are the ways in which this novel disrupts traditional ideas regarding the roles of wife and mother. While there are married couples living at La Maison, close relationships among persons of all ages and sexes are encouraged. People are drawn to each other because of mutual interests, as opposed to filial or marital connections. Moreover, parenting is just another one of the group’s shared tasks, albeit a most important one. When a widowed mother of two sons first joins the group, for example, she has to give “a solemn pledge to resign her maternal freedom in the management of the boys. Their training and discipline must be under the authority of the Unitary Home” (65). Joe learns to love all of the children in the house, not just his own. In fact, as a reader, it is difficult to tell which child belongs to which biological parents, as the children are seen in the hands of a myriad of caregivers. The cultural constructions of mothering become those of parenting.

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

Having nurtured their domestic socialism, the participants in the Unitary Home feel ready to “assume the grave responsibilities of extended public action” (200). The conference for mothers, the dramatic climax of the novel, emphasizes that women’s rights to control their own bodies and their own lives must be of primary concern in bringing about social change. As one of the widows, Mrs. Plimsol, explains:

There are delicate matters for mothers alone. They must limit their families. They must learn what their duty is to their own health, the health of their children, and the health of the nation. We women will instruct them in self-respect, and show them how to support one another in cases where men are brutal and ought to be resisted. (203)

As they assemble in La Maison’s newly constructed lecture hall, these mothers are released figuratively from an isolating domestic system that has offered a false sense of duty and protection. Late in the nineteenth century, after decades of performed feminist jurisprudence, Clapperton envisions women released from the Gothic reality of Wollstonecraft’s *Maria* and able to work together toward positive change—and not just in intimate groups of one or two, but rather as a large movement of women. Moreover, addressing family planning directly, this novel serves as a displacement of earlier novelistic representations that tended to legitimate women’s debilitating confinement, either by ignoring the tragic lives of women, such as the mother of Jane Austen’s Fanny Price in *Mansfield Park* (1814), who gladly sends one of her daughters to a new family as she prepares for her ninth lying-in, or by presenting their situations as comic, such as Dickens’s passing reference to Sophy Traddles’s mother in *David Copperfield* (1850), who has ten children and has “lost the use of her limbs” (554). In Clapperton’s novel, mothers are no longer defined by and confined within narrow and idealized conceptions of home and family.

With the establishment of La Maison and the important first step of the mother’s conference, Margaret Dunmore accomplishes the goal she had set out for herself at the beginning of the novel. Having traced the defects of English character to the “defects in the English home,” she had committed to “accomplish something, however small, in the exposure of these defects, the inauguration of a remedial system” (72). With *Margaret Dunmore*, Clapperton, too, took an important first step. Daring to show contempt for the
law, risking charges of inciting and encouraging “obscene, unnatural, and immoral practices,” and bringing youth and others “to a state of wickedness, lewdness, and debauchery,” Clapperton advocated for artificial birth control in the public forum of the novel.⁴⁰

In its review of this novel, *The Saturday Review* called *Margaret Dunmore* the “history of a scheme” (236), and it was right to do so. The communal home in the novel was more than a fictional representation; it was a blueprint. More than a setting, it was a site for the reconstruction of the cultural meanings of home, family, and the “duties” of women. So, too, was the novel itself. In situating her alternative domestic system within this literary forum, bringing her political ideas “in the zone of direct contact with inconclusive present-day reality” (Bakhtin, “Epic and Novel” 39), Clapperton created an imaginary space in which her political ideas could be “tried”—treated and tested, not as utopian fantasies, but as real possibilities.

**From the Obscene to the Offensive**

*Birth-Control Advocate Marie Stopes Sues for Libel*

In 1921, Marie Stopes took another first step, making Clapperton’s “utopian” idea of teaching women practical knowledge about contraception a reality with the opening of the first birth-control clinic in the British Empire. Just as Margaret Dunmore used her money to finance the Unitary Home, Stopes and her husband Humphrey Roe used their own funds to set up and run this clinic in Holloway, North London. Already the author of two enormously successful books on marriage and contraception, *Married Love* (1918) and *Wise Parenthood* (1918), Stopes wanted to reach those women who might not have access to her books, just as Clapperton earlier had turned to the novel as a more accessible forum than her treatise *Scientific Meliorism*. As Stopes explained, “the very overburdened working-class mother does not read our literary reviews; she does not read these books of health, and she has not the time to read them, even if she had the money and wished to buy them” (Box 78).⁴¹

Hundreds of women came to the clinic to receive information and advice on birth control, as well as for the fitting of contraceptives by qualified nurses. Everything was free except for the birth-control devices themselves (small rubber cervical caps called check pessaries), which were sold to the women at cost. In light of the success of this clinic, Stopes proposed to the Prime Minister, David Lloyd George, that the government set up birth-control clinics around the country as a public service. Not opposed to
Chapter 3

the idea, but fearing adverse political consequences, Lloyd George wanted Stopes to provide evidence that public opinion on this still publicly taboo subject had changed.\(^{42}\)

In the spirit of Clapperton’s mothers’ conference, Stopes organized a large meeting at the Queen’s Hall, where birth control was openly discussed in a very public forum. Speakers included prominent politicians and doctors, with the arguments echoing many of the same ideas that Besant had presented over forty years before. The Rt. Hon. G. H. Roberts, P.C.M.P., proclaimed, “It is a deplorable fact today that while the better-to-do possess this knowledge, and are, in my opinion, ordering their lives so as to give their children greater and fairer opportunities, the class to which I belong, groveling in their ignorance, are still producing in excessive numbers” (qtd. in Box 23). Dr. Jane Hawthorne, much like Besant, presented real-life examples of the hardship resulting from the lack of availability of practical birth-control information: “I am here today . . . to represent those who have neither the opportunity nor the power to make their own appeal, and therefore I am anxious to put before you as clearly as possible the position of the very poor, hardworked wife and mother” (qtd. in Box 23). When Stopes finally began to speak, highlighting the harmful effects of lack of sexual knowledge and sexual repression, Labour leader J. R. Clynes became “conscious of a spiritual fire somehow beginning to blaze up” (qtd. in Box 24).

Within a few weeks of this most successful public debate on birth control, Dr. Halliday Sutherland attended a lecture given by a noted gynecologist, Dr. Anne McIlroy, in which she referred to the rubber check pessary as “the most harmful method of contraception she had encountered in her experience” (qtd. in Box 27). A Scottish Catholic doctor much opposed to the idea of birth control, Sutherland knew that this type of pessary was the one in use at Stopes’s clinic. A year later, Sutherland published an anti–birth-control book, *Birth Control*, that included the following passage in the chapter titled “Evils of Artificial Control”:

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

> When we remember that millions are being spent by the Ministry of Health and by local authorities—on pure milk for necessitous, expectant
and nursing mothers, on maternity clinics to guard the health of mothers before and after childbirth, for the provision of skilled midwives, and on infant welfare centres—all for the single purpose of bringing healthy children into the world, it is truly amazing that this monstrous campaign of birth control should be tolerated by the Home Secretary. Charles Bradlaugh was condemned to jail for a less serious crime. (qtd. in Hyde 248–49)

Outraged by this attack on her work and herself, Stopes challenged Sutherland to a public debate. When she received no response, she had a writ for libel issued against him and his publishers. Thus, birth control became the subject of yet another highly publicized trial—only this time it and one of its most outspoken advocates were on the offensive.

In a trial lasting nine days, from February 21 to March 1, 1923, issues were argued ranging from the Catholic church’s position on contraception, the implications of specifying Stopes’s degree from a German University at a time in England (post–World War I) when anti-German sentiments were rife, to whether there was sufficient medical knowledge about the rubber check pessary to consider it non-experimental. There also were passionate and explicit arguments concerning whether Stopes’s books (which were part of “this monstrous campaign of birth control”) were indeed more obscene than *Fruits of Philosophy* (thus making true Sutherland’s comment that Bradlaugh had been condemned to jail for a less serious crime).43

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

1. Were the words complained of defamatory of the plaintiff?
   Answer: Yes.

2. Were they true in substance and in fact?
   Answer: Yes.

3. Were they fair comment?
   Answer: No.

4. Damages, if any?
   Answer: £100.

   (Box 390)

Seeming to ignore the answers to questions one, three, and four, the judge found for Sutherland, basing his judgment on the fact that the jury determined the alleged libel to be true in substance and in fact (even if it was not fair comment).

This surprising interpretation of the jury’s verdict is less so in light of the Lord Chief Justice’s far from impartial summation of the case. After
explaining the law of libel and the applicable defenses, he had gone on at length about the details presented at this particular trial. Stating that there obviously were those who believed in a “sort of public duty to spread abroad, on the widest possible scale, without discrimination of sex, or age, or marriage, or absence of marriage, the truth about the check pessary” (Box 363), he asked whether it did not also occur to the gentlemen of the jury that others held stoutly to an opposite view:

Contraception may be, as more than one of these witnesses have said, in some cases a deplorable necessity, always at the best a second best; but, for heaven’s sake, do not let this information be published broadcast to all and sundry, to persons of all ages and of all circumstances as to marriage or non-marriage. And if they are to be published in that way, let us be very careful as to the language, the tone, the manner, the style, in which the publication is made. . . . Sex teaching, yes, but in cold scientific language, not mixing up physiology with emotion, not teaching such truths as need to be taught in the language of adjective and rhetoric, but with austerity, with coldness, stating the facts and no more. (Box 363)

The literary presentation of this information (the language, tone, manner, style, the use of adjective and rhetoric) seemed most perturbing to this judge. In light of his admission that birth control may be “a deplorable necessity,” he most likely feared the effectiveness and persuasiveness of this type of written word.

In protecting “unfair comment” about birth control, the law itself came under attack. In a letter to the *Daily News* about the ruling, George Bernard Shaw commented as follows:

What has just happened in a case quite as important in its way as the trial of the seven bishops makes it unnecessary to say anything more except that if jury men are not better instructed in their rights and duties than they are at present, the continuous pressure of the Bench to usurp their functions will end in nothing being left to the jury but the responsibility for the Judge’s decision.44

The *Westminster Gazette* concluded, “Women who desire to know how to prevent unwanted children are bad women. Such is the law as it stands. The law is not functioning usefully.”45

Stopes acknowledged the verdict as a victory: “The result of the trial is indeed remarkable, but I feel absolutely vindicated as I obtained a clear
finding for damages from the British public as represented by a Jury, though this is withheld as a legal technicality. Even this has worked for good and led to many public expressions of sympathy and indignation.”

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

As with the Besant prosecution, the tremendous publicity these trials received did a great deal to spread the word about birth control. While ultimately losing the case, at a steep cost of approximately £10,000 (Hyde 276), Stopes herself admitted that her defeat had “roused so much more enthusiasm for me than simple success would have done that I cannot regret it” (qtd. in Hall 243). The number of women visiting the clinic in 1923 was more than double the number who had visited in 1922. One postal delivery alone in 1923 brought 350 letters to the clinic, and newspapers around the world carried coverage of the trials (Hall 246). “Stopery” had become the talk of the town.

The actual practice of birth control was not illegal in England; what was dangerous was to advocate it in print. And the greater the audience of readers, the greater the “crime.” Thus, the threat of being charged with obscenity and immorality, whether in a legal indictment, in a literary review, or in the court of public opinion, effectively kept many writers from openly addressing this pressing issue. It was clear from those who did speak out that the risks were high. Efforts were made in 1873 to keep John Stuart Mill from being buried at Westminster Abbey because he was sympathetic to family limitation (McLaren 93). Annie Besant was ostracized from “decent” society and unwelcome in many feminist groups because of her Neo-Malthusian views (Bland 196). Most shockingly, her outspoken views were “proof” in a court of law that she was unfit to raise her own child. Jane Clapperton’s novel was dismissed as “didactic,” and she has slipped into such obscurity that we do not know what ramifications she may have suffered on account of her contemptuous views (Review of Margaret Dunmore, Athenaeum 177). In the early twentieth century, Stopes’s personal trials included the receipt of many life-threatening letters, the refusals of newspapers to advertise her books (The Times even refused to print the announcement of the birth of her son), and arson at one of her birth-control clinics (Soloway 247; Briant 176).
Statistical evidence on the birth rate, however, suggests that these efforts at silencing were far from 100 percent effective. In 1876, one year before the Besant trial, the birth rate in Britain peaked at 36.3 births per thousand. Then it began to plummet. By 1901, fertility had dropped more than 24 percent; in the course of fifty years, the average size of British families fell by nearly two-thirds (Soloway xi). As Richard Soloway explains in his study *Birth Control and the Population Question in England, 1877–1930*, by the early twentieth century, “it was widely acknowledged that the decided shift toward smaller families was not a result of later marriage, alterations in diet, or the diminished fecundity of an evolving, or, as the more pessimistic suggested, a decaying race. On the contrary, the decline was the effect of the rapid spread of family limitation, or birth control . . .” (xii).

While it may be impossible to measure the influence of any one person or event, after Annie Besant raised her voice in court, thousands of people purchased pamphlets providing practical guidance on birth control, and in the same year as the trial, a Malthusian League was formed that openly promoted the discussion and use of contraception throughout the Victorian and Edwardian periods. Stopes reached out to a much greater public than the Malthusian League with her campaign for “constructive birth control,” which focused on the right to sexually fulfilling marriages and desired children as opposed to the League’s emphasis on the economic consequences of overpopulation.

The explicit discussion of birth control in Clapperton’s “lost” novel, as well as the relevance of this issue to the tragedy of Hardy’s much more famous one, also suggests that this taboo subject may have been explored in literature much more than has been previously considered. There may be other novelists like Clapperton who wrote, as one reviewer of *Margaret Dunmore* commented, without “an eye to the circulating libraries” (*Academy* 147), whose controversial subject matter may have ensured that their fiction was deemed unremarkable. Still others, like Hardy, may have commented more subtly in order to evade the severe and silencing judgment of “Mrs. Grundy” (the term Hardy used to refer to critics and other upholders of conventional propriety).

Just because a novel does not address a topic explicitly, however, does not mean that it was not written with those ideas very much in mind. Reading Victorian novels from our contemporary perspective that birth control was not really a nineteenth-century issue, we have failed to take into account, because it virtually necessitated euphemism and self-censorship, a social context that truly mattered. It is less likely that middle-class Victorian readers, who other evidence suggests had knowledge and access
to birth-control information, also would have read over these important cultural references.

With the knowledge that various methods of family limitation were available, the hangings in *Jude the Obscure* may be read as all the more tragic. For Sue *could* have helped it. That is unless she was one of those working-class women whom Besant and Clapperton recognized as having little practical guidance on how to limit the size of their families. Or unless, growing up without a mother, she was as ignorant about sexual matters as many of the women who wrote gratefully to Marie Stopes for the information she provided in *Married Love*. Or maybe, as her hero Mill had suggested, she was too hesitant (as the hesitancy of her remark itself underscores) to acknowledge desires and methods that were so unsupported by the moral feelings of the community. These possibilities would have further complicated the tragedy of everyday life that Hardy was trying to portray, especially for the many Victorian readers to whom the full significance of Little Father Time’s message would not have been obscure.