THE PROSECUTION OF MR. BRADLAUGH AND MRS. BESANT

The trial of Mr. Bradlaugh and Mrs. Besant for publishing an obscene book was commenced on Monday in the Queen’s Bench. The Solicitor-General, Mr. Douglas Straight, and Mr. Mead prosecuted. A preliminary application to quash the indictment was refused, the points being reserved. The Solicitor-General then opened the case, referring to the case of the “Confessional Unmarked” to show that it was not necessary that there should be an intention to vitiate public morals supposing that was the general effect of the book. His lordship said in that case they would be criminally liable. Formal evidence of the publication having been given, Mrs. Besant addressed the court for the defence. She denied that the work was obscene, argued that the information it conveyed was useful and necessary, and that opinion honestly expressed should not be put down because some police agents did not agree with it. She denounced the prosecution as a disgrace to English justice.

The case was resumed on Tuesday.

Mrs. Besant, in resuming her address, said that when the court adjourned on Monday afternoon she had laid the foundation for drawing a distinction between natural and death producing checks and those artificial checks of which she was the advocate upon the increase of population. She was the more encouraged in her defence by having only that morning received a letter from Professor Bain, in which he said that he regulated this trial as one of the most critical in the history of our liberties. The natural checks were most prevalent in savage life. Mr. Malthus had said that if population went on increasing without check, in time there would not be standing room on the habitable globe for the human race. The natural checks to be found in savage life were infanticide-too prevalent even in civilized life-the number of the aged, the frequent wars, the famines, and the terrible diseases. The poor of this country were looking to the jury to secure them from those checks which meant misery and vice, and to give them a chance of using scientific checks that meant happiness and comfort in their homes. Looking at China with its overwhelming population, Mrs. Besant pointed out the vice that resulted from it. Again (she proceeded) in our Australian colonies, where sixty women were to be found amongst 20,000 men, the amount of vice and diseases was beyond all imagination. In Europe all tended to preserve life, disease was cured, and wars were gradually being replaced by arbitrations. The more, therefore, that civilization progressed the more were the natural checks removed, and if we did not replace them by scientific checks civilization would only mean increased misery. If the population of England went on increasing at its present rate during the next fifty years, with the corresponding rise in the price of provisions, the means of population would be reduced to the most abject misery. We were following the example of Ireland, which resulted so disastrously in the famine of 1848, by increasing our population at a greater rate than our food supply. One wretched consequence of our enormous population was over-crowding, which led to more immorality on the part of young lads and girls than any that could result from giving them dry technical physical knowledge. She had seen with her own eyes the most terrible scene and vice among the poor, and she asked whether they marveled that be risked even imprisonment and fine in order to hiring salvation and happiness to these unfortunate creatures. Another check upon the population of this country was insufficient and unwholesome food, the result of low wages, due to over-competition, and the large number of children which were brought into the world. Another check was the terrible drunkenness among our poor arising from want of food. Baby farming and intentional overlaying of infants were others of the dreadful checks which were the results of our civilization. She asked whether it was more immoral to murder children after they were born by means of these direct checks, which the Solicitor-General pointed to an those designed by nature and by Providence, then to employ the scientific checks for advocating which she stood there as a criminal that day. It was the existence of this misery and vice, and of prostitution, which had led her to the conclusion that, however this trial might go, it was her duty steadily and patiently in no spirit of defiance-to preserve in her endeavour to alleviate human suffering, even though in reaching her goal she had to pass through the prison. Mr. Darwin had objected to her proposal that the great improvement in the higher animals and in man was the result of the struggle for existence. She admitted that there would be some force in that argument if man lived on the same terms as the animal, and let the young, the weakly, the aged, the diseased, and the starving die without assistance; but under our present condition of life such a thing was impossible, and therefore Mr. Darwin’s argument did not apply.

The Lord Chief Justice-It may be well worthy of Mr. Darwin’s consideration whether the result of a struggle for existence may not be twofold-namely, that beneath the small number of highly gifted race a deteriorated mans may not be found.

Mrs. Besant proceeded to point out the evil that resulted from delaying marriage until late in life. It was a mockery to tell young men and women that they must not marry until the spring time of their youth had passed away, and until their fresh and youthful affection had become blunted. She did not seek to prevent the production of children altogether, but merely to limit their number. It was not because she disliked children, but because she loved them so much that she urged that not more would be brought into the world than could be provided for. Profligacy on the one hand and celibacy on the other each gave rise to manifold evils that were worse than those which flowed from early marriage. Mrs. Besant, having referred to Mr. Montagu Cookson’s review on the subject, said that the object of this book was not to prevent marriage or to promote profligacy, but to encourage marriage early in life by introducing an artificial but healthy check upon the population. In support of her argument she referred to the works of Mr. John Stuart Mill, Professor Leone Levi, and Mr. and Mrs. Fawcett. She deprecated the discussion of physiological questions in magazines, and contended that they should be confirmed to works the titles of which indicated clearly the nature of their contents. She had placed before the jury the dilemma of choosing between the misery and vice resulting from over-population and from late marriages or the use of certain checks after marriage, and it would be for them to say which they preferred. Dwelling upon the physical plan and the ruin to the health of women in the poorer classes from over-child bearing and over lactation, she adverted to the number of letters she had received from country and town clergyman urging her to proceed in her course. She pointed out that medical men had recommended that in the case of deformed women unable to produce a living child abortion should be brought about, and surely that was more immoral than to recommend the use of a check. She contended that the whole of the first chapter showed that there was nothing obscene in the intention of the writer.

The Lord Chief Justice said that, taken by itself, the chapter was perfectly honest and pure. There was not a word that could be constructed into an expression of impurity. By itself it might be taken as an introduction to the Malthusian doctrine.

Mrs. Besant-Precisely no, my lord. She proceeded to contend that a physical truth could not be a moral evil. No doubt, that under the cover of physical knowledge indecent suggestions might be made, but that was not the case here. She referred to the Government Directory-a book issued by the Science and Art Department at South Kensington, and printed by the queen’s printers-stating that boys and the girls under sixteen years of age, who went up for examination, would be examined on any subject treated of in standard English works in Physiology-viz, Carpenter’s “Principle of Human Physiology,” Marshall’s “Outline of Human and Comparative Physiology,” “Lessons in Elementary Physiology,” by Professor Huxley, “Manual of Physiology ,” by Carpenter and others. She did not object to the Government circulating this information, but she did complain that she and her co-defendant were made the subject of prosecution for publishing as obscene what Lord Beaconsfield, the Marquin of Salisbury, and the other members of the Government, including the law officers of the Crown, placed in the hands of boys and girls at South Kensington. She was the mother of a daughter, whom she believed to be much happier from a correct knowledge of physiology, instead of packing it up in a casual manner. The misuse of knowledge did not seriously make it bad or obscure. The fault of the misuse of knowledge did not lie with the giver of the knowledge, but with the person who misuse it. This was a trumped up prosecution of a book that had been in circulation forty years, and by spite and malice had been brought into greater notoriety than the author could ever had anticipated. Justice required if they were convicted on this indictment that Mr. W. H. Smith, a member of her Majesty’s. Government should also be prosecuted for circulating without restraint amongst the wealthy clauses, who could spare 2s, 6d, 5s or 6s., what they would say by their conviction was indecent in a six-penny book. The object of the book was to promote marriage and teach temperature in those who were married. Dr. Knowlton’s object in writing the book was the opposite of that which had been attributed to it. The book was to be condemned for its obscenity on account of its price, but she hoped the jury would not condemn it on account of its price, and mature obscenity by the money paid for it. She could not understand why she and her co-defendant had been singled out for this prosecution, when medical words were hold by different booksellers without restriction. The circulation, since this prosecution had increased enormously-from 700 to 125,000 a year. If she gained the verdict, the sale would be stopped, the object being to gain the right to publish and any other person might take it up, and she warned them that the publication of the book would not be stopped by her conviction [Mrs. Besant’s speech occupied eight hours in delivery]

Mr. Bradlaugh, in rising to address the jury, said he felt the grave responsibility that rested on him, best his was of test in dealing with delicate matters should damage his co-defendant, who had presented the case earnestly and so eloquently before them. The indictment was for publishing an obscene book, but there was no statute which he defined the word “obscene.” They were indicted under the common law, but no verdict similar to this had been made the subject of an indictment as common law. This was the first case in which the defendants had ever stood forward and said the book was not obscene. He would affirm that there was not a line in this book which was not written with decency. When the learned Solicitor-General applied the term “filth” to a work in which, as he contended, there was not a trace of vulgarity, he must have forgotten that he was pleading for the conviction of a man and woman, and must have thought he was engaged in some civil cause. Having quoted Lord Campbell’s remarks on introducing his Bill in the House of Lord, and which was directed against what was intended to corrupt and deprave the public mind, he said in this case the (the defendants) had given notice to the authorities of their intention to publish the work. They had been arrested on a warrant, an indignity of which he did not complain, but which might have been well appeared to the lady who was his co-defendant. In the periodical which he had conducted he had ever put forward Malthusian views, and if this book was obscene, how was the poverty and misery of the working classes to be prevented? John Stuart Mill had left it on record that his attention had been directed to him (Mr. Bradlaugh) because he put forward these views. Indictments for obscenity, not under the statute but the common law, must be looked at with a little care.

The Lord Chief Justice said what he would hold was that if the jury should be of opinion that the effect of this book was to deprave public morals and to corrupt youth it was an infraction of the law.

Mr. Bradlaugh submitted that even so he and his co-defendant could not be convicted under this indictment.

The Lord Chief Justice – I shall hold to the contrary.

Mr. Bradlaugh contended that this work was an essay on the population, and that it was not indictable to advocate checking the population. He was addressing the court when his lordship rose.

On Wednesday. Mr. Bradlaugh continuing his address, submitted that the essay indicted was an essay on the population question; secondly, that the subject was one lawfully to be discussed; thirdly, that it could be proved over and over again that over population was the fruitful source of poverty, ignorance, crime, vice, and misery, and that, therefore, the advocacy of prudential check to population was not merely lawful, but was highly moral. There was not one sentence in the essay directed against marriage. It was amongst the poor that over population was most felt, and that was moral which produced the greatest happiness to the greatest number without injury to anyone. It was no ground against him to say that some time or other some people might do something he had not recommended under circumstances that were never intended, and make that the basis for indicting him. The pamphlet did not go beyond anything that was necessary or legitimate for the poor of England. Over population was also the cause of immorality. He had a wearisome task before him, for he had to go through the greater portion of the pamphlet to show them that there was not a solitary syllable on which the Solicitor-General could put his hand but which was clearly written, carefully written, and painstakingly put, with a view of avoiding any sort of morbid excitement, allurement, or inducement. There was nothing in the book but would be found in the books of the higher classes. Mr. Bradlaugh then at considerable length compared the language of his book with that to be found in standard medical works on the same subject. The jury might think that he and his co-defendant done unwisely to depend upon their own tongues against the trained ability that had been matched against them, but they remembered that in every age of history of this country juries had conserved the liberty of the press, and they stood between the prisoner and the power assigned against him, and had delivered him from charges of intent that never ought to have been preferred against him. Was over population the cause of poverty, misery, crime, and disease, and was it moral or was it criminal to check poverty, crime and disease? That might be effected by celibacy; but let them look at Paris, at Naples, and at Rome, at Chicago and New York, at Dublin and at Glasgow, and then ask themselves if poverty there was a reality or a sham? It was said that this pamphlet advocated immorality, but there was not a word in it that warranted that conclusion. Unless the jury regarded him and his co-defendant as the advocates of the vile men who sold obscene books and prints in the streets, their deliverance must be “not guilty,” and he trusted that by their verdict they would send them out of that court absolved from that shame which the indictment sought to cast upon them. The following evidence was then called for defence:

Miss Alice Vicary, examined by Mrs. Besant- I am a chemist, by examination of the Pharmaceutical Society of Great Britain, a student of the Ladies’ Medical College for Midwifery and diseases of Women for two years, and am also a four-year student at a medical college in Paris. I have read the pamphlet in question. Dr. Knowlton was competent to write this pamphlet, and I think it is fit for general circulation. Physiology had made great strides in advance since. She described the evils resulting from over-rapid child-bearing. Over nursing was injurious both to the mother and to the child. It produced great debility to both. Over lactation was no preventive of pregnancy, though considered so by the ignorant. She did not believe and she had never heard that physiological details corrupt the mind.

By Mr. Bradlaugh –The diseases of women and the remedies stated in the pamphlet are fairly put there. The physiological portion of the book are mildly stated-they are not highly coloured in comparison with many of the books I have had to read in the course of my studies. Dr. C. R. Drysdale, examined by Mr. Bradlaugh- I first read the pamphlet more than 20 years ago. I also read it last night. It is an old-fashioned book. It was always considered as excellent work. I cannot imagine a better style with a full knowledge of the subject at that time. I do not consider there is anything prurient or immodest in the work. There is nothing in it to excite libidinous passion, but the contrary. Poverty and sickness in the poor of London, with large families prevailed to a very great extent. We die a little faster now in London then we did 20 years ago. The children of the poor die three times as fast as the children of rich. The children of the poor were brought into the world only to die. Checks were adopted in France to a great extent. The over-crowding near Chancery-lane and Gray’s-inn was truly shocking. He had been six children and a man and woman in one small room. Large families produce disease. Overcrowding was a fruitful cause of prostitution. He had no doubt that hosts of children were worked to death.

Mr. H. G. Bohn, the well-known publisher, deposed that be published “Carpenter’s Animal Physiology,” and that it was largely used in schools. The pamphlet complained of contained no more, but less than was to be found in many other books. It contained scientific details by scientific men. She had put no restriction on the publication. He should have the price if he could have doubled the circulation.

The further hearing of the case was then adjourned.