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Source: *American Quarterly*, Vol. 18, No. 1 (Spring, 1966), pp. 3-23

Published by: The Johns Hopkins University Press

Stable URL: <http://www.jstor.org/stable/2711107>

Accessed: 04-10-2016 15:00 UTC

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# The Early History of the Anti-Contraceptive Laws in Massachusetts and Connecticut

THE DEBATE WHICH SPORADICALLY ERUPTS IN THE COURTS AND PRESS OF Massachusetts over its law against the dissemination of contraceptive information and in Connecticut over its law against the use of contraceptives has concerned primarily the anti-contraceptive doctrine of the Roman Catholic Church.<sup>1</sup> The religious snarls in this controversy have nearly obliterated any memory of the widespread popular and legal suppression of discussion about contraception which prevailed in the United States prior to the 1930s. The anti-contraceptive laws were not originally passed as a result of controversy over religious doctrine; they were passed as a by-product of an attempt to give legal support to a widespread attitude about obscenity. Virtually the only opposition to their passage came from the fear of a minority for the freedom of the press.

The laws in Connecticut and Massachusetts were passed in 1879 as part of a quiet but nationwide movement for similar laws.<sup>2</sup> Eventually

<sup>1</sup> For a detailed discussion of the Catholic position on birth control laws, see Norman St. John-Stevan, *Life, Death and The Law* (Bloomington, Ind., 1961), pp. 82-105 and Alvah H. Sulloway, *Birth Control and Catholic Doctrine* (Boston, 1959). It should be noted that the Catholic doctrine is opposed to use of "artificial means" such as a diaphragm or condom to limit births, but that it does sanction the "rhythm method" for couples who find it necessary to avoid conception. The distinction is an important one to keep in mind, since the church is not opposed to the principle of birth control or family limitation as is implied in labeling the controversy one of "birth control." The Catholic opposition to birth control is not limited to Massachusetts and Connecticut as is shown by recent demonstrations in Illinois and Colorado (for example) against dissemination of birth control devices to welfare patients.

<sup>2</sup> All the brief histories of the obscene literature laws, and of Comstock Laws consulted in this study state that after the federal law, state laws were passed, although they give no particular documentation. I have not checked the dates of passage of the laws in states other than Connecticut and Massachusetts.

anti-contraceptive laws were passed in 24 states as part of obscenity statutes, and obscenity laws in 22 other states came to be used as anti-contraceptive laws because of federal statutes and interpretations.<sup>3</sup> Prohibition of the dissemination of contraceptives and contraceptive information has been part of federal law since 1873, when the law known as the "Comstock Law" was passed. This law has not been repealed, although its anti-contraceptive provisions were drastically curtailed in the 1930s by a series of judicial decisions that reflected a change in popular definitions of obscenity.<sup>4</sup>

The federal law (the Comstock Law of 1873) was passed ostensibly for the purpose of restricting the circulation of obscene literature by mail.<sup>5</sup> However, the wording of the law gave it a much wider jurisdiction. According to the "Act for the Suppression of Trade in and Circulation of, Obscene Literature and Articles of Immoral Use" it became unlawful for anyone to:

Sell, or lend, or give away, or in any manner exhibit, or . . . offer to sell, or lend or give away, or in any manner to exhibit, or . . . otherwise publish or offer to publish in any manner, or . . . have in [one's] possession, for any such purpose or purposes, any obscene book, pamphlet, paper, writing, advertisement, circular, print, picture, drawing or other representation, figure, or image on or of paper or other material, or any cast, instrument or other article of an immoral nature, or any drug or medicine, or any article whatever, for the prevention of conception, or for causing unlawful abortion, or . . . advertise the same for sale . . .

or in any way indicate where or how the above articles could be obtained. The second section of the law amended the postal code of 1872 so as to outlaw the proscribed obscenity from the mails; the third section prohibited importation of the above articles; the fourth section provided

<sup>3</sup> Mary Ware Dennett, *Birth Control Laws* (New York, 1926), pp. 11-14. According to the statutes, contraception is still illegal in Kansas, Missouri and Nebraska, but the effectiveness of the prohibitive laws has been modified by other laws. For example, Nebraska has minimum standards for prophylactics and Missouri gives contraceptive advice as part of its maternal health services. St. John-Stevas, pp. 63-69. See especially note, p. 68.

<sup>4</sup> These decisions are discussed in detail in Morris L. Ernst and Alexander Lindey, *The Censor Marches On* (New York, 1940), and in Dennett.

<sup>5</sup> James C. N. Paul and Murray L. Schwartz, *Federal Censorship, Obscenity in the Mail* (New York, 1961), p. 259. "The 'Comstock Act' was codified in the Post Office Code [but with other plainly criminal sections] until 1909, when it was codified, along with many other criminal statutes in what has become Title 18 of the U. S. Code, the criminal part of the Code." The present article is a portion of a master's thesis, Brown University. Also contained in this thesis is a discussion of the federal law and Comstock's role in passing it. See also *Congressional Globe, 1873*, pp. 1240, 1307, 1358, 1371, 1436, 1525, 1571, 2060 and Appendix, p. 297.

penalty for any government official who knowingly aided and abetted in distribution of the above; and the fifth section provided that "any judge of any district or circuit court of the United States, within the proper district" could upon proper complaint issue a warrant for search and confiscation of the offending articles which were then to be destroyed.<sup>6</sup>

All accounts agree that Anthony Comstock, who lobbied extensively for the bill, played a major role in getting the legislation passed, and generally concede validity to his claiming the bill as his own.<sup>7</sup> Comstock devoted his life to the pursuit of moral purity and it was his boast that in his 41 years of service he could have filled nearly all the seats in a 61-car passenger train with convicted offenders of obscenity laws, and had confiscated 160 tons of obscenity.<sup>8</sup> Other similarly unsubtle measures of effectiveness that he wielded were six dead publishers, manufacturers and dealers;<sup>9</sup> 64,836 confiscated rubber articles as of 1882;<sup>10</sup> a total of 278 years and 15 days in prison sentences imposed; and 11 tons of gambling paraphernalia, lottery and pool circulars. These statistics were used to rally support to his crusade. "These are startling facts, and every one of these figures ought to be a trumpet note of warning to those who have the interests of the community, and the moral purity of the children of this country at heart. With such a record as this, we turn upon our enemies and challenge them to do their worst in their efforts at defamation of character."<sup>11</sup>

Although the federal law would seem to have been all inclusive in its provisions, Comstock believed it necessary to have state laws which would also sharply "define what are obscene publications and affix penalties to their circulation, somewhat adequate to the enormity of the crime against society."<sup>12</sup> Certainly the ability to prosecute offenders through the state courts as well as federal courts would allow greater flexibility of attack.

<sup>6</sup> Appendix to the *Congressional Globe*, 1873, p. 297. In most cases, the deletions in the above quote are of the word "shall." This law was amended slightly in 1876 so as to clarify penalties for violation and specifically include advertising in the postal amendment. See *Globe*, 1876.

<sup>7</sup> See particularly, Heywood Broun and Margaret Leech, *Anthony Comstock, Roundsmen of The Lord* (New York, 1927), pp. 128-44; St. John-Stevan; Paul and Schwartz, pp. 248-58, 9-24.

<sup>8</sup> Leech and Broun, pp. 15-16.

<sup>9</sup> Comstock in a letter to Representative Merriam dated Jan. 18, 1873. Quoted by Merriam in *Globe*, 1873, Appendix, pp. 168-69. This number represents those dealers who had committed suicide after their arrests. Comstock regarded it as justification of his cause.

<sup>10</sup> Comstock, *Traps For The Young* (New York, 1883), p. 136.

<sup>11</sup> Comstock quoted in "Success in the Suppression of Vice," *Our Day*, III (1888), 328-29.

<sup>12</sup> *Second Annual Report*, New York Society for the Suppression of Vice, Jan. 1876, p. 10.

After 1873, Comstock devoted at least part of his energies to encouraging individual states to pass laws similar to the federal law. In May of 1878 he spoke in Boston and enlisted support of clergymen and prominent citizens for a New England Society for the Suppression of Vice.<sup>13</sup> The group elected as president Col. Homer B. Sprague, Ph.D., who was also principal of Girls High and Normal School. The vice-presidents were primarily clergymen and would seem to have been selected for the prestige their names would offer the organization. From Massachusetts, the Rev. Phillips Brooks, the Rev. Edward E. Hale, the Rev. A. J. Gordon and the Rev. Julius H. Seelye, president of Amherst, and the Hon. Edward S. Tobey, onetime president of the Boston Y. M. C. A. and post-master of Boston in 1879, lent their support to the new society. Other New England notables in the vice-presidential list included, the Rev. Noah Porter, president of Yale, and the Hon. B. G. Northrop, secretary of the Board of Education from Connecticut; from Rhode Island, the Rev. E. G. Robinson, president of Brown; from Vermont, the Rev. Matt. H. Buckham, president of the University of Vermont; from New Hampshire, the Rev. S. C. Bartlett, president of Dartmouth and from Maine, the Rev. Henry E. Robins, president of Colby University. The treasurer was Charles J. Bishop, president of Central National Bank in Boston and secretary was the Rev. Fredrick Baylies Allen. Members of the executive committee were Homer B. Sprague, Robert Treat Paine Jr., Wm. Ripley Nichols, J. C. Proctor, Chas. J. Bishop, Irving O. Whiting, J. D. W. French and Fredrick Baylies Allen. The agent of the New England Society was none other than Anthony Comstock, who served in that capacity until 1882 when they enlisted Henry Chase of Watertown as agent.<sup>14</sup>

The president of the New England Society appears to have shared many of Comstock's attitudes toward obscenity and used similar phrases to describe his feelings. "There is a hydra-headed evil, malignant, un-resting, yet, for the most part, invisible . . . making the youth of the land its victims . . . dragging them by thousands to mental, moral and even physical disease and death. . . . The mischief is largely irreparable. . . ." Among the various obscenities he mentions, such as pictures and songs and even the classics, are "the nondescript pamphlets of self-styled reformers who would reconstruct society on new foundations, making each community one great poultry yard, and so bringing back

<sup>13</sup> *Word* (Princeton, Mass.) July 1878, p. 2.

<sup>14</sup> For list of officers, see *First Annual Report*, New England Society for the Suppression of Vice, 1879-80. No report was issued in 1880, and the one issued Jan. 1881 covered 1879-80. See also *Annual Report* for 1881-82. This Society later became the Watch and Ward Society.

the golden age of monkeydom and—liberty! To facilitate this consumption, numerous unnamable articles for the promotion of debauchery and for the prevention of its immediate consequences have abounded in every city and made their way into myriads of homes.”<sup>15</sup> Sprague, in this 1882 article, however, does not include quackery, fraud or gambling in his definition of obscenity as Comstock did. He also expressed greater faith in the power of education for preventing corruption of the morals of youth. “What with the innocent curiosity of youth . . . [and] the unwise reticence, the over-fastidious delicacy, the deceptive silence of parents, guardians, teachers, ministers, friends, on that unmentionable subject that nature continually thrusts upon the attention and which she compels to be prominent in every boy’s and girl’s thoughts for months and years during the period of adolescence . . . is it strange that the agencies of vice become legion?”<sup>16</sup> To be sure, however, his greatest reliance is on protection by suppression, not protection by education.

Although it had representatives from all New England states, most of the Society’s activities seemed to center in Boston, at least in this early period. All the Boston papers carried some report of its first annual meeting in 1879, but there was no mention of the meeting in Connecticut newspapers. The Society’s annual reports for 1879 and 1880 contained no specifics about chapters organized in other states, nor about anti-vice activities outside of Massachusetts.

Unequivocal linking of the activities of the vice societies to the passage of the Massachusetts and Connecticut laws is hindered by the fact that “publicity was necessarily shunned”<sup>17</sup> by the societies themselves and by the scanty legislative records in the two states. Certainly, however, there is no question that the New England Society was interested in the Massachusetts law. At the annual meeting of the New England Society held March 27, 1879, in Boston, “The secretary . . . announced that Governor Talbot yesterday signed the bill for the prevention and punishment of offences against public morality, chastity and decency, and the announcement elicited a hearty round of applause.”<sup>18</sup> This interest is rendered considerably more significant by the almost complete absence of expressions of interest by anyone else. Only one daily newspaper has

<sup>15</sup> Homer B. Sprague, “Societies for the Suppression of Vice,” *Education* (Sept. 1882), pp. 70, 74.

<sup>16</sup> *Ibid.*, p. 71.

<sup>17</sup> Statement in address of the Rev. Edward H. Hale to First Annual Meeting of the New England Society for the Suppression of Vice. Reported in *Boston Journal*, Mar. 28, 1879, p. 3.

<sup>18</sup> *Loc cit.* Although several other papers carried reports of speeches, only the *Journal* carries this statement.

been found that mentioned the bill in anything other than the statehouse proceedings column, and that exception is contained in an article on the New England Society's first annual meeting quoted above. Even this much interest is lacking for the Connecticut law.

The only claim for direct agency in the passage of either of the bills was made by Comstock in a report before the New York Society on meetings he had addressed in Connecticut and Massachusetts. "As results of these meetings, new laws have been passed in Massachusetts and Connecticut by their legislatures."<sup>19</sup> Once again, this claim is given weight by the absence of other claimants. Certainly, however, the wording and provisions of the two laws are consistent with the contention that Comstock and the New England Society were instrumental in their passage.

The Massachusetts bill was entitled "An Act Concerning Offences against Chastity, Morality and Decency" and provided that:

Any person who shall within this Commonwealth sell or lend, or give away, or in any manner exhibit or shall offer to sell, or to lend, or to give away any instrument or other article intended to be used for self-abuse, or any drug or medicine or any instrument or article whatever for the prevention of conception or for causing unlawful abortion, or shall advertise the same or shall write or print or cause to be written or printed any card, circular, book, pamphlet, advertisement or notice of any kind stating when, where, how, or of whom, or by what means any of the articles in this section hereinbefore mentioned can be purchased or obtained, or shall manufacture or in any wise make any of such articles or things shall on conviction thereof be imprisoned in the state prison for not more than five years, or in any jail or house of correction not more than three years, or fined not less than one hundred dollars nor more than one thousand.

The second section of the bill provided that the articles named above and all materials for the manufacture of the same could be seized and would be forfeited, and that warrants could be issued.<sup>20</sup>

The legislative history of the measure is reminiscent of the dispatch accorded the federal law, which was passed virtually without debate. On February 5, 1879, the last date on which new legislation could be introduced, Representative Hamilton A. Hill of Boston<sup>21</sup> "ordered that

<sup>19</sup> *Sixth Annual Report*, The New York Society for the Suppression of Vice (New York, 1880), p. 6. The only laws passed in Connecticut and Massachusetts which relate in any way to obscenity are the birth control laws. Comstock is also given credit for initiating the law by Ezra H. Heywood, *Word*, May 1879, p. 3.

<sup>20</sup> *Mass. General Laws*, 1879. Chap. 159, pp. 512-13.

<sup>21</sup> Although a search was made for papers and information about Rep. Hill, nothing was discovered which would link him to the Vice Society. He was a retired business

the Committee on the Judiciary consider whether any additional legislation was necessary for suppression of trade in and circulation of improper literature and articles of improper use, and if so, to make such recommendations as may be required." This form of introduction of bills allowed a representative to introduce such legislation as he personally favored, and differs from a petition in that the initiating force is the member himself. The Judiciary Committee reported "An Act in addition to an Act Concerning Offences against Chastity, Decency, and Morality" on February 28. The bill then apparently was read the set number of times, sent to the Senate on March 12, and concurred in on March 20. It was signed into law by Governor Talbot on March 26.<sup>22</sup> The Journals of the House and Senate give no indication that there was any debate or discussion of the bill, and the daily newspaper accounts of the activities in the State House mention no discussion in connection with it, or even the votes. In fact, the bill is always reported with several others as having been read and approved, and usually by title alone. None of the newspapers makes any special mention of the passage of the law, and several of them do not even record its passage among the measures for that date.

The contraceptive law in Connecticut was included as part of a previous obscene literature law at the time of its passage<sup>23</sup> and left a somewhat more extensive legislative record. On February 7, 1879, Senator Carlos Smith from New Haven introduced Senate Bill 43 entitled "An Act to Amend an Act Concerning Offenses against Decency, Morality

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man and his writings and speeches indicate a strong interest in promoting commercial shipping. He served many years as Secretary of the Boston Board of Trade. He showed a great interest in history, writing a history of the old South Church. He was elected to the Massachusetts Historical Society, was vice-president of the American Statistical Association, treasurer of American Social Science Association, vice-president and biographer of the Congregational Club, member of the American Philosophical Society, director of Bostonian Society and of the New England Historic Genealogical Society. He is further connected with the contraceptive bill by the introduction of another bill in the next session of the legislature providing for search and seizure of contraceptives. It was not reported out of committee. This information about his memberships was collected from several memorials to Hill, located in the Massachusetts State Library, Boston.

<sup>22</sup> *Proceedings Of The Mass. General Court, Journal of The House*, 1879, pp. 178, 311, 320, 348. *Journal of The Senate*, pp. 239, 256. Also, reports of legislative proceedings appearing in the Boston newspapers.

<sup>23</sup> In the 1887 revision of the *General Statutes of Conn.*, the anti-contraceptive statute was made a separate section of the laws, Section 1539. In this revision, the previous format of the laws was changed and all the laws relating to obscene literature were broken up and separated into four sections. Section 1539 read: "Every person who shall use any drug, medicinal article or instrument, whatsoever, for the purpose of preventing conception, shall be fined not less than fifty dollars or imprisoned not less than sixty days nor more than one year" (p. 345).



and Humanity" which was referred to the Joint Standing Committee on Temperance. This committee reported favorably on the bill to the Senate on February 13. On February 19, the Senate accepted the committee's report that the bill be passed. The House accepted the committee report on first reading, but voted to return the bill to committee on February 20. By March 13, the Senate had approved a substitute bill which was explained to the House on March 18 by P. T. Barnum, Chairman of the Temperance Committee for the House, and amended. The substitute bill was rejected, but subsequently reconsidered and tabled. On March 20, the bill as amended passed the House, was concurred in by the Senate on March 21, and signed into law March 28, 1879.<sup>24</sup>

The *Journals of the House and Senate* give no indication as to the arguments for the various substitutes nor reasons for rejections and reconsiderations, nor do the records of the Committee on Temperance offer any additional information. The newspaper accounts of this legislation give a few details of discussion. The most complete account appeared in the *Hartford Courant* and since the length is not prohibitive, the entire account will be quoted.

#### Report of March 19:

Bill to punish those who manufacture or sell certain articles used for immoral purposes reported favorably. Mr. Barnum said that the bill met with favor in the Committee but that he had changed his mind about it. By consent he withdrew the bill.<sup>25</sup>

#### Report of March 20:

Offences against Decency. Substitute bill to prohibit the manufacture and sale of certain articles used for immoral purposes, and often sent by mail to students of both sexes, being chiefly obscene and lewd literature came from the Senate passed. The House once rejected it but subsequently reconsidered. Mr. DeForest of Middlebury alluded to the enormity of the offenses committed through the license now exercised to manufacture and sell some of the articles reached by this bill. Mr. Barnum said one amendment adopted removed his objections. Mr. Graves thought present statutes are sufficient. Mr. Marcy said the amendment only changes the phraseology; he did not like it however and hoped it would be rejected. Mr. Walker spoke strongly in favor of the bill, as in the interest of the highest morality and against crimes of the worst sort; no more righteous bill has been presented here. Mr.

<sup>24</sup> *Proceedings of The Conn. General Assembly, Journal Of The Senate, 1879*, pp. 236, 294, 317, 339, 414, 449, 586. *Journal Of The House*, pp. 271, 333, 488, 548, 576, 594. Also reports of legislative proceedings in Hartford newspapers.

<sup>25</sup> *Hartford Courant*, Mar. 20, 1879.

Phipps of Prospect did not think existing statutes covered the evil complained thereof. The bill then passed.<sup>26</sup>

The entire legislative action was for the purpose of adding an anti-contraceptive amendment to the already-existing obscenity statutes, and, in varying degrees, to extend and possibly clarify the obscenity statute. The basic amendment in S.B. 43 provided that anyone "who shall manufacture, sell, or advertise for sale any article or instruments of an indecent and immoral nature, or use, or any drug, medicine, article, or instrument whatever, for the purpose of preventing conception or causing unlawful abortion . . ." <sup>27</sup> shall be subject to penalty. The basic amendment in the bill substituted after the original bill had been recommitted to the Temperance Committee provided that anyone who "shall manufacture, sell, or advertise for sale any article, thing or instrument designed, or intended and adopted for any indecent and immoral use, purpose, or nature, or any drug, medicine, article, thing or instrument, whatever, for the purpose of preventing conception or causing unlawful abortion . . ." <sup>28</sup> shall be subject to penalty. Essentially then, the basic amendment being added did not change the two bills.

However, the basic amendments did not describe all of the changes that were made in the obscenity law. S.B. 43 and the substitute bill both contained two sections, a description of the amendment to be added and a writing out of the obscenity law with the proposed amendment incorporated. The writing out of the law in the original S.B. 43 was as follows.

Every person who shall sell, or purchase or introduce into any family, college, academy, or school, any printed or engraved matter containing obscene language, prints, or descriptions, or any drawing, or figure of an obscene character, or who shall manufacture, sell or advertise for sale any article or instruments of an indecent and immoral nature or use, or any drug, medicine, article, or instrument whatever, for the purpose of preventing conception or causing unlawful abortion, shall be fined not less than fifty dollars nor more than three hundred dollars, or imprisoned not less than sixty days nor more than one year or both.<sup>29</sup>

The writing out of the law in the substitute bill, however, contained a number of changes that were contained neither in the description of the amendment in the same bill nor in the original bill. This means

<sup>26</sup> *Hartford Courant*, Mar. 21, 1879.

<sup>27</sup> Senate Bill 43, obtained through the Secretary of State's office, Conn. The comparisons being made between the bills are all based on copies of the original bills.

<sup>28</sup> Substitute Senate Bill 43.

<sup>29</sup> Senate Bill 43.

that the substitute bill was internally inconsistent. The changes in question have been underlined.

Every person who shall sell, *or lend*, or introduce into any family, college, academy, or school, *or shall have in their possession, for any unlawful purpose or purposes, any obscene, lewd, or lascivious book, pamphlet, paper, picture, print, drawing, figure, or image, or other publication of an indecent nature*, or who shall manufacture, sell, advertise for sale, *or have in their possession*, for any such unlawful purpose or purposes, any article, thing, or instrument designed, or intended and adapted for, any indecent or immoral use, purpose, or nature, *or use any drug, medicine, article, or instrument whatsoever*, for the purpose of preventing conception, or causing unlawful abortion, shall be fined not less than fifty dollars nor more than three hundred dollars, or imprisoned not less than sixty days, nor more than one year or both.<sup>30</sup>

The underlined phrase beginning "or shall have in their possession" through "publication of an indecent nature" clearly makes the Connecticut obscenity statute more closely resemble the Comstock Law than had the previous "obscene language" and "character" provisions. The important change, however, is that the substitute bill, as passed, prohibits the *use* of drugs, medicine, . . . to prevent conception. It is this aspect of the Connecticut law that distinguishes it from others passed in this period. Due to the contiguity of the word "use" to this section in the original law, it is quite possible that an extra "use" was unintentionally included in the revision. As the underlinings indicate, the amendment clause in the first part of the bill does not prohibit use.

The amendment which Mr. Barnum apparently felt allowed him to support the law merely cut from the substitute bill the description of the amendment, leaving only the writing out of the obscenity statute, thus eliminating any inconsistency in the bill.<sup>31</sup>

A brief history of the Connecticut law in the *New York Times* credits Mr. Phineas T. Barnum, the showman, with originating the bill.<sup>32</sup> The legislative journals do not corroborate the statement as a matter of record. However, Barnum may well have been an important influence in its passage. It is well known that he was a powerful orator, and it is not difficult to imagine him urging his colleagues on to suppression of the "hydra-headed" monster in his role as chairman of the Temperance

<sup>30</sup> *Public Acts Passed by the General Assembly of the State of Conn., 1879*, Chap. 78, p. 428.

<sup>31</sup> Amendment, "Schedule A."

<sup>32</sup> *New York Times*. From a clipping in the Conn. State Library file dated May 15, 1963. No page was given.

Committee. He displayed a great deal of overt personal piety which is similar to that shown by Comstock. One biographer suggested that "Barnum's genius for astute showmanship never was displayed to greater advantage than when he harnessed his caravan to the church by the straps of his personal piety."<sup>33</sup> He did not drink or smoke, and he insisted, for moral reasons, that none of his employees drink. One of the most popular attractions at his museum was a morality play, "The Drunkard," in which the hero began as a "moderate drinker" and ended up a totally destroyed drunkard. There is evidence that he personally subscribed to the school of the "fatal incident"—that one, irretrievable step which led to death and destruction. According to his biographers, he was once a moderate drinker, who became convinced by his minister that moderate drink was the crucial step toward becoming a hopeless drunkard. If he ever heard Comstock speak, his convictions would certainly have made him amenable to accepting all that he heard and acting on it if given the chance.

Barnum's career affords other examples of strong public action arising from his moral principles. In an earlier term in the state legislature, he had gained the reputation for making his presence felt. One newspaper wrote, "The people of Connecticut are under great obligations to him for breakdown of the railroad combinations which have so long infested the legislature and sought in many ways to control it."<sup>34</sup> When Barnum returned to the political scene, in 1875, he was elected Mayor of Bridgeport, where one of his first crusades was against houses of prostitution.<sup>35</sup>

It is evident that important additions could be made in the final form of the Connecticut law dealing with contraception without apparently being noticed, and that the laws in both states were passed almost without comment, in either the legislature or in the press.<sup>36</sup> If contraception, per

<sup>33</sup> M. R. Werner, *Barnum* (New York, 1923), p. 321.

<sup>34</sup> Irving Wallace, *The Fabulous Showman, The Life and Times of P. T. Barnum* (New York, 1959), pp. 260-61.

<sup>35</sup> *Ibid.*, p. 262. Neither of the two biographies consulted for this brief sketch of Barnum contained any particular mention of interest in vice societies or campaigns against obscene literature although they did offer enough personal information to allow making the above conclusions.

<sup>36</sup> The Connecticut papers consulted, *Hartford Daily Times*, *Hartford Evening Post*, *Hartford Courant*, carried several items on temperance and woman's suffrage and even the Society for the Prevention of Cruelty to Animals, and noticed events occurring in Boston and Massachusetts. They also ran daily items on events at the legislature and often commented briefly on the bills passed. Papers from other towns were not available in Hartford libraries or the Connecticut Historical Society, and the very paucity of information did not indicate that further search would be valuable. The Massachusetts papers, *Boston Daily Advertiser*, *Boston Evening Transcript*, *Boston Evening Traveller*, *Boston Post*, *Boston Herald*, *Boston Journal* and *Boston Globe*, showed similar interests.

se, had been an important, or even a minor issue, surely more than one of the major Boston newspapers reporting the meeting of the New England Society for the Suppression of Vice would have noticed the Secretary's announcement of Talbot's signing of the bill in Massachusetts.<sup>37</sup> There was one segment of the public, the religious liberals, aware of the passage of the bill. The event was reported and commented on in a small Boston radical paper, *The Word*,<sup>38</sup> edited by Ezra Heywood. On April 6, 1879, the liberals of Boston held an indignation meeting to protest the conviction of D. M. Bennett for violation of the Comstock Law. At this meeting a resolution was passed protesting the new Massachusetts law and was printed in *The Word*. "Resolved: That the law recently smuggled through our state legislature at the instigation and by the characteristic methods of Anthony Comstock, ostensibly for the purpose of punishing all attempts at the regulation of the increase of families, but really for the purpose of suppressing heterodoxy in medicine, is the latest development of the contemptible conspiracy to deprive the people of their liberties." The text of the law was also printed. Heywood added editorially, "No citizen of Massachusetts asked for the passage of the 'law'; it was slyly worked through by Comstock himself, Mr. Jennings, member from Fall River, aiding in this murderous conspiracy. . . . What do the Republican Party and Governor Talbot mean by importing this pious scamp from Brooklyn to 'regulate' morality in Massachusetts." <sup>39</sup>

Most of Heywood's accusations must be taken with reservation, for he, like Comstock, had a convenient devil—in this case, Mr. Comstock himself. For example, he wrote in connection with the federal law, "We have the statement from a reliable source, that the law was passed in the closing hours of the closing session of a drunken Congress, when many of the members knew not for what they were voting; and that the President hurriedly signed the bill, without even reading its title." <sup>40</sup> His account of the passage of the federal law is probably as exaggerated as Comstock's.

<sup>37</sup> Only one Massachusetts paper, the Boston *Daily Advertiser*, carried an editorial comment relating to vice activities or the law. It spoke favorably of the Vice Society and its officers, but did not mention the law. Mar. 29, 1879, p. 2.

<sup>38</sup> There was a similar type of paper published in Connecticut, the *Winsted Press*. The Winchester Historical Society, where the only known copies are supposed to be stored, can find issues only for 1873. Its editor, George Pinney (spelling uncertain), was an atheist, a supporter of labor reform and the Greenback Party, as was Heywood, and Heywood quoted the paper on several occasions. It cannot have been a large paper, for in Winsted only the editor of the *Winsted Evening Citizen*, T. Vail, had heard of it and knew where it was. The historical society does not seem to be a professional organization and they may have the relevant issues, but cannot locate them at the present time.

<sup>39</sup> *Word*, May 1879, p. 3.

<sup>40</sup> *Word*, Oct. 1878, p. 2.

There is a similar mixture of truth and exaggeration in his account, quoted above, of the passage of the Massachusetts law. His statement that no Massachusetts citizen desired the law and that the purpose was suppressing heterodoxy in medicine is inconsistent with the activity of the New England Society. But his contention that the law was passed quietly seems to have considerable validity.<sup>41</sup>

Only two discussions or arguments directed specifically against the anti-contraceptive portions of either the federal or the state laws have been discovered. The first comes from a Baptist minister, writing an anonymous letter about the federal law to the *New York Times*.

I protest against the laws and the proceedings under them of Anthony Comstock, wherein he attempts to regulate and prohibit the sale of certain things hitherto commended by prudent physicians as harmless and yet invaluable to sickly and over-burdened mothers. I am aware of the fact that some of those who have favored these prohibitions buy and use what they denounce. Common sense is a jewel, and there ought to be laws, if we are going to invade the privacy of homes, to discourage the bringing into existence of weaklings; also to guard the mothers from burdens that prevent them from caring for the children they have.<sup>42</sup>

Comstock's attitude as revealed in his reply to this letter seems far more representative of public opinion in this period than is that of the minister. "The laws he protests against prevent the abortionist selling, or sending his vile incentives to crime through the mails. . . . Evidently this pastor is either crazy, stupidly ignorant, a very bad man at heart, or else he has a very poor way of expressing himself so as to make people understand his meaning."<sup>43</sup> There is very little evidence of popular understanding of positive uses of birth control, and considerable evidence of widespread belief that contraception would lead to greater immorality. For example, J. M. Buckley, defending Comstock, wrote that "if securing the conviction of nearly sixty abortionists and the punishment of vendors of instruments and nostrums, whose sole purpose is the promotion or

<sup>41</sup> The resolution is the only place in which I have found any reference to the anti-contraceptive laws as being for the purpose of preventing limitation of family size. Regulation of the family was important to free-love doctrine so they may have been particularly sensitive to this possible implication of the law. The New England Free Love League also passed a resolution against the Massachusetts law. *Word*, July 1879.

<sup>42</sup> Dr. A. S. W., "pastor of the——church in west——street." Quoted in Comstock, *Frauds Exposed* (New York, 1880), p. 542. This identification was made after a series of efforts by Comstock to identify his unknown assailant.

<sup>43</sup> Comstock, *Frauds Exposed*, p. 548.

concealment of licentiousness be 'interfering with legitimate medical practice,' no denial can be made."<sup>44</sup>

The other discussion of the contraceptive provisions of the federal and state laws comes from the free love liberals. Angela T. Heywood, wife of Ezra Heywood, defending the free love movement, wrote, "This so called 'government' now holds woman's person for man's use or abuse as he pleases; and that *her* claim to own even her own womb is criminally obscene."<sup>45</sup> The free love support for contraception did not stem from arguments for maternal or infant health (although there were overtones of the later eugenic arguments), as much as from arguments for the rights of women. In defending the principles of an arrested abortionist, Ezra Heywood wrote, "While we [free lovers] do not believe in abortion . . . we deny the 'right' of men to dictate to women what they shall do with the lifeseed they give to or force upon them."<sup>46</sup>

Some sources have named the outstanding liberals of the day, Robert G. Ingersoll, Moses Harman, Ezra Heywood and D. M. Bennett along with John H. Noyes as spokesmen for birth control in the 1870s and 1880s.<sup>47</sup> Noyes clearly favored birth control and developed a workable system, but one which did not have much popular support. Heywood and Bennett both sold the book *Cupid's Yoke*, which had a brief discussion of birth control in it. Ingersoll signed a petition for repeal of the Comstock Law, and Harman was convicted for printing obscenity in 1890. All had one common denominator—the advocacy of reform of the present marriage institutions which might have depended on conception control. All would have defended, and did defend, the right of anybody to print any argument—for birth control as well as marriage reform—but there is no evidence that birth control was the main focus of interest of any of these men.<sup>48</sup>

The Comstock law was an important issue to the main body of the liberals for a different reason than contraception, namely, freedom of the press. A difference of opinion as to what stand to take regarding the law was sufficient to split the National Liberal League in 1878. This

<sup>44</sup> "The Suppression of Vice," symposium by Anthony Comstock, O. B. Frothingham, J. M. Buckley, in *North American Review* CXXXV (1882), 500.

<sup>45</sup> *Word*, Jan. 1880, p. 1.

<sup>46</sup> *Word*, June 1878, p. 2.

<sup>47</sup> This suggestion is made by Norman E. Himes, *A Medical History of Contraception* (Baltimore, 1936), p. 261, and Himes, "Birth Control in Historical and Clinical Perspective," *Annals of The American Academy of Political and Social Sciences*, CLX (1932), 51, who cites an unpublished Ph.D. thesis by F. M. Vreeland, "The Process of Reform with Especial Reference to Reform Groups in The Field of Population" (1929). I find the evidence for this contention unconvincing.

<sup>48</sup> See Sidney Ditzion, *Marriage, Morals and Sex in America* (New York, 1953), pp. 159-206.

League had been founded in 1876 for the purpose of uniting all non-Christians, the atheists, the Free-religionists and any others who did not belong to organized religion, to work for the complete separation of Church and State. In their platform, they included abolition of religious tests for state office, opposition to Sunday closing laws, opposition to the tax-free status of religious organizations, and opposition to teaching religion in the public schools.<sup>49</sup> They also adopted, in 1876, a resolution favoring reform of the Comstock Law.

Resolved: That this League, while it recognises the great importance and the absolute necessity of guarding by proper legislation against obscene and indecent publications, whatever sect, party, order or class such publications claim to favor, disapproves and protests against all laws, which, by reason of indefiniteness or ambiguity, shall permit the prosecution and punishment of honest and conscientious men for presenting to the public what they deem essential to the public welfare, when the views thus presented do not violate in thought or language the acknowledged rules of decency; and that we demand that all laws against obscenity and indecency shall be so clear and explicit that none but actual offenders against the recognized principles of purity shall be liable to suffer therefrom.

Resolved: That we cannot but regard the appointment and authorization by the government of a single individual to inspect our mails, with power to exclude therefrom whatever he deems objectionable, as a delegation of authority dangerous to public and personal liberty, and utterly inconsistent with the genius of free institutions.<sup>50</sup>

In 1877 the arrest of two outspoken religious liberals, Ezra Heywood and D. M. Bennett, for violation of the Comstock Law occasioned an editorial in *The Index*, by F. E. Abbot, president of the National Liberal League.

The arrest of Mr. D. M. Bennett for circulating 'obscene and blasphemous publications' by an agent of the Young Men's Christian Association who has been clothed with extraordinary power over the mails by a special act of Congress, shows that the suspected purpose of perverting this power to the disguised persecution of free-thought is no mere chimera of the imagination, but rather a serious danger which threatens the freedom of the press and ought to make clear to all liberals the necessity of defending their own equal rights before the

<sup>49</sup> *Index* (Boston) Jan. 11, 1877, p. 18. All the history of the National Liberal League included in this study is gathered from *Index*, 1877-80.

<sup>50</sup> *Loc. cit.*, the resolutions were occasioned partly by the arrest of E. B. Foote, see history of position in *Index*, Sept. 19, 1878, p. 447.



law. What right has any United States official to prosecute any man for 'blasphemy' under United States statutes? Is it not a proof that Church and State are not yet practically separated in this country and that the cause of the National Liberal League is the cause of every individual free-thinker?

Abbot then reminded his readers "that there is no more fondness of 'obscenity' in the liberals than there is in the majority of Christians." He recorded himself as opposed to free love, but defended Heywood's right to express his opinion, as well as Bennett's right to sell the book. "Although his 'free love' theory of morals, as set forth in this pamphlet, is one which we just as positively believe to be false, one-sided, logically ridiculous, and morally mischievous in all its tendencies, nevertheless we concede his full and entire right to plead his case as best he can before the public. . . ." <sup>51</sup>

Abbot clearly did not approve of the Comstock Law or of the use being made of it. He was concerned with defending liberals against charges of favoring obscenity, and it was this concern which led him to bolt from the National Liberal League in 1878.<sup>52</sup> At their convention one of the most important topics of debate was the issue of whether to push for reform or for repeal of the Comstock Law. Although the convention elected as officers men who openly favored repeal, it decided to delay changing the 1876 position which advocated reform. This led Abbot and his supporters to form the National Liberal League of America which took over *The Index* as their organ.

Openly the repealers in the National Liberal League adopted no more positive attitude toward contraception than did the National Liberal League of America. They too were more concerned with freedom of speech than contraception, but differed from the National Liberal League of America in being unwilling to concede that obscenity laws could be written that did not violate this principle. Ezra Heywood, writing from the Dedham Jail in 1878 said, "I assert, without fear of successful refutation, that any law against obscene literature, since it invades mental liberty, initiates, if it does not establish, a censorship of the press." <sup>53</sup>

The question of policy toward the Comstock law might have been resolved with less internal dissension had the case currently at issue involved some other book than Heywood's *Cupid's Yoke*. As one liberal put it, "many who reject his doctrine and condemn his language, will yet defend him and make common cause with him because the common

<sup>51</sup> *Index*, Dec. 6, 1877, p. 582.

<sup>52</sup> See Stow Person, *Free Religion* (New Haven, 1947), pp. 117-29.

<sup>53</sup> *Index*, Oct. 17, 1878, p. 501. Letter from Heywood dated Oct. 5, Y.L. 6.

enemy of freedom, free thought, and enlightened progress is persecuting him. But it is unfortunate for the liberal cause that the fight with the new American inquisition for freedom of discussion and speech should be made over such a book as Heywood's." <sup>54</sup>

*Cupid's Yoke* was essentially an argument against the principle that love, marriage and sex should be restricted to a single partner. Heywood's free love ideas advocated a drastic social change which incidentally required contraception. The book contained little more than one page of specific contraceptive information, most of which is quoted from Drysdale and Owen.<sup>55</sup> Exactly what part of the book was judged obscene is difficult to determine. The original charge was "blasphemy and obscenity" for selling R. T. Trall, *Sexual Physiology*, as well as *Cupid's Yoke*. The Trall book contained contraceptive information, but he favored abstinence as the only satisfactory remedy for too frequent pregnancies. "This fact, coupled with the pious tone of the book, may account for the fact that Trall's work escaped the vigilance of Comstock's crusade." <sup>56</sup> The Trall book was cleared, but the Heywood book was ruled too obscene to be read into the record.<sup>57</sup> It is highly probable that contraception was not the main issue involved in the trial, if in fact it was an issue. A frank discussion of the reproductive system or presentation of free love ideas would have been sufficient "obscenity."

There is some reason to believe that it was not the book, but Heywood and Bennett who were being singled out. Several other indictments for selling the book were allowed to go without prosecution.<sup>58</sup> More important, the many letters printed in Heywood's *Word* that began "I had not read your book until the trial. I have now done so and . . ." indicate that the book was still for sale. Heywood, as had been indicated, was an avowed free-lover and was president of the Free Love Association. Bennett is described in the *Dictionary of American Biography* as an outspoken "liberal in ethics and religion. . . . At best his propaganda would have been galling to the orthodox, but the jocose indecorum and irony he permitted himself in discussing the delinquencies of clergymen and the less edifying portions of the Biblical narrative proved unbearable,

<sup>54</sup> *Ibid.*, Oct. 24, 1878, p. 509, quoting *Seymour Weekly Times*.

<sup>55</sup> See *Cupid's Yoke* (Princeton, 188-), p. 20. The books quoted are Robert D. Owen, *Moral Physiology*, George Drysdale, *Elements of Social Science*. Ideas usually attributed to Charles Knowlton, *Fruits of Philosophy*, and Francis Place are also quoted.

<sup>56</sup> Himes, *Medical History*, p. 268, note.

<sup>57</sup> This information about the trial was collected from several accounts appearing in the *Index* in 1878-79, and the *Word* for the same period.

<sup>58</sup> At the "Watkin's Convention" of liberals held in New York State in late 1878, several others were arrested for selling *Cupid's Yoke*. The *Word* contained several notes that these people had not come up for trial as much as two years later.

and Anthony Comstock undertook to dispose of him.”<sup>59</sup> The prosecution of Bennett and Heywood did much to give Comstock and Vice Suppression Societies the reputation of representing orthodoxy against liberalism.

There was much less opposition to state laws than to the Comstock Law. This can probably be attributed to several circumstances. In the various liberal arguments there is an indication that some liberals favored state obscenity laws who opposed the federal law. Since most states did not have Anthony Comstocks in them, the suppression of obscenity seems to have been less flamboyant and more of the later Watch and Ward type, that is, the quiet threat to the book dealer. In addition, there were no widely publicized prosecutions under the state laws during this period.

The religious community, although often favorable to both the federal and state laws, took no active part in enforcing them in the period 1873 to 1900. Two contemporary topics which might have raised religious interest in contraception, the increase in the divorce rate and woman's changing role in the family and society, evoked virtually no mention of any dangerous tendency toward contraception.<sup>60</sup> The only exception to this was an article in the *New Englander and Yale Review*. The author advanced the theory that the New England family was clearly degenerating and sought an explanation.

There is another test of the family institution which indicates a deterioration. Within twenty or thirty years there has been an alarming increase of divorce in New England. . . . From the large number of divorces and the exposure it makes of personal and private matters, the presumption is that there must be many more families where discord and variance exist, but they decline to bring their trouble before the public. It should be stated that most divorces are obtained within a few years after marriage, and generally there are few or no children even if the parties had been married many years.

He then reported an “increase in licentiousness,” and an increase in the “destruction of unborn infants.”

<sup>59</sup> *Dictionary of American Biography* (New York, 1929), II, 192.

<sup>60</sup> The principal journals searched for the period 1870-85, *New Englander and Yale Review*, *Princeton Review* and *Catholic World* revealed a striking similarity in interests. All had several articles on divorce and on the proper role of women in society (the conclusions did not present such similarity). Other journals, such as *Baptist Quarterly Review*, *Congregational Quarterly* and *American Presbyterian Review* contained no articles of topical interest. *Poole's Index* was consulted for additional articles. None of the articles listed there on divorce, population, family, etc., contained any information on contraception.

Few persons are aware how extensively this 'destruction of unborn life' is carried on even in what are considered the better classes of society. But the 'arts of prevention' which are also being extensively employed are a far more dangerous foe, not only to the family, but to the virtue and purity of the community. They open in a covert way the flood-gates of iniquity. If violations of law are encouraged in married life, and found to be safely practiced there, the same things will be attempted outside and the primary object of marriage will be defeated. Methods that have long been employed in France have become not only well understood here, but improved upon by Yankee skill and ingenuity.

The author also saw danger in the fact that these arts were not known by the foreigners in America, and that while they welcomed the birth of each new child, many of the native stock did not.<sup>61</sup>

The attitude of this article was not strictly religious and it made no appeal to religious teaching or religious life in its effort to discover the reason for the deterioration of the family. All the reasons the author found were purely secular. However rare this writer's attitude might have been in religious journals, the attitude reflected in this article seems to have been widespread in America in the 1870s and 1880s and undoubtedly accounts for part of the support which Comstock received.

Even the columns of *The Index* contained few letters that portrayed the battle as one of Christian orthodoxy against the liberals. One reader, F.S.C., who was particularly persistent in pressing his argument, managed eventually to elicit a response from editor Abbot. F.S.C. wrote:

Many who denounce Heywood, do so because they have been taught by their Christian teachers that God is a Man, a King of Glory, Lord of Hosts (without a Queen), and hence as the supreme good is man, the supreme evil is woman. . . . Any way of looking at woman and sex relations except that which subordinates woman to man and makes sex union with her a mere convenience and an unavoidable, necessary evil . . . is obscene. . . . It is only necessary to examine the law itself to see its Orthodox, Christian, and anti-woman character. Unless woman and sex as the obscene facts of the universe are aimed at, would the Congress of the United States assume the extra-ordinary power of making the prevention of conception a crime?<sup>62</sup>

Abbot replied, "We utterly disbelieve the theory that common law, on this subject, is a mere creature of the church. There is a moral sentiment

<sup>61</sup> "The New England Family," *New Englander*, CXLV (Mar. 1882), 148, 151.

<sup>62</sup> *Index*, Aug. 1, 1878, p. 368.

native to mankind, which made the church rather than the church it.”<sup>63</sup> On another occasion, he had clearly set the Comstock law outside religious controversy. “It was not orthodoxy which enacted the Comstock laws, though orthodoxy may now gladly avail itself of them for purposes of its own: the real author of those laws was the people’s conscience, outraged by the crimes which the laws condemn.”<sup>64</sup>

As Abbot notes, it was a moral, rather than a purely religious attitude which gave the Comstock and state laws the tacit public approval they enjoyed. There are several things which indicate that there was this public support. All the cases of obscenity which Comstock prosecuted had to be decided by a jury trial, since obscenity was a criminal, not a civil, offense. The judges and the juries usually agreed with Comstock’s estimation of violation.<sup>65</sup> The laws seem to have had bipartisan support, even though the Republicans usually initiated them.

The security of the obscenity law in America is further demonstrated by the fact that no part of the law has seemed to be repealable. Mrs. Sanger wrote at length of the discouraging effort to find a legislator in the state of New York to sponsor the bill to repeal the New York state law, and the same difficulty in getting sponsors and hearings for the repeal bill in Congress.<sup>66</sup> Although the opposition today seems to come solely from the Catholic Church, these laws could not be repealed even before the Church had become organized against it.<sup>67</sup> Like love of God, country and motherhood, hatred of obscenity is politically safe and expedient, and in the rough and tumble political world, few people are willing to understand that labeling an evil does not always mean that the real evil has been properly identified.<sup>68</sup>

This period has been called by Morris L. Ernst the “Asterisk Age,” and the Comstock mentality was common enough so that George Bernard

<sup>63</sup> *Index*, Nov. 28, 1878, p. 573. This is in response to a similar assertion in another letter by F. S. C.

<sup>64</sup> Quoted in the *Word*, Oct. 1878, p. 2.

<sup>65</sup> The number of convictions when compared to the number of arrests which appears in all the *Annual Reports* of the New York Society for the Suppression of Vice is impressive. Apparently Comstock not only had sympathetic judges and juries, but he also collected sufficient evidence.

<sup>66</sup> Margaret Sanger, *An Autobiography* (New York, 1938), pp. 413-30.

<sup>67</sup> See Sulloway, pp. 45-49. The repeal attempt in 1923 met practically no opposition, Catholic or otherwise. By 1934, the Catholic church had organized against repeal and put up a much more effective opposition.

<sup>68</sup> See, for example, James J. Kilpatrick, *The Smut Peddlars* (New York, 1960) for a detailed treatment of the problem of classifying obscenity so as to exclude the hard core obscenity (the existence of which he documents) from the borderline obscenity.

Shaw called the American attitude toward sex “Comstockery.”<sup>69</sup> It was an age in which discussion of sex was in very bad taste. As one writer commenting on the modern novel expressed it in 1883: “Sensuous love is no longer in good form in the modern novel—the hero no longer loves her because her eyes are bright and her lips rosy—but because she feeds his soul. . . . Not so was it in the days of Tom Jones or Tristram Shandy. The age is refining and we are of and in the age. Let us be truly thankful!”<sup>70</sup>

<sup>69</sup> See Morris L. Ernst and William Seagle, *To The Pure . . .* (New York, 1928) and St. John-Stevan, *Obscenity and the Law* (London, 1956), pp. 1-85, for descriptions of the age.

<sup>70</sup> F. H. Stoddard, “The Modern Novel,” *New Englander*, Sept. 1883, p. 629.

