

Grandma's Book on Sex and the Comstock Act:
Censorship, Anthony Comstock, and Mary Ware Dennett.¹

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Anthony Comstock and Mary Ware Dennett are compelling historical figures in American sexual politics. Working in the late nineteenth and early twentieth century, Anthony Comstock is one of the most important censors in American history. He is the namesake of the most powerful postal censorship law, the Comstock Act.² He was also a vigilant self-made censor concerned with banning sexually explicit materials available in the United States. Working to better the lives of women in the early twentieth century, Mary Dennett was an anti-war activist, a suffragist, and a birth control activist. She is a little known, but important figure in the history of censorship in the United States. Dennett petitioned the government to restrict the fundamental powers of the Comstock Act. She was a rival of Margaret Sanger's in the fight to make birth control legal in the United States. As well, Dennett's name is attached to a federal obscenity case that was instrumental in changing the foundations of obscenity law in the United States.³ Comstock and Dennett assumed sex was a natural phenomenon repressed by culture, but they reacted to this repression in radically opposing ways: Comstock consigned sex to the dark, while Dennett publicized vital information concerning sex.

This paper examines the lives of Anthony Comstock and Mary Ware Dennett through issues of class and gender as a means to explore the cultural production of sex in and around obscenity law in the late nineteenth and early twentieth century. As a member of the dominant sex, and supported by the upper class men via the YMCA, Comstock's actions reproduce the hegemonic discourses around gender and class. He relied on discourses encouraging wealthy men to maintain their aristocratic bloodline. His crusade on sex fit well into the dominant production of sex in the Victorian era. Sexuality was seen as "economically useful and politically conservative."⁴ In opposition to Comstock, Dennett operated as one of "a plurality of resistances" to hegemonic renderings of sex.⁵ Dennett's writing offered an insistence on information that disrupted the power relations in place at that time. Her refusal of the common assumptions about women and sex posed a threat to Comstock's hegemonic core and helped redefine sex as a cultural artifact.

In addition to manifesting class and gender values in line with Foucault's writings, Dennett and Comstock's appear to be operating inside what Michel Foucault calls the repressive hypothesis. Foucault introduces the repressive hypothesis in his book The History of Sexuality, V. 1. He argues that we only seem to repress our natural sexual tendencies through culture, social law, and custom. Foucault argues that while we hypnotize sex it is something repressed by our culture we actually create sex through culture. In the work of Comstock and Dennett sex is being constructed through discourse. As Foucault argues, sex is not some prediscursive fact acted upon by culture. Instead, it "is the over-all 'discursive fact', the way sex is 'put into discourse'" that develops our understanding of what sex is, what counts as sex, and who are constituted as sexual beings is mandated by our social world.⁶

Comstock used, and Dennett tried to refuse the primary hegemonic narratives in place around sexual behavior and materials at that time: protectionist narratives.⁷ Comstock passed laws refusing access to sexually explicit materials. Dennett tried to make materials explaining birth control and sex available. But both were working on a battleground predetermined by the protectionist narratives in place around women, children, sex, and sexually explicit materials. In "The Protected, The Protector, The Defender" Judith Hicks Stiehm identifies protectionist narratives as the central narrative of governmental participation among its citizenry, government officials are mostly men and they have mostly forbidden women to apply society's force. For the most part, then, men have forbidden women to act either as defenders or as protectors. At the same time a government's very existence affirms the need for defenders or protectors. In this situation all women become 'the protected'. Some men become actual protectors; the rest remain potential protectors.⁸

Stiehm argues that governments continually reproduce the need for their own existence. They do this, in part, by refusing women the right to protect themselves. Unable to protect themselves, women are placed in the role of permanent victim. This secures the government's role as a protector. Susan Jeffords, elaborating on Stiehm's argument, argues the success of narratives of protection depends on the production of three interdependent subject positions: the protected, the protector, and the threat. The protector is "the one who protects/rescues the victim from the attacker, or the one who promises to provide such protection in event of attack."⁹ The villain/threat is simply the person (or group of persons; nation; sexually explicit materials) that

threatens the protected. These positions are highly interdependent. If the protected becomes able to protect herself, or if the villain withdraws threat, then there is no need for the protector. So, as Jeffords notes, in order to maintain power the protectors must be constantly reinventing both the threat and women's status as victim.

Comstock saw himself as protecting women and children from sexually explicit materials. In this narrative, he protected women and children from the various harms caused by degenerate men (and sometimes women) and their vast supply of sexually egregious materials. Dennett worked to remove narratives of protection around women and children. She argued for allowing public access to precisely the same materials Comstock censored. In fighting for access to information about sex and birth control, Dennett (in the tired, but still accurate language of the 1970's feminist movement) tried to empower women and children. She worked with Congress to revoke the Comstock Act. She was convicted under it (this conviction was overturned). Her actions offered the first crack in the hegemonic hold protectionist narratives maintained around women and children's access to birth control materials in the United States. This essay examines the lives of Anthony Comstock and Mary Ware Dennett as they participated in the production of sex. I reach back to the late nineteenth-century to Anthony Comstock and examine his understanding of sex and sexually explicit materials via his book Traps for the Young and the Comstock Act. I then move forward to the early twentieth-century to interrogate Mary Ware Dennett's work as a birth control activist and her trial for violating the Comstock Act. I am specifically interested in how their lives seem to support what Foucault calls the repressive hypothesis, but in fact, their work is a part of the cultural production of sex, not its repression.

THE VICTORIAN ERA AND BEFORE

Foucault argues that ideology and discourse are not the same. In The Archaeology of Knowledge, his discussion of Saussure's *langue* v. *parole* helps the reader map the difference between ideology and discourse.¹⁰ Ideology, for Foucault, operates in the stead of *langue*: it is the map of our unconscious. Remembering his friendships with Althusser and Lacan, this reading makes sense. For Foucault, talking about ideology is too simple, it does not take into account the material conditions of a given era or hegemonic formation. Instead, Foucault concentrates his energy on the production of discourse around his object of study. For Foucault discourse is more like *parole*. In the same way Saussure was interested in the use of *langue* in particular situations,

Foucault uses the concept of discourse to examine the use of power and meaning in a given context. So, when I explore the production of sexuality around Dennett and Comstock it must be done in the context of the Victorian era, and early twentieth century America. To understand the uses of sexuality in play at that time it is not enough to simply look at the application of the law, but I must also examine the production of that law, and the discourses being put in place to supplant the Comstock Act.

The nineteenth-century serves as a place marker in time. Sex was not invented in the 1800s, nor was it repressed out of existence. The nineteenth-century is important to the study of sexuality, not because it made unprecedented changes in sexual life, but because it is a time fraught not just with issues around sex, but with the effects of the industrial revolution, the American Civil War, and Western expansionism. The nineteenth-century sees public and private domains re-categorized and separated for the first time. Medicine replaces religion as the domain overseeing sexual welfare. All this, to a greater or lesser extent impacted how we understand sex, women, and law. It is at the complicated intersections of this moment we see narratives of protection enter law in relationship to sexually explicit materials. This is an interesting example of what Foucault calls the production of discursive structures. We have always had discursive structures in place around sexual behavior; it is a socially constructed artifact. But the Victorian era marks a shift in those structures. The hegemonic production of sexuality shifted to include the production of gender and class in new ways. With the creation of the public v. private debates, and with the establishment, for the first time, of ‘real money’ in the United States sex came to operate inside discourse in new ways.

SEX AS ILLNESS AND SOCIAL ILL

To understand the Victorian era in America, it is important map the arrival of the scientific notion that sex is unhealthy. In America, a signer of the Declaration of Independence, Dr. Benjamin Rush popularized the idea that the loss of precious bodily fluids was bad for the human body.¹¹ In Science in the Bedroom historian Vern Bullough notes that Rush was, “possibly the most significant American physician at the end of the eighteenth-century.”¹² In Medical Inquiries and Observations Upon the Diseases of the Mind, Rush argued that all disease could be reduced to two basic causes: the excess of or lack of nervous energy.¹³ Because sex was a major arena for excitement, too much sex was unhealthy.¹⁴ More importantly, Rush argued that

“Women, in consequence of the greater predisposition imparted to their bodies by menstruation, pregnancy, and parturition and to their minds, by living so much alone with their families, are more predisposed to madness than men.”¹⁵ Therefore, not only was sex unhealthy, it affected women and men differently.

By the late nineteenth-century, Rush’s argument supported the work of physician George Beard, creating a powerful push against non-procreative sexual behavior. According to Beard, neurasthenia was a ‘deficiency of nerves’.¹⁶ He believed neurasthenia was caused by the growing complexities of modern life. He believed it struck hardest among educated women and men, as they were most inline with the social world.¹⁷ Beard, stepping in where Rush left off, argued sex was the chief cause of this new illness.¹⁸ He argued it was important to guard against non-procreative sexual behavior. Bringing in the work of Rush, Beard argued unnatural sex was worse than almost any other illness, because it constantly drained “the vital body fluids and gradually took away life itself.”¹⁹

The nineteenth-century then becomes, as Foucault, and others, have noted, a Janis faced era in its relationship to sexuality. On the one hand, sex is harmful, morally suspect, and the less said the better. On the other hand, the Victorians were very busy classifying and categorizing sex and all its imagined ills. Foucault, in The History of Sexuality Vol. I, comments on this phenomenon, “[w]hat is particular to modern societies, in fact, is not that they consigned sex to a shadow existence, but that they dedicated themselves to speak of it *ad infinitum*, while exploiting it as *the secret*.”²⁰ Nineteenth-century science was not alone in its derision of sex. This era was a spider web of discourses intersecting somewhere with sex. At the same moment scientific discourses of sexuality were describing the physical dilemmas of sex, the British and Americans began to concern themselves with sexuality and class. Beginning in the 1830s, British and American governments along with much of the upper class began to be obsessively concerned with the sexuality of the working classes. At first, invasions into the bedrooms, hearts, and minds of the working classes were done under the guise of *noblesse oblige*. On the surface, discussions of working class sexuality were meant to prevent the variety of ailments caused by sex, to improve working conditions, and enable working class salvation. All of this eventually tied nicely into eugenics.

Buying into the notion that the cream always rises to the top, Sir Francis Galton founded

the eugenics movement. This social Darwinism attempted to control the gene pool. The idea was that human beings could improve (smarter, stronger, more agile, etc.) as a collective if we managed reproduction. A moral and class centered ideology drove eugenics: the good will succeed, the bad will fail. Conversely, people who succeeded were good (both morally and physically) and those who failed (the poor) were bad. Karl Pearson, a vocal eugenicist, and the founder of twentieth-century statistics, felt the poor were a dangerous threat to civilization.²¹ So what began, at least on the surface, as an attempt to help the poor ended in some circles as a reason not to help the poor. In helping the poor a person might be prolonging the contamination of the gene pool.

PROSTITUTION, THE MIDDLE CLASS, AND THE PUBLIC V. PRIVATE SPLIT

While scientists were worrying about the negative effects sex had on the body, and while the eugenicists were worrying about the negative effect sex had on civilization, middle and upper class women were concerning themselves with the negative effects sex could have on the home, the family, marriage, and individual domestic prosperity. Sex, in this case, took the form of prostitution.

Much like the late twentieth-century, and early twenty-first century, the late nineteenth-century brought moral (sexual) reform to the center of politics.²² Like other morality campaigns of the time, anti-prostitution campaigns depended on a newly established social division: public vs. private space.²³ The private was firmly located in the home. It was a haven of virtue. The wife was the angel at the hearth. The family was the moral center of a man's world. The public was a site of temptation and vice: alcohol, prostitutes, corruption. From the 1860's onward there were many middle and upper class women who tried to create, in both public and private spheres, a single standard of moral behavior: the chaste woman.²⁴

Prostitutes clearly violated this goal. Prostitution became a site of excessive signification. For example, prostitutes came to stand for everything wrong with the American's continued move westward toward the Pacific Ocean. Historians have noted that in some gold mining camps, prostitutes outnumbered non-prostitute women twenty-five to one.²⁵ Though that may be the case, it is important to note that both men and women were engaged in this sexual behavior, but at first, only the women were seen as a social problem. They became larger than life. They became *the* problem with Western expansion. Meaning exploded around the prostitute.

Prostitutes operated as an anathema to both Church and home. As sellers of non-procreative sex, the Church viewed prostitutes as morally bankrupt. This conceptualization reinforced the middle class notion that prostitution battered the foundations of marriage by refusing its most sacred precepts: chastity before marriage, fidelity within marriage. Economically they were considered parasitic. Medically, they were sites of contagion.²⁶ But it is important to note that over time, men and women came to view prostitutes in very different lights.

Legislators, clergy, physicians, and the average man on the street saw the relationship between customers and prostitutes as one more example of evil women preying on innocent men.²⁷ They argued that the guilt in a monetary sexual exchange was not equal: women (from Eve forward) lead men down the primrose path. Here men are not predators, they are prey.²⁸ Laws were put into motion to protect the male victims, not the female prostitute. On the other hand, well-to-do nineteenth-century women saw this exchange from a rather different perspective. In the discourse of women's reform groups the sympathy was with the prostitute. In this argument, women, both in the public and private spheres, were victims of men. This is an interesting historical moment in that it refuses the romance of protectionist narratives in place around some women. Middle class women clearly saw that the protection of men was both a blessing (safety of the home) and a curse (it limited mobility). Prostitutes were seen as women neglected by family, friends, and male protectors. If women were 'lost' inside the social world, they became the victims of men, (animals with demanding sexual urges). Inside the home, wives were victimized in body and spirit. The wife, the moral center of the home, was threatened by a straying husband. Husbands could bring home sexually transmitted diseases, a physical threat to women and their potential progeny.²⁹

Nineteenth-century battles over prostitution were some of the earliest sexual reform movements in America and England. These movements later included the suppression of other forms of non-procreative sexual practice, most important for my purpose, access to birth control materials and pornography. There are two axes turning the discourses surrounding the anti-prostitution and later anti-pornography campaigns: public v. private, and virgin v. whore. As Weeks notes these debates were premised on "a series of ideological separations: between family and society, between the restraint of the domestic circle and the temptations of promiscuity; between the privacy, leisure and comforts of the home and the tensions and competitiveness of

work.”³⁰ The decency and morality of the home understood as being under constant threat from the outside. At any moment the public sphere could rush in and pollute the private. At that time sexual regulation rested, and still rests, on the production of the public v. the private.

The rise of the middle class and the separation of the public space from the private occurred in the nineteenth-century. Gender became crucial to this new distinction: masculine identity was equated with the public, and “the emerging concept of ‘occupation,’” while women were associated with the home and hearth.³¹ The public and private split was key to the articulation of beliefs and practices that magnified the notion of gender differences. Davidoff and Hall argue that many pamphlets, manuals, novels and magazines read by the nineteenth-century middle class set the terms for this new characterization of women and men.³² What constituted ‘womanhood’ was being developed by the language of a *woman’s place* and a *woman’s mission*. Though ‘womanhood’ was a fiercely contested sight,³³ much of the middle class writing of the time argued,

that men and women occupied separate spheres by nature as well as custom and propriety. Men were naturally formed for [in the words of a contemporary writer, Hannah More] ‘the more public exhibitions on the great theatre of human life’. Women, by contrast were best suited to the smaller scale of the domestic, seeing the world [again quoting More] ‘from a little elevation from her own garden’ where she had exact survey of home scenes.³⁴

Men became the purveyors of the public sphere: business, government, economics, education. Women ruled the avenue of life that would facilitate salvation, the home. It was their duty to “care for their relatives, improve their men folk and to bring up their children on a Christian path.”³⁵ It is clear the home was associated with domestic bliss and spiritual salvation. Maintaining the home as an attractive place for men to return to after a long day of work was understood as important to promoting virtue. Men were tempted by the outside. It was clear that women *should* be in the home, keeping it for the husband’s return. Domestic women knew they had competition. Some women had been seduced from, or torn from, the domestic scene. Such women were threats to happy homes.³⁶

There are several protectionist narratives in place around women at this time: the anti-prostitution movement, medical discourses of the time, and the eugenics movement. These

discursive logics placed women in the position of the protected. The threat was non-procreative sex. Non-procreative sex was discursively located in the form of a variety of weak men: lustful men, the sinful men, the poor, genetically inferior men. Sex was a threat, via its agents: men. The medical community condemned non-procreative sex as physically and mentally harmful. To the Church it was a sin. To the eugenicists it threatened the gene pool and the long-term social fabric. To married middle class women it became an anathema to the family. In the nineteenth-century in America sex for pleasure operated as a threat to the fabric of modern social life. It threatened the body. It threatened the family and the home. It threatened economic relationships between women and men. These discourses together helped make compelling protectionist narratives used by nineteenth-century culture against non-procreative sex.

The moral reformers of the time did not limit themselves to defeating prostitution. All forms of non-reproductive sexual activity were under fire in the nineteenth-century. The first United States laws restricting access to information on birth control and abortion were written at this time, as were the first laws against birth control devices and abortion. The United States began to write national obscenity laws in the mid-1800s when Anthony Comstock pressed Congress to add legal weight to an anti-pornography postal law already in place.

ANTHONY COMSTOCK

Comstock's career as a moral crusader began in 1872. Just short of his 28th birthday, Comstock broke out of obscurity when he directed a police officer to a stationary store selling pictures Comstock considered obscene (at this point he was a clerk in a store, he held no official post). He presented the materials to the officer, who promptly arrested all six employees of the store, including two boys, eleven and thirteen. Comstock had attempted such raids before, with little success. But on this raid he brought along a reporter from the New York Times.³⁷ With the reporter present the officer felt compelled to act. The New York Times covered the affair and portrayed Comstock in a highly favorable light. In an instant, he became New York's crusader for virtue. By August of that year the New York Times reported that Comstock had, in just five months, assisted in the arrest of forty 'dealers in obscene literature.'

Impressed by Comstock's actions Morris Jesup, a millionaire, and the President of the YMCA, gave Comstock a \$650 contribution.³⁸ Bringing in other New York millionaires, Jesup, Comstock, and the YMCA established The Society for the Suppression of Vice which Comstock

was paid to run.³⁹

In 1873 Comstock went to Washington D.C. intent on boosting the power of the Post Office Statute 1872, which at that time loosely prohibited the sale of obscene materials through the mails. His bill, which became known as ‘the Comstock Act’ was passed without debate during the closing hours of the 1873 congressional session, this is the same session in which Congress was busy cleaning house after the Credit Mobilier scandal.⁴⁰ After such a scandal ridden session, it might have seemed politic to pass a bill with high minded morals.

President Grant signed the Comstock Act along with 117 other bills on March 3, 1873.⁴¹ Three days later, Comstock received a commission as Special Agent of the United States Post Office. This post gave him the power to enforce federal laws regulating the mails. At the same moment the YMCA committee broke away to form its own independent organization. It was now called The New York Society for the Suppression of Vice. Comstock was its chief agent. He was 29 years old.

Using decoy letters Comstock began his anti-obscenity campaign with more force, extending its purview to include any material concerning sex: pornographic, descriptive, and even medical. He often wrote letters as a ‘woman in trouble’ to lure physicians giving medical advice on abortion or birth control to women. While publicly claiming only to arrest pornographers and abortionists, he used the following letter to lure physicians into breaking the law.

Dear Sir:

I am an employee of the Treasury and I have got myself into trouble. I was seduced about four months ago, and I am now about three months gone in the family way. The person who seduced me has run away and I do not know what will become of me if I do not get relief...For God’s sake do not disappoint a poor ruined and forsaken girl whose only relief will be suicide if you fail me.⁴²

Sending such letters via registered mail Comstock enclosed \$20 to cover the cost of the ‘relief’. Most every physician responding was eventually thrown into jail, even those who sent placebos. For example, Dr. J. Bott of New York City sent a stomach antacid, yet the judge in his case ruled that *any* response to Comstock’s decoy letter was *prima facie* evidence of guilt. The judge instructed the jury to find Bott guilty, “which they did without ever leaving their seats.”⁴³ Bott

was sentenced to 18 months in jail.

Comstock also worked diligently to imprison anyone discussing free love. The most famous ‘pornographers’ (free lovers), Comstock harassed were Ezra and Angela Heywood. The Heywoods published a monthly journal called The Word. In The Word, they advocated labor reform, free love, and spiritualism. Comstock arrested Ezra Heywood for mailing his pamphlet Cupid’s Yokes or, the Binding Forces of Conjugal Life. Cupid’s Yokes contained no sexually explicit passages. It merely argued marriage should be governed by reason. Heywood argued that marriage gave the sexes “legal license...to invade, pollute and destroy each other.”⁴⁴

In November 1877 Comstock arrested Heywood under the Comstock Act for mailing Cupid’s Yokes. Heywood was convicted. Ezra Heywood would eventually go to trial three times under the Comstock Act and would spend time in prison. Under his first conviction Heywood sat in jail for six months before he was pardoned by President Hayes. Later he would languish for two years before President Benjamin Harrison would pardon him.

In the end, Anthony Comstock worked for over forty years through the New York Society for the Suppression of Vice, the United States Postal Service, and with the Comstock Act to limit society’s access to sexually explicit material. Comstock bragged that his crusade caused at least 3 suicides and “the destruction of over fifty tons of ‘obscene’ books, 3,984,063 ‘obscene’ pictures and 16,900 negatives.”⁴⁵ He claimed he caused the conviction of enough people “to fill a passenger train of sixty one coaches with 60 people each.”⁴⁶

The Comstock Act continues to be one of the chief means used to bring forward obscenity charges in the United States. As prominent First Amendment lawyer Edward deGrazia argues there are two executive agencies that operate as the twin powerhouses of censorship within the United States: the Bureau of Customs and the Post Office. It is the Comstock Act that allows the Post Office to operate as a censorship body in the United States.⁴⁷

COMSTOCK’S SUCCESS

As one of the most famous protector’s of the late nineteenth-century, Anthony Comstock had the political and cultural capital to continually broaden the scope of the threat he worked to keep at bay.⁴⁸ He began with prostitutes, men selling pornography, and abortionists. He moved on to physicians, anarchists, and ‘free lovers’. He also worked to close gambling houses, penny presses, and in some cases respected presses. Comstock also worked to suppress works of art he

found morally objectionable. Throughout his career he drew immense power by exploiting protectionist narratives around the home. But why did Comstock and his anti-obscenity movement succeed so well? I ask: were the cultural anxieties about sex, gender lines, and public and private spaces the only one's he exploited? No, he also, and importantly, exploited class.

It is no coincidence that a list of Comstock's backers reads like a Fortune 500 list. Morris Jessup, J. P. Morgan, Charles Whitehead, and Thatcher Adams were original founders of the NYSSV. Later, other social register families added their names: Coolidge, Sears, Dodge, Cornell, Colgate and Putman were just a few of the families included in the ranks of the NYSSV.⁴⁹ A full 28% of Comstock's supporters were millionaires. How did Comstock get such backing? Comstock succeeded when he connected arguments concerning the moral protection of children to class issues, showing that the moral corruption led to a loss of social status. In other words, obscenity was no longer simply a threat to the family, or morals, or the body and spirit. It was a threat to a way of life. It became a threat to the social status of middle and upper class families.

Comstock addressed a crucial issue for parents: would their children equal, or better, their own social status? Parents seeking to reproduce their economic and class position in their children had to teach children values and beliefs that would lead to their success. Comstock argued that certain vices might make the children of the well-to-do unfit for desirable jobs, marriages and social position. The threat here was that children might be locked out of the most desirable social circles because their habits, or reputation, made them seem untrustworthy. Fears about character ran high in the late 1800s. A lot of old families lost fortunes during the Civil War. At the same time 'new money' seemed to be everywhere. Families with little or no social history arrived on the scene. The old rules used to judge who was in and who was out were falling by the way side and, as other requirements for reproducing upper class social status became less clear, requirements for 'character' became important to establish and maintain social position.⁵⁰ Thus the moral corruption of children involved more than the loss of cherished parental values. One slip by a child could, and did, topple families from their place in respectable society.

Comstock's book Traps for the Young was a literary tract aimed at informing parents how to protect their children from the harms of modern life. Comstock focused his book on the various "traps" that may ensnare the youth of America: pornography, romance novels, penny

presses, gambling, free love. He constructed a literary landscape bristling with peril. The threat was the loss of moral purity. But just under the surface lingers the more intimate threat of the loss of status. The warning was simple, and consistent, throughout Traps for the Young: if a young person was led off the moral path the consequences were swift, permanent and devastating.

Comstock carefully tied moral goodness to economic security. He argued in his book that “Half-dime” novels and serial magazines corrupted character. Advertising corrupted mental capacity. Gambling caused weakness of mind and sensibility. Pornography corrupted the spirit and the body, as did prostitution, and free love. He warned parents to be ever vigilant against these traps. Such claims for protecting children masked deeper social issues: class inequity, and the forms by which class inequity is reproduced, namely parents trying to pass their privilege on to their children.

Comstock’s work was part of an ideological moment that constructed sex as a prediscursive fact, a set of behaviors and impulses that needed to be controlled through cultural and social regulation. Comstock, seizing upon and exploiting cultural anxieties about sex, helped to solidify a new hegemonic truth of sex as: dangerous to the mind and body; a destructive force that reeked havoc on morals and society; and potentially volatile enough to cause the ruin of the individual, a class of people, and society. This understanding of sex operating in the common sense of the time provided a powerful threat to the family, which Comstock could play upon to create a need for his crusade.

Putting all of these elements together, Comstock created: first the disease, sexually explicit materials, and then his cure, his moral crusade. The success of his crusade outlived him and his bullying of physicians, birth control activists, anarchists, journalists, and ‘free love-ers’.

THE COMSTOCK ACT AND OBSCENITY LAW

The 1873 version of the Comstock Act prohibits the mailing of every “obscene, lewd, lascivious, or filthy book, pamphlet, picture, paper, letter, writing, print or other publication of an indecent character.”⁵¹ It also prohibited the mailing of

every article of thing designed, adapted, or intended for preventing conception...every written or printed card... or notice... giving information, directly or indirectly, [on]... how or by what means conception may be prevented or abortion produced.⁵²

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To be clear, the Comstock Act makes it illegal to mail materials which explain how to prevent contraception. It was illegal to mail materials about family planning, voluntary parenthood and birth control. Further, in the Comstock Act, representations of sex were placed in the same class as material that discussed arson, murder, or assassination. The term indecent as defined in the Comstock Act included material “of a character tending to incite arson, murder or assassination.”⁵³ This juxtaposition illuminates the place sex held in nineteenth-century/early twentieth century America. Materials providing sex education were considered as dangerous as tracts explaining the taking of human life. The common sense of the time understood sex to be always already dangerous, a threat to life, home, happiness, and prosperity. This is one of the most interesting aspects of censorship and obscenity law in the United States, its primary assumption of the negative effects of sexual knowledge. As a people, and a legal body, we assume texts of a sexual nature belong to a special and problematic category. Obscenity law, as it was established by the Comstock Act, is impossible without this assumption. We do not prohibit that which we do not find threatening or dangerous. It makes no sense to write laws against behavior we find appropriate. The very existence of obscenity law is evidence of our cultural fear of sexually explicit material.

MARY WARE DENNETT

Mary Ware Dennett was involved in the Arts and Crafts movement, she was a suffragist (helping women earn the vote in seven states), she was a peace protester during the First World War, she hung out with Emma Goldman, Big Bill Haywood, John Reed, Marie Skopes, Carrie Chapman. She believed in sexual freedom, she was a birth control activist (a rival of Sanger’s...), and in her retirement, she was the center of a Federal censorship case that weakened the power of the Comstock Act.

In 1915, Mary Ware Dennett began circulating a sex education pamphlet she had written for her two young sons. She wrote the essay after she became discouraged while looking for a scientifically accurate text that did not moralize to her children. As a part of the free love movement, she believed sex was a natural and positive part of adult life. Unable to find anything satisfactory, she wrote an essay demystifying sex. Before long this essay, now called, The Sex Side of Life was passed along to the Medical Review of Reviews, which published the essay in its entirety in 1918.

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Soon after, people all over the United States wrote to Dennett asking for a copy of her pamphlet. At first she refused, informing those writing that she could not send the pamphlet through the mail. She let them know that mailing The Sex Side of Life was a violation of the Comstock Act, she then asked that they write a letter to their congressman asking for a repeal of the Comstock Act. Eventually, Dennett relented and send The Sex Side of Life through the mails or via private carrier.

While Dennett was refusing to send The Sex Side of Life through the mails, Margaret Sanger and the Birth Control League illegally handed out birth control information. But, Dennett and the National Birth Control League (of which she was President) worked to change federal law. Dennett felt that the scope of the Comstock Act was too broad in its definition of obscenity. Three times Mary Ware Dennett had almost died while giving birth; consequently, she was a firm believer in voluntary parenthood.⁵⁴ To that end, she wanted all references to birth control removed from the state and federal obscenity legislation.

Dennett, and many lawmakers, found the wording of the Comstock Act to be so vague as to be unenforceable. In 1921, Dennett decided to press the issue. She went to see Third Assistant Postmaster General Warren Grover. He interpreted law for the Post Office. Grover admitted that the Comstock Act was in places too vague to be legally enforceable but he went on to say that in spite of that, “prosecutions were made if a complaint was lodged against obscene matter.”⁵⁵

She then spoke to the Postmaster General, William Hays. Hays supported her request to remove references to birth control from the Comstock Act. But before she could get the bill before Congress, Hays resigned to form the first Hollywood censorship board, the Hays Commission. The next Postmaster General was openly hostile to Dennett and her desire to revamp the Comstock Act. Several months after writing him she received a threat from the Postmaster. Rather than dealing directly with Dennett’s concerns over the Comstock Act, the new Postmaster used it to threaten her freedom. In July 1922, Dennett received a letter informing her that her pamphlet The Sex Side of Life was obscene, and to cease mailing it. Dennett ignored the letter but changed her political tactics. Rather than trying to motivate the Post Office on her behalf, she went to Congress.

It took years of working consistently for Dennett to find a senator willing to sponsor a bill that would, “correct an error in the Comstock Act,” but she did it.⁵⁶ Rather than center the bill

around issues of sex, Dennett carefully constructed the issue as one of free speech. She argued that her bill was simply correcting the Comstock Act. In 1924, her bill was passed without prejudice by the Judiciary Committee, and moved to a general vote.

At this point, Margaret Sanger saw a very public opportunity to discredit Dennett, (Sanger did not care for Dennett). At the end of the 1924 Congressional session Sanger sent two lobbyists to speak against Dennett's straight repeal of the Comstock Act. They suggested an amendment to the Comstock Act. Sanger called this amendment 'the Doctor's Bill'. This bill would allow physicians to use the mail to supply birth control information, but would still qualify any other birth control information sent through the mails obscene.⁵⁷ They argued that a simple repeal would flood the market with 'quack remedies' harmful to women.⁵⁸

Sanger's weight had its effect. In 1925, Dennett's bill died on the floor of Congress. With it went the support Dennett had won on the Hill. In the end, Sanger won her battle against Dennett, but she set the birth control movement in America back 12 years. Sanger's 'Doctor's' fix of the Comstock Act did not pass the Senate until 1937, some 12 years after Dennett's had failed.⁵⁹

MARY WARE DENNETT IS CONVICTED UNDER COMSTOCK

After the stunning defeat of the repeal of the Comstock Act, Dennett went back to her Arts and Crafts roots. It was at this point that she made history in relationship to the Comstock Act. In January of 1929, living in NYC, Dennett received a rather vague summons requesting her appearance at court for a violation of the U.S. Criminal Code.⁶⁰ Dennett contacted a friend who happened to be on the board of the ACLU, as well as its lawyer, Morris Ernst.⁶¹ Ernst discovered that the United States District Attorney James Wilkinson filed a complaint on behalf Mrs. Carl Miles. According to the District Attorney, Miles had received a copy of The Sex Side of Life in the mail and was alarmed at its contents.⁶²

Dennett was charged with violating the Comstock Act. Morris Ernst defended Dennett during the 1929 trial. Ernst argued that Dennett's pamphlet was accepted by the community, and therefore could not be considered obscene. The Sex Side of Life was widely distributed and sold throughout the United States (she only charged the cost of reproduction of the pamphlet, she made no money from its sale). On the other side, the prosecution believed its case to be straightforward. Mary Ware Dennett had stipulated that she had indeed mailed the pamphlet. As

far as the prosecution was concerned, that was all they needed to convict. This case was all over the papers, not just the New York Times, but also national news.⁶³ Even Ogden Nash, a well known humorist of the day, wrote a poem about it.⁶⁴ When the judge gave the case to the jury, his instructions practically demanded they come back with a guilty verdict. Judge Burrow's instructions were eighteen pages in length. But the key points are as follows: first, any text that might cause prurient thought in the weakest members of the community is obscene (the *Hicklin* test);⁶⁵ second, the jury should read The Sex Side of Life and search for sections of the text which might arouse prurient interest; if they found such sections, they should convict; third, the jury could not take into account Dennett's motives for publishing the essay, those were beside the point, the text should be judged on its own merit.⁶⁶ The judge went on to insinuate that anyone who supported Dennett and The Sex Side of Life was morally corrupt. In other words, if a juror thought the text was not obscene, there was something wrong with the juror.⁶⁷ It took the jury a scant 45 minutes to convict Dennett.

The judge ordered Dennett to pay a fine of three hundred dollars or spend one year in jail. Upon hearing the sentence Dennett declared, "If I have corrupted the youth of America, a year in jail is not enough for me. And I will not pay the fine."⁶⁸ Nor, as it turns out, would she let anyone else pay the fine. She told supporters she would rather go to jail than to bow to "the folly and injustice of the conviction."⁶⁹ Ernst immediately appealed the decision and asked the judge to set bail at the amount of the fine. Instead, he set bail at \$2,500.

The Dennett trial was a political blunder for all involved in its prosecution. First, Dennett became an overnight hero. Requests for her essay poured in, as did offers of financial help.⁷⁰ People sent quarters, dimes, nickels, and of course, huge contributions. The trial had struck a nerve. Dennett was a grandmother, the pamphlet was widely distributed, so what was the big deal? The public was shocked that the New York justice system was sending an 'old' woman to jail for mailing an essay they could buy at the YMCA. Then the press discovered that the Postmaster General's office had invented Mrs. Carl Miles as a way to arrest Mary Dennett. They had a field day with the Postmaster General's part in Dennett's conviction. The press ran articles making it clear that the federal and state governments were trying to entrap a grandmother.⁷¹ Letters of support arrived to Dennett by the bag full, and a senator, who once refused to help Dennett repeal the Comstock Act, was widely quoted as saying

There is a conspiracy between the school, the churches, the press and the legislature of this country to prevent the dissemination of sex knowledge...There is no reason for keeping general sex knowledge away from anyone. It is more important for young boys and girls to learn about sex than it is for them to learn about geography or history.⁷²

This public outcry against the *Dennett* decision gave a three judge panel in the Second Circuit Court of Appeals in New York the support they needed to put the first dent in the Comstock Act. In March of 1930, in a decision written by Augustus Hand, the Appeals Court reversed the lower court's conviction. They argued that the *Hicklin* test for obscenity might be too narrow. Judge Hand wrote that any discussion of sex could be taken in context. And if the context was rational and disinterested than a discussion of sex might not be obscene. And, if the text as a whole was not meant to arouse prurient interest, than it was not obscene. This was a radical new way of defining obscenity in the legal community. The Circuit Court narrowed the scope of what could be called obscene under the Comstock Act.

The *Dennett* decision became a powerful precedent judges routinely used in clarifying the meaning of obscenity. The court system adopted this more reasonable approach to obscenity law.⁷³ In 1934, a New York Federal District Judge used *Dennett* as a precedent in his decision to allow James Joyce's *Ulysses* into the United States. Fourteen years previously, the Federal Postmaster had declared *Ulysses* unmailable under the Comstock Act.⁷⁴ But, in 1932 Random House, the owners of *Ulysses*' copyright, hired Morris Ernst (Mary Dennett's lawyer, and by now a well-known First Amendment lawyer), to test the case in the federal court system. With knowledge of the *Dennett* decision, Random House notified the United States Customs office that they were importing a copy of Joyce's *Ulysses*. Customs seized the text and the case went to the Federal Court. Justice John Woolsey used *Dennett* to argue that taken as a whole *Ulysses*' primary intent was not to arouse prurient interest. He released *Ulysses* into the United States unedited. Ernst called the Woolsey decision a 'body blow to censorship'.⁷⁵ Thirteen years later Supreme Court Justice William Brennan would use the *Ulysses* and *Dennett* decisions as precedent in writing his 1957 landmark obscenity decision *Roth v. United States*.

CONCLUSION

Until 1957 sexually explicit materials were not available for public consumption. And anyone choosing to deal with sexually explicit material was held suspect. Many caught dealing with such material went to prison, were ruined, or committed suicide. Others simply hid out until the coast was clear and they could start up again.

Today, obscenity law still whispers Comstock's words. Sex is still an anathema to public health and class safety. Sexually explicit materials have been rendered unprotected via the First Amendment, thus upholding the Comstock Act's power to refuse the right to mail them. In spite of this, the Comstock Act has much less power than before. It is still with us, but underneath its power is Mary Ware Dennett's trial, and the trials that succeed after her: *Ulysses*, *Roth*, *Manuel Enterprises*.

In his book The Jaguar and the Anteater, Bernard Arcand asks who is obscenity law meant to protect?⁷⁶ He recognizes that on the surface, it looks as if obscenity law is meant to protect the weakest members of the community. But in fact, he argues we use obscenity law to protect ourselves. Arcand argues that as a society, we believe that pornography might cause bad behavior in others, "because we believe that certain persons might react badly, what we feel when faced with pornography is the fear of the impact it might have on them. And we can usually identify who these other people are: groups or social classes whose reactions are fearful, or who must be protected ... our only fear is the possibility of becoming their victims."⁷⁷ We do not worry pornography will harm us, we worry about the impact it will have on others. We worry that pornography will indirectly harm us because it will cause others to do harm. From 1868 to now fears around sex are written into law; gender differences are reproduced and magnified by protectionist narratives put in place around prostitution and pornography, and the new separate spheres for women and men.⁷⁸

As I have argued, obscenity law assimilates protectionist narratives around the home without question. These protectionist narratives operate to give power to some, while making it more difficult for others to access its potential. In protectionist narratives all three positions, threat, protector and protected, are interdependent but not equal. The preeminence in determining the dynamics of exchange goes to the protector, he defines both the threat and the vulnerabilities of those who need to be protected from it. In his anti-obscenity campaign Anthony Comstock

successfully exploited the anxieties already available in the common sense of the time and created a powerful protectionist narrative. He coupled a biological essentialist reading of sexual behavior with an implicit theory that texts lead to behavior. This enabled the construction of a powerful threat: obscenity and its purveyors. Comstock drew on the fraught Victorian distinction between public and private space to help define the protected: the family. In a way strikingly unself-conscious, and in their claims' obvious self-interest, Comstock and the 'good men' of his time, wrote themselves as the protectors, valiant defenders on a dangerous battlefield. And the fight could be widened advantageously on a multitude of fronts.

Mary Ware Dennett, on the other hand, worked to undermine the power of the Comstock Act, and indirectly, the protectionist narratives surrounding it. Inside narratives of protection, the people operating in the subject position of the protected are not provided a voice. They are spoken for, they are spoken about, but they do not speak. Narratives of protection often fall apart when the protected speak. Mary Ware Dennett found a venue in which to speak. After trying to change the Comstock act via more conventional routes and failing, she did so by being convicted under the law and refusing to pay the fine. In this case, her refusal spoke for her. Her refusal to accept censor under the Comstock Act gave Federal Judges the opportunity to overturn her sentence, and to strike the first blow to the Comstock act. So while Dennett never managed to get Congress to pass a law limiting the power of the Comstock Act, she never-the-less did limit its powers. As Michel Foucault notes, "points of resistance are present everywhere in the power networks. Hence there is no single locus of great Refusal, no soul of revolt, source of all rebellions, or pure law of the revolutionary. Instead there is a plurality of resistances, each of them a special case."⁷⁹ Dennett found a point of resistance available to her, and used it to her best advantage.

While Comstock and Dennett understood the terms of debate as 'to repress or not to repress,' it was never that simple. They did not participate in the repression, or freeing, of sexually explicit materials and sex. They participated in the production of sex inside our larger discursive structures. They helped make sex, via obscenity law; it becomes a locus of truth about ourselves, our nature. It defines us as weak or strong, male or female, good or bad. While we, in Foucault's words, "continue to speak of it *ad infinitum*, while exploiting it as *the secret*," we also produce ourselves within that secret.⁸⁰

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Notes

- ¹ The author would like to thank Allison Burr-Miller for her helpful comments on this paper. An earlier version of this paper was presented to the Christopher Newport University, Dean Parks Colloquium Series, November 2004.
- ² United States Criminal code, Title 18, Chapter 71, Section 1461, hereafter referred to as the Comstock Act.
- ³ *United States v. Dennett*, 39 F. 2d 564 (1930).
- ⁴ Michel Foucault, The History of Sexuality: Volume I: An Introduction, trans. Robert Hurley (New York: Vintage Books, 1980) 37.
- ⁵ Foucault 96.
- ⁶ Foucault 11.
- ⁷ See Stuart Hall's "Narrative Construction of Reality," for a full account of the ideological power of narrative. Stuart Hall, "The Narrative Construction of Reality," Southern Review 17 (1984): 7.
- ⁸ Judith Hicks Stiehm, "The Protected, The Protector, The Defender," Women's Studies International Forum 5.3/4 (1982): 367.
- ⁹ Susan Jeffords, "Rape and the New World Order," Cultural Critique 19 (Fall 1991): 204.
- ¹⁰ Michel Foucault, The Archaeology of Knowledge and the Discourse on Language, trans. A.M. Sheridan Smith (New York: Pantheon Books, 1972) 146-147.
- ¹¹ *Dr. Strangelove* may have popularized this term in the middle twentieth-century, but A.D. Tissot brought the idea into European popularity in 1766. As Foucault notes in The Use of Pleasure: The History of Sexuality Volume Two, these ideas were not new to the eighteenth-century. Such fears have been in circulation since before the Common Era. But it was in the eighteenth-century that medicine and pedagogy nurtured and spread these obsessive worries "on the subject of pure sexual expenditure--that unproductive and partnerless activity." Michel Foucault, The Use of Pleasure: Volume 2 of the History of Sexuality, trans. Robert Hurley (New York: Vintage Books, 1990) 15.
- ¹² Vern Bullough, Science in the Bedroom (New York: Basic Books, 1994) 21. John Kellogg, maker of breakfast cereal and founder of the Battle Creek Sanitarium, was an avid believer in Rush's ideas.
- ¹³ Benjamin Rush, Medical Inquiries and Observations upon the Diseases of the Mind (Philadelphia: Kimber & Richardson, 1812) 347.
- ¹⁴ Rush 32-33.
- ¹⁵ Rush 59.
- ¹⁶ Bullough 23.
- ¹⁷ This argument appealed to the eugenicists of the time, because it used science to justify class and race divisions. The eugenics movement was slow to die, see Sharon Leon's "Hopelessly Entangled in Nordic Pre-Suppositions: Catholic Participation in the American Eugenics Society in the 1920's." Journal of the History of Medicine and

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Allied Sciences 59.2 (2004): 3-49.

¹⁸ Bullough 23.

¹⁹ Quoted in Bullough 23.

²⁰ Foucault, The History of Sexuality: Volume I: An Introduction 35.

²¹ Leon 7.

²² Stephen Garton's chapter on Victorian America in History of Sexualities: Antiquity to Sexual Revolution (New York: Routledge, 2004), is an excellent summary of these concerns.

²³ See Leonore Davidoff and Catherine Hall, Family Fortunes: Men and Women of the English Middle Class, 1780-1850 (Chicago: University of Chicago Press, 1987).

²⁴ Jeffrey Weeks, Sex, Politics and Society: The Regulation of Sexuality Since 1800 (London: Longman, 1981) 81.

²⁵ John D'Emilio and Estelle Freedman, Intimate Matters: A History of Sexuality in America (New York: Harper and Row Publishers, 1988) 135.

²⁶Prostitution was not simply a symbolic issue. Prostitutes became more visible in the 1800's. Industrialization brought women into prostitution from two directions. First, women moving with families into urban spaces from rural communities occasionally found themselves located in a strange place with only one means for self-support: prostitution. Second, industrialization often displaced jobs that had traditionally been a means of economic support for poor women, spinning being one example. For a more in depth look at prostitution and work, see Hara Cook, The Long Sexual Revolution (Oxford: Oxford University Press, 2004) 6.

²⁷ The victims of prostitution, in the eyes of medicine, were the clients of the sex trade, and their wives. Thus in the 1860's the medical community in England, along with the military and several moral reform societies petitioned Parliament to pass the Contagious Disease Act. This act, passed in the 1860's required prostitutes to register with local authorities and submit to routine medical exams. In America, during the early 1870's, Saint Louis tried to require that all prostitutes become licensed and submit to regular physical exams. But in 1874 a group of anti-prostitution marchers descended upon the Missouri legislature with over 100,000 signatures on anti-regulation petitions.²⁷ The legislature responded by repealing the Saint Louis registration requirement. D'Emilio and Freedman 139.

²⁸ Garton 111.

²⁹ These crusading women of England and America worked to transform prostitutes into true women. They built and supported halfway houses for 'fallen women'. The central dilemma of this social movement was that many of the prostitutes did not want to change. Prostitutes refused middle-class moral standards. And often, the money made in the sex trade was superior to what women could earn in 'respectable occupations': maid, seamstress, or teacher.

³⁰ Weeks 81.

³¹ Davidoff and Hall 30.

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³² Davidoff and Hall 149.

³³ See Davidoff and Hall's discussion of the King George IV and Queen Caroline trial.

³⁴ Davidoff and Hall 160.

³⁵ Davidoff and Hall 170.

³⁶ By the end of the nineteenth-century the idea that all men could temporarily succumb to the evils of the public sphere (sex for pleasure) and be redeemed within the home, but a woman lost, was lost forever did begin to crumble. But this double standard is central to nineteenth and twentieth-century thinking about women and sex. While the dual image of the virtuous and fallen woman did not go unchallenged, it had a vivid impact on nineteenth-century life.

³⁷ Robert Bremner, *introduction*, Traps for the Young by Anthony Comstock, ed. Robert Bremner (1883; Cambridge Mass: Harvard University Press, 1967) *x*.

³⁸ Bremner *xi*.

³⁹ Comstock received \$1,950 in 1872 and \$3,000 in 1873. Bremner *xi*.

⁴⁰ This scandal had to do illegal manipulation of stocks and contracts by the Union Pacific railroad. Many public figures, including Congressional representatives were involved.

⁴¹ Bremner *xiii*.

⁴² Reproduced in full in Constance M. Chen, The Sex Side of Life: Mary Ware Dennett's Pioneering Battle for Birth Control and Sex Education (New York: The New Press, 1996) *xxiii*.

⁴³ D. M. Bennett, Anthony Comstock; His Career of Cruelty and Crime (1878. New York: Da Capo Press, 1971) 1030.

⁴⁴ Ezra Heywood, Cupid's Yokes or, the Binding Forces of Conjugal Life (Princeton Mass: Co-operative Publishing Co., 1879) 19.

⁴⁵ New York Society for the Suppression of Vice Arrest Records, qtd. in Bates *xvi*.

⁴⁶ Heywood Broun and Margaret Leech, Anthony Comstock: Roundsman of the Lord (New York: Albert and Charles Boni, 1927) 15.

⁴⁷ Edward deGrazia, *introduction*, Censorship Landmarks (New York: R.R. Bowker Co., 1969) *xviii*.

⁴⁸ Helen Lefkowitz Horowitz's ReReading Sex: Battles Over Sexual Knowledge and Suppression in Nineteenth-Century America (New York: Knopf, 2002) offers a careful reading of Comstock's actions via the YMCA as he worked to gather power and fame in the name of social purity.

⁴⁹ Nicola Beisel, Imperiled Innocents: Anthony Comstock and Family Reproduction in Victorian America (Princeton: Princeton U. Press, 1997) 228.

⁵⁰ Beisel 5.

⁵¹ Comstock Act.

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⁵² Comstock Act.

⁵³ Comstock Act.

⁵⁴ For an excellent discussion of voluntary parenthood see Julian Carter's "Birds, Bees, and Venereal Disease: Toward an Intellectual History of Sex Education." Journal of the History of Sexuality 10.2 (April 2001): 213-249.

⁵⁵ Chen 227.

⁵⁶ Chen 235.

⁵⁷ Emily Taft Douglas, Margaret Sanger: Pioneer of the Future (New York: Holt Rinehart and Winston, 1970) 215.

⁵⁸ Sanger's lobbyists failed to mention that Dennett's bill also had a provision to halt the sale of quack remedies. She had included in her bill a clause which "added that all literature containing contraceptive information must be certified by five physicians as not injurious to life or health." Sanger, An Autobiography 415.

⁵⁹ Dennett was against Sanger's Doctor's Bill, arguing it was class biased. One had to afford a physician before one could learn about birth control. She also felt it gave physicians a continued monopoly on a woman's body. Ellen Chesler, Woman of Valor: Margaret Sanger and the Birth Control Movement in America (New York: Simon and Schuster, 1992) 145.

⁶⁰ Mary Ware Dennett, Who's Obscene (New York: Vanguard Press, 1930) 44.

⁶¹ Morris Ernst is now considered to be one of the best First Amendment lawyers of the twentieth-century. While speaking before the Supreme Court, lawyer David Albrecht praised Ernst, "I would like to quote a statement made by perhaps the greatest living and most respected writer on the subject today...Mr. Morris Ernst." Leon Friedman, ed. "*Roth v. United States* Oral Argument," Obscenity: The Complete Oral Argument Before The Supreme Court in The Major Obscenity Cases (New York: Chelsea House Publishers, 1970) 15.

⁶² Ernst later discovered Miles was a pseudonym used by the Postmaster General when his office ordered the essay from Dennett. The Post Office had requested the pamphlet with the explicit purpose of charging Dennett for violating the Comstock Act.

⁶³ For a full discussion of newspaper coverage of the Dennett trial see, Dolores Flamiano, "The Sex Side of Life" in the News: Mary Ware Dennett's obscenity case, 1929-1930." Journalism History 25.2 (Summer 1999): 64-74.

⁶⁴ "I for one Think the Country would be much better run, If Mary Ware Dennett Explained things to the Senate." Reproduced in Flamiano, 64.

⁶⁵ From the British *Regina v. Hicklin*, adopted for use in the American legal system.

⁶⁶ Dennett 179.

⁶⁷ Dennett 190.

⁶⁸ Madeline Gray Margaret Sanger: A Biography of the Champion of Birth Control (New York: Richard Marek Publishers, 1979) 293.

⁶⁹ Chen 296.

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- ⁷⁰ After the trial she began filling requests for The Sex Side of Life 10,000 at a time. It was eventually translated into 15 languages, and went into 23 printings. But she refused to make money off of her trial. She continued to sell the pamphlet for the price of reproduction and postage. Chen 301.
- ⁷¹ In her book Who's Obscene Mary Ware Dennett offers up a host of sample headlines from the time. Dennett 202-205.
- ⁷² Quoted in Chen 296.
- ⁷³ David Kennedy, Birth Control in America: The Career of Margaret Sanger (New Haven: Yale U. Press, 1970) 244.
- ⁷⁴ Edward deGrazia, Girls Lean Back Everywhere (New York: Vintage, 1992) 9.
- ⁷⁵ deGrazia, Girls Lean Back Everywhere 30.
- ⁷⁶ Bernard Arcand, The Jaguar and the Anteater: Pornography Degree Zero, trans. Wayne Grady (New York: Verso, 1993) 115.
- ⁷⁷ Arcand 117.
- ⁷⁸ *Roth v. United States* 354 U.S. 476 (1957).
- ⁷⁹ Foucault, The History of Sexuality: Volume I: An Introduction 96.
- ⁸⁰ Foucault, The History of Sexuality: Volume I: An Introduction 35.