

Anarchy and Jurisprudence: Examining Emma Goldman's Fight to Secure Free Speech by Challenging the Comstock Act ¹

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Abstract

Suggesting that anarchy and jurisprudence are partners in any way may seem oxymoronic, at best. However, concluding that the relationship between anarchy and jurisprudence is completely antagonistic may be based on the erroneous acceptance of a limited definition of anarchy that solely focuses on the outcome of anarchy instead of the process of anarchy. A case in point can be found in the philosophical definition of anarchism in relation to how it was actually practiced in the life of Emma Goldman. In order to understand better the relationship between anarchy and jurisprudence, this paper begins by examining the supposed tension between anarchy as outcome and anarchy as process, before turning to the life and works of Emma Goldman, who both embodies anarchism and uses it as a way to challenge laws.

Suggesting that anarchy and jurisprudence are partners in any way may seem oxymoronic, at best. However, concluding that the relationship between anarchy and jurisprudence is completely antagonistic may be based on the erroneous acceptance of a limited definition of anarchy. For instance, Ganguli (1979) points out, there are several different philosophical perspectives with respect to anarchism, which include those that support violence and those that condemn violence. Drawing on Ganguli's point, Clair (2006) states that these varied schools of thought "range from the mutualism of Proudhon to the communism of Marx and Engels, from the atheist anarchism of Nietzsche to the Christian anarchism of Tolstoy, from the violent anarchism of Lenin to the passive-resistance anarchism of Gandhi and Thoreau" (p. 11, see also Clair, McConnell, Bell, Hackbarth, Mathes, in press). Recognizing that varied forms of anarchism exist with varying foci on violence opens the possibility that certain forms of anarchy may exist within a less than antagonistic relationship with jurisprudence. Indeed if the goal of anarchy is to end authoritative rule, then the relationship seems to be one of dialectical tension; however if the goal of anarchy is to end unjust authoritative rule then the tension is eased and the focus can switch from outcome to process. Both ideally and paradoxically justice is served when no laws are necessary. The paradox lies within the concern that justice via jurisprudence, for anarchists, has been corrupted.

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While extremists called for immediate revolution and an end to authority, other anarchists (e.g., Thoreau) resisted one law at a time. According to Harding (1965), Thoreau's Transcendentalist perspective encouraged his resistance to unjust laws. Harding summarized Thoreau's view by writing, "If he will go to prison rather than obey an evil law, he will through his courage and his martyrdom arouse the conscience of his people to rebel *en masse* and through their resistance they will clog the machinery of tyranny by filling the courts and the jails and thus bring about repeal of the offensive law" (p. 207). Although the end goal may have been the same, the means to achieve the goal vary dramatically depending upon the form of anarchy employed. The form of anarchy then may best be defined in terms of the process under which its adherents proceed.

Anarchy, often misjudged as simply chaos or as violence, and often misunderstood as having only one definition, deserves a thorough conceptualization before asserting its relationship to jurisprudence. However, a complete conceptualization is beyond the scope of this article as volumes have been written (e.g., Read, 1971; Bookchin, 1971; & Ward, 1973) on the topic of anarchy, which only further demonstrates the point that any simplistic definition of anarchy especially those associated with chaos and violence lacks the nuance that anarchy as a philosophy deserves. For example, Zinn (1971) explains:

The word anarchy unsettles most people in the Western world; it suggests disorder, violence, uncertainty. We have good reason for fearing those conditions, because we have been living with them for a long time, not in anarchist societies (there have never been any) but in exactly those societies most fearful of anarchy—the powerful nation-states of modern times. (p. ix)

Not only has anarchy often been defined mistakenly as chaos, but it also has been limited to one definition in common parlance, that of radical revolution. When in fact, varied definitions exist and give rise to varied practices. Therefore a focus on how anarchy is enacted in process may tell us more about its relationship with jurisprudence than a focus on the end goal.

Philosophically speaking, anarchism's end goal is not always consistent with anarchistic means. A case in point can be found in the philosophical definition of anarchism in relation to how it was actually practiced in the life of Emma Goldman. At times Goldman adheres absolutely to the tenants of radical anarchy and other times she promotes a softer side, not one of passive resistance by any means, but rather one that fights unjust laws, one law at a time.

The Life of Emma Goldman

This section begins with a general introduction and rationale for choosing Emma Goldman, followed by brief biographical information about her. In later

sections, we relate this information to Goldman's form of anarchy and its relationship to the law.

Why Emma Goldman?

Not only have we selected Emma Goldman for her unique philosophical contributions to the concept of anarchy through activism but also because of her lasting impact. We begin with a look at the lasting impact she has had.

During the late 19th and early 20th century, a time when few women orators gained notoriety, Emma Goldman (1869-1940) was embarking on a career of activism that would not only impact her lifetime, but also secure her name in the history books. An anarchist agitator, rhetorician, and staunch individualist, Goldman dedicated her life to social reform. No stranger to public ridicule, legal prosecution, prison, or physical violence, Goldman's stance on women's issues, conscription, the penal system, militarism and patriotism ultimately resulted in her deportation under the Hoover administration. Her "wizardry on the stump, fusing fervid rhetoric with a spectacular delivery marked by a theatrical presentation" teamed with her heroic commitment made her a constant threat to the state and contributed to her legendary status (Frankel, 1996, p. 908).

Since the 1960's, she has been the focus of more than fifteen books, 50 magazines and academic articles, PhD dissertations, Master's theses, children's books, murals, school curriculum, a computer game, the inspiration for the Emma Goldman Clinic for Women established in Iowa City, and featured in an entire line of "Emmoribelia" (Frankel, 1996, p. 903). The Emma Goldman Papers Project, housed at the University of California, Berkley contains more than 22,000 letters, government documents and newspaper clippings about the infamous anarchist and has recently been the sight of a free speech controversy concerning Goldman's anti-war messages ("Free Speech at Berkeley," 2003). Her contributions were considerable and continue to impact people today, perhaps as much as they did in the 1800s.

Emma's Life

Emma Goldman, a Russian born orthodox Jew, whose life appears to be the exemplar of strength in the face of struggle (she was arrested sixteen times for her beliefs before being deported) began with a childhood marked with pain. Born to a bourgeois family of "declining fortunes," Emma Goldman recalls the first eight years of her life as the gloomiest (Wexler, 1984, p. 6). Her father, Abraham Goldman, had wanted a different life for himself and his general disappointment seemed to be violently directed at Emma. In her autobiography, Goldman recalls two frightful experiences of her father's harshness; "Once Father lashed me with a

strap so that my little brother Herman, awakened by my cries, came running up and bit Father on the calf” (Goldman, 1931, p. 59). Another event, which inspired Emma to write, “As long as I could think back, I remember his saying that he had not wanted me” (p. 59) was sparked by a bad behavior mark on a report card and ended with Abraham beating Emma until he grew tired and fainted.

Not only did these events eventually drive Goldman from her home, but they also permanently affected how she viewed childhood and childbearing. She later wrote, “I had learned since then that my tragic childhood had been no exception, that there were thousands of children born unwanted, marred and maimed by poverty and still more by ignorant misunderstanding. No child of mine should ever be added to those unfortunate victims” (Goldman, 1931, p. 61).

Although she endured a trying childhood, Goldman still had hope for a better future. In 1885, at the age of sixteen, Goldman and her sister Helena immigrated to America. During the time period between 1881 and 1889 so did approximately five million others who were seeking better lives. Like many of them, Goldman was considerably disappointed. The scenes in Castle Garden, the clearing-house for immigrants, were filled with “antagonism and harshness” (Goldman, 1931, p. 12). Once she arrived at her sister’s house in Rochester, New York, neighbors and previously immigrated family members berated her with questions of Russia, the “old country.” Life was so hard for these Jewish immigrants that they “were still possessed by nostalgia for their home that had never been a home” (p. 12). This longing can be partially attributed to the fact that poverty was common and work for these immigrants was difficult to find. Eventually, Goldman found employment sewing overcoats, ten and a half hours a day, for two dollars and fifty cents a week. The deplorable factory conditions and resulting health hazards led Goldman to fight for labor reform as one of her first activist endeavors. She writes extensively about the ill-effects of factory work and the *sins* of factory owners and managers. During this period of her life, poverty and loneliness drove her into the first of several unsuccessful marriages. Through her first marriage to Jacob Kershner, Goldman gained US citizenship (or so she thought).

In February of 1886, a peaceful labor strike for the eight-hour work day, ended with the police using brutality to break up the crowd. In response to this brutality, a mass meeting was called in Haymarket Square in downtown Chicago. On August 20th during this otherwise peaceful gathering, a bomb ignited and killed seven policemen, wounding over sixty. Eight anarchists were arrested and charged with murder. Eventually, seven of the anarchists were hanged and one was sentenced to fifteen years in prison. Goldman followed the story as it was reported in the newspapers, and felt very sympathetic to the striking workers and was even more touched by the martyrs whom she believed to be totally innocent. However,

she had not been introduced to anarchism and only knew that the men had died for their ideal. While attending a German socialist meeting (her sister attended them regularly) Goldman heard about the martyr's idea, anarchism, from Johanna Griere, a female guest speaker whom Emma would later consider "more prophetic than she had probably realized" (Goldman, 1931, p. 10). Goldman began to devour anarchist literature and soon came across the writings of Johann Most which she described as "lava shooting forth flames of ridicule, scorn and defiance" (p. 9).

At the age of twenty, she left her husband and moved to New York's lower Eastside to enter the anarchist movement. After studying under Most, Goldman met Alexander Berkman who, in her opinion, was an ideal revolutionist. They began an intimate relationship that lasted most of Goldman's life. Not too long after entering the relationship, Berkman attempted to assassinate Henry Frick, Andrew Carnegie's steel plant manager, who refused to treat employees collectively. According to Goldman, (1931) "Frick curtly refused the peace advances of the workers' organization, declaring that there was 'nothing to arbitrate'" (p. 84). Frick's heavy handed method of ending the dispute led to the deaths of strikers, including a young boy caught in the struggle. The incident enraged both Berkman and Goldman, leading Berkman to plan an assassination attempt on Frick. Goldman later confessed that she did have a hand in helping plan the murder (she even attempted to prostitute herself to raise money for the cause) but ultimately Berkman was the only one who served jail time. With her comrade in jail, Goldman felt a growing need to take a more active role in the anarchist movement; she began lecturing.

Central to her version of anarchy was her understanding of women's rights and feminism. However, contrary to popular belief, Goldman did not identify herself with the feminists of her day. In fact, contemporary feminists had a particular disdain for Goldman because her ideas of "free love" were too radical for them (Gustein, 2002). Because she believed the anarchist tenant that the "state was founded on violence and existed only to protect the wealthy; thus voting or even to accept representation by a lawyer, was self-defeating and morally bankrupt," she found the suffrage battle baffling and misguided (Gustein, 2002). It was not until almost twenty years after her death that radical and militant feminists of the 1960's and 1970's, whose ideas were more progressive, finally embraced Goldman's message and forever connected her name to feminism. Indeed, Goldman's women's rights messages may have been too progressive for her contemporary audience. In a heated argument over whether or not women's equality rested on their reproductive role, Peter Kropotkin, an anarchist comrade and mentor of Goldman, said "When she is his equal intellectually and shares in his social ideals, she will be as free as he" (Goldman, 1931, p. 253). Goldman's view, almost completely the opposite, was

that women would not be able to attain equality until they were able to gain power over reproduction. Typical of Goldman's speaking style, she answered his assertion with exact cunning and biting wit: "All right, dear comrade, when I have reached your age, the sex question may no longer be of importance to me. But it is *now*, and it is a tremendous factor for thousands, millions even of young people" (p. 253). Clearly, Goldman advanced a form of anarchism distinct from that of her predecessors grounded in the lives of women.

Goldman, who studied midwifery, saw first hand how women, especially the poor, were suffering due to unwanted pregnancies. In her autobiography, she wrote "Most of them lived in continual dread of conception; the great mass of the married women submitted helplessly, and when they found themselves pregnant, their alarm and worry would result in the determination to get rid of their expected offspring. It was incredible what fantastic methods despair could invent; jumping off tables, rolling on the floor . . . drinking nauseating concoctions and using blunt instruments" (p. 186). She later recounted a story of a woman in labor who already had eight children, four of whom had died in infancy. She wrote, "The remaining were sickly and undernourished, like most of the ill-born, ill-kept, and unwanted children who trailed at my feet when I was helping another poor creature into the world" (p. 186). No doubt, the lack of information about contraception and the resulting societal impact was painfully apparent to Goldman.

In short, Goldman investigated women's lives through everyday empiricism, analyzing the social situation, and eventually challenging the laws against contraception, along with the views of her famed mentor, Peter Kropotkin. Although defiant at an early age, her definition of anarchy developed over time.

Defining Anarchy

With the intention of reducing the fears associated with anarchism, Emma Goldman wrote an essay for *Mother Earth* entitled *Anarchism* in which she explained the philosophy and situated it in terms of its place with respect to law and government. Goldman suggested that anarchism, like any other novel idea, was being met with resistance before people understood it. In large part, she blamed ignorance "for the initial resistance to anarchism and suggested that once ignorance was replaced with knowledge few objections would exist" (Clair et al. in press, p. 106). Goldman tackled the resistance to anarchism by noting the objections and then providing a refined definition of anarchism in the following way: "First, Anarchism is impractical, though a beautiful ideal. Second, Anarchism stands for violence and destruction, hence it must be repudiated as vile and dangerous" (Goldman, 1910, p. 55). Even these criticisms were born of ignorance, she claimed. Goldman explained: "Anarchism is indeed practical. More than any other idea, it is helping to do away

with the wrong and foolish; more than any other idea, it is building and sustaining new life" (p. 55). Stories of the violence and horror of anarchism are fed to people by those who oppose anarchism, she suggested. Ignorance, not anarchy, then becomes the violent and destructive force that controls the minds of the people, she argued. "Anarchism urges man to think, to investigate, to analyze every proposition . . . Anarchism is the philosophy of a new social order based on liberty unrestricted by man made law; the theory that all forms of government rest on violence, and are therefore wrong and harmful, as well as unnecessary" (Goldman, 1910, p. 56). In short, Goldman believed that anarchy is the transcendence of law, but it is also the process of thinking, investigating, analyzing, and challenging man-made laws. For Goldman, as well as her predecessors (e.g., Thoreau) and closest mentors including Alexander Berkman, Johann Most, and Peter Kropotkin, the duty of the anarchist is to challenge the law for its inherent attack on the liberties of humankind. Thus, as a process, anarchy is crucial to the elimination of unjust laws and at the very least the amelioration of questionable laws.

Unpacking the relationship between anarchy as a process and jurisprudence will benefit from a specific case, which highlights the process side of anarchy. We have selected Emma Goldman's attack on the Comstock Act to explicate the point. Before addressing Goldman's specific challenges to the law and the implications that follow, we provide a brief picture of the social context that gave rise to her activism concerning reproductive rights.

Goldman Speaks Out, Challenges Laws

Financial panic had taken hold of the country in 1893 when unemployment jumped from 800,000 in the summer to three million by the following December (Wexler, 1984). Terrible working conditions for the employed, a growing number of unemployed, and a growing chasm between the wealthy and the poor made for turbulent times. Hunger demonstrations, picket lines and anarchist gatherings were increasingly common. During a speech to unemployed workers on August 21, 1893, Goldman urged those in need of food to take it if they were hungry and as a result, was arrested for the first time for *Incitement to Riot*. She was tried, found guilty, and sentenced to one year in jail. While serving her sentence, she worked in the prison infirmary and began training informally in nursing. Once she was released from prison she decided to pursue nursing and midwifery in order to have a way to support her lecture tours which were growing in popularity.

No doubt, her nursing experiences greatly influenced her ideas on reproduction. When called to her first private delivery, she found "three children asleep and a woman writhing in labor pains . . . Incredible poverty oozed from every corner" (Goldman, 1931, p. 184). This is only one of many scenes in Goldman's

autobiography that helps to illustrate the desperate conditions that result from poverty and lack of family limitation.

Witnessing poverty and its relationship to the lack of reproductive rights would later lead Goldman to challenge the laws that supported such conditions. However, before her own anarchist philosophy was developed, she faced her most serious legal battle after being charged in connection with the assassination of President William McKinley.

In 1901, Leon Czolgosz attended one of Goldman's lectures and asked her for anarchist literature. He later assassinated President William McKinley and named Goldman as his influence. Instantly, she was wanted in connection with the murder (later the charges were dropped) but as a result, public sentiment towards her grew increasingly hostile. During the ten years between 1902 and 1912 Goldman lectured on various topics under the titles of *The Misconceptions of Anarchism*, *Direct Action as the Logical Tactics of Anarchism*, *Women under Anarchism*, and *Patriotism: A Menace to Liberty*. Also during this time, Goldman was arrested on six separate occasions for causes such as *Being a Suspicious Person*, *Attempting to Speak*, and *Conspiracy against the Government*. Her reputation as "Red Emma" made it difficult and sometimes dangerous to speak or travel. Throughout this time, Goldman still practiced midwifery as a source of income. This ongoing connection to the tangible effects of a society lacking adequate literature on birth control, prompted Goldman to include the topic in her lecture tour. In hopes of changing the laws that restricted reproductive choice, Goldman specifically addressed the Comstock Act.

A Closer Look at the Comstock Act

Anthony Comstock (1844-1915) a prohibitionist, and a crusader against obscenity, began his activism at the age of eighteen when he raided a saloon in his hometown and dumped all of the liquor on the ground (Finan, 2007). Later, in 1873, Comstock persuaded Congress to pass the act bearing his name that greatly strengthened the federal obscenity laws. Not only did the act criminalize the publication, distribution, and possession of information about abortion and contraception, it also outlined punishments for such offenses (up to five years in prison and up to a \$2,000 penalty), and named Comstock as a special agent of the United States Post Office, which allowed him to confiscate obscene materials and arrest the senders. The Comstock Act (17 Stat. 599)² extended obscenity laws in

² This footnote includes the entire obscenity law along with the Comstock Act as Sec. 148.

FORTY-SECOND CONGRESS. Sess. III. CH. 258. 1873. CHAP. CCLVIII. - An Act for the Suppression of Trade in, and Circulation of, Obscene Literature and Articles of Immoral Use.

New York to include the mailing of “a broad range of sexual material: erotica; contraceptive medications or devices; chemicals that could be used to induce abortions; sexual implements, including dildos and other masturbatory aids; contraceptive information; and advertisements for contraception, abortion, or sexual implements” (Finan, 2007, p. 82). Other states followed suit and created similar laws.

In the twenty years following its creation, 105 people were arrested for violating the Comstock Act (Tone, 2001, p. 35). On August 6, 1915, while in Portland, Oregon, Goldman and long time friend Ben Reitman were arrested under the Comstock Act for distributing information about birth control. The following February, Goldman was arrested in New York City for delivering a birth control lecture in January. She was tried and convicted in April, and opted to spend fifteen days in jail, instead of paying the \$100 fine. Seven months later, in October, Goldman was arrested when she went to court to support a fellow birth control advocate. She was released on a \$500 bond and later acquitted.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whoever, within the District of Columbia or any of the Territories of the United States, or other place within the exclusive jurisdiction of the United States, shall sell, or lend, or give away, or in any manner exhibit, or shall offer to sell, or to lend, or to give away, or in any manner to exhibit, or shall otherwise publish or, offer to publish in any manner, or shall have in his 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 shall advertise the same for sale, 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, draw, or print, or in any wise make any of such articles, shall be deemed guilty of a misdemeanor, and, on conviction thereof in any court of the United States having criminal jurisdiction in the District of Columbia, or in any Territory or place within the exclusive jurisdiction of the United States, where such misdemeanor shall have been committed; and on conviction thereof, he shall be imprisoned at hard labor in the penitentiary for not less than six months nor more than five years for each offense, or fined not less than one hundred dollars nor more than two thousand dollars, with costs of court.

SEC. 2. That section one hundred and forty-eight of the act to revise, consolidate, and amend the statutes relating to the Post-office Department, approved June eighth, eighteen hundred and seventy-two, be amended to read as follows:

SEC. 148. That no obscene, lewd, or lascivious book, pamphlet, picture, paper, print, or other publication of an indecent character, or any article or thing designed or intended for the prevention of conception or procuring of abortion, nor any article or thing intended or adapted for any indecent or immoral use or nature, nor any written or printed card, circular, book, pamphlet, advertisement or notice of any kind giving information, directly or indirectly, where, or how, or of whom, or by what means either of the things before mentioned may be obtained or made, nor any letter upon the envelope of which, or postal-card upon which indecent or scurrilous epithets may be written or printed, shall be carried in the mail, and any person who shall knowingly deposit, or cause to be deposited, for mailing or delivery, any of the hereinbefore-mentioned articles or things, or any notice, or paper containing any advertisement relating to the aforesaid articles or things, and any person who, in pursuance of any plan or scheme for disposing of any of the hereinbefore-mentioned articles or things, shall take, or cause to be taken, from the mail any such letter or package, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall, for every offense, be fined not less than one hundred dollars nor more than five thousand dollars, or imprisoned at hard labor not less than one year nor more than ten years, or both, in the discretion of the judge."

Joining Goldman in the fight against the Comstock Act was Margaret Sanger. Sanger (1883-1966) was first arrested in 1914 for publishing information about birth control in her magazine *Woman Rebel*. After learning that Sanger was being pressured to plead guilty, Goldman wrote to Sanger to urge her to use the trial as an opportunity to further the movement.³ Sanger was again arrested in 1916 for opening the first birth control clinic in Brooklyn and tried under the Comstock Act. Her arrest proved very important in the fight against obscenity laws because her appeal went to the Supreme Court, where it was decided that the Comstock Act did, in fact, violate both federal and state constitutions, which meant she was not guilty of a criminal act for opening the clinic. Further, the court's decision in January of 1918 allowed doctors to advise their married patients about birth control.

Although Sanger made it her life's work to fight for the reproductive rights of women, Goldman brought Sanger into the campaign against the Comstock Act, mentored her, and consistently argued that birth control must "be viewed in the context of the broad social, economic, and political forces that led to its suppression" ("Birth Control Pioneer," 2002). Goldman encouraged Sanger "to fight" rather than plead guilty and she encouraged Sanger's legal stand by promising, "whatever means will be needed" (Goldman, 1915/2002). Goldman did not advocate revolution in face of this legal battle, instead she promised guidance and encouraged Sanger in order to end one unjust law.

Goldman, Sanger, and other birth control advocates of their time pressured government officials to repeal the obscenity laws that were standing in the way of free speech, and damaging women's and children's health. However, neither of

³ Transcription of Goldman's letter to Margaret Sanger

To Margaret Sanger

[St. Louis] Dec 8. [1915]

My dear

I wrote you a long letter from Chicago yester day. To day I heard that our good friends Schroeder & others are urging you to plead guilty.

That would be too awful Just kill the movement you have helped to advance in 50 years I hope you will do no such a thing. That you will be as brave as you have so far

Dear dear Girl, I appreciate your state of mind I feel deeply all you have gone through since you began your work. But at the same time I feel that it would be a great impardonable error were you now throw allow yourself to be beaten. To compromise when there is no need of it.

You have friends all over the country You can have what ever means will be needed to fight. You have aroused the interest, as no one ever has Think of losing it all by declaring yourself guilty. Don't do it

I have a suggestion to make to you. Hold out until I come back the 23 rd of this month Then go away with me for 2 weeks to Lakewood or some place. I am terribly tired and need a rest We'd both gain much and I would help you find yourself

What do you think to this? Let me know But in any event don't decide right now what you want to do about your case, don't.

Write me Gen Del Indianapolis Ind With love. E G [sic]

("Transcription of Goldman's letter to Margaret Sanger," 2002, all errors in original)

these dedicated advocates, nor any to this day have been able to supply enough pressure to have the act repealed. In 1996, former Congresswoman from Colorado, Patricia Schroeder, addressed the House of Representatives and again called for the repeal of this act. Schroeder argued that although Congress deleted prohibition on birth control in 1971, it was now being applied to materials on the internet having to do with abortion and as of 1994 it carried new fines up to \$250,000 for a first offense. Schroeder mentioned, “And so, as a consequence, this has been thrown up on the internet and could be used to bring people into a criminal conviction or arraignment if they decided to discuss anything about the big A word on the internet” (Schroeder, 1996). She further argued that the Telecommunications Act passed in 1996 extended the Comstock Act to prohibit anyone who used an interactive computer service. Schroeder provided several examples to illustrate how this act could be applied to important medical communication, such as “a telemedicine consultation between two doctors who are conferring about a patient who may need an abortion to save her life.” Although the Comstock Act remains “on the books” today, Goldman’s work and Sanger’s court case were instrumental in altering the definitions of what counts as obscene, specifically altering the statute that obstructed liberty and free speech concerning birth control. Goldman may have been an anarchist with revolution on her mind, but she focused many of her efforts, not on full scale revolt, but on specific issues, primarily those that affected the reproductive rights of women.

Anarchy and Jurisprudence

Understanding the relationship between anarchy, as defined and practiced by Goldman, and jurisprudence requires the acceptance of anarchy as a complex multi-faceted philosophy that can be construed as either a process or outcome, or both. While the long term goal of most versions of anarchy is the complete abolition of law, the reality is that anarchy lives as process in constant tension with jurisprudence. No revolution has culminated in the abolishment of government. However, anarchist efforts, directly or indirectly, have resulted in the amelioration of certain laws (e.g., The Comstock Act) or the end of certain laws (e.g., draft laws which Goldman and other anarchists also challenged). The process side of anarchy is often neglected by those who would prefer to focus on anarchy as outcome (read: violent chaos). Instead, the processes of anarchy deserve legitimate attention. One of the most interesting avenues to explore may be the view of anarchy as a process—thinking, analyzing, and challenging. What stages of critical thinking and public challenge are necessary to the overthrow of a single law? Does anarchy need personas to represent the radical (e.g., the outspoken and fiery Emma Goldman) as well as the more moderate and liberal voice (e.g., the less caustic Margaret Sanger).

As other feminists joined the fray, the challenge to the Comstock Act moved from radical departure to a more considered position. That is, one lone voice may seem extreme, but when several women challenged the strict conventions of the Comstock Act, jurisprudence was forced to consider the clamor as having some legitimacy. In addition, it would seem that thinking, analyzing, and challenging may be dependent on observing, witnessing, and testifying to the injustices of the lived experience. All of which may have contributed to Goldman's focus on overturning a specific law.

In addition, anarchists of the nineteenth and twentieth century often refused legal representation or to defend themselves in the courtroom claiming it would be hypocritical to participate in the system of jurisprudence. Nevertheless, their very pronouncement of this practice shed light on the law and forced society to consider not only the jurisprudence of the particular case but of jurisprudence in general. Goldman's encouragement for Sanger to fight the charges in court, instead of accepting a plea, was strategic; it tackled authoritative rule by focusing on the law rather than a revolution. Finally, it seems clear, according to the case against the Comstock Act, that anarchy as the process of critically thinking about and challenging laws is a continuing and long term affair in some cases. Although Goldman fought tirelessly, the battle continues today. Although revised, the law has not been completely eradicated. Anarchy as a process is not always one of violent and revolutionary overthrow; it is, in some cases a slow, tedious process toward the dissolution of law. As Goldman stated,

Unless I am very much mistaken, I am sustained in my contention by the fundamental principles in America, namely, that when a law has outgrown time and necessity, it must go and the only way to get rid of the law, is to awaken the public to the fact that it has outlived its purposes and that is precisely what I have been doing and mean to do in the future. (1916, p. 2)

Goldman's Fate and Her Legacy

Although birth control and women's rights would continue to be important issues for Goldman, the nation's entrance into World War I in 1917 distracted her. By 1916, congress had doubled the size of the army and drafted three major laws, the Espionage Act of 1917 (which made it unlawful to aid a US enemy, interfere with the draft, or encourage disloyalty), the Selective Service law of 1917, and the Sedition Act of 1918 (prohibiting anti-government speech or anti-conscription activities). These three laws, that considerably limited freedom of speech, became the target of much of Goldman's work.

After being arrested in June of 1917 for *Conspiracy to Violate the Draft Act* Goldman was sentenced to two years in jail. Roughly three months after Goldman's release from prison in 1919, the Federal government found a way to legally deport

her. Her brief marriage to Jacob Kersner in 1887 had not secured her citizenship because Kersner was denaturalized. In December of 1919, she and long time friend, Alexander Berkman were deported from Ellis Island and bound for Russia. She reportedly predicted that she would return to “Soviet America” (Frankel, 1996, p. 2).

Goldman spent fourteen years in exile working with Russian, British, Spanish, French, Italian, German, and Scandinavian anarchists (Goldman, 1931, p. 727-799). Then in 1934, Goldman was granted a three month visa to the US with the restriction that she could only lecture on non-political subjects. It seems that this 65 year old anarchist still posed a threat to the American government.

In 1939, Goldman was invited to Canada by a small group of her supporters, with whom she celebrated her seventieth birthday. Her life ended on May 14, 1941 approximately a year and a half following a stroke that she suffered in 1940. Although previously deported from the United States, in the end, her body was returned to the United States and buried with the “Haymarket five,” the young anarchists who had so influenced her during her lifetime (Ganguli, 1979).

Conclusion

Anarchy, often misperceived as chaos stemming from or resulting in violence, has played an undeniable role in the development of contemporary U.S. laws, especially concerning women’s rights and military service. The case of Emma Goldman clearly points to the significant link between anarchy and jurisprudence. Although governments continue to impose laws that are meant for all without “regard to individual and social variations” (Goldman, 1910, p. 67) just as they did in Goldman’s day, anarchists through their activism have raised consciousness, and at least ameliorated if not ended unjust laws, especially those concerning obscenity, reproductive rights, and the draft. Although Goldman once wrote that anarchism stands for “the spirit of revolt, in whatever form, against everything that hinders human growth” (p. 69), she later changed her mind, arguing that violence was unacceptable and that a new social harmony could not be built on violent revolution. Anarchism is about liberty of mind, liberty from authority, and liberty from exploitation and this does not allow for “human life . . .to be degraded or cheapened even for a short period” (see Ganguli, 1979, p. 85). Thus, Goldman’s anarchy evolved into a philosophy that argued that liberty is achieved by interrogating and challenging *the law* or laws. This perspective suggests that anarchy “the theory of social harmony. . . is the great, surging, living truth that is reconstructing the world, and that will usher in the Dawn” (p. 73). Perhaps, anarchy can achieve a new society, one law at a time.

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