

SPECIAL FORUM

The History and Legacy of Anthony Comstock and the Comstock Laws

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Abstract

The figure of Anthony Comstock may seem like an odd historical relic: a repressed, puritanical, anti-sex reformer from a bygone past. And yet, because his namesake act has been revived as a potential strategy for limiting access to reproductive healthcare, Comstock is no joke. Today, some Americans see the Comstock Act, passed by Congress in 1873, as a pathway to banning abortion and other reproductive care, effectively jettisoning any need for new Supreme Court abortion rulings or congressional legislation. As scholars of the Gilded Age and Progressive Era, we are uniquely situated to intervene in this dialogue and ensure that contemporary conversations are grounded in historical context. We present this forum not as an exhaustive account of the Comstock Act and its architect, but as an opportunity to highlight the context in which this law, which holds so much potential relevance for our present, was created, enacted, enforced, and challenged. We hope this forum will stimulate further scholarly and public conversations around the nation's long history of regulating reproductive rights and how that history became entangled with other social anxieties.

Keywords: Comstock; obscenity; abortion; birth control; censorship

Introduction

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Anthony Comstock arrived in Washington, D.C., in January 1873 with a collection of pornography and big plans for what to do with it. Bearing a veritable grab bag of explicit images, books, pamphlets, contraceptives, and sex toys that he had ordered expressly for the purposes of shock, he set up displays, first in the private homes of legislators and then in the office of the vice president inside the congressional building.¹ As congressmen trooped by to gawk, Comstock spoke to them about the “nefarious business” of obscenity.² In just a few weeks, Congress would pass a sweeping law bearing his name, one that criminalized mailing anything to do with sex. “An Act for the Suppression of Trade in,

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was exceptionally pious and prudish. One of ten children, he was born in New Canaan, Connecticut, in 1844 to Congregational Church members Thomas and Polly Comstock. They owned a sawmill and farm, and, although initially prosperous, his father declared bankruptcy when Anthony was just five years old. When he was ten, he arrived home from school to find his mother dead from “flooding,” or hemorrhage during childbirth.⁷ Only a few years later, his father abandoned Anthony and his surviving siblings, moving to England and marrying a woman thirty years his junior.⁸ After his elder brother died at the Battle of Gettysburg in 1863, Comstock enlisted in the Union Army. Contrary to his later claims, Comstock never saw combat. Instead, his regiment was stationed for the remainder of the Civil War in South Carolina and Florida, where Comstock was bored and uncomfortable with his fellow soldiers, who clearly disliked him.⁹ Perhaps this was because he was the kind of man who once made a performative ceremony of pouring his daily ration of whiskey on the ground and reprimanding his compatriots for their drinking, carousing, and sharing of dirty pictures.¹⁰

During his time in the army, Comstock had felt lost and aimless. After moving to New York City in 1867, however, he found order in a new job, a new family, and a new mission. While working as a dry goods clerk, he was horrified at his co-workers’ (like his fellow soldiers’) consumption of pornography and their familiarity with prostitutes. On his own, he began raiding shops that sold pornographic books and items and became more involved with the Young Men’s Christian Association (YMCA). Together with YMCA officials, he formed the Society for the Suppression of Vice (SSV), hanging a picture of himself in the new offices on Nassau Street.¹¹

Soon, the YMCA and Comstock began working on the idea of a federal obscenity law. In this special forum, Andrew Wender Cohen shows how Comstock’s campaign began during the election of 1872 as a political reaction to the radicalism of the post-Civil War period. His wealthy evangelical backers in New York City openly wanted the federal government to enforce individual morality rather than protecting Black civil rights and collecting tariffs to pay war debts. Lauren MacIvor Thompson also illustrates the confusion that Comstock’s legislation created in Congress during the winter of 1873. Originally written with a medical exception that would have allowed licensed physicians to prescribe contraception or abortion care, the removal of this language would create complex enforcement issues for appellate courts.¹² The codified statute, however, applied widely to the “obscene, lewd, lascivious,” “immoral,” and “indecent,” and restricted the mailing of “any drug or medicine, or any article whatever, for the prevention of conception, or for causing unlawful abortion.”¹³

The statute handed Comstock all the power he needed, and “[o]n the wings of his new authority, [he] swooped jubilantly down upon the malefactors.”¹⁴ He spent the rest of 1873 “on a rampage of trips,” traveling some 23,500 miles by railroad.¹⁵ Even if Comstock fashioned himself as the nation’s chief anti-vice crusader, he soon recognized that implementing his vision depended upon the investment of other government forces and private organizations, such as his key ally, the YMCA.¹⁶ Perhaps most significantly, many states in the late nineteenth century enacted or revised obscenity laws to complement the new federal provision. Many of these “little Comstock laws” echoed the federal language but, rather than target only mailable matter, often criminalized a wide range of content and behavior. The breadth and diversity of these state statutes further muddled the legal definition of “obscenity” and turned it into a crime that violated a tangled web of state-federal jurisdiction. The details of the legislative and public debates surrounding the laws’ passages remain an important subject for further study.¹⁷

Bolstering this legislative campaign, Comstock’s New York SSV worked alongside sibling societies in other major cities, including Boston, Chicago, and San Francisco.¹⁸ Magdalene

Zier spotlights the Western Society for the Suppression of Vice and its leader, Robert W. McAfee. Zier's essay illustrates the important role that these regional groups played in expanding and enforcing obscenity laws beyond Comstock's East Coast orbit. In addition to male-dominated anti-vice societies, women's groups – especially the Woman's Christian Temperance Union (WCTU) – played a central role in anti-obscenity activism and in carrying the push for purer popular culture into the twentieth century. However, central to the WCTU's social purity efforts, as well as some of the male-dominated anti-vice groups' agendas, was a critique of the sexual double standard and male sexual licentiousness.¹⁹

Comstock spent his career, from 1873 until his death in 1915, using his federal mandate, extensive network, and outsized reputation to target abortion providers, birth control advocates and merchants, purveyors of erotic material, exhibitionists, scammers, gamblers, lottery operators, modern artists, and other individuals of whom he simply disapproved. Comstock's expansive agenda yielded arrests of nearly four thousand people – “enough to fill a passenger train of sixty-one coaches” – plus the seizure of “160 tons of obscene literature,” photos, cards, “rubber articles,” pills, and powders.²⁰ Though he did arrest many men, his most famous targets were outspoken women, including, as Allison K. Lange's and Nicholas L. Syrett's essays illustrate, Victoria Woodhull and Madame Restell.²¹ Lange demonstrates that Woodhull and Comstock battled to define visual debates about women's rights and sexuality. Woodhull defied gender norms through her photographic portraits and engravings in popular illustrated newspapers. These images won fame for her and her ideas but also made Woodhull and conversations about women's rights the target of Comstock's policing efforts. Syrett's essay explores Comstock's attitudes toward abortion via a case study of the arrest of nineteenth-century America's most well-known female physician and abortion provider, Madame Restell. Syrett argues that Comstock objected to abortion because he believed it encouraged illegitimate sex and allowed married women to opt out of motherhood.

Comstock's arrest records and writings also testify to his xenophobia and antisemitism, as well as an obsession with maintaining a culture of sexual purity that was built on protectionism of white middle-class women. Historians have examined Comstock's prejudice against immigrants, especially Jewish immigrants, which he made explicit in his case ledgers, but there is more research needed to fully unpack the racial and religious biases that drove Comstock's crusade and America's embrace of it in this period.²² The experiences of women of color have long been shaped by gendered violence, eugenic concerns about reproduction, and the ongoing forces of colonialism, but it is unclear how much the Comstock laws directly impacted them. It seems that parallel structures such as federal Indian policy, burgeoning immigration regimes, and the white supremacist violence that dismantled Reconstruction policies targeted people of color to a much greater extent than did Comstock.²³ Further research is required on the Deep South, Southwest, and Pacific Coast to interrogate how Comstock laws interacted with other systems policing sexual and racial purity. Segregation and anti-miscegenation laws, alongside legal and literal violence, persecuted immigrants and people of color for deviating from a standard of propriety rooted in xenophobia and racism.²⁴

Comstock's final target, ironically, was a white man. William (Bill) Sanger, Margaret Sanger's first husband, was arrested for handing out her birth control pamphlet, “Family Limitation.” On the eve of Bill's trial, Comstock had just arrived back in New York after traveling to San Francisco for the International Purity Congress, returning with a cold that had developed into pneumonia. He rallied from his deathbed, however, to participate in the trial.²⁵ Bill told the court, “The obscenity laws, State and Federal, as administered by Comstock and his inhuman and ignorant censorship, have driven the mother of my children into exile, separated her from her children now for almost a year, and caused

untold hardship to her and to me.”²⁶ Comstock’s prosecution of the Sangers is well-known and has shaped much of the public understanding of the Comstock Act. Kimberly Hamlin’s essay gives readers a new glimpse of this story and the “Family Limitation” pamphlet, along with other key primary sources and artifacts, to illustrate for readers and teachers how these historical texts can help us better understand (and teach) Comstock today.

Anthony Comstock died in 1915, but the Comstock laws did not die with him. A series of significant court cases over the following fifty years testified both to the persistence of restrictive obscenity laws at the state and federal level and to growing resistance. Critics of Comstock struggled to mobilize a cohesive opposition movement during his lifetime, but advocates of free speech and of reproductive freedom gathered momentum in the late 1910s and 1920s.²⁷ Finding legislators unreceptive to pleas to repeal the Comstock laws, birth control leaders Margaret Sanger and Mary Ware Dennett turned to the courts.²⁸ A string of test cases in the 1930s succeeded in constraining the reach of the federal Comstock law, carving out protections for contraception and fueling the emerging civil liberties movement.²⁹ For example, in *United States v. One Package of Japanese Pessaries* (1936), the Second Circuit emphasized the necessity of narrowly construing the Comstock Act and held that Congress could not bar the shipment of contraceptives ordered by licensed physicians for their patients’ health and well-being.³⁰ While some states echoed the federal court’s approach, other states preserved restrictive obscenity laws.³¹ Fifty years after Comstock’s death, the Supreme Court in *Griswold v. Connecticut* (1965) struck down Connecticut’s ban on contraception and asserted married couples’ fundamental privacy right to use birth control.³² Then, in *Eisenstadt v. Baird* (1972), the Court took aim at Massachusetts’s lingering law and extended the *Griswold* principle to unmarried individuals.³³ The Court’s intervention coincided with legislative action: Congress in 1971 removed language about contraception from the Comstock Act.³⁴ In the same years, the Court reconsidered the legal definition of obscenity in *Roth v. United States* (1957) and *Miller v. California* (1973). Even as the Court confirmed that obscene materials fall outside the First Amendment’s protections of free speech and thus can be subject to criminal consequences, the Court sought to modernize the sweeping standard of obscenity that prevailed in Comstock’s day and develop a test seemingly focused more on commercial pornography than on reproductive healthcare.³⁵

The history of Comstock has many facets, and the legal complexities of modern obscenity law remain in flux. We hope the brief essays of this forum will be useful in providing an overview of the important historical themes present in a potential Comstock Act revival. Our work offers a cautionary note to the argument that the Comstock Act should play a future role in how the United States grapples with reproductive rights law. All too often, arguments for the Comstock Act’s contemporary resurrection are ahistorical, resting on modes of interpretation that seek to strip the statute’s language from its historical context. If the Comstock conversation is here to stay, we need to take seriously the circumstances in which the law was passed, the messiness of its enforcement, and the fierceness of resistance to it.

Supplementary material. The supplementary material for this article can be found at <http://doi.org/10.1017/S1537781424000240>.

Notes

¹ Amy Werbel, *Lust on Trial: Censorship and the Rise of American Obscenity in the Age of Anthony Comstock* (New York: Columbia University Press, 2018), 58–59.

² Heywood Broun and Margaret Leech, *Anthony Comstock: Roundsman of the Lord* (New York: Albert and Charles Boni, 1927), 131.

³ Act of Mar. 3, 1873, ch. 258, 17 Stat. 598.

⁴ Anthony Comstock, *Frauds Exposed; or, How the People Are Deceived and Robbed, and the Youth Corrupted* (New York: J. Howard Brown, 1880).

⁵ In addition to Amy Werbel's comprehensive modern biography, other good histories of Comstock can be found in Nicola Kay Beisel, *Imperiled Innocents: Anthony Comstock and Family Reproduction in Victorian America* (Princeton, NJ: Princeton University Press, 1998); John D'Emilio and Estelle B. Freedman, *Intimate Matters: A History of Sexuality in America* (Chicago: University of Chicago Press, 1997); Judith Giesberg, *Sex and the Civil War: Soldiers, Pornography, and the Making of American Morality* (Chapel Hill: University of North Carolina Press, 2017); Amy Sohn, *The Man Who Hated Women: Sex, Censorship, and Civil Liberties in the Gilded Age* (New York: Farrar, Straus and Giroux, 2021). Historic biographies include Broun and Leech's *Anthony Comstock*, as well as Charles Gallaudet Trumbull, *Anthony Comstock, Fighter: Some Impressions of a Lifetime Adventure in Conflict with the Powers of Evil*, 2nd ed. (New York: Fleming H. Revell, 1913).

⁶ For an analysis of the claims of Comstock "revivalists," see Reva B. Siegel and Mary Ziegler, "Comstockery: How Government Censorship Gave Birth to the Law of Sexual and Reproductive Freedom, and Again May Threaten It," *Yale Law Journal* 134 (forthcoming 2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4761751 (accessed June 11, 2024).

⁷ Sohn, *Man Who Hated Women*, 21.

⁸ Werbel, *Lust on Trial*, 21.

⁹ Giesberg, *Sex and the Civil War*, 68–69.

¹⁰ Broun and Leech, *Anthony Comstock*, 45.

¹¹ Sohn, *Man Who Hated Women*, 61.

¹² For an overview of the impacts of the Comstock Act and problems of enforcement, see Janet Farrell Brodie, *Contraception and Abortion in Nineteenth-Century America* (Ithaca, NY: Cornell University Press, 1994); D'Emilio and Freedman, *Intimate Matters*; Wayne E. Fuller, *Morality and the Mail in Nineteenth-Century America* (Urbana: University of Illinois Press, 2003); Helen Lefkowitz Horowitz, *Rereading Sex: Battles over Sexual Knowledge and Suppression in Nineteenth-Century America* (New York: Random House, 2002); Andrea Tone, *Devices and Desires: A History of Contraceptives in America* (New York: Hill & Wang, 2001).

¹³ Act of Mar. 3, 1873, ch. 258, 17 Stat. 598, 598–99.

¹⁴ Broun and Leech, *Anthony Comstock*, 145.

¹⁵ Broun and Leech, *Anthony Comstock*, 148.

¹⁶ On the variety of elements that the implementation of Comstock's regime required, see Jeffrey Escoffier, Whitney Strub, and Jeffrey Patrick Colgan, "The Comstock Apparatus" in *Intimate States: Gender, Sexuality and Governance in Modern U.S. History*, ed. Margot Canaday, Nancy F. Cott, and Robert O. Self (Chicago: University of Chicago Press, 2021), 41–64.

¹⁷ Mary Ware Dennett, *Birth Control Laws, Shall We Keep Them, Change Them, or Abolish Them* (New York: F. H. Hitchcock, 1926); Escoffier, Strub, and Colgan, "The Comstock Apparatus," 48–52; Martha Bailey, "Momma's Got the Pill: How Anthony Comstock and *Grissold v. Connecticut* Shaped U.S. Childbearing," *American Economic Review* 100 (Mar. 2010): 104–06; Carol Flora Brooks, "The Early History of the Anti-Contraceptive Laws in Massachusetts and Connecticut," *American Quarterly* 18 (Spring 1966): 3–23. While historians have hypothesized that Comstock and colleagues in anti-vice societies played an important role in lobbying for the state laws, relatively little evidence about the public and legislative debates surrounding the laws' passage survives. See, for example, Brodie, *Contraception and Abortion in Nineteenth-Century America*, 266, 349 n.37.

¹⁸ Escoffier, Strub, and Colgan, "The Comstock Apparatus," 52–53. On Boston's society, see Paul Charles Kemeny, *The New England Watch and Ward Society* (New York: Oxford University Press, 2018).

¹⁹ Alison M. Parker, *Purifying America: The Women's Moral Reform Movement and Pro-Censorship Activism, 1873–1933* (Urbana: University of Illinois Press, 1997); Leigh Ann Wheeler, *Against Obscenity: Reform and the Politics of Womanhood in America, 1873–1935* (Baltimore: Johns Hopkins University Press, 2004).

²⁰ Broun and Leech, *Anthony Comstock*, 15–16, 153; Elizabeth Bainum Hovey, "Stamping out Smut: The Enforcement of Obscenity Laws, 1872–1915" (PhD diss., Columbia University, 1998), 17 n.35.

²¹ Sex reformer Ida Craddock was another notable target of the Comstock laws. See Shirley J. Burton, "Obscene, Lewd, and Lascivious: Ida Craddock and the Criminally Obscene Women of Chicago, 1873–1913," *Michigan Historical Review* 19 (Apr. 1993): 1–16; Leigh Eric Schmidt, *Heaven's Bride: The Unprintable Life of Ida C. Craddock, American Mystic, Scholar, Sexologist, Martyr, and Madwoman* (New York: Basic Books, 2010); Marsha Silberman, "The Perfect Storm: Late Nineteenth-Century Chicago Sex Radicals: Moses Harman, Ida Craddock, Alice Stockham and the Comstock Obscenity Laws," *Journal of the Illinois State Historical Society* 102 (Fall–Winter 2009): 324–67.

- ²² See Beisel, *Imperiled Innocents*, 104–27; Hovey, “Stamping out Smut,” 215–32; Werbel, *Lust on Trial*, 293–94.
- ²³ Some examples include Sarah Deer, *The Beginning and the End of Rape: Confronting Sexual Violence in Native America* (Minneapolis: University of Minnesota Press, 2015); Katrina Jagodinsky, *Legal Codes and Talking Trees: Indigenous Women’s Sovereignty in the Sonoran and Puget Sound Borderlands, 1854–1946* (New Haven, CT: Yale University Press, 2016); Brianna Theobald, *Reproduction on the Reservation: Pregnancy, Childbirth, and Colonialism in the Long Twentieth Century* (Chapel Hill: University of North Carolina Press, 2019); Natalia Molina, *Fit to Be Citizens? Public Health and Race in Los Angeles, 1879–1939* (Berkeley: University of California Press, 2006); Alexandra Minna Stern, *Eugenic Nation: Faults and Frontiers of Better Breeding in Modern America* (Berkeley: University of California Press, 2015); Nayan Shah, *Stranger Intimacy: Contesting Race, Sex, and the Law in North America* (Berkeley: University of California Press, 2012); Crystal N. Feimster, *Southern Horrors: Women and the Politics of Rape and Lynching* (Cambridge, MA: Harvard University Press, 2011); Tera W. Hunter, *Bound in Wedlock: Slave and Free Black Marriage in the Nineteenth Century* (Cambridge, MA: Belknap Press of Harvard University Press, 2017); Deirdre Cooper Owens, *Medical Bondage: Race, Gender, and the Origins of American Gynecology* (Athens: University of Georgia Press, 2018); Hannah Rosen, *Terror In the Heart of Freedom: Citizenship, Sexual Violence, and the Meaning of Race in the Postemancipation South* (Chapel Hill: University of North Carolina Press, 2009); Marie Jenkins Schwartz, *Birthing a Slave: Motherhood and Medicine in the Antebellum South* (Cambridge, MA: Harvard University Press, 2010).
- ²⁴ On the broad reach of anti-miscegenation laws, see Peggy Pascoe, *What Comes Naturally: Miscegenation Law and the Making of Race in America* (New York: Oxford University Press, 2009). For an example of work that demonstrates the influence of Comstock laws on the U.S.-Mexico borderlands, see Lina-Maria Murillo, “Birth Control, Border Control: The Movement for Contraception in El Paso, Texas, 1936–1940,” *Pacific Historical Review* 90 (Summer 2021): 314–44.
- ²⁵ Werbel, *Lust on Trial*, 297–98.
- ²⁶ James Waldo Fawcett, ed., *Jailed for Birth Control: The Trial of William Sanger, September 10, 1915* (New York: Birth Control Review, 1917).
- ²⁷ On early efforts to mobilize resistance, see C. Thomas Dienes, *Law, Politics, and Birth Control* (Urbana: University of Illinois Press, 1972), 68–69. See also Peter C. Engelman, *A History of the Birth Control Movement in America* (New York: ABC-CLIO, 2011); Carole R. McCann, *Birth Control Politics in the United States, 1916–1945* (Ithaca, NY: Cornell University Press, 1994); James Reed, *From Private Vice to Public Virtue: The Birth Control Movement and American Society since 1830* (New York: Basic Books, 1978); Leigh Ann Wheeler, *How Sex Became a Civil Liberty* (New York: Oxford University Press, 2012).
- ²⁸ Lauren MacIvor Thompson and Kelly O’Donnell, “Contemporary Comstockery: Legal Restrictions on Medication Abortion,” *Journal of General Internal Medicine* 37 (June 2022): 2566; Brooks, “Early History of the Anti-Contraceptive Laws in Massachusetts and Connecticut,” 22; Laura Weinrib, “The Sex Side of Civil Liberties: *United States v. Dennett* and the Changing Face of Free Speech,” *Law and History Review* 30 (May 2012): 341–42.
- ²⁹ “Application of the Comstock Act to the Mailing of Prescription Drugs That Can Be Used for Abortions,” 46 Op. O.L.C. (Dec. 23, 2022), 5–9, <https://www.justice.gov/olc/opinion/file/1560596/dl?inline> (accessed June 10, 2024); David S. Cohen, Greer Donley, and Rachel Rebouché, “Abortion Pills,” *Stanford Law Review* 76 (Feb. 2024): 342–43; Weinrib, “The Sex Side of Civil Liberties”; Wheeler, *How Sex Became A Civil Liberty*, 39–60.
- ³⁰ *United States v. One Package of Japanese Pessaries*, 86 F.2d 737, 739–40 (2d. Cir. 1936).
- ³¹ The vagaries of state-level anti-obscenity laws are an area ripe for further exploration. Generally, however, see Dienes, *Law, Politics, and Birth Control*, 116–47; David J. Garrow, *Liberty and Sexuality: The Right to Privacy and the Making of Roe v. Wade* (New York: Macmillan, 1994).
- ³² *Griswold v. Connecticut*, 381 U.S. 479 (1965). On the historical and legal backdrop to *Griswold*, see Garrow; *Liberty and Sexuality*; John W. Johnson, *Griswold v. Connecticut: Birth Control and The Constitutional Right to Privacy* (Lawrence: University Press of Kansas, 2005); Neil S. Siegel and Reva B. Siegel, “Contraception as a Sex Equality Right,” *Yale Law Journal Forum* 124 (Mar. 2015): 349–58.
- ³³ *Eisenstadt v. Baird*, 405 U.S. 438 (1972).
- ³⁴ On this and subsequent statutory revisions, see Cohen, Donley, and Rebouché, “Abortion Pills,” 343–44.
- ³⁵ *Roth v. United States*, 354 U.S. 476, 481–89 (1957); *Miller v. California*, 413 U.S. 15, 22–24 (1973). For more on the doctrinal development of obscenity law, see Whitney Strub, *Obscenity Rules: Roth v. United States and the Long Struggle over Sexual Expression* (Lawrence: University Press of Kansas, 2013).