[23] "Obscene Letters," *Cleveland Plain Dealer*, Apr. 9, 1887; "Important Decision by Judge Morris," *Baltimore Sun*, May 28, 1889; "United States District Court," *Baltimore Sun*, May 28, 1889; "United States Court," *Buffalo Courier*, Nov. 22, 1894; "Real Celestial is King of Buffalo's Chinatown," *Buffalo Courier*, Oct. 19, 1902.
[24] Historians have noted the tension between laws requiring individual morality and more systemic social reforms. See Gwendolyn Mink, *The Wages of Motherhood: Inequality in the Welfare State, 1917–1942* (Ithaca, NY: Cornell University Press, 1996); Robert O. Self, *All in the Family: The Realignment of American Democracy since the 1960s* (New York: Hill & Wang, 2012); Kevin M. Kruse, *One Nation Under God: How Corporate America Invented Christian America* (New York: Basic Books, 2016); Elizabeth Hinton, *From the War on Poverty to the War on Crime: The Making of Mass Incarceration in America* (Cambridge, MA: Harvard University Press, 2016).

Abortion, Contraception, and the Comstock Law's Original Medical Exemption, 1873–1936

Lauren MacIvor Thompson

Kennesaw State University, Kennesaw, GA, USA
Email: lthom182@kennesaw.edu

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The Comstock Act of 1873 was not meant to be, nor did it ever function as, a total abortion ban.[1] This fact is important to emphasize in our current political moment because those who want to revive the statute have argued that the Comstock Act is an existing (if dormant) law that already bans abortion on a federal level. They have also argued that the law completely outlawed abortion in the past.[2] The statute's legislative and enforcement history, however, tells a different story. It was first and foremost a law about obscenity and sexual purity.[3] It contained provisions for outlawing abortion and contraception, but the bill's author, Anthony Comstock, along with his fellow vice crusaders, were mostly concerned about controlling illicit sexuality and censoring sexual material. From the beginning, the law was inconsistently and less often applied to violations involving abortion and contraception than it was against other forms of obscenity.[4]

The version of the Comstock Act first introduced to Congress in the winter of 1873 had a medical exception that would allow for physicians to prescribe abortion and birth control. The reasons for the exemption's initial inclusion and deletion, as well the act's subsequent enforcement patterns, reveal a deeply complicated medico-legal regime. Sponsored initially by Minnesota Republican Senator William Windom, the finalized bill emerged from the Committee on Post Office and Post Roads in February 1873. Senator George Edmunds (R-Vermont) then added an amendment with new phrasing that prohibited "any article or medicine for the prevention of conception, or for causing abortion, *except on a prescription of a physician in good standing, given in good faith*" (emphasis added). Senator William Buckingham, the former Civil War governor of Connecticut, swiftly intervened, however, and moved to remove Edmunds's new addition.[5]

Why Edmunds added the exemption and why Buckingham removed it is somewhat of a political and legislative mystery, as the details of the debate are very brief in the historical record. Historian Andrew Wender Cohen has noted in his piece for this same issue that the Comstock Act's passage was subject from its inception to wrangling between Republican factions at odds over various aspects of postwar Reconstruction policy. All of the senators who helped to create or pass the bill were Republicans, but it is not clear that

intraparty rivalries played a role in the passage of the Comstock Act within Congress itself during the weeks it was debated. Nor did there appear to be significant opposition to the bill from Democrats, largely because the "elements opposed to Comstockery" were not openly represented on the political agendas of Democratic Congressmen.[6] Both Buckingham's upbringing and his personal affinity for Anthony Comstock's agenda, however, perhaps help to explain his motivations. Like Comstock, Buckingham was raised in Connecticut and descended from a long line of Puritan ministers. Both men had grown up on farms less than a hundred miles apart from each other, and both had gone to work in New York as young men. Buckingham, like Comstock, worked as a dry goods clerk in the city before returning to Norwich to start in the carpet and rubber businesses.[7]

In any case, because of Buckingham's quick change in wording, most senators never saw the exception or got to debate its merits. The Congressional Record shows senators' confusion concerning Buckingham's amendment to the amendment when the bill was brought to floor. New York Senator Roscoe Conkling, another Republican, complained that "no Senator is able to get any intelligent idea of the substance of this amendment as contrasted with that which it is to take the place of." To this complaint, Buckingham replied, "There is no material alteration in the section. It is rather to strengthen it than otherwise." Conkling was nonplussed, leading Buckingham to execute another verbal dodge. He stated evasively, "The words in the thirteenth line are stricken out. I cannot give the details without looking at the bill."[8]

Republican Senator Hannibal Hamlin from Maine then also challenged Buckingham after this statement, accusing him of being up to no good. He commented, "I think the Senate had better take the bill precisely as it came from the committee … this kind of … tinkering by a single Senator with a subject so important to the country as this … does not meet my approbation." Senator Conkling agreed. "If I were to be questioned now as to what this bill contains, I could not aver anything certain in regard to it. The indignation and disgust which everybody feels … may possibly lead us to do something which … will not be the thing we would have done if we had understood it." There was no further discussion, however, and it passed the Senate on February 21. In the House, Representative Michael Kerr (D-Indiana) also noted that the bill seemed to be pushed through in "hot haste," but it was passed over his objections and there was no other live discussion.[9] President Ulysses S. Grant signed the Comstock Act into law on March 3, 1873, and Congress ended its session the following day. The law was immediately unpopular and the subject of both ridicule and serious political efforts to protest it.[10]

Congress's removal of the draft statute's phrasing – "a physician in good standing, given in good faith" – signaled the many complexities of American medical and pharmaceutical practice at the time. Unregulated (and often dangerous) patent medicines containing emmenagogic ingredients that were known to induce menstruation and abortion were widely available in this period, sold with names like "French Periodical Pills" that promised "relief for ladies."[11] Licensed doctors as well as unlicensed practitioners performed abortions. Although medical schools had expanded and states had established professional societies and licensing laws, medicine in this era was far from certain science. Trained physicians did not necessarily achieve better health outcomes for their patients and the field was divided into multiple sects that had wide differences in approaches to treatment. "Regular" licensed physicians who had received medical education derisively called these sectarians, midwives, healers, and other practitioners "irregulars." All nonetheless battled for expertise, patients, and dollars.[12] Most Americans treated their own ailments, and it was usually women or the local midwife who served as the "family physician." Reliance on self-treatment also drove an unregulated but thriving

commercial market for patent medicines and self-administered medical instruments.[13] Also part of the home medical economy were contraceptive devices and preparations, as well as abortifacients.[14]

Abortion was already a decades-old reform issue by the time of the Comstock Act's passage. In an aggressive bid for professional dominance, the American Medical Association (AMA) and its members sought to shut down the medical practice of "irregulars" beginning in the 1840s. Part of this initiative involved drafting new antiabortion laws that were meant to eliminate competition.[15] In the years just before and after the Comstock Act's passage, AMA members helped to author and ratify over thirty separate antiabortion measures in state and territorial legislatures.[16] Many of these laws had various forms of therapeutic exceptions, however, that continued to allow for abortions by licensed physicians (and in fact, put them solely in charge of performing them) for medical reasons.[17]

In the Comstock Act, the final inclusion of the phrase "unlawful abortion" thus helped to preserve the specifications of already extant abortion laws in the states. Comstock sniped in his diary (without providing evidence) that Edmunds's medical exception amendment probably stemmed from having "friends in this business that he desires to shield," referencing abortion-performing "irregulars" or even perhaps a trained doctor who was performing them for money outside legal bounds.[18] More likely, Edmunds may have been thinking of eliminating confusion and repeating similar exemption language that already existed in most state abortion laws of the time. His home state of Vermont had passed its first abortion law in 1846 as part of an overhaul of its general criminal code, and then updated it in 1867, one year after Edmunds joined the U.S. Senate. Vermont's state medical society had lobbied for the update and sought to restrict abortion on "any pregnant woman" as well as the sale of abortifacients by "any merchant, druggist, peddler, or any person whatever" who would compete with regular physicians. It also preserved a life exception and specifically exempted the pregnant woman from criminal liability.[19] Birth control reformer Mary Ware Dennett also observed the unlikelihood of a total ban in her comprehensive 1926 study, *Birth Control Laws.* "Why [the medical exception] was later omitted does not appear in the [Congressional] Record," she wrote, "but its original existence proves that there was at least some glimmering of realization somewhere that a wholesale prohibition was not the aim of the statute."[20]

Senator Edmunds's willingness to include birth control in the exemption is also noteworthy. After all, because of extant state laws, a licensed physician might recommend or perform a perfectly lawful abortion for medical reasons. Pregnant women might legally self-induce an early-term abortion with no one but themselves the wiser in states where quickening was the standard. Women who were not pregnant but had a late period might use the same emmenagogue to simply "bring down the menses." Birth control was different and was even more complicated by the fact that contraceptive and abortifacient methods and drugs overlapped, even into the early twentieth century.[21] Most scandalously, however, contraception in theory allowed women to simply opt out of pregnancy in the first place.[22] For Protestant moral reformers, this possibility was a threat to both the safety and stability of the white patriarchal family, gender roles, and the nation itself, and it is not surprising that the Comstock Act ultimately "made pregnancy prevention the more serious crime."[23]

Long after the bill's passage, the perception remained that Comstock had singled out birth control as its chief target, even above other forms of obscenity. Henry E. Allen, former secretary for the National Social Science League, explained this view in an 1897 editorial for the famous anarchist free love periodical, *Lucifer the Light Bearer.* "For many

years it has been a matter of surprise to me why so many hold to the belief that the Comstock law was intended to prevent the dissemination of obscene literature," he wrote. "This was never the real purpose of the law … The intent and purpose of the Comstock law is to prevent the dissemination of all knowledge pertaining to contraceptic [*sic*] science – not obscene literature."[24] The statute was also enforced in an era without the regulatory apparatus of the Food and Drug Administration and its targeting of both abortion and birth control centered largely on patent medicines and their advertising and distribution. Although historians have explored the history of American pharmacy and patent medicines, there is more work needed to determine the overlap of the federal Comstock Act, state obscenity laws, and early state pharmaceutical regulation.[25]

Comstock probably did not mean his law to function as a nationwide ban on abortion or even on prescriptions for contraception from physicians. As legal scholars Reva Siegel and Mary Ziegler have argued, the legal history of Comstock enforcement illustrates that the law did not target the physician-patient relationship or the medical aspects of abortion or contraception.[26]

At the end of his life, Anthony Comstock wrote to a birth control reformer denying his law restricted access to medically necessary abortion or birth control. "I challenge your League to produce a single case where any reputable physician has been interfered with or disturbed in the legitimate practice of medicine. Do not make the mistake, however, of classifying the quack, and the advertiser of articles for abortion and to prevent conception with reputable physicians."[27] In an interview with the reporter Mary Alden Hopkins that appeared around the same time in *Harper's Weekly*, Comstock again clarified his position. "A reputable doctor may tell his patient in his office what is necessary, and a druggist may sell on a doctor's written prescription drugs which he would not be allowed to sell otherwise."[28] Birth control reformer Mary Ware Dennett called Comstock's bluff on his insistence that his law did not affect "reputable physicians," arguing his reasoning was "baffling." "[E]ither he did not fully realize the meaning of the laws which he himself framed, or else he hopefully confused the actual wording of the laws with his personal choices," she wrote. The law made it "just as criminal for a conscientious doctor to send needed contraceptive instructions to a patient, as for a sex pervert to send an advertisement of contraceptive means with his depraved literature."[29]

While physicians, abortionists, pharmacists, and patent medicine manufacturers were all prosecuted under the law for procuring or performing abortions or selling or administering birth control, these charges comprised few of the nearly four thousand obscenity arrests that Comstock claimed to have made by the end of his career.[30] Early biographers also commented on this phenomenon, noting, "Generally speaking, Comstock had no great luck among the so-called abortionists."[31] Despite the fact that one out of four obscenity prosecutions in Chicago in the late nineteenth and early twentieth centuries dealt with contraceptives or abortifacients, only seven resulted in prison sentences for the perpetrators.[32] In New York, Comstock and agents of the New York Society for the Suppression of Vice redoubled their efforts to arrest birth control and abortifacient purveyors beginning in the mid-1890s, but they were never the majority of obscenity arrests overall.[33] In fact, Comstock often felt frustrated that judges refused to convict those who performed illegal abortions, complaining that they received but "the smallest fine and no imprisonment."[34] Comstock was most concerned that people were having extramarital sex and were using birth control or illegal abortion to cover up their immoral misdeeds.[35]

The fact remained, of course, that the Comstock Act's wording in the statute still criminalized physicians for medical advice or treatment. Eventually, a series of appellate cases including *United States v. Dennett* (1930), *Youngs Rubber Corporation v. C. I. Lee*

(1930), and *United States v. One Package of Japanese Pessaries* (1936) reclassified contraception as part of health and medicine.[36] The Great Depression had rapidly amplified new economic and cultural rationales for birth control, and physicians were chafing at restrictions their predecessors had put into place that continued to limit their authority and expertise.[37] Beginning in the 1920s, new medical and scientific research on human fertility and methods of contraception had also sought to move beyond the "black market" for reproductive control and establish birth control clinics run by physicians and clinical trials on new contraceptive methods.[38] These cases affirmed that contraception or knowledge of sex was not obscenity, and that "conscientious and competent" physicians had the "right to prescribe" for the health of their patients.[39]

The Comstock Act's provisions on abortion and contraception seemed to emerge in Congress not from negotiation, but from a combination of confusion and prevarication. Frankly, this theme would continue throughout the Act's enforcement period. After all, the ultimate power of Comstock—both the man and the law—only partially stemmed from the actual number of arrests made or fines imposed. Instead, the greatest strength of "Comstockery" was rooted in the art of intimidation and the restrictions it placed on discussions of sex throughout much of the twentieth century.[40] The political maneuvering that resulted in the removal of its medical exception illustrates the complicated relationship between vice and reproductive control in late nineteenth-century America, and the vast gulf between "regular" medicine and the reasons for the thriving commercial market for birth control and abortifacients. Of course, Anthony Comstock himself did not care much for splitting these hairs. Violators of his law, no matter the substance of their crime, were "all knaves and miscreants, and there were no whites or grays among the black ranks of the sinful."[41]

Notes

[1] Despite revivalists' recent claims of the clear meaning of the Comstock Act as an abortion ban, historians and legal scholars have long addressed the statutory complexities and uneven enforcement of its restrictions on abortion and contraception. For the most current and comprehensive overview, see Reva 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).

[2] In June 2024, the Supreme Court decided *Food and Drug Administration v. Alliance for Hippocratic Medicine*, No. 23-235, slip op. (U.S. June 13, 2024), part of a rapidly shifting legal landscape on abortion regulation. Respondents in this case cited the Comstock Act and past enforcement history on abortion as part of their reasoning in asking the Court to restrict mifepristone, which is part of FDA-approved medication abortion protocol. See Brief for the Respondents, in U.S. Food and Drug Administration et. al., v. Alliance for Hippocratic Medicine et al., and Danco Laboratories, L.L.C, v. Alliance for Hippocratic Medicine, et al. Nos. 23-235, 23-236 (U.S. Feb 22, 2024).

[3] For general histories of the Comstock Act and obscenity enforcement, see, for example, Nicola Kay Beisel, *Imperiled Innocents: Anthony Comstock and Family Reproduction in Victorian America* (Princeton, NJ: Princeton University Press, 1998); Helen Lefkowitz Horowitz, *Rereading Sex: Battles over Sexual Knowledge and Suppression in Nineteenth-Century America* (New York: Knopf, 2002); Helen Lefkowitz Horowitz, "Victoria Woodhull, Anthony Comstock, and Conflict over Sex in the United States in the 1870s," *Journal of American History* 87 (Sept. 2000): 403–34; Amy Sohn, *The Man Who Hated Women: Sex, Censorship, and Civil Liberties in the Gilded Age* (New York: Farrar, Straus and Giroux, 2021); Whitney Strub, *Obscenity Rules:* Roth v. United States *and the Long Struggle over Sexual Expression* (Lawrence: University Press of Kansas, 2013); Amy Werbel, *Lust on Trial: Censorship and the Rise of American Obscenity in the Age of Anthony Comstock* (New York: Columbia University Press, 2018).

[4] For work that specifically addresses the disparity in arrests for contraception and birth control versus other kinds of obscenity, see, for example: Shirley J. Burton, "Obscene, Lewd, and Lascivious: Ida Craddock and the

Criminally Obscene Women of Chicago, 1873–1913," *Michigan Historical Review* 19 (Apr. 1993); Elizabeth Bainum Hovey, "Stamping out Smut: The Enforcement of Obscenity Laws, 1872–1915" (PhD diss., Columbia University, 1998); Siegel and Ziegler, "Comstockery"; David M. Kennedy, *Birth Control in America: The Career of Margaret Sanger* (New Haven, CT: Yale University Press, 1970); Lauren MacIvor Thompson and Kelly O'Donnell, "Contemporary Comstockery: Legal Restrictions on Medication Abortion," *Journal of General Internal Medicine* 37 (June 2022): 2564–67. These scholars show that the Comstock Act's focus was about maintaining sexual purity and morality, not banning reproductive rights that were otherwise legally protected for health reasons. However, both nineteenth-century abortion laws and the Comstock Act's censorship of contraception and abortion severely curtailed access and cemented their association with illicitness, licentiousness, and crime.

[5] United States Congress, *Congressional Globe and Appendix: Third Session Forty-Second Congress: In Three Parts, Part II* (Washington, DC: F. & J. Rives & George A. Bailey, 1873), 1436; Heywood Broun and Margaret Leech, *Anthony Comstock, Roundsman of the Lord* (New York: Albert & Charles Boni, 1927), 135; Mary Ware Dennett, *Birth Control Laws, Shall We Keep Them, Change Them, or Abolish Them* (New York: F. H. Hitchcock, 1926), 20; United States v. One Package of Japanese Pessaries, 86 F.2d 737, 739-40 (2d. Cir. 1936).

[6] Senator Edmunds's congressional work had aligned with typical "radical Republican" support for Reconstruction, such as his sponsorship of new state admissions that ensured racial equality in male suffrage. See Walter Hill Crockett, "George F. Edmunds," *The Vermonter: The State Magazine* 24, no. 3–4 (1916): 31–34. Historian C. Thomas Dienes notes, "Although party and institutional variables do not appear to have played any major role at the prescriptive stage, considerations of constituency attitudes and interest-group strength, as well as the legislator's personal value system, do seem to have been vital." C. Thomas Dienes, *Law, Politics, and Birth Control* (Urbana: University of Illinois Press, 1972), 48. See also Gaines M. Foster, *Moral Reconstruction: Christian Lobbyists and the Federal Legislation of Morality, 1865–1920* (Chapel Hill: University of North Carolina Press, 2003).

[7] Increase N. Tarbox, *Sketch of William Alfred Buckingham* (Boston: A. Mudge & Son, 1876).

[8] *Congressional Globe and Appendix, Part II*, 1525.

[9] United States Congress, *Congressional Globe and Appendix: Third Session Forty-Second Congress: In Three Parts, Part III* (Washington, DC: F. & J. Rives & George A. Bailey, 1873), 2005.

[10] A typical cartoon ridiculing the Comstock Act appeared in *Life* in 1888. P. M. Howarth's "That Fertile Imagination" depicted Anthony Comstock arresting an artist painting a presumably nude woman submerged in a lake, with only her head visible. Comstock says in the caption, "Don't you suppose I can imagine what is under the water?" P. M. Howarth, "That Fertile Imagination," *Life* 11 (Jan. 1888): 18. See also Dienes, *Law, Politics, and Birth Control*, 68–69.

[11] Janet Farrell Brodie, *Contraception and Abortion in Nineteenth-Century America* (Ithaca, NY: Cornell University Press, 1997); Andrea Tone, *Devices and Desires: A History of Contraceptives in America* (New York: Hill and Wang, 2001). On the dangers of commercial abortifacients, see Leslie J. Reagan, *When Abortion Was a Crime: Women, Medicine, and Law in the United States, 1867–1973* (Berkeley: University of California Press, 1997), 209; Leslie J. Reagan, "'About to Meet Her Maker': Women, Doctors, Dying Declarations, and the State's Investigation of Abortion, Chicago, 1867–1940," *Journal of American History* 77 (Mar. 1991): 1240–64.

[12] On broader histories of American medicine, see Lewis A. Grossman, *Choose Your Medicine: Freedom of Therapeutic Choice in America* (New York: Oxford University Press, 2021); Joseph F. Kett, *The Formation of the American Medical Profession: the Role of Institutions, 1780–1860* (New Haven, CT: Yale University Press, 1968); William G. Rothstein, *American Physicians in the Nineteenth Century: From Sects to Science* (Baltimore: Johns Hopkins University Press, 1972); Paul Starr, *The Social Transformation of American Medicine: The Rise of a Sovereign Profession and the Making of a Vast Industry* (New York: Basic Books, 2008); Nancy Tomes, *Remaking the American Patient: How Madison Avenue and Modern Medicine Turned Patients into Consumers* (Chapel Hill: University of North Carolina Press, 2016).

[13] Jane Marcellus, "Nervous Women and Noble Savages: The Romanticized 'Other' in Nineteenth-Century US Patent Medicine Advertising," *Journal of Popular Culture* 41 (Oct. 2008): 784–808; James Harvey Young, *The Toadstool Millionaires: A Social History of Patent Medicines in America before Federal Regulation* (Princeton, NJ: Princeton University Press, 2015).

[14] See Brodie, *Contraception and Abortion*; John C. Burnham, *Healthcare in America: A History* (Baltimore: Johns Hopkins University Press, 2015), 83; Susan E. Klepp, *Revolutionary Conceptions: Women, Fertility, and Family Limitation in America, 1760–1820* (Chapel Hill: University of North Carolina Press, 2009); Tone, *Devices and Desires.*

[15] This history has been well-documented by historians of medicine in the context of the history of childbirth and midwifery. See Brodie, *Contraception and Abortion*; James C. Mohr, *Abortion in America: The Origins and Evolution of National Policy* (New York: Oxford University Press, 1979); Reagan, *When Abortion Was a Crime.*

[16] Mohr, *Abortion in America*, 200.

[17] Mohr, *Abortion in America*, 186.

[18] Broun and Leech, *Anthony Comstock*, 135; James C. Mohr, *Doctors and the Law: Medical Jurisprudence in Nineteenth-Century America* (Baltimore: Johns Hopkins University Press, 1996).

[19] *The General Statutes of the State of Vermont*, 2nd ed. (Cambridge, MA: Riverside Press, 1870), 968–69; Mohr, *Abortion in America*, 210.

[20] Dennett, *Birth Control Laws*, 20. Dennett went even further to suggest that contraceptive knowledge should not be kept within the domain of physicians at all, but rather be "part of general hygiene and education."

[21] Sarah E. Patterson, "Being Careful: Progressive Era Women and the Movements for Better Reproductive Health Care" (PhD diss., State University of New York at Albany, 2020); John M. Riddle, *Eve's Herbs: A History of Contraception and Abortion in the West* (Cambridge, MA: Harvard University Press, 1999).

[22] Contraceptive devices and methods in this period had high failure rates. See Brodie, *Contraception and Abortion*, 73; Klepp, *Revolutionary Conceptions*, 48–49.

[23] Tone, *Devices and Desires*, 22.

[24] Henry E. Allen, "Abortion and the Comstock Law," *Lucifer the Light Bearer*, Jan. 6, 1897.

[25] David L. Cowen, "The Development of State Pharmaceutical Law," *Pharmacy in History* 37, no. 2 (1995): 49–58; Joseph M. Gabriel, *Medical Monopoly: Intellectual Property Rights and the Origins of the Modern Pharmaceutical Industry* (Chicago: University of Chicago Press, 2014); Joseph M. Gabriel, "Restricting the Sale of 'Deadly Poisons': Pharmacists, Drug Regulation, and Narratives of Suffering in the Gilded Age," *Journal of the Gilded Age and Progressive Era* 9 (July 2010): 313–36.

[26] Siegel and Ziegler, "Comstockery."

[27] Anthony Comstock to Clara Gruening Stillman, Apr. 28, 1915, Additional Papers of Mary Ware Dennett, Schlesinger Library, Harvard University, Cambridge, Massachusetts.

[28] "Birth Control and Public Morals," *Harpers' Weekly*, May 22, 1915.

[29] Dennett, *Birth Control Laws*, 42.

[30] In a 1915 letter to Clara Gruening Stillman, secretary of the National Birth Control League, Comstock claimed he had arrested 3,870 people for obscenity. Comstock to Stillman, Apr. 28, 1915, Schlesinger Library. Elizabeth Hovey's research found 3,941 total arrests between 1872 and 1915, although SSV records claimed 3963 total cases by the end of 1915. See Hovey, "Stamping out Smut," 17 n.35.

[31] Broun and Leech, *Anthony Comstock*, 160.

[32] Burton, "Obscene, Lewd, and Lascivious," 8; Siegel and Ziegler, "Comstockery," 37.

[33] Hovey, "Stamping out Smut," 202–32.

[34] Broun and Leech, *Anthony Comstock*, 165.

[35] Amy Werbel, *Lust on Trial*, 68–69.

[36] United States v. Dennett, 39 F.2d 564 (1930); Youngs Rubber Corporation v. CI Lee & Co., 45 F.2d 103 (1930); *One Package.* For specifics on *Dennett*, see John M. Craig, "'The Sex Side of Life': The Obscenity Case of Mary Ware Dennett," *Frontiers: A Journal of Women Studies* 15 (Jan. 1995): 145–66; and Laura M. 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): 325–86.

[37] Trent MacNamara, *Birth Control and American Modernity: A History of Popular Ideas* (Cambridge: Cambridge University Press, 2018).

[38] Cathy Moran Hajo, *Birth Control on Main Street: Organizing Clinics in the United States, 1916–1939* (Urbana: University of Illinois Press, 2010); Rose Holz, *The Birth Control Clinic in a Marketplace World* (Rochester, NY: Boydell & Brewer, 2014); Amy Sarch, "Dirty Discourse: Birth Control Advertising in the 1920s and 1930s" (PhD diss., University of Pennsylvania, 1994); Johanna Schoen, *Choice and Coercion: Birth Control, Sterilization, and Abortion in Public Health and Welfare* (Chapel Hill: University of North Carolina

Press, 2005); Andrea Tone, "Black Market Birth Control: Contraceptive Entrepreneurship and Criminality in the Gilded Age," *Journal of American History* 87 (Sept. 2000): 435–59.
[39] *One Package.*
[40] Coined by the Irish playwright George Bernard Shaw, "Comstockery" became the word for the Comstock Law's brand of overzealous sexual censorship. See L. W. Connolly, *Bernard Shaw on the American Stage: A Chronicle of Premieres and Notable Revivals* (Switzerland: Springer International, 2022), 118.
[41] Broun and Leech, *Anthony Comstock*, 130.

Robert W. McAfee: The Comstock of Chicago

Magdalene Zier

Stanford University, Stanford, CA, USA
Email: mzier@stanford.edu

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Anthony Comstock is synonymous with the Gilded Age crusade against vice. The 1873 "Act of the Suppression of the Trade in, and Circulation of, Obscene Literature and Articles of Immoral Use" – better known, then and now, as the "Comstock Act" – secured its namesake's enduring notoriety. Most federal laws with an appellation honor a congressional sponsor, or, in more recent years, a victim of the issue that the law aims to address. Only the Comstock Act memorializes a man who was both the chief civilian proponent of its passage and the government bureaucrat tasked with its enforcement.[1]

Comstock the tireless and cantankerous crusader makes for a compelling historical villain, but he alone could not patrol an entire nation's mail. After all, the 1873 act represented an unprecedented federal incursion on personal privacy and state police power that required new enforcement mechanisms. As scholars Jeffrey Escoffier, Whitney Strub, and Jeffrey Patrick Colgan urge, we need to look beyond Comstock's fanaticism to understand the innovations in "statecraft" on which the law's enforcement depended. The "Comstock Apparatus," as they call it, was broader than the federal act alone and required the simultaneous development of several "structural elements," including the proliferation of state-level "little Comstock laws" and of private anti-vice societies that served quasi-public prosecutorial roles.[2] While the federal law's constitutional legitimacy rested on regulation of the national postal service, state laws could criminalize a wider range of behavior and thus represented a large share of obscenity cases. By the end of the nineteenth century, nearly every state had enacted or revised some sort of anti-obscenity statute, and eight of the country's ten largest cities had an anti-vice society.[3] Comstock would not live in such historical infamy without these auxiliary elements.

This essay spotlights one understudied arm of the apparatus: Robert W. McAfee. Dubbed the "Anthony Comstock of Chicago," McAfee, founding secretary of the Western Society for the Suppression of Vice (WSSV), served as agent to the Post Office for more than thirty years. Across the corpus of works written on Comstock, McAfee reliably garners a brief mention but never a dedicated study.[4] Although McAfee never rivaled Comstock's prominence in the press and in public imagination, he was instrumental to the expansion and daily operation of the Comstock regime across stretches of the Midwest, Upper South, and Great Plains. McAfee followed Comstock's lead but was not an exact facsimile: whereas Comstock was notoriously rotund, his face accentuated by fluffy muttonchops, McAfee was "[t]all, thin and angular, with tawny beard and sharp