

No Sex Please, We're American: Sexual Health Nonfiction versus US Censorship

Cheyenne Maier

Abstract

Sexual health nonfiction has faced various levels of censorship throughout American history and reactions by its producers have responded in kind. Intertwined with the history of erotic works and contraception, the genre would come under attack by the Comstock Act like other publications labelled 'obscene'. It wouldn't be until a series of court room battles weakened the Comstock Act that sexual health nonfiction would experience unfettered publication. However, censorship would still occur on the level of local jurisdiction.

Keywords

Obscenity, Comstock Act, Contraception, Pornography, Censorship

Introduction

The Comstock Act interfered with the publication and distribution of not only literary works but also contraceptive information. Most attention has either been focused on how the Act affected literary publications or restricted distribution of contraceptives or other birth control tools. However, nonfiction sexual health publications which include subjects such as contraception, abortion, and sexual practices also suffered. Margaret Sanger is the most likely name that comes to mind when thinking of a sexual health publication battling against the Comstock Act. But there were others before her, even before the Comstock Act, and though obscenity laws have changed, there are sexual health publications facing censorship in libraries and schools today.

Early Obscenity Laws and Underground Printers

Early 19th century America would label sexual health publications as pornography, an umbrella term that could include medical, philosophical, and sensual depictions of sex. To examine the beginnings of sexual health nonfiction in America, one would need to look at early obscenity laws and the history of American pornography.

At the time, various states had their own obscenity laws without a unilateral definition for 'obscene' (Law Library 2020). Judicial discretion was left to each judge depending on their respective state penal code (Agata, pp. 253-254).

America's first obscenity case involving a book occurred in 1821 with the novel *Fanny Hill, or Memoirs of a Woman of Pleasure* by John Cleland (Sova, 2006). Originally published in England in 1748, it wasn't until 73 years later that it was published in its unexpurgated form in America by Peter Holmes (Sova 2006, 67). Holmes was convicted and fined (Sova 2006, 68).

This was not *Fanny Hill's* first time in the U.S. Ever since its initial publication in England, it had been imported or illegally reprinted in America and sold in underground book markets, as did other European pornographic work, particularly in New York and Chicago (Sabor 2000, Sigel 2016). The amount of explicit works smuggled from Europe provoked Congress to pass the Post Office Act in 1842, prohibiting the importation of pornography (Sigel 2016, 443). In reaction, this caused a boom in the production of American-based underground pornography (Sigel 443).

In the years leading up to the Civil War, pornographic works could 'be found in nearly every small book and print shop of New York' (Foster 54). Many periodicals would outwardly condemn these publications while simultaneously providing free advertisement for the shops that sold them (Foster, 54). Once the Civil War began, Congress-regulated low postage price for items sent to the US army combined with a new allowance for bound books to be mailed caused mail-order pornography to achieve great financial success and gain a wider readership (Giesberg 17, 23-24).

Aside from now classic titles like *Fanny Hill*, the content of other early 19th century pornography is virtually unknown. Not only are personal documents (letters, diary entries, etc.) discussing the texts missing but a majority of early pornographic material was destroyed in the latter half of the 19th century and the start of the 20th century during the anti-vice crusade (Sigel 2016, 442). Sigel posits that these destroyed works may have operated as guides or manuals on sexuality for early 19th century Americans (442). If any nonfiction works were created specifically regarding sexual health or if fictional narratives were their only printed source for sexual guidance during this early period, it is hard to say.

The Comstock Act

Anthony Comstock was the founder of the New York Society for the Suppression of Vice and was one of the many purity reformers that sprung up in reaction to the rise of pornography during the Civil War (Silberman 2009). Through his lobbying, he successfully pushed a bill through Congress in 1873 commonly referred to as the 'Comstock Act' (Silberman 2009). The Act forbade the selling, giving, publishing, or mailing of 'an obscene book, pamphlet, paper, writing, advertisement, circular, print, picture, drawing,' as well as any item that could be used to cause abortion (Burnette 2016). Congress placed power of prosecution with Comstock in his new role as Postal Inspector to target mailers of obscene material. States soon followed by creating their own 'Little Comstock' obscenity laws, aiming to prosecute not only senders but also publishers and retailers (Puglionesi 2015, 468-469).

Originally, there was to be a clause excepting the 'prescription of a physician in good standing given in good faith' in the Act but was not added upon Comstock's insistence that the Act in its original form would not impede a physician's job ('Comstock Act...' 1937). The Act was also vague in its definition of 'obscene', causing many judges to refer to the Hicklin Test in defining obscenity (Bachman 16). The term 'susceptible person', upon which the Test was hinged, could be applied to women, ethnic minorities, and others that society deemed mentally inferior. All this combined would create a legal battleground between anti-vice crusaders and social reformers called 'sexologists'.

Health Publications Under the Act

A group of doctors and social reformers would be indicted under the Comstock Act in the three decades following its ratification. Some chose the fine over jailtime, such as Dr Edward Bliss Foote for his birth control pamphlet *Worlds of Pearl* (Silberman 2009, 336). Others served multiple jail sentences. Moses Harman, a former minister, coedited the *Lucifer the Light Bearer* newspaper wherein the subjects of women's rights, free love, freedom of expression, marital abuse, and contraception were openly discussed (Silberman 327). Harman was charged with 270 counts of obscenity, tried, and sentenced to 5 years of prison—the maximum jailtime for obscenity (Silberman 327). Once he served his sentence, he moved to Chicago and distributed his newspaper there until his next arrest in 1905.

Moving around to, if not avoid, but postpone being arrested seemed a popular tactic for so-called sexologists. Chicago was a logical place to hide as the city's population boomed, tripling in size between 1870 and 1890 and becoming America's second most populous city (Silberman 328). In correlation to its growing population, Chicago surged in obscenity cases with more than 500 recorded cases from the Comstock Act's beginning to 1913 (Silberman 328).

Sexologist Ida Craddock took advantage of being lost in the crowd and wrote prolifically from 1893 to 1898 (Silberman 340-342). She would continue evade legal persecution and institutionalization until the publication of her pamphlet *The Wedding Night* (Silberman 342). Confident she could contest Comstock and his Act in New York City where he was based, she published her pamphlet there and sent it through the mail (Silberman 342). She was found guilty under the state's obscenity law and sentenced to three months of hard labour, completing the sentence before being charged once again, this time under the federal Comstock Act (Silberman 342). Craddock committed suicide on 17 October 1902 before the second trial (Silberman 343).

Shortly after this the Alice B. Stockham Publishing Co. became entangled in legal battle with the Comstock Act in 1905 (Silberman 349). The Stockham Publishing Co. was owned by

Dr Alice Stockham and operated in Chicago from 1883 until 1912 (Silberman 330, 352). Dr Stockham was the author of *Tokology: A Book for Every Woman*, a women's sexual health manual published in 1883 that went through 45 print runs and sold hundreds of thousands of copies through door-to-door booksellers (Silberman 330). This sales method helped delay threats of Comstock and his postal agents by skipping the mail system entirely. A survey conducted in the 1890s found that *Tokology* was often the only source of sex education and birth control information for women during this time (Foster 82).

In 1905, Stockham published and mailed her own version of Craddock's *The Wedding Night* (Silberman 349). Another book of hers was banned and others were put under scrutiny of the law. Her publishing company would continue but her works would never reach the same level of success (Silberman 352).

Despite the personal defeats, the twenty-year period straddling the turn of the century was, according to Virginia Johnson, 'a period of major transformation in sexual theory' (Silberman 353). While Harman, Craddock, and Stockham chose to confront obscenity laws head-on, other publications chose subtly. Much like the pre-Comstock periodicals reporting on sellers of erotic works, some publications would veil themselves with conformity to Victorian America morals while simultaneously informing their readers about anatomy, sexual health, and contraception. Puglionesi explains that hygiene manuals like *Lights on Health* (1896) would use editorial tactics, such as chapter titles like 'When and Whom to Marry' and 'Chastity and Purity of Character', to pass the censors and achieve wider sales through mail-order subscriptions (2015, 465). These such publications, while probably not as innovative or detailed as the works banned by the Comstock Act, had a better chance of being disseminated to the public, particularly to those who wanted to avoid the eye of the federal law.

It wouldn't be until Margaret Sanger's *Woman Rebel* magazine and her pamphlet *Family Limitations* in 1915 that noticeable media attention was given to the obscenity case of a sexual health publication (Margaret Sanger Papers Project, 'Biographical Sketch'). Sanger's fight for access to birth control would be fought more prominently in the medical and legislative sphere rather than within publishing but she would spark a movement that would

continue on after her. Mary Ware Dennett's *The Sex Side of Life* would lead to the court opinion: 'An accurate exposition of the relevant facts of the sex side of life in decent language and in manifestly serious and disinterested spirit cannot ordinarily be regarded as obscene' (*United States v. Dennett* 1930).

Sexual health-related nonfiction would be further secured with the second trial of James Joyce's *Ulysses* where it was declared 'that works of physiology, medicine, science, and sex instruction are not within the statute' as an obscene work (*United States v. One Book Entitled "Ulysses"* 1934). Texts about sexual health were cleared from being labelled 'obscene' and could be distributed through the mail, along with prescriptions for contraceptives by physicians after the 1933 case *United States v. One Package*, returning the exception for physicians that had been tabled during the Comstock Act's ratification.

The Comstock Act would be slowly hacked away over the years by various legal cases about literature and birth control until it became effectively neutered. The contemporary test for obscenity would be made from the cases *Miller v. California*, *Smith v. United States*, and *Pope v. Illinois* into the 'three-pronged test':

1. Whether the average person, applying contemporary adult community standards, finds that the matter, taken as a whole, appeals to prurient interests
2. Whether the average person, applying contemporary adult community standards, finds that the matter depicts or describes sexual conduct in a patently offensive way
3. Whether a reasonable person finds that the matter, taken as a whole, lacks serious literary, artistic, political, or scientific value. (*Miller v. California*, *Smith v. United States*, *Pope v. Illinois*)

Sex Education and Localized Censorship

While the obscenity battle over sexual health nonfiction in the courts came to a close in the 20th century, censorship remains an issue within the public sphere. In 2018, approximately

531 materials were challenged by library patrons, parents, board/administration, or librarians/teachers (American Library Association). Reasons given for some of the challenges were LGBTQIA+ representation, sexually explicit material, and sex education (American Library Association, 2018).

According to the ALA's Top Ten Banned Books list, the majority of these challenges are toward children's and YA books (2018). Much like the anti-vice crusaders over a century ago, a major rhetoric tactic for censorship aligns with one used by Anthony Comstock: 'Our youth are in danger' (Foster 75). The age of the readership may be different but the censorship of sexual health nonfiction is still an issue of contention among the American public. For example, *It's Perfectly Normal* by Robie Harris, a sexual health guide for 10 to 14-year-olds published in 1994 has been challenged and banned in several states, featuring in the Top Ten Banned Books list multiple times (Scales 2015, 61). The most recent challenge was by Arizona lawmakers in 2019 (National Coalition Against Censorship, 'Arizona Legislatures...').

While banned books are only removed or restricted on the local level in terms of singular libraries, this has a massive impact on its target audience. If a pubescent child is denied the unimpeded access of a book at their local or school library and has a guardian who is unable or unwilling to buy it, it may as well be a universal ban.

Conclusion

Unsurprisingly, Anthony Comstock has left his mark on the history of sexual health publications. Not only are the genre's beginnings hazy due to its inextricable ties to pornography but Comstock and his postal agents would destroy 78,608 pounds of books and sheet stock by 1900 alone (Sigel 442). Neither old nor contemporary works were safe. Comstock's Act markedly effected sexual health publication throughout the late 19th century either directly through censorship and destruction or indirectly with health manuals disguising their content to evade censors. After several legal battles, including a major literary case, sexual health publications were unburdened of the obscenity label, helping to

lead the way for birth control rights in America. But even today, the Comstock Act remains on the books and the genre's censorship continues on in the public sphere.

References

- Agata, Bernard, Agata, Seth, & Meyer, Burton. 2006. *The History of the New York Court of Appeals: 1932-2003*. New York: Columbia University Press. doi: 10.7312/meye13632.13 Accessed: 13 April 2020.
- American Library Association. 2018. "Top 10 Most Challenged Books Lists." <http://www.ala.org/advocacy/bbooks/frequentlychallengedbooks/top10> Accessed April 19, 2020
- American Library Association. 2018. "Censorship by the Numbers." Office for Intellectual Freedom. http://www.ala.org/advocacy/sites/ala.org.advocacy/files/content/2018-bbooks-graphic-1_0.pdf Accessed April 19, 2020
- Bachman, E. 2018. *Literary Obscenities: U.S. Case Law and Naturalism after Modernism*. University Park, Pennsylvania: Penn State University Press. DOI: 10.5325/j.ctv3znxph.5
- Burnette, Brandon. 2016. "Comstock Act of 1873 (1873)." In *The First Amendment Encyclopedia*. CQ Press, 2009; online ed. <https://www.mtsu.edu/first-amendment/article/1038/comstock-act-of-1873>
- "Comstock Act. Admissibility of Contraceptive Devices." 1937. *Columbia Law Review*, 37(5): 854-856. doi:10.2307/1116929 Accessed 14 April 2020
- Foster, T. 2013. *Documenting Intimate Matters: Primary Sources for a History of Sexuality in America*, Chicago: Chicago University Press.
- Giesberg, Judith. 2017. "Lewd, Wicked, Scandalous: American Pornography Comes of Age." In *Sex and the Civil War: Soldiers, Pornography, and the Making of American*

Morality, 12-32. Chapel Hill: University of North Carolina Press. Accessed April 18, 2020. www.jstor.org/stable/10.5149/9781469631288_giesberg.5.

Law Library: American Law and Legal Information. "Obscenity." Available at :
<https://law.irank.org/pages/8890/Obscenity.html> (Accessed 10 April 2020)

Margaret Sanger Papers Project. "Biographical Sketch." Accessed 18 April 2020.
<https://www.nyu.edu/projects/sanger/aboutms/index.php>

Miller v. California, 413 U.S. 15 (1973)

National Coalition Against Censorship. 2019. "Arizona Legislatures Challenge It's Perfectly Normal." Accessed 19 April 2020. <https://ncac.org/news/arizona-legislators-challenges-its-perfectly-normal>

Puglionesi, Alicia. 2015. "'Your Whole Effort Has Been to Create Desire': Reproducing Knowledge and Evading Censorship in the Nineteenth-Century Subscription Press." *Bulletin of the History of Medicine* 89, no. 3 (Fall): 463-490. Project Muse. [doi:10.1353/bhm.2015.0086](https://doi.org/10.1353/bhm.2015.0086).

Sabor, P. 2000. "From Sexual Liberation to Gender Trouble: Reading 'Memoirs of a Woman of Pleasure' from the 1960s to the 1990s." *Eighteenth-Century Studies*, 33(4): 561-578. <https://www.jstor.org/stable/30054163> (Accessed 10 April 2020)

Scales, P. 2015. *Books under Fire: A hit list of banned and challenged children's books*. Chicago: American Library Association.

Silberman, M. 2009. "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(3/4): 324-367. Available at:
<https://www.jstor.org/stable/25701240> Accessed 10 April 2020

Sigel, Lisa Z. 2016. "Handmade and Homemade: Vernacular Expressions of American Sexual History." *Journal of the History of Sexuality* 25(3): 437-62.

www.jstor.org/stable/44862361. Accessed April 16, 2020.

Sova, D. 2006. *Banned Books: Literature Suppressed on Sexual Grounds*. New York: Facts on File Inc.

United States v. Dennett, 39 F.2d 564 (2nd Cir. 1930)

United States v. One Book Entitled "Ulysses", 72 F.2d 705 (2nd Cir. 1934)

United States v. One Package, 86 F. (2d.) 737 (C. C. A. 2d, 1936)