

THE STRUGGLE FOR FREE SPEECH IN THE UNITED STATES, 1872–1915

**Edward Bliss Foote, Edward
Bond Foote, and
Anti-Comstock Operations**

Janice Ruth Wood



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Chapter One

Introduction

According to a fable written in 1881, a venomous spider cast a web over the insect community that kept alien moths out of the garden paradise. However, it also trapped butterflies, considered important for pollination. The bumblebee lawmakers, strong enough to fly through the web, ignored complaints from the garden's weaker residents about the harsh methods used by the spider, who bore "on his broad dark back a growth of dirty white down, forming for all the world hieroglyphics which could be clearly interpreted as the letters A and C" (Foote Sr., 1881, p. 3).

The A and C stood for Anthony Comstock (1836–1915), the moralistic New York crusader who spearheaded the national laws that gave postal officials license to remove from the mail any items they deemed "obscene, lewd or lascivious" or "of indecent character" (Fowler, 1977, p. 62–3). Written by Dr. Edward Bliss Foote (1829–1906), the fable warned readers of the immediate dangers imposed by the Comstock Laws on freedom of the press, particularly for literature on sex education. The cause was personal for Foote, he explained in 1881 (pp. 11–13). He had felt the sting of Comstock's actions with the suppression of birth control information that appeared in the home medical books that Foote mailed to customers nationwide from his New York City medical practice in the mid-19th Century.

After presenting the spider fable in a booklet, Dr. Foote then cited a few legal cases that exemplified threats he had seen to free speech, including his own. He and his son, Dr. Edward Bond Foote (1854–1912), sought to repeal the Comstock Act while working with the National Liberal League, which eventually splintered over the issue. The Footes led the more radical faction to form the National Defense Association in 1878 for the financial and moral support of Comstock defendants. At the turn of the century, their leadership and money helped launch the Free Speech League when

new laws against anarchist speech added yet another peril for freedom of expression (Rabban, 1997, pp. 24–5).

However, the two doctors Foote have been recorded in history primarily as pioneers in birth control or as publishers of popular medical books for the general public. But even in the late 19th Century, they stood out among physicians promoting contraception as “conscious, articulate social reformers” (Gordon, 2002, p. 111) with free speech being a favorite cause. This study illuminates the “forgotten” period in free speech between the Civil War and World War I (Rabban, 1997, Foreword) by examining the valuable contributions made by Edward Bliss Foote and Edward Bond Foote to organizations that mounted resistance to the Comstock laws on obscenity.

It is important here to note for clarification the manner in which the two Footes will be mentioned; with two such similar names a discussion can become confusing. The father and son were not actually a senior and junior because their middle names differed. However, during their lifetimes the two men were known as E. B. Foote (or E. B. Foote Sr.) and E. B. Foote Jr.; therefore, calling them Foote Sr. and Foote Jr. is truer to the record than using the strictly proper forms.

ENVIRONMENT FOR FREE SPEECH

The period in which the Footes worked has been described by legal scholar David Rabban as the forgotten years of free speech because previous generations of researchers had considered the period between the Civil War and World War I devoid of First Amendment significance. In a 1997 book titled *Free Speech in Its Forgotten Years*, Rabban contended that the court battles related to sex reformers (such as the Footes in the area of birth control) and proponents of anarchism and socialism had been largely ignored under the assumption that the period produced no legal decisions and scholarship of significance for future generations in handling issues related to freedom of expression.

Rabban’s section on “The Lost Tradition of Libertarian Radicalism” (Chapt. 1) prominently features the discord surrounding the Comstock Act, including the work of the Footes and the First Amendment scholarship of Theodore Schroeder, a close colleague of the Footes. Rabban regarded the National Defense Association and the Free Speech League as bastions of the free-speech principles that inspired the American Civil Liberties Union (p. 24).

According to Rabban, post-World War I progressive thinkers (including legal scholar Zechariah Chafee and members of the ACLU) perceived

the value of free speech differently from their predecessors. They promoted its value to political democracy rather than its status as an inherent right of individuals (p. 4) and distanced themselves from prewar disputes over sex-related issues and the labor violence of the Industrial Workers of the World, or “Wobblies.” Such controversies had left a trail of repression and unfavorable judicial decisions that might have hampered the progressives’ new vision for free speech (p. 5).

Amid the forgotten years, Anthony Comstock launched his campaign against obscenity from the YMCA in New York City. He set his sights on national legislation to thwart those who defied Victorian sensibilities and thereby posed imminent threats to the innocence of children and the moral fabric of America. After scant debate, Congress passed the bill he proposed that became known as the Comstock Act (Horowitz, 2002, p. 382). The maximum fine specified was \$5,000, and prison terms ranged up to 10 years. As amended in 1876, the act declared:

Every obscene, lewd, or lascivious book, pamphlet, picture, paper, print, or other publication of an indecent character, and every article or thing designed or intended for the prevention of conception or procuring of abortion . . . are hereby declared to be non-mailable matter, and shall not be conveyed in the mails, nor delivered from any post office nor by any letter carrier; and any person who shall knowingly deposit, or cause to be deposited, for mailing or delivery, anything declared in this section to be non-mailable matter . . . shall be deemed guilty of a misdemeanor. . . . (Fowler, 1977, pp. 62–3)

KEY CONTRIBUTIONS OF THE FOOTES

Even before the passage of the national Comstock laws, its namesake had already encountered resistance from E. B. Foote Sr. The older doctor had been the sole opponent of legislation Comstock proposed to the New York state assembly in 1872. Foote Sr. would later assert that Comstock retaliated by prosecuting him for the *Words in Pearl for Married People Only* pamphlet inserted into his popular medical books. The doctor was convicted and fined \$3,500 for mailing information to married couples about birth control and the contraceptives he offered for sale (Sears, 1977, p. 195).

The doctor’s legal struggle galvanized a group of social reformers bent on liberalizing the restrictive attitudes toward sex that dominated Victorian society. In the three previously mentioned organizations, they challenged

Comstock's powers in Congress and the courts. One of Comstock's last prosecutions before he died in 1915 involved birth control activist Margaret Sanger. The Free Speech League used funds to defend her that had been left in the will of E. B. Foote Jr. in 1912 (Rabban, 1997, p. 69). Therefore, the father-and-son team had thrown obstacles into the path of Comstock throughout his 43-year-long career as a public censor, from 1872 to 1915.

For Foote Sr., the Comstock laws intruded upon the medical practice he had pursued since 1858 as well as his publishing business. After his prosecution, he deleted offending passages from other editions in order to keep his business running (Horowitz, 2002, p. 410). Later, the enormous sales of the Footes' books and other medical items provided the financial resources to make the two doctors the principal backers of a Comstock resistance movement (Sears, p. 82; Rabban, pp. 39–40). One contemporary newspaper editor referred to Foote Sr. as a hero for all defenseless victims of Comstock's prosecutions for a quarter of a century (Macdonald, 1929, p. 285).

Foote Jr., sometimes called "Dr. Ned," never achieved the widespread fame as a doctor that was granted his father. He revised his father's books but also wrote his own, including one that supported contraception by using principles of population control (1886). Foote Jr. became better known as an activist for free speech (Sears, 1977, p. 199) and as a high-profile humanitarian, according to his obituary in a 1993 directory of the American Medical Association, which also cited him as one of the earliest advocates of sex education in public schools (p. 1555). A frequent speaker in New York liberal circles, Foote Jr. presented the National Liberal League's petitions for repeal of the Comstock Act to Congress (Schroeder, 1913, p. 12). Altogether, the Footes contributed to so many free-thought causes with so little fanfare that estimating the total of their donations has seemed impossible (Stein, 1996).

Social Setting

Both doctors Foote endorsed several of the social reforms transforming post-bellum America. With near-religious zeal, the so-called "sex radicals" created one of the major free-speech controversies of the era (Rabban, 1997, Foreword). Movements toward free love, women's rights, birth control, and free thought collided with the legendary Victorian sexual repression to spawn a group of nonconformists who publicly wrote and spoke about aspects of "The Sex Question," including the Footes (Sears, 1977, pp. 68–9).

Such frank discussions were not initially welcomed as a positive development. Rather, they symbolized for some people a breakdown in sexual

standards and a threat to the stability of society. Victorians recognized the importance of sex; however, they saw it as a force to be harnessed for the evolutionary process of reproduction, not to be frittered away as a source of physical pleasure (Haller & Haller, 1995, pp. 91–2). As attitudes toward sexuality began to change, physicians emerged as important confidants for their female patients (Haller & Haller, 1995, x–xi). A new generation of medical practitioners, including the Footes, made more information available outside their offices through books and pamphlets, at the risk of being labeled “quacks.” However, members of the mainstream medical profession denounced contraception as harmful to a woman’s physical and moral well-being (Gordon, 2002, p. 106).

PURPOSES OF THIS STUDY

This study chronicles the Footes’ free-speech activities as individuals and sponsors of three organizations by examining historic documents written by them and about them. More specifically, this study examines what actions they took on behalf of freedom of speech for and through the organizations they sponsored and the factors that motivated them to spend so much time and money in support of free speech. It explores what their views on free speech were, how these views were shaped by being doctors, and how those views shaped their free-speech activities. Finally, this study illuminates the contributions they made to expand freedom of expression during the forgotten years of free speech.

“Talk is cheap. Free speech isn’t,” according to a slogan that originated with the Free Speech Movement of the 1960s. Largely taken for granted today, freedom of expression has been won with a price for some Americans. In Comstock’s time, the costs could have been steep fines, prison terms, court costs, business losses, and damaged reputations. The two doctors Foote could not stop Comstock’s actions, but they worked to ameliorate the devastation on the lives of those being prosecuted. With leadership and financial support, the Footes also tried to make the public aware of the toll being taken on these individuals and society as a whole. Possibly free speech’s greatest philanthropists, the Footes deserve closer attention to understand their activities within their organizations and to evaluate the ultimate contributions they made.

As remote as Victorian sexuality seems by today’s standards, many of the same issues still emerge from time to time around the country and subsequently in the mass media. Many times since then people have campaigned to keep information about sex, masturbation, birth control, abortion, homosexuality, and AIDS away from children, ostensibly for their welfare.

Pornography remains one of the most controversial issues involving the balance of free-speech rights with measures to safeguard children, the latter of which was Comstock's stated concern. More recently, the same type of conflict arose when the Supreme Court struck down the Communications Decency Act as an impermissibly vague and overbroad restriction of Internet content.¹ Perhaps the most interesting research potential lies in exploring the interplay of legal, social, and sexual issues involved in legislating and prosecuting obscenity, ever a formidable challenge in First Amendment law. Historical perspective could shed light on the "moral panics" that ripple through American culture from time to time when a sex-related incident seemingly poses a threat to morality, such as the Super Bowl/Janet Jackson "Nipplegate" incident or exaggerated fears over Internet security and predators. When these panics spread, vague, deep-seated cultural anxieties are shifted onto more readily identified targets (McGarry, 2000).

SEARCH FOR SOURCES

No complete biography exists for either doctor Foote. For one reason, the father's personal papers were destroyed in a fire at his home in Larchmont, New York, shortly before his death in 1906. Additionally, after the son's death his widow burned family documents, she wrote to one of her husband's colleagues (Schroeder, Box 11, File 1). Biographical information appears in two types of sources: sketches in compilations such as *American National Biography* and tributes to the men after their deaths that were assembled by the organizations they sponsored (Wakeman, 1906; Schroeder, 1913). The most frequently cited reference on the Footes is a 1977 book by Sears, *The Sex Radicals*, which features 21 pages of biographical information (Chap. 11).

To add to the existing body of knowledge about the Footes, this study followed two distinct courses. It differed from the books and articles that emphasized their major work with contraceptives; many can be classified as historical studies of sexuality, birth control, gender issues, and women's health matters (Brodie, 1994; Gordon, 2002; Himes, 1970; Leach, 1989; Reed, 1978). Another writer (Cirillo) contributed a series of articles on Foote Sr. to medical journals in the 1970s. Sappol examined the older doctor's influence in the medical field (2002). However, no study has focused on their contributions to free speech much beyond mentioning Foote Sr.'s arrest and his son's work in one or more of the organizations. More recently, studies focused on Comstock (Beisel, 1997), women's rights (Passet, 2003), and 19th Century sexuality (Horowitz, 2002) have taken a

sociological approach and included the Footes on a limited basis. While these books, especially the Horowitz study, offer valuable information, they do not chronicle the Footes' continuing free-speech activities throughout the period, 1872–1915.

Secondly, this study took advantage of the broad range of materials where information on the Footes' free-speech work could be found: the magazine articles and pamphlets of their day, the books they wrote, materials written by or about the people with whom they worked, and the correspondence of colleagues. A comprehensive record was needed to bring together the information from a myriad of sources.

Special Collections at SIU

The Special Collections section of Morris Library at Southern Illinois University, Carbondale, offered many resources to benefit this research. The Rare Books and Manuscripts collections complement one another with published and unpublished materials especially useful for studying free-speech topics.

Theodore Schroeder, Collection 17

Formally the secretary of the Free Speech League, Theodore Schroeder served more as its executive director. Therefore, his personal papers contain much of the correspondence related to the League, which defended and supported many Comstock defendants. Foote Jr. served as the founder and treasurer who incorporated the organization and worked with individual clients. Additionally, he left a defense fund when he died in 1912 to be used as Schroeder saw fit.

Not only was Schroeder deeply involved with the Free Speech League, but he also kept files and media clippings on free-speech issues, on which he wrote extensively. There are almost 100 boxes in the manuscript collection in the SIU library, with a large quantity of books and other printed materials in addition. Not all are pertinent to this study, because Schroeder lived until 1953, more than 30 years beyond the existence of the Free Speech League. Using the collection's inventory list, it was possible to narrow down the contents to those that held the greatest potential.

Its vast number of boxes contained much correspondence among the group's officers and clients, as well as media clippings and books on subjects related to the League's work. Letters between Foote Jr., Schroeder, and other members indicated the type of business they conducted, and the materials offered information on the specific cases with which Foote Jr. was involved. Letters between Schroeder and the Footes include

details on financial matters. The records offered evidence of the Footes' importance in the League and perspectives on the free-speech issues of the day.

Ida Craddock, Collection 18

Originally part of the Schroeder collection, the papers of sex educator Ida Craddock include her correspondence with Foote Jr. while she was imprisoned after an obscenity conviction. He counseled her on issues related to her case and took care of personal matters for her. The collection includes several letters to Foote Jr. from Craddock that indicated the advice he gave to Comstock defendants. A dinner in Craddock's honor in the fall of 1902 was the first activity of the Free Speech League (Rabban, 1997, p. 64), not long before she committed suicide rather than face another prison term. After her death, Schroeder assembled the seven boxes of letters and unpublished manuscripts that make up the SIU collection.

McCoy Freedom of the Press Bibliography

The McCoy annotated bibliography lists more than 8,000 entries that trace the problematic heritage of media censorship in the United States and Great Britain. Compiled by retired SIU library director Ralph E. McCoy, the bibliography is accompanied by many of the books, articles, and documents listed in it as well as other similar items, many of which are unavailable elsewhere. The collection holds many materials from court cases and other activities pertaining to the obscenity prosecutions led by Anthony Comstock. Listed among its holdings are many items related to the Footes, the National Liberal League, the National Defense Association, the Free Speech League, and the clients served by the groups.

Additional sources include biographies of Anthony Comstock and two books he produced, *Frauds Exposed* and *Traps for the Young*, which presented to the public the findings of his hunt for obscene objects. Although published with Comstock listed as the author, they may actually have been written by members of his sponsoring organization, the New York Society for the Suppression of Vice (Horowitz, 2002, pp. 393–4).

Lloyd Library & Museum

Dr. Foote's Health Monthly, the periodical produced by the Footes, reported on the National Defense Association's activities for approximately 20 years from the mid-1870s. Still offering historical insights into the free-speech activities of the period, the *Monthly* can be found in only

six American locations, most connected to medical schools in the Northeast. This author viewed the collection at the Lloyd Library and Museum in Cincinnati, Ohio, formerly affiliated with a now-defunct eclectic medical school; it holds volumes 6 through 21 of the *Health Monthly*, printed between 1881 and 1896.

Labadie Collection, University of Michigan, Ann Arbor: Denton Family Papers. Elizabeth Denton was the sister to E. B. Foote Sr., and letters in the collection concern both doctors as well as free-speech activists Edwin C. Walker and Moses Harman. A librarian photocopied some of the materials for this project.

The *Library of Congress* also holds a collection of records that belonged to the New York Society for the Suppression of Vice, Comstock's sponsors. The inventory lists items belonging to people who were prosecuted, many of which contain notes written by Comstock. Some of the materials were available on microfilm. This author obtained copies of the arrest records pertaining to Foote Sr.

ORGANIZATION

This study is organized as follows.

Chapter 2, Historical Background, presents an overview of sexuality in the 19th Century, during which time Victorian taboos about sex were confronted by society's new interests in free thought, free love, women's rights, and birth control. It also presents what is known about the influences on Comstock's life as well as the personal lives and medical careers of Foote Sr. and Foote Jr.

Chapter 3, Legal Encounters with Comstock, portrays the legal problems that the Footes faced from Comstock and the postal authorities against the backdrop of the era's judicial and legislative systems, biased against free speech. Not only was Foote Sr. prosecuted, but the post office also curtailed the circulation of the Footes' magazine. Both doctors pursued Comstock through legislative channels.

Chapter 4, Free-Speech Organizational Activities, chronicles the work of the three groups that promoted free speech, of which the Footes were key members. A section of this chapter is devoted to *Dr. Foote's Health Monthly*, the unofficial newsletter of the Defense Association and the fullest expression of the Footes' views on free speech.

Chapter 5, Personal Involvement in Free-Speech Cases, describes the special interest the Footes took in the free-speech cases involving 15 individuals. For example, Foote Sr. became a close friend of free-thought

editor D. M. Bennett, and Foote Jr. supported sex educator Ida Craddock on a personal level while she was in jail.

Chapter 6, Conclusions, evaluates the influence of the Footes on free speech. After studying their organizational activities, their personal involvement, and their perspectives on free speech, it will be appropriate to draw conclusions from the findings of this research and the opinions of others found in the sources consulted.

RESEARCH QUESTIONS

RQ1: What were the Footes' particular views on free speech?

RQ2: What influence did the Footes have on free speech?

RQ3: How did the Footes' backgrounds as physicians affect their free-speech work?

RQ4: What contributions did the doctors Foote make to the National Liberal League, the National Defense Association and the Free Speech League?

RQ5: To what extent were they involved with specific cases and/or defendants?

Chapter Two

Historical Background

E. B. Foote Sr. admitted a common tie with the man who prosecuted him for obscenity while also noting how they differed. In a letter to the *New York Times*, he wrote, “Brother Comstock and I are engaged in what each regards as humanitarian reforms. He is trying to make people better by reformatory measures, and I by formatory processes; he playing the role of the moralist, and I the part of both moralist and physiologist” (“To the editor,” 1876). Both men saw Americans changing their values on sexuality and other key issues. However, if Foote advocated one side of an issue, Comstock most likely took the opposite view, or vice-versa.

Comstock and his conservative backers had been alarmed by numerous reform movements of the Victorian era (1837–1901) related to sex, religion, science, and medicine. Such ideas were so threatening to the status quo that Comstock declared them obscene, confiscated the publications that carried them, and prosecuted the individuals who expressed them. As outspoken proponents of birth control and other controversial reforms, the Footes found themselves embroiled in conflict with Comstock along with the purveyors of other radical concepts. With their message deemed unfit by Comstock, the defendants pooled their efforts and resources to demand their First Amendment rights; thus, the doctors Foote launched their anti-Comstock operations.

The first section of this chapter describes the general setting, and the second turns to the religious and spiritual matters that set the stage for reform. The third part looks at common attitudes on sexual issues of the period, and the fourth describes the transformation in the medical, social, and intellectual realms that influenced the work of the Footes and Comstock. The final section explores the factors that influenced their professional careers.

GENERAL SETTING

Postbellum America was industrializing with advances in railroading and steel production, accentuated by Yankee ingenuity and laissez-faire policies. Society also was diversifying in business, occupations, and interests (Morison, 1965, pp. 761–4). President Theodore Roosevelt described the period before 1900 and its social impact this way:

A riot of individualistic materialism, under which complete freedom for the individual . . . turned out in practice to mean perfect freedom for the strong to wrong the weak . . . The power of the mighty industrial overlords . . . had increased with giant strides, while the methods of controlling them . . . through the Government, remained archaic and therefore practically impotent. (Morison, 1965, p. 764)

The quotation describes patterns for change in 19th Century American life. The nation had matured from its small-town agricultural roots into a global commercial and manufacturing power. The extraordinary opportunities available to individuals and businesses turned into the excesses that Roosevelt would attempt to curb as president.

The nation took seriously the notion of Manifest Destiny and extended its borders from the Atlantic to the Pacific as the population grew from 3 million of 1790 to 31.4 million by 1860. The boom shifted workers from farming communities to major cities, already brimming from immigration: in 1820 there had been 8,000 new residents, which rose to 369,000 in 1850 (Friedman, 2002, p. 38). All these factors altered the urban landscape.

The same forces that transformed American society also re-made the American family: industrialization, urbanization, and immigration. Father, mother, and children worked side by side in the agricultural family, particularly in Colonial marriages. However, the 19th Century industrial economy thrust the marital partners into distinct roles: the father as breadwinner, the mother as primary caregiver, and the children as dependents rather than workers (Schroer, 2005, p. 10), despite the overuse of some in factories (Gordon, 1988, p. 28). The new configuration reinforced the bond between mothers and children, raising matriarchy to a societal pedestal. In urban settings, families were more likely to face poverty, overcrowding, unsanitary living conditions, and the perils of the street. Especially immigrants drawn to cities for employment and detached from their old support systems became more vulnerable to domestic abuse and inner-city violence (Gordon, 1988, p. 28).

THE SPIRIT OF REFORM

By mid-19th Century, Americans could no longer sidestep the slavery issue and other social problems simmering beneath the burgeoning economy and expanding boundaries. Politicians focused on compromises, secession, and military maneuvers while humanitarians crusaded extensively for abolition, buoyed by optimism and spiritual fervor. Other reformers tackled causes such as temperance, women's rights, better public education, and improved conditions inside prisons and hospitals in addition to matters involving sex and family life. Women discovered their political voice by organizing groups to advocate their views on slavery, temperance, and suffrage even before they could vote or manage property (Hurst, 1971, pp. 29–30).

Religious Factors

The overall climate for 19th Century reform drew inspiration from a number of spiritual sources. At the turn of the century, a revival movement tagged “the Second Great Awakening” propelled Protestant congregations toward evangelism and away from indulging human passions such as sexuality; the childhood home of Anthony Comstock exhibited the austerity of the revival movement (Bates, 1995, pp. 15–6). First in New England and then in New York, the South, and throughout the nation, the movement begat new sects within established churches and social reforms spurred by like-minded men and women brought together (Horowitz, 2002, pp. 47–8, 67). Separatist groups such as the Shakers and the Mormons defied social convention; the former practiced celibacy and gender equality while the latter migrated westward to escape persecution for polygamy. Utopian communities, estimated as many as 500, sprang up among religious and nonreligious groups to test theories members espoused about free love, socialism, anarchism, individualism, and transcendentalism (Schroer, 2005, p. 20).

Spiritualism

Additionally, a broad-based wave of Spiritualism swept across the United States, starting in the 1840s. Focused on the possibility of communicating with other-worldly spirits, believers sought comfort in contact with deceased loved ones or inspiration for reform issues intended to enrich earthly existence. Blending with religious and social influences, Spiritualism before the Civil War drew as many as 4 million followers in and out of conventional churches (Horowitz, 2002, p. 264), from nonconformist Christians, and among freethinkers (Friskin, 2004, pp. 26–8). McGarry (2000) argues that the 19th Century's parallel fascinations with spirituality and awakening sexuality spawned fears of sexual images haunting individuals

and the general public, thereby creating America's first "sex war," or moral panic over obscene materials in the mail.

Spiritualism took root in the 1830s when New Englanders explored the words of Emanuel Swedenborg (1688–1772), a Swedish mystic, philosopher, scientist, and theologian. Credited as the first significant practitioner of Spiritualism, Swedenborg theorized that spirits of the dead mediated between a higher being and the living through trances, which he learned from his own personal experience as a medium and clairvoyant. He also saw marriage as a means of mutual personal growth for marital partners, as long as they were properly mated; however, poor matches prevented spiritual progress. Swedenborg's disciples highly valued marriage and sexual love but opposed social conditions preventing the dissolution of unsatisfactory unions (Passet, 2003, p. 9).

As the second key event in establishing the Spiritualist movement, teen-agers Kate and Margaret Fox of Hydesville, New York, in 1848 claimed making contact with the ghost of their home's former resident. Their reported system of rapping and clapping made them celebrities and touched off a host of séances, trances, automatic messages, and mysterious phenomena. One of the sisters later admitted their initial story was a hoax, but already the genie was out of the bottle. Too many mediums were working, entertaining, and reaching believers to keep the movement from moving forward. They formed a national association and elected reformer Victoria Woodhull president for five terms (Friskén, 2004, p. 181).

Spiritualism created a platform for advocates of social change, notably in the abolition of slavery and the emancipation of women (Horowitz, 2002, p. 265). The movement tapped into the spiritual nature of women, believed to be more receptive to messages from other realms (Horowitz, 2002, p. 264). For the first time, American women became empowered within the culture to provide a service—as mediums—and to lecture on Spiritualist topics before public audiences of men and women (Friskén, 2004, p. 26). Around women and girls grew Spiritualist circles, as happened with the Fox sisters, and a network of supporters who saw the sexual liberation of women as key to all other reforms (Friskén, 2004, p. 14). They found a platform in Spiritualism and support from radicals who advanced social causes (Horowitz, 2002, pp. 264–5). One writer on the spiritualist movement described the mutual support between the two social movements this way: "While not all feminists were Spiritualists, all Spiritualists advocated women's rights" (Braude, 2001, p. 58).

The introduction of ideas from Scandinavian Swedenborg paved the way for another European: French socialist Charles Fourier (1772–1837). His American followers in the mid-1840s first became enamored with his

economic and scientific theories. However, Fourierism took off when attention turned to his plans for the sexual reorganization of society, quickly becoming known as *free love*. Fourier's implication that social institutions unreasonably restrained human sexuality shocked Victorian society and sparked public debate (Passet, 2003, p. 10). When Fourier's notions about sexuality combined with his proposal that society ought to be organized into small self-sustaining groups, 62 communes sprang up across the country. However, American interest in Fourierism waned in the late 1850s (Horowitz, 2002, pp. 261–2).

SEX-RELATED ISSUES OF THE PERIOD

The doctors Footes were among the individuals who believed true reform for society began with the sexual liberation of women and that birth control provided the initial step for improving the personal lives of Victorian women (Friskin, 2004, p. 14). Foote Sr. claimed center stage in the country's first movement toward birth control, and he took supporting roles in reforms such as feminism, free love, and free thought. Foote Jr. then took up his father's causes, making his own contributions. The popularity of the father's books gave both men the celebrity to publicly address the issues they cared about, and as writers and editors they built their own platform inside the pages of their books and magazine. As social activists, they positioned themselves at the heart of social reform circles. Highly visible physicians, the Footes made their views known, which are included in this chapter that surveys the reforms of their day.

At the mid- to late 19th Century, women served as moral guardians at the heart of Victorian family life. Not only was a woman expected to have no sexual experience before marriage, but doubt would be cast on her chastity if she showed knowledge of sex. She would channel her sexuality into motherhood and also lead her husband and children to the higher ground of keeping their sexual feelings at bay. Sex was seen as proof of base instincts, and some relegated it to a procreative role (Haller & Haller, 1995, pp. 100–2). Giving into sexual feelings on an undisciplined basis, whether in intercourse for reasons other than breeding or for masturbation (which Foote Sr. called “self-pollution”), could wreck personal health and harm later offspring, according to societal standards (Horowitz, 2002, pp. 92–3).

Prostitution

Foote Sr. expressed horror at the consequences of prostitution, around which was built a sophisticated industry that made services available to men at all income levels who were unwilling to abide by the antisexual

rules set down by society (Gordon, 2002, p. 9). Considered a necessary evil then and evidence today of the sexual double standard, prostitutes weren't considered threats to a happy home; instead, they supported domestic life (Gordon, 2002, p. 66). Socially acceptable women were regarded as paragons of virtue, for whom intercourse meant motherhood, not the satisfaction of sexual desires. To help maintain the ideal, their husbands were expected to moderate their powerful sexual appetites by taking advantage of prostitutes (Gordon, 2002, p. 11). Despite the social norm, Foote Sr. believed women could enjoy sexual intercourse, especially if they used contraception to avoid pregnancy. The methods that prostitutes used to prevent pregnancy were inappropriate for respectable women, who should not have the means to cover up immoral sexual behavior, according to the wisdom of the day (Horowitz, 2002, p. 149).

Medical problems arising from prostitution also concerned Foote. When men brought venereal disease home to their wives, getting treatment was complicated. Laws inspired by the Comstock Act made it illegal to advertise medicines and medical services for sexually transmitted diseases (Horowitz, 2002, p. 362). Foote Sr. proposed that prostitution be regulated by the state so that prostitutes could be examined periodically for contagious diseases, as found in a 1911 revised medical book (p. 212). Prostitution would not be tolerated, he wrote, if young adults were properly educated about sex and if laws and customs better protected the rights and social status of women (pp. 223–4).

A doctor working in New York's prison system produced *A History of Prostitution* in 1858. According to the results found by William Sanger (no known relation to birth control advocate Margaret Sanger's husband, also named William), one prostitute worked in New York City for every 57 men. Seven other cities were mentioned, with the highest rate in New Haven, Connecticut, where Sanger reported one prostitute for every 26 men (Baxandall, Gordon & Reverby, 1976, p. 93). Prostitution had become such a familiar image that reformers often likened marriage to it; as Victoria Woodhull expressed it, "She who marries for support, and not for love, is a lazy pauper, coward and prostitute" (Friskin, 2004, p. 27).

Pornography

Long before the Footes and Comstock squared off over materials considered "obscene," producers of pornography had tapped into a growing market. Customers, becoming more literate as industry expanded in the 19th Century, could be reached through the post office, as proven by the success of the Sears and Roebuck catalog business in the 1870s. Nonetheless, Foote Sr. drew a distinct line between what he and Comstock considered

obscene. They agreed that one class of publications should be extinguished: true erotica, which Foote Sr. described as “lascivious books and pictures and other articles of immoral use” (Foote Sr., 1877, pp. 3–4). However, Foote Sr. continually argued for the educational value of his own publications and those of his liberal friends, from which society did not need to be protected (Horowitz, 2002, p. 409). Most importantly to Foote Sr., he disagreed that articles used for the prevention of conception should be included as obscene materials (Foote Sr., 1877, p. 4).

By 1880, the literacy rate stood at 92.3 percent for all whites 10 and over and 30 percent for blacks (Sloan, 2004, p. 200), as Americans expanded school systems and enlarged public libraries. Already pornography had been mailed to Civil War soldiers on the battlefield, and the Young Men’s Christian Association worked among the troops to help them fight temptation with prayer meetings and libraries full of uplifting reading materials (Horowitz, 2002, pp. 307–12, 317).

When the soldiers came home, they flocked to major cities to find jobs. Publishers cranked out cheap fiction and racy pictures, particularly enjoyed by single men lacking family guidance (D’Emilio & Freedman, 1988, p. 158). The easy availability of erotic books and pictures compelled Comstock to take action, and he affiliated with members of the New York City YMCA, all intent on ridding the world of obscenity.

French philosopher Michel Foucault once pointed out that the adamant suppression of pornography in the Victorian Era made it all the more desirable. The public tended to agree that pornography—erotic images and stories—should be taken off public streets and out of the mails, but they disagreed on what other materials were considered obscene (Heins, 2001, p. 26). The Comstock Act included articles used for contraception and abortion along with erotica, making them obscene and non-mailable, and courts gradually ruled that materials challenging conventional notions about marriage and religion also were obscene.

But pornography wasn’t new to America in the Victorian Era; it had been available since the earliest years, some of it imported and some produced by the nation’s first printers. Even an associate of prominent American printer Isaiah Thomas turned out copies of the legendary *Fanny Hill: Memoirs of a Woman of Pleasure*, which circulated widely in this country before a Massachusetts court found it obscene in 1819 (Horowitz, 2002, pp. 34, 43). A common theme of pornography appeared in *Fanny Hill*: stories told from a woman’s perspective. Male writers typically described a woman’s sexual pleasures to incite men’s lust that was then acted out in intercourse or masturbation. The images stood in sharp contrast to the lack of sexual interest and response attributed to proper Victorian women (Horowitz, 2002, pp. 221–2).

REFORM MOVEMENTS

Traditional values faced an onslaught from multiple social reform movements, many interrelated. Typically, the reformers were Northeastern liberals, with exceptions in the Midwest, many of whom had worked toward the abolition of slavery. Forging new roles for women created a common bond for feminists, free lovers, and birth control advocates. Free-thinkers explored the interplay of society with religion and/or science. They shared with free lovers a disdain for the authority of the Christian church, even while others fell out with free love as a threat to a traditional home life (Gordon, 2002, p. 55). Neither their common bonds nor their causes survived the test of time into the 20th Century as free lovers and freethinkers aged and their ideas grew less radical (Passet, 2003, p. 170).

Birth Control

Foote Sr. thought reform for American society started with women being able to control reproduction and found his true calling among his married female patients seeking help. He had been alarmed at the health problems that women faced by unwanted pregnancies, damaging contraceptive methods, and botched abortions; he therefore tackled the risqué issue of birth control. Initially he preferred dispensing advice in private sessions only, but gradually he incorporated the topic into editions of his popular medical books. Eventually, Foote Sr. presented his discussion of contraceptives in a separate tract, *Words in Pearl*, produced around 1870; the publication became the evidence that Comstock used against him in court. It contained a comprehensive discussion of the four birth control devices that he thought were dependable and then offered them for sale (Garraty & Carnes, 1999, p. 193).

He made available “membraneous envelopes” (condoms made from fish bladders), “apex envelopes” (rubber condoms), the “womb veil” (variably considered a rubber cervical cap or a diaphragm), and an “electromagnetic preventive machine.” He derived the latter from a belief that a weak current from the machine produced an electrical disparity between the male and female, causing the uterus to reject sperm with no shocks or injuries. The text with all the products explained Foote Sr.’s goals of allowing women to control conception and to promote pleasure for both partners (Garraty & Carnes, 1999, p. 193; Sears, 1977, p. 196).

Foote Jr. reiterated many of his father’s concerns and worked just as hard to promote birth control for the sake of women’s well-being. Foote Jr. also introduced the term “contraceptics,” which some consider the origin of the later term, “contraceptives” (Himes, 1970, pp. 280–1). The

abstinence imposed by the antisexual beliefs of the era was enough to suppress birth rates with some women. Yet other women, particularly those in lower-income families, continued to accept yearly, unregulated pregnancies as nature's course, and others saw pregnancy as a curse and lived in continual fear of conception. Some suffered permanent damage to their health from frequent births or they died in childbirth (Gordon, 2002, p. 25).

The birth rate for mid- to upper-income Caucasian women declined by half over the 19th Century, and for African-American women the drop was steeper after the Civil War. Behind these numbers was the increased use of contraceptives and incidence of abortion to limit family size (Tone, 1997, p. 77). In 1800, the average woman gave birth to eight children, whereas in 1900, it was three, despite the imposition of laws against contraception in the last quarter of the 1800s (Gordon, 2002, pp. 22–3). Birth rates remained highest among Southern and immigrant families. For middle-class Caucasian families, limiting offspring was the key to climbing in social status (D'Emilio & Freedman, 1988, p. 58). The drop in population led Theodore Roosevelt in 1905 to chastise women who avoided having children, calling it "race suicide." The term was not Roosevelt's, but he popularized it and the thoughts behind it (Gordon, 2002, p. 86).

The publication of two books in the 1830s marked the first stage of the American birth control movement, cut short by the passage of the Comstock Act. When Robert Dale Owen, the son of an English social reformer, produced *Moral Physiology*, he focused more on the general need for contraception and mentioned only one specific technique: male withdrawal before ejaculation. In *The Fruits of Philosophy*, Dr. Charles Knowlton recommended that women douche with spermicides (Brodie, 1994, p. 89).

Yet another contraceptive technique originated inside the utopian community of Oneida, New York; with male "continence," a man avoided ejaculation for as long as possible (Brodie, 1994, p. 66). Proponent John Humphrey Noyes assured others that continence would not hinder the pleasure or health of either partner although Foote Sr. criticized it as impractical (Brodie, 1994, p. 282).

Throughout the century, women had experimented with a wide variety of contraceptive devices, some homemade and others available at pharmacies: syringes, suppositories, sponges, chemical and natural douches, powders, pills, and spermicides. The invention of vulcanized rubber in the 1850s made early forms of condoms, diaphragms, cervical caps, and intrauterine devices more accessible. Some initially arrived in America with European immigrants (Tone, 2001, p. 48).

In general, mainstream doctors stayed out of public discussions about birth control, anticipating that it might disturb the medical profession's

lucrative practice with women. Most who spoke up denounced contraceptives as harmful or supportive of immoral behavior (Gordon, 2002, p. 106). Any progress made in birth control came to a screeching halt with the passage of the Comstock Act, which forbade advertising methods of preventing conception, and the prosecutions that followed had a chilling effect on physicians who prescribed them (Gordon, 2002, p. 111).

Comstock condemned all forms of birth control as debasements of the institution of marriage. He called them “articles of diabolical design . . . cunningly contrived to minister to the most degrading appetites” (Friedman, 2004, p. 48). He, along with society as a whole, might have been disturbed by more than the contraceptives themselves. Once the wider use of birth control unleashed reproduction from sex, individuals were forced to reckon with their own sexuality in new ways and society to deal with women in different roles and new topics of conversation (D’Emilio & Freedman, 1988, pp. 59, 164).

Abortion

Both doctors Foote strongly opposed abortion as a form of birth control. Calling himself a “preventionist,” Foote Sr. preferred contraception to abortion, which he considered a crime and a sin (Foote Sr., 1911, p. 1086). His views differed from those of Comstock, who categorized abortion and contraceptives together as ways of relieving the consequences of illicit sexual behavior (LaMay, 1997, p. 44). Foote Sr. contended that the laws inspired by Comstock actually increased the incidence of abortion by making it risky for doctors to recommend contraceptives; they feared arrest or public exposure. Therefore, women wanting to limit the size of their families grew increasingly desperate for abortions, legal or not (“Prevention,” 1885).

In his 1858 book *Medical Common Sense*, Foote Sr. expressed concern that women did not fully recognize the dangers posed by abortion. If they survived the risky ordeal, whether with drugs or surgery, women stood a good chance of suffering permanent damage to their health. Such hazards could be avoided altogether by using reliable methods of preventing conception, Foote Sr. wrote, as he introduced his own contraceptive products (pp. 249–50).

Foote Jr. echoed his father’s disdain for abortion, which he called “wastefulness of human life” in his 1886 book, *A Radical Remedy in Social Science* (pp. 7–8). Also, he denounced the legal system that he saw as giving physicians more allowances for performing abortions than for prescribing contraceptives even though both were illegal (Brodie, 1994, p. 286).

New laws, shifting mores, and efforts from the medical profession changed mid-19th Century circumstances surrounding abortion, a form of

birth control for many women. Estimates of abortions in the country ran as high as 2 million a year in the 1890s (Gordon, 2002, p. 28). The Comstock Act, and the state laws it fostered, made advertising abortion services and products that caused abortion illegal. Through the American Medical Association, mainstream physicians launched campaigns to outlaw abortion, declaring it immoral and dangerous. Opponents saw AMA's actions as efforts to protect the medical profession against competition from midwives and practitioners of untraditional methods, many of whom specialized in women's health services (Gordon, 2002, pp. 30–1).

Accordingly, state laws followed suit, prohibiting abortions performed by anyone other than physicians licensed by the AMA, who were allowed to determine when it was medically necessary (Gordon, 2002, p. 30). Under the new regime, legal abortion—although expensive and hard to obtain—became a privilege of mid- to upper-income women. Those of lower income resorted to illegal and more dangerous methods and even infanticide (Brodie, 1994, p. 287).

The new laws abandoned the formerly tolerated tradition of abortion before “quickening,” the point at which a pregnant woman felt the fetus moving, around 20 weeks (Horowitz, 2002, p. 195). Even the Catholic Church had not condemned the quickening tradition until 1869 when abortion at all stages of pregnancy was declared immoral (Gordon, 2002, p. 30).

Prior to the mid-19th Century reversal in public attitudes toward abortion, an industry had grown up around the sales of items that caused abortion and the provision of related services (Brodie, 1994, pp. 224–5). Women for decades had used blunt instruments and prepared their own pills, herbs, extracts, and oils for abortive purposes. Commercial preparations discreetly sold as patent medicines for female problems bore names such as the “Female Regulator” and the “Woman's Friend” became available. Women learned how to acquire such items through word-of-mouth, circulars, and delicately worded newspaper advertising (Brodie, 1994, pp. 226–7). All of them drew the ire of Anthony Comstock, who could not distinguish between abortion and contraceptives; both encouraged sin and discouraged marriage, he thought (Friedman, 2004, p. 48).

Most notable were the ads of professional abortionists; the best known of them was Ann Lohman, commonly called “Madame Restell.” She and her husband ran a New York City business that offered instruments and drugs for abortion by mail order as well as in-house abortions and adoption services when women waited too long to end pregnancies (Brodie, 1994, pp. 229–30). Weary from her husband's recent death and legal entanglements in the deaths of several women, Lohman sold contraceptives to Comstock

appeared at her home one night in 1878 under the guise of buying them for his wife. Just before she was to appear in court, Lohman slit her own throat and died, which Comstock characterized as “a bloody ending to a bloody life” (Horowitz, 2002, pp. 386–7).

Women’s Rights

The Footes supported feminism in its first wave at mid-19th Century. The movement served as a boon for contraception, but there was by no means unanimity among women on the topic. Many welcomed new methods and became involved in sex education campaigns. Yet others became female proponents of “social purity” who wanted to see the age of consent for marriage raised, prostitution reformed, and obscenity censored. They favored abstinence as the only means of controlling reproduction. For them, Comstock was a champion (Gordon, 2002, pp. 12–3).

The Footes were feminists in a time when men rarely spoke in favor of women’s rights. Foote Sr. endorsed greater rights for women (Foote Sr., 1884, p. 25), supported Victoria Woodhull’s presidential campaign in 1872 and once paid a fine for Susan B. Anthony when she tried to vote (Horowitz, 2002, pp. 350–1). Writing in one of his medical books, he ridiculed a claim that female students were inept in mathematics, finding “no satisfactory evidence” He also believed women were better suited by nature than men for the medical profession, noting there were 300 female practitioners at the time (1911, pp. 363–4), one of whom was his daughter-in-law, the wife of Foote Jr., Mary E. Bond Foote. Foote Jr. also supported women’s rights and he once stated: “I also advocate woman’s suffrage, and the sexual emancipation of women, less bondage in marriage, far greater freedom in divorce” (Putnam, 1894, pp. 730–3).

Even feminists delving into more political issues espoused conflicting views. Leaders Elizabeth Cady Stanton and Lucretia Mott planned the 1848 Seneca Falls Convention to discuss women’s rights as well as expanding educational and employment opportunities; yet the congregants disagreed in one vital area (Horowitz, 2002, p. 258). Mott and other traditionalists opposed Stanton’s suffrage resolution: “Resolved, that it is the duty of the women of this country to secure to themselves their sacred right to the elective franchise.” Passed in 1848 by a narrow margin, the resolution reached near-unanimous support by the next convention in 1858 (McElroy, 1982, p. 7).

Feminists sought to raise the status of women, previously confined to the home. They worked to reform laws that ceded wives’ property to their husbands and gave fathers exclusive custodial rights over children. Women were not allowed to vote, serve on juries, hold elective office, or work in

most professions. Educational and employment opportunities were scarce. Entry into most businesses depended on family connections (Horowitz, 2002, pp. 50–1). States at mid-century began to address women's legal issues, as New York did with the Women's Property Act of 1848, allowing women to own property, to retain inherited money, and to keep salaries they earned (Basch, 1982, pp. 233–4). By the dawn of the 20th Century, the system had been standardized from state to state. Not only could women buy and sell land, but they could also enter into contracts and make out wills; they also gained custodial rights (Friedman, 2002, pp. 59–60).

However, much of society was not ready for a woman's status to change. Women began moving out of the home and finding new power in their relationships with men. Many doctors criticized them for violating the laws of nature and neglecting their divine mission—motherhood. If women limited the size of their families, they were criticized as sexless beings who drove their husbands to prostitutes. They were no longer content to nurture male children to become society's movers and shakers; they craved leadership roles for themselves and other females (Haller & Haller, 1995, pp. 76–9). Thereby, women had become threats to the common morality and the very foundations of society, as many believed (Haller & Haller, 1995, p. 85).

Divorce

Women pursuing greater personal freedom were joined by male supporters such as the Footes in demanding changes in the institution of marriage. They called for revisions to laws that subordinated wives to their husbands and to divorce laws that bound partners in unhappy unions despite incompatibility (McElroy, 1996, p. 1). In a public lecture and debate that he published in 1884, Foote Sr. proposed that the divorce process be simplified and that special councils of psychologists be established to examine and approve prospective marital partners (p. 25). He believed early marriage would prevent "solitary vice," presumably masturbation, but preferred that parenthood be delayed until age 25 for women and 30 for men. He published and distributed transcripts from the event where he expressed his views (p. 29). Foote Jr. also favored relaxing divorce laws (Putnam, 1894, pp. 731–3).

By the 1890s, states were expanding the grounds on which marital unions could be dissolved, so much so that the United States held the world's highest divorce rate as the 20th Century dawned (McGerr, 2003, p. 85). From 1880 to 1918, the rate climbed from one in 21 marriages to one in nine (Foner & Garraty, 1991, p. 287). Behind the rising numbers, Victorian moralists, reformers, and feminists scrutinized divorce from all

its legal, religious, and social angles (Basch, 1999, p. 37). Noted newspaper editor Horace Greeley launched journalistic forums on the value of love, marriage, and divorce in American society (Horowitz, 2002, p. 269).

Activists sought increased options for failing marriages, but the basic framework for dissolving marital unions already had been established. The concept of *fault divorce* had come to serve as the legal foundation and set the American system apart from its English predecessor. The right to claim fault lay with the partner who could show the other had breached the marital contract (Basch, 1999, p. 22). The most common grounds being used were desertion, cruelty, and adultery (Basch, 1999, p. 47). At mid-19th Century, alleged domestic abuse contributed significantly to failed marriages (Passet, 2003, p. 69). Cruelty had become the most commonly cited grounds by 1886, but the standard was broadly interpreted for a wide range of situations involving physical, emotional, and verbal abuse (Grossman, 2002). Because the law made no provisions for marital partners to part ways amicably, they were forced into collusion by which they agreed one would claim grounds finding the other at fault (Friedman, 2002, pp. 63–4).

In the absence of a federal code to set uniform divorce standards across the country, the states retained jurisdiction on how it was handled within their own borders, leery of a centralized government becoming overly powerful (Basch, 1999, pp. 7, 47). The pronounced statutory differences among states gave rise to *divorce mills*, or jurisdictions capitalizing on their laws that were generous to nonresidents seeking quick dissolution of their unions (Friedman, 2002, p. 64), called “Lollies” (Basch, 1999, p. 59). Male and female Lollies were attracted by Indiana’s liberal divorce laws at mid-19th century, attributed to the influence of New Harmony, a utopian community inside the state that practiced true equality between the sexes along with unconventional sexual pairings (Crumrin, n.d.). New York—where the doctors Foote and Comstock squared off over obscene literature—positioned itself on the conservative end of the spectrum when it came to divorce laws (Basch, 1999, p. 8).

Divorce was ardently deliberated among women because they had so much at stake in 19th Century marriage, including their legal identity and financial support. In fact, no issue besides divorce so polarized individuals inside the women’s movement (Basch, 1999, p. 72). Some leaders preferred to steer clear of controversial issues such as divorce until women could cope with them once they were granted greater legal rights (Passet, 2003, p. 94). Others tackled the issue head-on; feminist leader Elizabeth Cady Stanton lauded easy divorce not only for women trapped in abusive unions but also for preventing what she considered a sin—living together under less than

satisfying circumstances. Yet noted author Harriet Beecher Stowe warned that easy divorce was “a liberty which, once granted, would always tell against the weaker sex.” In other words, she feared women would be victimized by ungrateful husbands and unforgiving customs, bereft of financial support and social stance (Basch, 1999, p. 69). Women faced domestic abuse (Passet, 2003, p. 69) and unique challenges in the courtroom; even if they brought suit against erring husbands, their own behavior had to be above reproach to see their premarital assets returned to them (Basch, 1982, p. 94).

Free Love

Divorce also appeared on the political agenda of the free-love movement, one of the most controversial—even divisive—issues of the century. Those who advocated free love challenged government and church intervention in personal matters, such as marriage and birth control, and featured more philosophical underpinnings than the free love movement of the 1960s. All its followers did not necessarily adopt unorthodox sexual practices, but early proponents who did separated themselves into communes (Sears, 1977, p. 8), inside which a number of birth control measures developed. The most studied of the free-love communities took root in Oneida, New York, founded by John Humphrey Noyes. He rejected traditional legal ideas about marriage and divorce in favor of “complex marriage,” in which all men were married to all women. The practice required sexual partners to consent through a third party and forgo exclusive pairings (Schroer, 2005, p. 21). Foote Sr. defended the Oneida community as possibly “prophetic of an advanced condition of society, when the whole human family will be united in one marriage” (Stoehr, 1979, p. 49).

A footnote in a book on the history of the free-thought movement states that both Footes were free lovers without further explanation (Kirkley, 2000, p. 101). Typical of the perplexity in defining free love, it is hard to separate the philosophical principles involved in 19th Century free love from the untraditional sexual relationships that made it infamous. Neither of the doctors Foote is known to have deviated from conventional sex practices, but they supported the free-speech rights of people who did.

By contrast, mainstream society saw the lifestyle pursued by free lovers as immoral (Schroer, 2005, p. 23). The issue became a lightning rod for Anthony Comstock, with whom free love became synonymous with “free lust,” according to his 1884 books that was reprinted in 1990, (p. 164). For him and most of the public, few concepts more pointedly affronted Victorian morality than women involved in sexual intercourse outside of marriage. Therefore, Victoria Woodhull shocked all those around her when

she proclaimed: “Yes, I am a Free Lover. I have an inalienable, constitutional and natural right to love whom I may, to love for as long or as short a period as I can; to change that love every day if I please” (Passet, 2003, p. 91).

Woodhull’s statement publicized the cause of free love, but she didn’t speak for all believers. Nor could anyone else; they widely differed in their convictions. However, the gospel of free love spread a few core beliefs: (a) Sexual relationships controlled by the government harmed both women and men; (b) laws that muted women’s legal voices kept them from controlling their own bodies and their sexuality, whereas personal choice should reign supreme; and (c) Women had too long been denied equal rights to economic independence through educational and work opportunities, situations that should be rectified (Schroer, 2005, p. 23). For proponents of free love, the perfect romantic relationship involved two equally accountable partners presenting themselves for a mutually satisfying sexual encounter, a goal complicated by the fact that men and women were not equal in the eyes of society and the law (Gordon, 2002, p. 67).

A favorite target of Comstock’s was Ezra Heywood, the organizer of the New England Free Love League in Boston and editor of *The Word*, a free-love, free-thought, and anarchist journal. Heywood was first prosecuted and jailed in 1878 for writing *Cupid’s Yokes, or The Binding Forces of Conjugal Life*, a pamphlet that proposed the abolition of marriage on the grounds that it enslaved women and demeaned romantic love. Interestingly, Heywood maintained a traditional marriage; his wife, Angela Tilton Heywood, also wrote and spoke her mind on controversial sexual issues.

Free Thought

Both Footes were deeply involved in the free-thought community, which attracted individuals dissatisfied with the influence of the mainstream Christian church in society. Freethinkers included religious liberals, radical church/state separatists, transcendentalists, and individuals influenced by Darwin’s evolutionary theory toward scientific and rational thought who had met in loosely affiliated chapters across the country since the 1830s. They idolized Thomas Paine, known for writing *Common Sense* and *The Age of Reason* and as America’s first freethinker. His criticism of Christianity tainted his legacy as a patriot for some (Jacoby, 2004, p. 5). Variably called liberals, atheists, or agnostics, freethinkers remained “infidels” to Comstock, who prosecuted their publications as blasphemous and obscene (Comstock, 1969, p. 443).

Before affiliating with the free-thought movement, Foote Sr. had been active in the Presbyterian Church in childhood but became a Unitarian as an adult. Becoming a freethinker enhanced his visibility and expanded his

life onto the political stage; he once ran for a Congressional seat but lost (Macdonald, 1931, p. 82). He also attended meetings of the Republican, Democratic, Greenback, and Equal Rights parties but wasn't especially comfortable in party politics (Wakeman, 1906, p. 19). Typical of freethinkers who believed that women were particularly talented in fund raising, Foote Sr. suggested their skills could be incorporated into an 1881 convention of freethinkers, at which time they could sell homemade crafts (Kirkley, 2000, p. 105).

Raised as a Unitarian, Foote Jr. later became a high-profile member of free-thought organizations and an agnostic who denounced the Christian concept of an afterlife (Putnam, 1894, pp. 731–3). At the New York Liberal Club, he shared the platform with the likes of newspaper editor Horace Greeley and poet Walt Whitman. Foote Jr. made an impromptu speech on birth control that so agitated his audience in the club that police were called to handle a disturbance. He then joined the Manhattan Liberal Club and served as its president for many years (Schroeder, 1913, p. 10).

From 1860 to 1900, when the Footes were most active, freethinkers enjoyed a period of prosperity. A few major personalities emerged, including Robert Ingersoll, the country's most popular orator of the period and dominant critic of organized religion (Stein, 1985, p. 692). The 1899 death of Ingersoll, called "the Great Agnostic," thrust the movement into decline (Kirkley, 2000, p. 19).

According to one sample of free-thought membership in the early years, the vast majority lived in New England and the mid-Atlantic region, and most worked in professional careers. Gradually, the group moved westward and broadened to the working classes (Kirkley, 2000, pp. 22–23). Female freethinkers joined the ranks, notably Stanton and Mott; however, members in general differed widely over social issues such as women's rights, free love, divorce, and contraception. Others also advocated anarchism and socialism (Kirkley, 2000, pp. 17, 19).

Francis Abbot established the Free Religious Association after the Civil War and edited the *Index* free-thought newspaper, which became a unifying force for the nationwide string of chapters. Hoping to build a stronger national alliance, Abbot called a convention in the 1870s that launched the National Liberal League, joined by Ingersoll (Horowitz, 2002, pp. 420–1). From within the League emerged a groundswell of resistance to the Comstock Laws as members witnessed Comstock's prosecutions. But opposing forces created a permanent rift in the organization, and the extreme wing evolved into the National Defense Association. Among its first clients was prominent editor, D. M. Bennett, of the *Truth Seeker* free-thought newspaper.

EUGENICS

Another social cause advanced by the Footes and their associates, *eugenics* was considered a science of human breeding influenced by *social Darwinism*. Although it originated with British philosopher Herbert Spencer rather than scientist Charles Darwin, social Darwinism applied the “survival of the fittest” principle of evolutionary theory to social policies. Accordingly, the rich were thought to have reached their station in life through virtue and hard work and the poor were destitute because of laziness and immorality (“Social”). Holding the belief that a race and a nation could benefit through reproductive control, eugenicists encouraged individuals with above-average mental and physical traits to produce more children and those with below-average traits to have fewer. An early emphasis on the inherent rights of children to good health and living conditions that nurtured their growth (Gordon, 2002, pp. 75–6, 193–4) can be seen in “Borning Better Babies,” the subtitle of Foote Jr.’s 1886 book on eugenics, *A Radical Remedy in Social Science*.

Calling eugenics “my pet hobby,” Foote Jr. extended his father’s interest in the field (Putnam, 1894, p. 732) but also practiced what he preached. He rushed to complete *A Radical Remedy*, believing he was about to die, although he survived another 26 years. Foote Jr. considered himself unfit for parenthood because he had acquired a blood-related disease while in medical school. Therefore, he chose not to have children and married late in life (Schroeder, 1913, p. 21). His wife, Mary, also spoke and wrote about eugenics and birth control (Foote, M. B., 1908, p. 355).

His father opened an 1877 pamphlet titled *A Step Backward* on his beliefs about eugenics with an attack on the Comstock laws. He wondered why items used to prevent conception were criminalized just at the time they were most needed to curb climbing populations (pp. 3–4). The Comstock laws were based on “antiquated sentiment” that mirrored Catholic views on contraception, Foote Sr. wrote, but hoped an outcry from American Protestants would overturn the obscenity statutes. Until then, he saw no choice but to abide by them (pp. 8–9).

Foote Sr. praised contraception as a means of improving living conditions for the human race in general as well as the individual lives of women (pp. 6–7), reiterating some of the teachings of 18th Century British essayist Robert Thomas Malthus, who published *Essay on the Principle of Population* in 1789. According to Malthus, population growth would always exceed the food supply. Naturally occurring *checks* on the population, such as famine and disease, would be insufficient to match supplies. He proposed preventive checks to keep the birth rate down, primarily the postponement

of marriage until age 30, particularly among lower-class groups who tended to produce a higher proportion of babies than other classes. Most of Malthus' American followers were actually Neo-Malthusians because they favored the widespread use of birth control, whereas Malthus accepted only abstinence for curbing personal reproduction (Sears, 1977, p. 191). Foote Jr. in his 1886 book reiterated Malthusian principles to prove the value of contraception but cited "excessive child-bearing" as the more pressing danger in America than overpopulation (Walters, 2000, p. 128).

Foote contemporaries also studied eugenics. In the Oneida community John Humphrey Noyes developed "stirpiculture," a nonscientific system by which adults were selected for parenthood and the offspring raised communally (Gordon, 2002, p. 50). Editor Moses Harman, a friend of the Footes, developed his own ideas about eugenics, women's rights, and birth control, published in his newspaper, *Lucifer the Light Bearer*, later renamed the *American Journal of Eugenics* in 1907. An earlier publication on eugenics, *Our New Humanity*, appeared and disappeared in the 1890s. Long beleaguered, Harman had moved his publication from Kansas to Chicago, and he was prosecuted in both places for violating the Comstock Laws. Comstock arrested and imprisoned him several times (Sears, 1977, p. 112).

Harman combined his interest in eugenics with a commitment to feminism. Calling it "natural selection," he proposed that a woman should be free to choose the man she wanted to father her child, free of marital bonds. The conventional form of marriage, in which the husband dominated his wife, produced inferior offspring, he thought, and granting women more independence would automatically improve the health of her children and society in general (Gordon, 2002, p. 81). Harman's daughter, Lillian, depicted her father's ideals. She chose to bear a daughter in a contract relationship with writer/editor Edwin C. Walker rather than a marriage that met state and church requirements (Sears, 1977, p. 121–2).

A formal eugenics movement would not appear in the United States until the early 20th Century; 19th Century disciples began disseminating ideas as extensions of evolutionary theory (Gordon, 2002, p. 68). Phrases that included the word "race," such as "improving the race" and "race suicide" (for the falling birth rate among white citizens), on the surface reflected a commitment to humanity. However, the terms more frequently connoted the Caucasian race than the human race. Eugenicists became concerned that immigrants, nonwhites, and the poor would reproduce at a higher rate than Caucasians and overwhelm mainstream American society (Gordon, 2002, pp. 87–8).

By the early 1900s, eugenicists were pushing for policies and laws on selective breeding. Twenty-nine states, by the end of the decade, had

passed laws to sterilize individuals considered mentally retarded, prone to criminal behavior, low in character, or poor. Taken to the extreme, eugenics spawned the racial superiority policies of Nazi Germany against Jews and other non-Aryan people (Gordon, 2002, p. 212).

The Footes' interest in eugenics also displayed the darker side with its elitist and racist views. According to an 1876 issue of *Dr. Foote's Health Monthly* quoted in a 2002 book, inferior sectors of society, such as "tramps" and "molly maguires" (a derogatory term for the Irish population in America) should be eliminated by "preventing the increase of these pauper classes by propagation" through contraception (Sappol, p. 245).

A 20th Century edition of the Footes' home medical books expressed pride that the authors had long advocated laws restricting marriage to individuals capable of producing "viable and well-balanced offspring" (1911, p. 1081). They also recommended sterilization for a range of individuals considered unsuitable to reproduce:

. . . both men and women with incurable diseases, victims of an inherited tendency to epilepsy, insanity, idiocy, or consumption, and especially those who are born with a depraved nature causing them to perpetuate cruelty and violent crime. (1911, p. 1087)

COMSTOCK IN RESPONSE TO SOCIETY

Anthony Comstock was ill-prepared to see the world changing around him. He clung to his strict religious upbringing in New Canaan, Connecticut, throughout his career as a public censor, describing his own efforts as "weeding in the Garden of the Lord" (Bates, 1995, p. 3). His parents had been deeply influenced by the Second Great Awakening of the 1830s that revived fundamentalist Christianity in the Northeast (Bates, 1995, p. 29), and his mother provided the role model for his belief that the female parent was the chief guardian of a child's education and morality. One biographer suggested that Comstock was so close to his mother that he never recovered from her death when he was 10 years old. Fifty years later, the son said he still lived to honor his mother and the principles she taught (Bates, 1995, p. 33).

Personal Influences

The Comstock family attended their Congregational Church, which stressed a disciplined life bent on avoiding temptation to sin. Comstock's parents abhorred carnal lust and fully embraced the Victorian standard of sexual

activity only within marriage for procreative purposes. Masturbation, or “self-abuse,” was seen as a drain on health and a contributor to insanity or other immoral sexual behavior. When their son grew up, he became particularly worried that suggestive writing and pictures led children to masturbate. Books that taught children about their sexuality also might lead them down the wrong path (Bates, 1995, pp. 15–6). The Comstocks were leery of immoral effects in the plays presented by nearby Yale University students; in later life, the son would close down theater productions to protect youth from temptation and lust (Bates, 1995, p. 35). Comstock as a child heard bawdy stories told by less religious hired help on his father’s farm; he subsequently claimed the stories filled his mind with lascivious thoughts he retained the rest of his life. Writers have even suggested that Comstock waged his own battle against habitual masturbation (Goldsmith, 1998, p. 344; Heins, 2001, p. 30). Another attributed his intolerance of birth control to grief over his only child’s death and his wife’s inability to conceive again (Tone, 2001, p. 8).

Setting Traps for Obscenity

From his father Comstock learned his two known sources of pleasures: stamp collecting and hunting small animals. Years later he would save the obscene materials he confiscated and display them as vice-hunting trophies to illustrate his points about the dangers awaiting children (Bates, 1995, p. 37). Even when he addressed Congress in 1873, Comstock punctuated his call for beefed-up obscenity laws with stories of men and women whose lives he claimed had been ruined by pornographic pictures, books and other materials used for immoral purposes. He illustrated the points with contraceptives, abortion-causing devices, and items used for masturbation that he had gathered (Broun & Leech, 1927, p. 131). He also used images from hunting to describe tracking down those he prosecuted. He saw obscene materials as “Traps for the Young,” which became the title of a book attributed to him (Stoehr, 1979, p. 382).

Even while serving as a Union soldier in the Civil War in Florida, Comstock felt ill at ease among the troops. Daily he poured out his rations of liquor to the dismay of the soldiers around him. Others ribbed him for his self-righteous behavior, and he in turn was appalled by their mischief (Broun & Leech, 1927, p. 45). Affiliated with the wartime Christian Commission (Boyer, 1978, p. 120), he took it upon himself to find ministers to conduct religious services, which he attended from four to nine times a week (Broun & Leech, 1927, p. 47).

After the war, Comstock pursued employment opportunities in New York City but found much to affront his moral sensibilities: drinking,

gambling, prostitution, and public entertainment of all sorts. But at the YMCA he found kindred spirits and encouragement to pursue his private antiobscenity crusade. Impressed with his fervor, a wealthy group of businessmen known as the New York Committee for the Suppression of Vice (later renamed the Society for the Suppression of Vice) gave him substantial support; among the group were prominent financier J. P. Morgan and soap magnate Samuel Colgate (Bates, 1995, p. 99).

Far from being a millionaire, Anthony Comstock also found a home at the YMCA, where he mingled with men of wealth and stature. His success in life more closely exemplified the popular Horatio Alger fictional tales of the era that saluted self-made men as the epitome of achievement (Garrity, 1966, p. 554). An historian of free thought hailed Comstock as the “embodiment of an iconographic American story” for his rise from uneducated and socially unconnected store clerk to nationally recognized crusader based solely on his single-minded pursuit of his vision for a moral nation (Jacoby, 2004, p. 207).

Criticism as Censor

More derision of Comstock’s character emerged when 20th Century legal scholar Zechariah Chafee opined on the precarious role of being a censor. Those who want the role, he said, were unlikely to be fit for the responsibility. “[Y]ou are liable to get volunteers of the Comstock temperament who are morbidly sensitive about the morals of others. Constant preoccupation with questionable books or plays is not good for anyone. It throws him off his balance, and takes away his sense of proportion” (Chafee, 1967, pp. 532–3).

Heywood Broun in 1927 also paralleled the criticism as he closed his biography of Comstock with a section called “Broun on Censorship.” Comstock, he said, had been sorely mistaken about the power of pornography (p. 266) and was more concerned with applying his own social agenda than in serving as a fair-minded censor (p. 273). He concluded, “[It] is pretty safe to assume that any given censor is a fool. The very fact that he is a censor indicates that” (p. 275).

THE FOOTES WITHIN THE MEDICAL PROFESSION

Comstock found fault in how Foote Sr. practiced medicine. Both Footes preferred an alternative to mainstream medicine called “eclecticism,” which led to their promotion and sales of birth control, illegal to advertise or distribute in the mail, according to the terms of the Comstock Act. Before Foote Sr. was arrested, lawyers had advised him that doctors probably would not

be prosecuted; however, the eclectics were not as highly regarded as other physicians in some circles (Horowitz, 2002, p. 408). A critic of Comstock's work accused him of courting the favor of establishment physicians to use as a weapon in prosecuting eclectics (Wakeman, 1881, pp. 73–5).

Mainstream physicians of the time were called “allopaths” or “regulars.” They maintained traditional European practices based on surgery, balancing the body's secretions (blood, sweat, etc.), and large doses of chemically based medicines. They also controlled how medical practitioners were regulated (Haller, 1999, p. 7), and they worked to exclude from professional recognition the eclectics and those who used alternative approaches, calling them “irregulars” and even “quacks.”

Eclectic physicians, such as the Footes, took from different sources the treatments that seemed most suitable for specific purposes. Overall, they preferred natural medicines and procedures less invasive than surgery. They sometimes used trendy forms of treatment: hypnotism, electricity, hydrotherapy, herbal treatments, dietary restrictions, and botanical medicines (Gordon, 2002, p. 108). The eclectics cultivated an image that seemed less elitist than the allopaths and advertised their services and wares more often. Foote Sr. considered eclecticism “as much a protest in the field of medicine as was Luther's Reformation in the domain of religion” (Haller, 1994, Frontispiece).

The Footes practiced medicine in an age when doctors held a privileged position in society on issues beyond physical matters; they were also spiritual advisers, especially with women. To varying degrees, physicians distributed information on sexual intercourse, birth control, masturbation, abortion, and prostitution (Haller & Haller, 1995, pp. 114–5, 122–123). Increasingly, they were important confidants for female patients as women's roles evolved (Haller & Haller, 1995, x–xi).

Besides the health manuals of Foote Sr., Frederick Hollick produced *The Marriage Guide*, and A. M. Mauriceau wrote *The Married Woman's Private Medical Guide*. Whatever similarity the authors and books shared was lost when it came to the subject of birth control. Hollick approved the concept of controlling reproduction but did not advocate particular methods. Mauriceau used his book to promote his own abortion services (Gordon, 2002, p. 110–1). For Foote Sr., Hollick, and Mauriceau, the road had been paved in the 1830s by the first books on sex-related topics by Robert Dale Owen and Charles Knowlton (Brodie, 1994, p. 89).

In general, the mainstream medical profession opposed birth control and the options it gave women. At times they even denounced contraception as harmful to a woman's physical and moral well-being. The exception came at mid-century in a popular health movement that made

medical information accessible outside the doctor's office. At the risk of being labeled quacks, some physicians printed pamphlets on sensitive issues and published health manuals geared toward the general public; among the most popular were books written by Foote Sr. and Hollick (Gordon, 2002, pp. 110–11).

There were new rules for popular audiences: doctors explaining sex was acceptable, but talking about contraceptives was not (Horowitz, 2002, p. 410). Writers interested in disseminating medical information faced new challenges during the Comstock years. Some switched formats, such as textbooks or medical journals, thereby maintaining a forum for professionals to debate the merits and disadvantages of various forms of birth control (Yates, 1976).

Foote Sr. as Medical Practitioner

Despite the enthusiastic statements on eclecticism made by Foote Sr., he once declared his allegiance to the allopathic school (Horowitz, 2002, p. 91), and a publication of the American Medical Association listed both Footes as allopaths. Foote Sr. graduated from Penn Medical University in Philadelphia (Abrahams, 1966, p. 222), a medical school that taught eclecticism, homeopathy, and chronothermal systems. He earlier had apprenticed with an irregular who used botanical medicines. Yet throughout the literature with references to the Footes, both the father and son are called irregulars or eclectics. In the early 20th Century, Foote Sr. described his medical practice as a unique combination of accepted and contemporary methods that could be called "Foote-arian" (Foote Sr., 1911, p. 377–8).¹

From the Manhattan base Foote established in 1864, Foote Sr. gradually developed an extensive medical practice and offered medical advice through correspondence (Sears, 1997, p. 186). In 1872, he launched Murray Hill Publishing, which eventually published more than 60 pamphlets and books written by Foote Sr., Foote Jr., and others on reproductive control, health care, social reform, and free speech; agents across the country distributed the materials. Foote Sr. aggressively advertised his books and services, enclosing sales fliers with orders and printing testimonials from satisfied patients in the backs of books. Business had grown so rapidly² by the 1880s that Foote Sr. established the Sanitary Bureau to handle mail-order sales of books, medicines, and devices at the Murray Hill Publishing location. It was managed by another Foote son, Hubert Townsend Foote (1859–1912),³ also a doctor trained as an eclectic in New York City (Cirillo, 1973, p. 474). Hubert Foote and his father marketed such items as a patented antimasturbation device called the "Timely Warning" (Museum), an eye remedy for nearsightedness advertised as "Old eyes made new" (Van

Vleck, *Quack*), an impregnating syringe, and a variety of ointments, balms, and tablets for such ailments as rheumatism, malaria, cramps, and coughs (Foote Jr., 1901, p. 12).

Foote Jr. as Medical Practitioner

Foote Jr. graduated from Columbia University and the New York College of Physicians and Surgeons (AMA, p. 515). Much less is known specifically about the medical career of Foote Jr., except that it was always closely tied to his father's.⁴ In one of his medical books, Foote Sr. explained the relationship this way: "When the Senior is for any reason absent, the Junior is in charge" (Foote Sr., 1911, p. 373). His father bragged about his son's winning the Sequin Prize in medical school for the best report on certain lectures on the diseases of the nervous system (Himes, 1970, p. 280) and showed a drawing of the trophy he won in a June 1884 pamphlet that marketed the business, called *Foote Prints on the Path to Health*.

Foote Jr. also was responsible for several publications of Murray Hill Publishing, including *Tocology* (1900), an edited reprint of an English book on childcare; *Bacteria in its Relation to Disease, An Illustrated Treatment on Gynecology, or Diseases of Women*, and a manual on vegetarianism (Foote, 1893, p. 68). Foote Jr. married another doctor and lecturer on women's rights and eugenics: Mary E. Bond Foote. She trained at two schools: the Eclectic Medical College of New York City, graduating in 1873, and the New York Medical College and Hospital for Women, Homeopathic, New York, graduating in 1875. She practiced in New York City and Larchmont, New York, from 1915 to 1920 (AMA, 82:1062).⁵

CIRCULATION OF FOOTE PUBLICATIONS

Foote Sr. sold thousands of his home medical books, with cloth-bound copies priced at \$1.50 and the leather-bound copies at \$5. The first, *Medical Common Sense*, appeared in 1858 and sold an estimated 250,000 copies (Sears, 1977, p. 184). An expanded volume, *Plain Home Talk, Embracing Medical Common Sense*, sold in the 500,000 range, starting in 1870; Foote Sr. might have exaggerated the sales of *Plain Home Talk* by as much as double the actual figure (Brodie, 1994, p. 202). The *Home Cyclopedia of Social and Sexual Science*, with 1,200 pages, was considered his masterpiece when it debuted early in the 20th Century (Sears, 1977, p. 184); no sales totals were found.

In addition, Foote Sr.'s Murray Hill Publishing Company turned out five volumes of *Science in Story* for young readers, at 50 cents each, and printed the works of writers other than himself and Foote Jr. (Sears,

1977, p. 184). *Dr. Foote's Health Monthly* was published for 20 years as a journal of health and free-speech information. In 1882, the *Health Monthly* reported a circulation of 5,000 subscribers; readers paid 50 cents a year or 5 cents for a single copy. Advertisers paid \$3 per column inch ("Many thanks," 1886). However, the magazine never made money ("Good-bye," 1896).

The Footes remained concerned that another Comstock prosecution could ruin their business (Schroeder, 1913, p. 48). Sources vary on how they responded to the restrictions pertaining to contraceptive devices. While one says they deleted offensive passages from the literature (Horowitz, 2002, p. 410), another says they continued selling contraceptives using more ambiguous names such as the "sanitary syringe," as other distributors did (Brodie, 1994, p. 282).

PERSONAL INFLUENCES ON THE FOOTES

Medicine was not the first career interest for Foote Sr. At age 15 he apprenticed himself as a printer in Cleveland, Ohio, first working with the *Cleveland Herald*. Over the next decade, he joined newspaper staffs in New Haven and New Britain, Connecticut, and Brooklyn, New York. He once editorialized in support of an unpopular group's right to freedom of religion (Putnam, 1894, p. 728). His work as a journalist before becoming a doctor might have sensitized Foote Sr. to other First Amendment controversies.

Patterning his life after Benjamin Franklin, Foote Sr. entered the journalism field after dropping out of school, much to his parents' chagrin. As a postmaster and merchant, his father frequently welcomed into their home traveling ministers, teachers and musicians, including three members of the prominent Beecher family who were clergymen. Such encounters whetted his appetite for social issues (Sappol, 2002, p. 244).

The dual interests of Foote Sr. in printing and medicine coalesced in writing his books with "the diffusion of medical knowledge and hygiene among the people," his friend and fellow free-speech advocate Thaddeus Wakeman wrote (1906, p. 52). It was a role Foote Sr. so cherished, Theodore Schroeder wrote, that he "believed he had a constitutional right to spread intelligence, even about sexual subjects" (Schroeder, 1913, p. 8). He thought all his readers should be fully aware of their own anatomy, even children, for whom he wrote anatomically explicit sex education books centered around "Sponsie the Troublesome Monkey" and a doctor who resembled the stories' author (Sappol, 1996, p. 8; Collins, "Spanking," 2004).

By the end of his life,⁶ Foote Sr. made his loyalties obvious in his will. In a letter that accompanied the final document, he advised his sons: "I would say that my wishes would be that they give generously from the proceeds of my estate to all good monuments for the maintenance of free press, free speech, and free minds; the causes of heredity, liberalism, etc." (Putnam, 1894, p. 730).

Life was different for his son, Foote Jr., sometimes called "Dr. Ned" to distinguish him from his father. Foote Jr. grew up in New York City with the affluence and the educational advantages that his father hadn't enjoyed until a later age. Having a well-known parent could be a burden, Theodore Schroeder wrote at the time of Foote Jr.'s death, in that it reduces the public's notice of the offspring's activities. However, he added that in the Foote family the son was not bitter because he genuinely admired the characteristics of his father that made him famous (Schroeder, 1914, p. 3). Accordingly, Foote Jr. acknowledged that his own success was due as much to heredity and to the environment in which he was reared as to his own efforts (Putnam, 1894, pp. 731–3).

Foote Jr. pursued several interests outside medicine and free speech. Among his favorite projects was helping to restore the home of one of his father's heroes, Thomas Paine.⁷ The first Foote book, *Medical Common Sense*, had been named in honor of Paine's treatise, *Common Sense*. In New Rochelle (New York) Foote Jr. established a museum with a life-size statue of the American patriot revered by freethinkers. Additionally, Foote Jr. made provisions in his will for generous gifts to a host of organizations, social causes, and charity groups (Schroeder, 1914, p. 18). Foote Jr. was also an inventor. In 1893, he patented a "wonder camera" or "polyopticon" as a refinement to *Magic Lantern* technology that projected images for viewing before motion pictures were invented ("Foote" 1893). *Dr. Foote's Health Monthly* reported "polyopticon parties" being held and an award being given the machine; both articles appeared in January 1884.

SUMMARY

Numerous reforms were transforming late 19th Century society, and the Footes favored many of the movements to change the role of women and promote free discussion of sex-related topics. As leaders in birth control, the Footes believed controlling reproduction was a central issue in advancing women's rights and improving traditional marital relationships, advocated by the free-love movement. The free-thought movement led society away from the domination of mainstream religion, and the Footes were active in the free-thought-oriented National Liberal League, which produced the

first resistance to the Comstock Laws. Both doctors Foote incorporated in their writing the principles of eugenics, an approach to human breeding inspired by social Darwinism. Their writing also demonstrated the darker side of eugenics: a racist and elitist perspective that sought to advance favored classes and reduce other populations considered inferior. Social reforms of the late 19th Century set the stage for dramatic conflict between the radicals promoting family social reform and Anthony Comstock's crusade to preserve morality and the ties to his religious past. E. B. Foote Sr. first took center stage in the country's initial movement toward birth control, and he held a supporting role in the areas of feminism, free love, and free thought. Foote Jr. then took up his father's causes, making his own personal contributions.

The changes also taking place in the medical world produced the type of medicine the two doctors Foote preferred to practice. More responsive to patients, eclectic physicians worked harder than mainstream doctors to disseminate medical information and promote the use of contraceptives among their primarily female clientele. As masters of marketing, public address, and self-promotion, Foote Sr. and Foote Jr. built a high-profile practice, publishing company, and distribution center that championed women's health concerns, and distributed their products. However, their high visibility made them easy prey for Anthony Comstock on his crusade to safeguard the public from obscenity and rid the country of sexual references.

Chapter Three

Legal Encounters with Comstock

After Edward Bliss Foote died in 1906, free-thought editor George Macdonald wrote that the late doctor had befriended everyone he ever met with one obvious exception: Anthony Comstock. The latter continued to malign Foote Sr., according to Macdonald, to justify the legal actions he had taken against the doctor many years earlier (Wakeman, 1906, p. 20). Comstock as his sole enemy proved to be costly for Foote, affecting his personal finances, medical practice, publishing business, and professional reputation.

Therefore, this chapter examines the legal problems faced by the Footes through their encounters with Comstock. The first section describes the context of the Comstock Act and related arrests against the backdrop of the era's judicial system that was biased against free speech. The second part turns to actions taken on obscenity in Congress and statehouses, including the New York legislature, Foote Sr. and his son lobbied against Comstock. The focus shifts to the specific cases involving Foote Sr., starting with his prosecution for violating the Comstock Act by distributing information on contraceptives. Yet another conflict developed between Foote Sr. and postal authorities over mailing rates for his magazine; he took drastic measures—printing in Canada—to continue publishing it, which led to a different set of problems.

GENERAL LAW BACKGROUND

Americans of the 19th Century held modest expectations for the federal government, whose role at the time was more promotional than supervisory. Citizens seemed satisfied if Uncle Sam kept the economy growing while state and local authorities handled the legal issues of everyday life. In general, the country looked to Washington, D.C., for a few basics: establish the court system, protect property rights, and create the infrastructure for various means

of transportation. Congress also got involved with land grants that facilitated the building of railroads, canals, and roads (Friedman, 2002, p. 40).

The same changes affecting other sectors of society—namely growth in industry, productivity, and population—also triggered developments in the criminal justice system (Hurst, 1971, p. 71). Newly dense populations in urban areas necessitated the formation of police forces to handle challenges to the public order. Authorities then altered the country's approach to criminal activity, building penitentiaries to restrict and rehabilitate offenders rather than merely punish them, as in earlier times (Friedman, 2002, pp. 80–1). Nineteenth-century courts continued to formulate codes of law, whereas Colonial courts had rendered decisions based on the common-law tradition of “sins” as punishable (Friedman, 2002, p. 82). America's prison population grew by 50 percent in the 1880s, and the homicide rate soared almost 300 percent, with most of the crimes being committed in larger cities (Garraty, 1966, p. 533).

Against this backdrop arose an odd phenomenon distinctive to a brief period at mid-19th Century, described by one legal historian as the “Victorian compromise.” Accordingly, society could tolerate occasional and inconspicuous lapses when it came to the vices of its citizens. However, flagrant infractions were a completely different matter; they posed threats to the social order and had to be stamped out. As the century progressed and the compromise eroded, the focus shifted from social stability to individual accountability (Friedman, 2002, p. 98).

The Comstock Laws signaled the end for this alleged compromise where obscenity was concerned (Friedman, 2002, p. 98–9). In pre-Comstock days, only persons responsible for the most explicit obscene materials were prosecuted (Dennis, 2002, p. 388). After the Comstock Laws were enacted, minor dealers of supposedly obscene materials actually became more likely to be prosecuted than major ones (Tone, 2001, p. 29). Other indicators of this change included the push to prohibit alcoholic beverages, a rise in the age of consent, a crackdown on lotteries in 1895, and all the social reforms that propelled women into public action even before they could vote. Men, considered less sensitive to moral issues, occasionally turned their attention away from their business endeavors, some for diversion and others out of guilt, a legal historian wrote. For the first time, Congressmen and their state-level counterparts were asked to legislate morality, or to build so-called “victimless crimes” into legal codes (Friedman, 2002, pp. 97–8).

THE PROSECUTION OF OBSCENITY

The writings of Foote Sr. on birth control and his associates on other social reform issues created imminent dangers to the moral fabric of America and

the innocence of children, as Comstock believed. He had launched his anti-obscenity campaign from the YMCA in New York City and shut down some pornographers. However, he concluded in 1872 that existing laws on obscenity were ineffective. His attempts to prosecute reformer Victoria Woodhull failed after her New York newspaper exposed the adulterous affair of prominent minister, the Rev. Henry Ward Beecher. *Woodhull & Claflin's Weekly* disparaged Beecher for the hypocrisy of practicing free love while preaching against it. A judge had ruled that prevalent obscenity laws keeping materials "of vulgar or indecent character" out of the mails did not apply to newspapers (Fowler, 1977, pp. 57, 60). But the Woodhull prosecution gave Comstock the high-profile case he needed to make a public splash, biographers have claimed, to force a showdown with lawmakers (Heins, 2001, p. 31).

With the passage of the Comstock Act, its sponsor became a special agent of the Post Office with unlimited power to enforce it. Back in New York, the *Times* and the *Herald* promised to stand behind his efforts and promptly cancelled ads for contraceptives and abortion services from their pages (Bates, 1995, p. 97). The liberal groups represented by the Footes (i.e., freethinkers, free lovers, etc.) who opposed Comstock stood well outside the mainstream, where he found considerable public support (Dennis, 2002, p. 376).

At times, Comstock bragged about his record. Once, he speculated he had confiscated 130,000 pounds of obscene literature as well as 194,000 lewd pictures and photos. "I have convicted persons enough to fill a passenger train of 61 coaches." Later he extended his boasts to include 15 suicides among the people he prosecuted with great zeal (Bates, 1995, p. 159). Frequently he was accused of using deception to trap people he believed violated his moral principles. Hiding his identity, Comstock waited in the crowd of a free-love convention to serve an arrest warrant on free-love advocate Ezra Heywood. He reported seeing lust in the faces of all 250 men and boys present (Stoehr, 1979, p. 387).

Yet Comstock's favorite and most criticized tactic for tracking down the sources of obscene materials was the decoy letter, by which he mail-ordered copies of publications thought to be illicit under assumed names (Blanchard, 1992b, p. 17). Comstock used decoy correspondence in the arrest of Foote Sr. and at least two Foote associates: free-thought editor D. M. Bennett and sex educator Ida Craddock. With Craddock, Comstock zeroed in a booklet called *The Wedding Night*, intended to prepare Victorian honeymooners for their first sexual intercourse. He requested it by mail, pretending to be a 17-year-old girl; Craddock refused on the basis of age and returned the money. However, Comstock testified in court that she actually *did* supply the booklet (Stoehr, 1979, pp. 303–6).

Comstock acknowledged criticism of his tactics and then denounced that criticism. What others called “decoys,” he called “test letters.” When others accused him of “tampering with the mails,” Comstock maintained that neither he nor his agents had done anything illegal. He claimed in his 1880 book (reprinted in 1969) that no action could be illegal if it enforced the laws against the distribution of obscene materials through the mail (p. 530). However, the National Defense Association reported in an official document opposing a Congressional proposal that there were few known violations of the Comstock Act that had not been induced by using false names or decoy letters (NDA, p. 4). Comstock also was sensitive about false names used another way. In 1889, he asked Congress to prohibit the use of false names in advertisements that offered obscene materials for sale. He claimed that many people had used fictitious names or misleading addresses in mail schemes involving obscene material; when pursued by officials, such offenders were hard to trace. Congress obliged Comstock’s request (Fowler, 1977, p. 80).

Not everyone shared Comstock’s views. President Ulysses Grant, who had signed the original Comstock laws, pardoned 5 of 12 people convicted for selling contraceptives during his term. Reportedly, Comstock wrote in his diary, “O, that I had known of this in time to have got [sic] the facts before Grant.” Later President Rutherford Hayes pardoned free-love pamphleteer Ezra Heywood and seriously considered the same for Bennett (Tone, 2001, p. 39).

Another charge often leveled against Comstock’s campaign was that of selective prosecution. Small-time dealers of contraceptive devices were more likely to be prosecuted than the big players (Tone, 2001, p. 29). For example, Comstock ignored the case of the president of his sponsoring group, the New York Society for the Suppression of Vice, Samuel Colgate. He operated a large soap business that held exclusive rights to sell Vaseline, promoted for preventing conception in an advertising campaign of the 1880s (Tone, 2001, pp. 28–9). E. B. Foote Jr. took Comstock to task for this incident in his 1886 book, *A Radical Remedy in Social Science* (p. 89). Even some of Comstock’s backers were dismayed at his lack of discrimination between companies that sold large numbers of birth control items and an individual selling just one (Tone, 2001, p. 40).

Gradually Comstock earned more detractors. Some court officials detested him, and newspapers lampooned him in cartoons and editorials at the turn of the 20th Century. For more than 40 years, Comstock crusaded against obscenity, and while society over time moved beyond his standards, he did not. Particularly among lovers of fine art, Comstock came across as comical when he declared the works of writers and artists obscene. For example,

he drew media fire in 1906 after he prosecuted a bookkeeper for the New York Art Students' League for mailing a pamphlet with nude drawings (Bates, 1995, p. 179). He also found some of Walt Whitman's poetry unacceptable (Beisel, 1997, pp. 98–9).

Comstock proudly sparked American controversy over Irish playwright George Bernard Shaw's play *Mrs. Warren's Profession*, in which the title character's profession was prostitution. Shaw had stated, "Comstockery is the world's standing joke at the expense of the United States. Europe likes to hear of such things. It confirms the deep-seated conviction of the old world that America is a provincial place, a second-rate country town civilization after all." The "Comstockery" label stuck, and the obscenity crusader hurled the epithet "Irish smut dealer" back at Shaw (Broun & Leech, 1927, pp. 229–230).

OBSCENITY IN THE COURTS

Foote Sr. and others encountered conservative jurists dominating the courts between the Civil War and World War I and trying to shape a properly ordered society across the nation. Intent on conformity, courts were antagonistic toward the same dissident ideas that personally offended Comstock, such as free thought and free love (Blanchard, 1992b, p. 3).

Judicial System

In most state and federal courts of the period, defendants in free-speech cases found a hostile climate. Decisions from the Supreme Court routinely denied free-speech claims, usually unanimously (Rabban, 1997, p. 131). State courts had not yet been required to ensure First Amendment freedoms for their residents, which would become the standard in the *Gitlow v. New York* decision of 1925.¹

Heywood Broun, one of Comstock's earliest biographers, wrote in 1927 that Comstock owed much of his success in winning convictions to judges who shared his views on obscenity, especially those in U.S. district courts (Broun & Leech, 1927, p. 273). Some jurists shared Comstock's perspective on obscenity, and Judge Charles Benedict of New York's Southern District Circuit Court was one of his favorites. The obscenity crusader boasted that he had never lost a case in Benedict's court (Broun and Leech, 1927, p. 87), exactly where the trial of E. B. Foote Sr. landed. With New York City established as the nation's principal publishing center—as well as Comstock's home turf—Benedict presided over a sizable number of obscenity prosecutions.

The judicial system did even more to reinforce Comstock's battle against obscenity. Judges regularly allowed court procedures that worked

against free-speech defendants, further enhancing Comstock's ability to obtain convictions. They disallowed expert witnesses who might testify that the material in question had value. Many juries never even saw the evidence, with prosecutors wishing not to offend them and the audience with the items considered obscene (Blanchard, 1992b, p. 17).

Judging Obscenity: Hicklin Rule

Both Foote's opposed the Hicklin rule, commonly used in American courts between the Civil War and World War I to define obscenity. From its British inception in 1868, Hicklin set as the test: "whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall."² If *any* passage was found to be obscene, the *whole* work was considered obscene.

With the focus placed on the protection of individuals most vulnerable to immoral influences, adults could gain access to no material that was inappropriate for children. It was this provision that drew the ire of both doctors Foote and others; they expressed concern that Hicklin principles unreasonably restricted reading options. Foote Sr. once wrote that he was amazed that the legal system could not discern materials created for truly pornographic purposes from those that were educational. "But it looks as if this obscene literature law was to be used for the purpose of knocking out the brains of everyone who [doesn't] strictly conform to the established ruts, be they medical, social, or otherwise" (Horowitz, 2002, p. 435). He also wrote in 1877:

No decent-minded person would object to the professed design of this measure, inasmuch as a large business has unquestionably been done through the medium of the United States mails in the sale of lascivious books and pictures and other articles of immoral use. But it is difficult to comprehend why articles and things for the prevention of conception should have been so unqualifiedly included. (pp. 3–4)

Foote Jr., writing in the July 1905 *Eclectic Review*, also opposed the Hicklin rule on the basis that physicians needed to be able to share ideas in a free medical press, including literature on sex. He considered it preposterous that even material prepared specifically for adults was being judged on the basis of its fitness for children. Theodore Schroeder reprinted the statement in his book, *Free Speech Anthology* (1909, p. 200).

On the other hand, Comstock's outlook on obscenity fit comfortably within the Hicklin framework. In the Preface to his 1883 book, *Traps for*

the Young (ix-x), he warned parents about their children's reading material. He encouraged them, as moral guardians, to "think, act, and speak for that very large portion in the community who have neither intellect nor judgment to decide what is wisest and best for themselves."

Key Court Cases

In 1879 the Hicklin rule was first applied in an American federal court, although lower-court judges had used it sporadically since 1868. The conviction of Foote associate D. M. Bennett³ on obscenity charges was appealed from the southern New York District Court of Charles Benedict and upheld by prominent federal judge Samuel Blatchford in 1879. Later appointed to the U.S. Supreme Court, Blatchford wrote a decision that established the constitutionality of the Comstock Law as interpreted in Benedict's court, where Comstock prosecuted often (Horowitz, 2002, p. 433). The Hicklin rule prevailed until the *Roth* decision in 1957 redirected the focus of obscenity cases to considering the work as a whole, assessing community standards, and looking for redeeming value.⁴ *Roth v. United States* declared obscene materials unconstitutional.

Related to the Footes' interest in birth control, *Griswold v. Connecticut* was handed down by the Supreme Court in 1965. The decision overturned a state law that criminalized the use of contraceptive devices. Also reversed was the companion state law that penalized people who assisted or counseled others to commit the offense of using birth control, such as the Planned Parenthood staff members charged in the Griswold case. Connecticut could not constitutionally abridge a couple's fundamental right to privacy in the matter, the court ruled.⁵

In the courtrooms of the late 19th and early 20th centuries, traces could be seen of the legal battles over obscenity that would come later. Even then, the battle lines were drawn over the constitutionality of obscenity, the problems of defining it, how it was distributed, whether community standards or national guidelines prevailed, the appropriate audience, and its value to society (Curry & Goodheart, 1991, pp. 147–8).

Judges also borrowed a court practice from Thomas Starkie, an English writer of legal commentary on the common law of libel and slander. Only two questions prevailed in trial: Did the defendant mail the material? Was it obscene? The latter question was usually answered by Comstock himself or one of his agents. Defense issues such as motives, character witnesses, and free-speech claims became irrelevant (Horowitz, 2002, p. 416).

When Comstock verbally sparred with playwright George Bernard Shaw, they recapitulated one aspect of the Hicklin rule. "Everybody knows," Shaw said, "that I know better than your public library officials

what is proper for people to read, whether they are young or old.” However, Shaw acknowledged that his work might harm “weak and dishonest people,” and Comstock responded, “Well, that lays him, his works, his publishers, the people who present his plays and all who or which has anything to do with the production or disseminating of them liable to the law which was made primarily to protect the weak. He convicts himself,” (Broun & Leech, 1927, p. 230).

OBSCENITY IN CONGRESS

When Comstock approached Congress in 1873, his proposed legislation built upon the 1865 federal laws that made it illegal to mail items “of vulgar and indecent character” and the Tariff Act of 1842 that criminalized the importation of obscene literature (Fowler, 1977, p. 57). Originally passed in 1873, the Comstock Act gave postal officials license to remove from the mail any items they deemed “obscene, lewd or lascivious” or “of indecent character,” minimally defining the terms. The maximum fine specified was \$5,000, and the maximum prison term was 10 years. A separate section outlawed the importation and sales of contraceptives (Fowler, 1977, p. 61).

Among the items considered obscene were articles that prevented conception or produced abortion. One legal historian has noted that an original draft of the Comstock legislation contained the phrase “except on a prescript of a physician . . . given in good faith.” The wording did not make it into the final draft, nor was it mentioned in Congressional debate (Friedman, 2004, p. 220, n.44). Such an exception would have made the law more acceptable to the Footes, who wanted medical matters left to physicians instead of politicians.

At the time, the House and Senate were embroiled in the Credit Mobilier scandal, in which several members peddled influence in exchange for Union Pacific Railroad profits. Congress took the opportunity to pass morality-related legislation, trying to improve its public image (Blanchard, 1992b, p. 16). Comstock wasn’t the only backer of obscenity legislation, just the most tenacious. Even though similar bills had been discussed, the Comstock Act passed with very little debate, an issue that would provoke criticism from opponents for many years to come.

The 1873 Act included an appointment for Comstock as a special agent of the post office. He turned down the \$3,500 annual salary in favor of the \$3,000 already provided by the New York Society for the Suppression of Vice. He feared that he would eventually lose the job to a politician if a salary were attached (Horowitz, 2002, p. 382). The legislation was formally

called the “Act of the Suppression of Trade in, and Circulation of, Obscene Literature and Articles of Immoral Use” but quickly became better known by the name of its principal backer.

Revisions to Comstock Laws

Helpful sources for information on enacting and revising the Comstock law are two histories of the post office, Fowler’s (1977) and Fuller’s (2003), relevant because they trace Congressional action on obscenity once it became a postal issue. Refinements to the Comstock Act followed shortly after 1873 to shore up loopholes exposed as cases went to trial (Fowler, p. 1977, p. 62). The most extensive changes came in 1876 after legislators discovered that the original version provided penalties for mailing contraceptives and abortion-causing devices but none for obscene literature. The laws were recast from a negative construction starting “No obscene book . . . shall be mailed” to a positive form starting “Every obscene book . . . is declared non-mailable” (Fowler, 1977, p. 62). Congressmen believed that the new form would ensure that all items in the act would be covered (Fowler, 1977, p. 63).

Between 1882 and 1886, both houses of Congress debated at least five proposed amendments that eventually failed (Fuller, 2003, p. 119). However, Congress amended the Comstock Act twice in 1888 to close additional loopholes. Among the changes in the June 1888 version was the addition of outside covers or wrappers to the list of places where obscene matter could not be printed (Fowler, 1977, p. 74). It was closely followed with more revisions in September 1888 that reduced the penalties for violating the Comstock Act. The maximum prison term was lowered from 10 to 5 years of hard labor, and minimum penalties were eliminated altogether (Fowler, 1977, p. 75).

The September version also added transparent envelopes, materials written or printed, and letters to the list of materials that could not be mailed if obscene (Fowler, 1977, p. 75). Defense attorneys, as in the case of Foote Sr. in 1876, had attempted to show their clients were not guilty because the relevant materials were letters, not specifically mentioned in the original Comstock Act. The judge in Foote Sr.’s case rejected the claim, but other courts accepted the contention, noted in obscenity law histories (Schauer, 1976, pp. 17–8; Kilpatrick, 1960, pp. 69–70).

20th Century Problems

Congress continued debating provisions of the Comstock Act, even into the early 20th Century (Fowler, 1977, pp. 101–2). While the Comstock Law had been focused on the U.S. Post Office, Congress in 1897 turned to

transportation companies used for private delivery. They also were forbidden by law to carry “obscene literature and articles designed for indecent and immoral use from one State or Territory to another State or Territory” (Fuller, 2003, pp. 185–6). Free Speech League attorney Theodore Schroeder mentioned this expansion to private transportation companies in a 1910 letter to writer Upton Sinclair, found among Schroeder’s personal papers at Southern Illinois University. Schroeder still favored private service as less risky because the packages were less likely to be inspected by government officials (Schroeder, Box 7, Folder 3).

In December of 1909, Foote Jr. sought advice from Schroeder on new postal regulations that he anticipated would hinder the delivery of his health-care books. Foote regretted that he had not mounted resistance to the new law, “for I doubt if either of us will live to see it repealed” (Schroeder, Box 9, Folder 3). Foote Jr. died in 1912.

As Schroeder explained to *Arena* magazine editor Benjamin Flower, the new federal law that took effect on January 1, 1910 made it illegal to mail any advertisement or notice that even indirectly gave information on the prevention of contraception (Schroeder, Box 9, Folder 3). Schroeder advised Foote Jr. against letting postal inspectors preview the books to ward off problems, saying such a move might actually increase the chances of the books being considered obscene. Although he offered no solution to the immediate quandary, Schroeder suggested that they discuss a possible test case to demonstrate the difficulties they faced (Schroeder, Box 9, Folder 3).

OBSCENITY ON THE LEGISLATIVE FRONT

State-level action on obscenity seems less clear than national. Blanchard lists Connecticut, Massachusetts, New York, and Pennsylvania as the only states with obscenity laws prior to the Comstock Act (1992a, p. 746, n22). Dennis, however, writes that 20 states had passed such laws before the Civil War (2002, p. 384). The conflicting totals possibly reflect the variation among states in how they dealt with obscenity. Some relied on common-law traditions rather than statutes; some passed civil laws while others preferred criminal (Horowitz, 2002, p. 37).

After Congress passed the Comstock Act, many states rushed to pass their own versions; by one estimate, all states except New Mexico copied the federal legislation (Ernst, 1971, p. 18). So-called “little Comstock Laws” on the state level extended the reach of the national act for promoters of pornography, abortion, and birth control (Blanchard, 1992b, p. 18). Eventually, Comstock came to rely on these new state laws as the legal basis in a majority of the arrests he made across the country (LaMay, 1997,

p. 14). Reinforcements were needed at the local levels, where law-enforcement officials faced mounting challenges.

Comstock, writing in 1886, expressed a particular interest in the states' passing their own laws, in order for them to "define what obscene publications [are] and affix penalties to their circulation, somewhat adequate to the enormity of the crime against society" (Brooks, 1966), reported in a journal article on New England law. Therefore, Comstock paid close attention to the actions of state legislatures (Brooks, 1966; "Improper," 1886). For example, he lobbied lawmakers in Connecticut and Massachusetts before they passed laws that paralleled the federal act in 1879 (Brooks, 1966). Earlier, the state of New York had passed the first Comstock Laws in 1872, allowing the obscenity crusader to test the legislation he took to the U.S. Congress the next year (Broun & Leech, 1927, p. 188). Additionally, Comstock sent an associate, R. W. McAfee, to press for stronger obscenity laws in the statehouses of Iowa, Wisconsin ("Comstockism," 1882) and Missouri ("Mr. Heywood," 1883), as reported in *Dr. Foote's Health Monthly*.

The establishment of Comstock-inspired obscenity laws recognized the failure of local and state governments to police the growing market in pornographic materials. Venders had discovered they could bypass local jurisdictions altogether by using federal mail and private means of interstate transportation, explained in a law journal article. They also had learned they could successfully fight local legal systems, known for selective prosecutions and poor follow-through on indictments (Dennis, 2002 p. 388). Relying on the traditions of common law, courts had entrusted state and local governments to safeguard the public welfare on moral issues, which led to the subjective curtailment of communications, including the regulation of obscenity and eventually motion pictures (Blanchard, 1992b, p. 63).

However, the presence of new federal and state laws on obscenity did not mean that the public supported them; most private citizens preferred to keep their sentiments to themselves (Broun & Leech, 1927, p. 188). Citizen groups adamantly backed Comstock's crusade and waged battles on the state front. Societies that opposed vice, such as the New York group that originally sponsored Comstock, brought together mostly prosperous businessmen alarmed by the changing mores after the Civil War and suspicious of immigrants and the working class moving into their cities. They clung to the conservative moral codes of the past, hoping to maintain the familiar social order (Dennis, 2002, pp. 371–2). Outside New York City, groups sprang up in Boston, Chicago, Cincinnati, Louisville, St. Louis, San Francisco (Boyer, 1968, p. 5) and Philadelphia (Beisel, 1997, p. 128). Additionally, groups of women launched the social purity movement to oppose

pornography along with prostitution and contraception while championing traditional notions about motherhood and family (Gordon, 1998, pp. 105–6). Better known for their efforts against liquor, members of the Women's Christian Temperance Union added obscenity to the list of threats to public morality they opposed (Beisel, 1997, p. 72; Parker, 1997, p. 1). States and courts were more likely swayed by the organized antiobscenity efforts of prominent business leaders, Christian groups, concerned mothers, and librarians than the radical advocates of free thought and free love who opposed Comstock (Parker, 1997, pp. 4, 76–7), including the Footes.

Survey of State Laws

Before World War I, Theodore Schroeder studied speech-related laws across the country, comparing them with figures he compiled from European countries. He concluded that in America there was “a greater variety of penalized opinions than any other country in the world at any period in recorded time” (Schroeder, 1944, p. 3). Almost every state had supplemented the federal Comstock Act with its own legislation on sex-related literature, prohibiting language described in a range of nebulous terms such as “obscene,” “vile,” “disgusting” and “filthy.” He reported that 21 states had forbidden the advertising of remedies for venereal disease and 18 states had laws against information on abortion (Schroeder, 1944, pp. 5–6). Seventeen states had laws penalizing blasphemy, and 36 prohibited profanity (Schroeder, 1944, p. 4).

According to files that Schroeder kept to update himself on legislation around the country, state laws went beyond mailing obscene material, which had been the focus of the Comstock Act. Many states included all forms of transportation as well as possessing, selling or otherwise distributing obscene materials. A few even mentioned new technologies, such as the telegraph, telephone, and phonograph. Many did not use the terms “abortion” or the “prevention of conception” as did the federal law; instead they opted for euphemisms, such as “secret drug or apparatus for females,” “recipes for cure of chronic female complaints,” and “drugs exclusively for women” (Schroeder, Box 90, Card Files; Tone, 2001, p. 30). These files remain with Schroeder's papers at SIU.

The 1901 version of New York's state laws, on Comstock's home turf, determined “obscene” to be that which “tend[s] to demoralize the morals of youth or others, or which shall be lewd, indecent or immoral,” a combination of ideas from the Comstock Act and the Hicklin rule. In Massachusetts, where the “banned in Boston” reputation was already growing and free-love pamphleteer Ezra Heywood had been prosecuted, the 1908 laws were extensive. Legislators went so far as to prohibit the description

of venereal diseases on the label of a medicine bottle or enclosure inside a sealed package of medicine. In Illinois, where radical editor Moses Harman had faced multiple prosecutions, the 1909 law also made it a crime to receive obscene materials, not just mail or sell, as other laws did (Schroeder, Box 90, Card Files).

Legislative matters in Washington and Albany

Before Comstock and Foote Sr. faced each other in the courtroom, they had met in legislative halls. Research of the *Congressional Record* and its predecessor, the *Congressional Globe*, turned up no mention of the Footes' activity in Washington. Additionally, a researcher with the New York State Library found no references to the Footes in comparable state records (personal conversation, October 2003). However, information was available in a limited number of sources, including the Footes' *Health Monthly* and Moses Harman's *Lucifer, the Light Bearer*, both hard to locate today.

The first known confrontation between the Footes and Comstock occurred in 1872 when the obscenity crusader presented a prototype for the Comstock Act to the New York state legislature, a year before he addressed the U.S. Congress. Despite lobbying efforts against it from Foote Sr. as the sole dissenter, the measure passed both houses. But Foote Sr. further pressed his objections in a letter to New York Gov. John Adams Dix, hoping to prevent the legislation from being signed into law. However, his timing was off; the governor signed it on the same day that Foote Sr. wrote the letter (Putnam, 1894, p. 729).

Comstock, quoted in an 1876 *New York Times* article, stated that Foote Sr. had also "bitterly opposed" the national legislation as well as state bills. Comstock also claimed that Foote enclosed copies of the Comstock Law with the items he mailed that led to his prosecution ("Physician indicted," 1876). Foote's work against both the national and state bills was also mentioned in the Foote arrest records of Comstock's Vice Society, held at the Library of Congress (NYSSV, 1876). Foote Sr. believed that it was his lobbying activity that led to his arrest, as reflected in an 1881 issue of *Dr. Foote's Health Monthly*:

Our real offense, too, was our opposition in Legislative Committee to one or two of the objectionable features of those proposed enactments, a protest which nearly defeated Mr. Comstock. Hence his ill-will [developed] toward us which found support as the trial progressed from some of the influential bigots of the old school in medicine. Had there been as strong and united an opposition to the passage of these bills as there has since been awakened against their bungling enforcement[.]

much suffering would have been saved. Many earnest workers have been entrapped by them at the instigation of illiberal and mercenary self-appointed guardians of public morals. (“Mr. Baldwin,” 1881)

In 1876 Foote Sr. again lobbied the New York legislature as it debated an amendment to its Comstock-inspired law to ban the manufacture and sale of contraceptives. Foote Sr. found his influence limited when he submitted a countermeasure for consideration, which was rejected. According to the *New York Times*, the bill sponsored by Foote Sr. represented the interests of abortionists, but the newspaper disclosed no details or source. Comstock presented a document signed by a group of New York doctors who testified that only quacks prescribed contraceptives and performed abortions, the article also reported (“A blow,” 1876). Comstock tended to categorize abortion and contraceptives together because in his mind both eliminated the consequences of illicit sexual behavior (LaMay, 1997, p. 44).

Foote Sr. objected to the implications of the aforementioned *New York Times* article and wrote a letter to the editor. Having long denounced abortion, he denied all connections to abortionists and claimed the support of prominent physicians other than those who rallied around Comstock (“To the editor,” 1876).

Again in 1881, Foote Sr. with lawyer Thaddeus Wakeman and the National Defense Association lobbied in Albany when Comstock made a pitch for increased police power for his sponsor, the New York Society for the Suppression of Vice. The request went unheeded, and Foote claimed credit for the Defense Association. He wrote in the *Health Monthly*, “We have put our hands deeply into our own pockets” (“What Foote, Sr.,” 1881), implying that he and other Defense Association members made substantial personal donations to the cause.

When the U.S. Congress debated a batch of proposed amendments to the Comstock Act between 1882 and 1886, the liberal organizations with which the Footes worked contributed to the dissension that doomed a few of the bills (Putnam, 1894, p. 543; Fuller, 2003, p. 119). The group particularly opposed two such potential amendments that would have added terminology to close legal loopholes and further restrict language concerning the advertising or selling of products to prevent conception or produce abortion (NDA, pp. 34–7).

Even though the aforementioned amendments failed on the national level, similar bills passed within the state of New York. Both Foote Sr. and Foote Jr. battled the 1887 bills in Albany before their passage. When Foote Sr. addressed the judiciary committees of the state senate and assembly, he

vilified the bill's provisions on Comstock-related issues of free speech and medical practice, such as the advertising of medicines for venereal disease and the exceptions made for abortions while none was added for birth control ("Free speech, free press," 1887). Foote Jr. joined his father before the senate judiciary committee to square off on the bill against Comstock and his Vice Society associate, Samuel Colgate ("Ides of March," 1887). Additionally, Foote Jr. took advantage of another opportunity to speak out against the legislation when the governor allowed more testimony before he signed it into law ("Disgusting literature," 1887). These activities were recorded in the *Health Monthly* and free-thought history books.

BATTLE LINES DRAWN: FOOTE AND COMSTOCK

Once the state of New York passed the prototype for the Comstock Laws in 1872, Foote Sr. feared he would become a target (Wakeman, 1881, p. 88). He had been publishing information about preventing conception and selling contraceptives through the mail for more than a decade. Trying to distance himself from the New York state laws, Foote set up a branch office in neighboring Connecticut (Wakeman, 1881, p. 89). According to an account given by Comstock in his 1880 book (reprinted in 1969), Foote filled orders twice a month from a warehouse in South Norwalk, Connecticut, and made \$4.75 from every \$5 received in the sale of each "infernal article" (p. 427). Connecticut passed its own version of the Comstock laws in 1879 (Brooks, 1966).

Building Up to the Arrest

The national version of the Comstock Act, initially passed in 1873 and modified in 1876, criminalized the mailing of "every obscene, lewd, or lascivious book, pamphlet, picture, paper, print, or other publication of an indecent character, and every article or thing designed or intended for the prevention of conception or procuring of abortion." Individuals convicted of violating the act could be imprisoned up to 10 years of hard labor and fined up to \$5,000 (Fowler, 1977, pp. 62–3).

The medical literature produced by Foote Sr. gave Comstock all the ammunition he needed. The doctor incorporated the topic of preventing conception into the 1860s editions of his popular medical books. However, new laws in the early 1870s led him to remove from the books details on the contraceptives he sold (Brodie, 1994, pp. 238–9).

In the back of his book, *Plain Home Talk* (an expansion of *Medical Common Sense*), Foote Sr. encouraged married couples to write for a separate tract on family planning and to include the signatures of both spouses

and 10 cents (Sears, 1977, p. 194). They received a pamphlet first titled *Confidential Pamphlet for the Married* and later renamed *Words in Pearl for the Married*. It contained a comprehensive discussion of the four forms of birth control that Foote made available: condoms made from fish bladders, rubber condoms, a version of the rubber cervical cap or a diaphragm that he called a “womb veil,” and a machine he called an “electromagnetic preventive machine.” The latter supposedly applied a weak electrical current that made conception impossible, although Foote’s promotional materials were vague on how to use the device (Garraty & Carnes, 1999, p. 193; Sears, 1977, p. 196). The *Words* brochure, 32 pages long, provided answers to 20 common questions posed by patients (Foote Sr., 1881, p. 12). It was so titled in reference to the typeface he used, called “pearl,” which was so small that large amounts of information could be printed onto pages that fit into standard envelopes for mailing (Brodie, 1994, p. 239).

Arrest of Foote Sr.

Comstock’s prosecution of Foote Sr. began with his familiar practice of sending a decoy letter, signed by a “Mrs. Semler” of Chicago (Bennett, 1878, p. 1038) in 1875. The letter writer, purporting to be a wife and mother (Wakeman, 1881, p. 88), requested the *Words in Pearl* pamphlet on contraception and expressed great admiration for Foote Sr.’s *Plain Home Talk* (Bennett, 1878, pp. 1038–9). A clerk, rather than Foote Sr., actually filled the order and testified to that fact in court. Yet the judge determined that the doctor retained responsibility, just as a bank officer would for an action taken by a subordinate (Bennett, 1878, p. 1039). Several years after his father was tried for obscenity, Foote Jr. received another letter in the family’s Murray Hill Publishing Company office that he suspected was a decoy from Comstock (Schroeder, 1913, p. 60).

Remaining records of Comstock’s New York Society for the Suppression of Vice are housed in the Library of Congress. Foote Sr. was the first individual listed on the “Report of Persons Arrested Under the Auspices of the New York Society for the Suppression of Vice during 1876.” Arrested on January 8, Foote Sr.⁶ surrendered himself to the District Attorney’s office. He had been indicted January 7 in the Circuit Court in the Southern Division of New York, where a bench warrant listed his offenses as mailing an obscene pamphlet and the advertisement of an obscene pamphlet and article to prevent conception. Bail was set at \$5,000, paid the same day as the arrest (NYSSV, 1876).

The best sources of information on Foote’s trial are the legal documents and the accounts of anti-Comstock confederates D. M. Bennett and Thaddeus Wakeman. A few other books give details. Foote Sr. and

his attorney, Thomas Harland, expected only minor opposition in court. They anticipated that the case would be quickly dismissed, that the doctor would be acquitted if it ever reached the jury, and that any fine imposed would be the Comstock Act's minimum of \$100 (Bennett, 1878, p. 1039). However, Harland's expectations would be thwarted. In his first move, Harland called for the indictment to be quashed, arguing that it failed to describe the allegedly obscene material in question and that the Comstock Act did not specifically forbid letters mailed in sealed envelopes, responses to inquiries, or communications between doctor and patient.⁷

In a decision filed June 17, 1876, Judge Charles Benedict, one of Comstock's favorite jurists, refused to quash the indictment. Afterward, bail for the doctor was doubled to \$10,000 (Bennett, 1878, p. 1039). In response to Harland's objections, Benedict ruled that omitting a description of the material considered obscene did not invalidate the indictment. However, the judge decided that it was "neither necessary nor proper to pollute the record by a detailed description of obscene matter."⁸ In D. M. Bennett's account of the proceedings, he wrote that a ruling favorable to Foote on this issue would have been a major victory. Had the judge allowed the pamphlet's text to be entered into the public record, it would have been hard for the government to argue that it was also not fit to be distributed by the post office (Bennett, 1878, p. 1039).

Judge Benedict also did not accept Harland's contentions about the nature of the material being mailed. Even though the Comstock Act did not specifically mention letters, it is not the form, he wrote, "but the character of the matter itself, which fixes the criminality of the act."⁹ Benedict likewise rejected Harland's contention that the word "notice" in the original act did not adequately describe the correspondence in question, considered a piece of paper mailed in response to an inquiry rather than a solicitation from the doctor. Additionally, Benedict ruled that if Congress had intended for medical advice to be excluded from the law, specific language would have been provided.¹⁰ Congress addressed the exceptions taken by Harland in amendments to the Comstock Act (Kilpatrick, 1960, p. 69).

Foote's Conviction and Sentencing

With the indictment still in place, the Foote case progressed to trial on June 21, 1876. Benedict refused to let Foote's book be entered into evidence (Bates, 1995, p. 156). According to the records of the New York Society for the Suppression of Vice, the prosecutors during the trial emphasized that the 10 cent charge for Foote's *Words in Pearl* made it affordable to even children. To the contrary, Foote's attorney argued; the publication was

available only to married couples who requested it by mail and never sold in public where children had access (Horowitz, 2002, p. 408).

The jury began its deliberations on the 26th and took only 5 minutes to return a verdict of guilty on two counts of the indictment (NYSSV, 1876).¹¹ Years later Foote Sr. wrote that the jury convicted him to avoid being “considered inferior to anybody for purity and chastity” (Foote Sr., 1881, p. 12).

Dr. Foote Sr. was fined \$3,500 of the Comstock Act’s maximum \$5,000; the fine and costs of his defense exceeded \$5,000 (Bennett, 1878, p. 1040). A defense fund had been established by the *Truth Seeker* free-thought newspaper, and supportive readers paid part of the fine. The doctor believed that all of it would have been raised had not there been a general business depression at the time (Sears, 1977, p. 195).

Foote Sr. also could have been sentenced to prison, as many as 10 years of hard labor, under the terms of the Comstock Act. However, friends and colleagues made personal appeals in court and sent letters imploring the judge to refrain from sending the doctor to jail. The judge was persuaded to suspend the sentence on imprisonment to keep the doctor’s patients from suffering while he was in jail, the *New York Times* reported (“Physician fined,” 1876). But the judge made a provision, according to the arrest records: if Foote were “caught again,” he would certainly be sent to jail (NYSSV, 1876).

D. M. Bennett described a few members of the group pleading on behalf of Foote Sr. without naming them: an ex-governor, a prominent homeopathic physician, an independent physician, a noted clergyman, a well-known sculptor, and a professor of eclectic medicine (Bennett, 1878, p. 1040). Another member was John P. Jewett, the publisher of Harriet Beecher Stowe’s *Uncle Tom’s Cabin*, who earlier worked in Foote’s printing plant and joined the National Defense Association (Sears, 1977, p. 199).

Foote Sr. and Comstock would later dispute details of the prosecution. Comstock claimed to have suppressed thousands of Foote’s circulars, advertisements, and books along the way. However, the doctor disagreed, swearing in an affidavit that the only one of his publications restricted in such a manner was the *Words In Pearl* pamphlet (Wakeman, 1881, p. 90). No evidence supports either side.

CONFLICT OVER MAILING RATES FOR PERIODICALS

Five years after Foote Sr. was arrested and convicted, he and his magazine became embroiled in another controversy with postal officials. In 1881, Foote Sr. blamed Comstock when the second-class mailing permit for *Dr.*

Foote's *Health Monthly* was revoked while running a controversial series of articles about sexual intercourse. Meanwhile, the post office contended that the issue was the magazine's basic nature as a means of advertising the Foote's books and products rather than a source of information, according to the *Health Monthly* ("Latest stab," 1881), which is the only known source on the dispute between the magazine and postal officials.

At stake were the low second-class mailing rates granted to the *Health Monthly* and other publications in an 1879 post office appropriations bill. Newspapers and magazines could be mailed at 2 cents a pound if they met four basic requirements: (a) issued at least four times a year; (b) produced from an identifiable office; (c) maintained with a list of subscribers; and (d) published "for the dissemination of information of a public character, or devoted to literature, the sciences, arts, or some special industry" (Fowler, 1977, p. 65).

In the year after Congress set the low rates, the number of publications soared and the volume of second-class mail rose from 56 million pounds to more than 61 million pounds (Fuller, 2003, p. 131). Determining whether publications met the qualifications fell to the discretion of postmasters, which became a form of postal censorship, especially when interpreting the requirement "for the dissemination of information of a public character" (Fowler, 1977, p. 65). Postal laws stipulated that advertising material denied second-class postage would travel third class at a rate of 8 cents a pound (Fuller, 2003, p. 150). Publishers awarded second-class postal privileges could mail sample copies along with subscriptions in order to build their circulations. However, disputes arose over how many sample copies were reasonable; sizable mailings to nonsubscribers would have overridden the rule on having a mailing list (Fuller, 2003, p. 150).

After the Foote publication lost its second-class permit, supporters gathered to protest the postal action at an "indignation meeting," at which Foote Sr. expressed his thoughts about the entire experience ("What Foote, Sr.," 1881). He also detailed for the *Health Monthly's* readers in September 1881 the dispute between his business and postal officials, ongoing since April of that year. In August, an assistant attorney general for the post office department notified Foote that the magazine's second-class mailing permit had been retracted because the publication sent out far more free copies than paid subscriptions and it was filled with advertisements for books and products offered by Foote's Murray Hill Publishing Company, making the *Health Monthly* a "publication designed primarily for advertising purposes" ("Final decision," 1881).

Abram Wakeman, a former postmaster in New York, had represented other Comstock defendants and now worked for the *Health Monthly* in

proceedings that Foote Sr. believed were slanted against him and evidence of “Comstockism in the Postal Department,” according to a headline in the magazine (“Final decision,” 1881). The *Monthly* editorial asked: “How long will it be before we shall become as degenerate as Russia?” (“Ho, for Canada,” 1881).

In defense, the Footes claimed that postal officials had miscalculated the *Health Monthly*’s circulation figures by underestimating the number of subscribers and exaggerating the total of sample copies they mailed. The Footes also believed that the proportion of advertising in their publication was no greater than that of major contemporary publishing houses, such as Harper’s and Scribner’s (“Final decision,” 1881).

Move to Canada

Initially after being excluded from second-class mailing privileges, Foote Sr. paid the third-class postage rate while negotiating with the post office, he wrote. He felt more fortunate than the publishers of other magazines forced to cease publication altogether after losing their permits (“The situation,” 1881). He explained that being bumped to third class meant a difference in postage between the \$10 a month he had been paying and an annual bill of \$500. Subscribers would not be asked to pay more unless they chose to do so as a way of donating to Foote’s legal defense (“Later still,” 1881).

But as the negotiations drag on, the Footes chose a new direction for the *Health Monthly*—north to Canada. For a few months, the magazine was printed in the town of Whitby in Ontario, by the printing house of J.S. Robertson & Bros. while the Footes’ medical practice remained in New York City (“Final decision,” 1881). Whitby was located on the northern shore of Lake Ontario, 30 miles east of Toronto. By 21st Century estimates, Whitby is 493 miles from New York City and 127 miles from Buffalo, New York (“Town of Whitby”), where the Foote journal entered the United States in mail shipments.

The Canadian postal system had not been marred by the “Comstock blight,” Foote wrote in the *Health Monthly*. Bulk mailing rates were lower than in the United States, 1 cent per pound rather than 2, with postal laws more explicit about unacceptable material. Foote told readers he regretted taking the *Health Monthly* out of the country but nonetheless was grateful to have such an option available while he resolved the clash over the second-class mailing permit with the U.S. postal authorities. He expected the temporary measure to operate smoothly (“Ho, for Canada,” 1881).

Despite Foote’s initial optimism about the working relationship with Canadian authorities and the Whitby printer, the arrangements soon began to collapse. The September 1881 issue, the first to be printed in Canada,

was delivered late in the month ("Seventh volume," 1881), and by mid-November, the Foote office was being swamped with phone calls from New York readers complaining that their magazines had not arrived. Foote first called the New York City government, where an auditor told him that any of his publications delivered to the city post office would have been thrown into the trash ("November number," 1882).

Foote printed more copies of the magazines in New York to appease readers while he telegraphed the Whitby printer, who then pursued the matter with Canadian postal officials in Ottawa. They promised to investigate ("November number," 1882), but meanwhile, *Health Monthly* readers continued to report problems with the December and January issues. Foote told readers that he spent more than \$100 telegraphing the printer and the Canadian government and invested half his working hours into efforts to resolve the problem. By early February, Foote Sr. received a letter from the post office in Buffalo, New York, saying that nearly 27,000 copies of the *Monthly* were sitting in that facility. The Buffalo postmaster told Foote that postage had not been paid on these copies, even though Foote had met existing conditions for postage in Canada ("An outrage," 1882).

The March 1882 issue of the *Health Monthly* came home to be printed in New York, and Foote told readers that the U.S. post office had seized as many copies as possible when they came in from Canada. He also withdrew his previous praise of Canadian officials, calling them duplicitous and dishonest in accepting postage payment but knowing the magazines were being held without notifying the sender. During the *Health Monthly* fiasco, American authorities had been negotiating with their Canadian counterparts on a set of new postal regulations. No longer could items be mailed into the United States on Canadian postal rates. According to the Foote account, the *Toronto Globe* reported that the new terms were created just to handle the Foote case. In the aftermath, Foote paid postage a second time for the magazines being held in the Buffalo post office ("An outrage," 1882).

In March, Foote Sr. met with a new postmaster, who granted him a temporary second-class mailing permit. A change in the Washington post office administration eased the tensions ("Our friends," 1882). Shortly thereafter, his full permit was restored, and the *Health Monthly* returned to its pre-Canadian status ("Official restoration," 1882).

Throughout the ordeal, Foote Sr. contended that he had violated no postal regulations and that his only misstep had been to offend Comstock's sensibilities on discussing sex-related matters. Postal inspectors had warned him that there would be consequences if he continued a controversial series that presented differing perspectives on sexual intercourse, which had been

launched just as the conflict with the Post Office over rates was heating up, he wrote (Foote Sr., 1883, p. 31).

Dispute over Sensitive Topics

The series sprang from a dialogue between Foote Sr. and Dr. Caroline Winslow, who published a journal, the *Washington Alpha*. As their ideas were being published in the *Health Monthly*, other writers, including a minister and a counselor, weighed in on the issue. Winslow advocated sexual activity for procreative purposes only, an approach known as “Alpha” and its proponents called “Alphites.” Foote Sr. countered with the stance that moderate sexual activity, with the benefit of contraception, could be enjoyable and beneficial. He compiled the articles into a pamphlet called *Dr. Foote’s Reply to the Alphites* in 1883.

The doctor believed that his mailing permit was pulled because his advocacy of “advanced ideas,” such as the Alphite series, ran counter to Comstock’s agenda. The postal office was “bitterly opposed” to his magazine, instigated by one individual only: Anthony Comstock (“Happy New Year,” 1882). With the Alphite series completed, the negotiations between the Footes and the post office gradually became more agreeable (Foote Sr., 1883, p. 32).

Foote Sr. also blamed Comstock postal laws for an entirely separate incident of censorship in 1882. Foote had advertised his book, the *Handbook of Health Hints and Ready Recipes*, in an issue of *House and Home* magazine. A postal inspector suspected that the Foote book was obscene and ordered that the magazine be suppressed; a week later, it was approved for circulation. According to Foote, the same ad that appeared in *House and Home* had been run previously in several prominent publications (“Reign of terror,” 1882).

SUMMARY

The courtrooms and legislative halls of Comstock’s day provided a hostile environment for those prosecuted for obscenity, such as E. B. Foote Sr. Federal and state judges regularly ruled against free speech claims, and courts in general made it easy to convict those arrested for obscenity. Congress, eager to dig itself out of political scandal, passed the Comstock laws and continued refining them to ensure more convictions. In turn, the states passed their own laws to address similar issues.

While Comstock was establishing himself as America’s obscenity crusader, Foote Sr. had already recognized the threats posed to his business of educating the public about contraceptives and selling them. Foote worked

to no avail against Comstock's bills in New York State as well as Congress. However, he made enough of an appearance to make himself known to Comstock. Within a few years of the act's passage, Foote Sr. was arrested and convicted of violating the laws he had opposed.

The cost for Foote was higher than the \$3,500 fine, shared by supporters, and the court costs. He moved his medical business to another state to avoid prosecution, refocused his practice away from birth control, and altered the contents of the books that had made him successful. In public, he was called a quack, an abortionist, and a criminal by Comstock.

Foote's publishing business took yet another hit when the post office revoked the second-class status of his publication, *Dr. Foote's Health Monthly*. Rather than pay higher postage, he had the magazine printed in Canada for about 6 months while his lawyer negotiated the renewal of his permit. However, trouble followed him into Canada, where postal officials, at the behest of American authorities, altered their regulations to exclude the Foote publication from the cheaper rates there also.

All along, Foote maintained that Comstock was behind the revocation even though the post office attributed its action to Foote's failure to meet postal standards. Foote's legal problems gave him first-hand experience with noted postal and legal practices pertaining to so-called obscene material of the time. While prosecuted, he fell victim to Comstock's decoy letters, selective prosecution, trial by a favored judge, denial of the right to present evidence, and fines as high as Comstock's annual salary. Next, he felt the effects of the subjective application of second-class postage rates.

Foote and his son continued to challenge current obscenity laws while lobbying against new ones in Congress and the New York state legislature. Such efforts were chronicled in their *Health Monthly* along with information about obscenity-related bills in other states and on medical issues.

The Footes would organize with other individuals, some of whom also were prosecuted, to fight Comstock's influence among lawmakers and the public as well as defend individuals being prosecuted. Foote Sr. and Foote Jr. would become involved in the National Liberal League, the National Defense Association, and the Free Speech League.

Chapter Four

Free-Speech Organizational Activities

In 1905 E. B. Foote Jr. was asked to give advice to sex reformers on organizing themselves against governmental censorship; the group even considered establishing its own postal system. Foote Jr., wary of the opposition's strength, responded in *Lucifer, the Light Bearer*: "It would be OK if they [the sex reformers] could afford to travel and get together; but they are too poor and scattered, or the country is too big and their wallets are too small." He also thought the private post office would be doomed to failure as long as the government held a monopoly on mail delivery ("Organizing," 1905).¹

By the time that Foote Jr. made these comments, he and his father had been leading organizational charges against Anthony Comstock's censorship of obscene materials for nearly 30 years, working inside three associations that championed free speech. The National Liberal League was the first to mobilize against Comstock, upon seeing him prosecute some of its members, Foote Sr. among them. The League's radical members saw the need for an organization expressly dedicated to fighting Comstock and subsequently established the National Defense Association, for which the Footes produced a newsletter. A third group, the Free Speech League, appeared at the turn of the 20th Century as its members responded to new threats to First Amendment rights. The common thread among the three organizations was the presence of the two doctors Foote.

With their messages deemed unfit by Comstock, defendants pooled their efforts and resources to demand their First Amendment rights; thus, the National Liberal League, the National Defense Association, and the Free Speech League began their anti-Comstock efforts. The liberal groups represented by the Footes who opposed Comstock stood well outside the mainstream, where he found considerable public support (Dennis, 2002, p. 376).

GENERAL BACKGROUND

Associations held a special fascination for 19th Century Americans, as observed by French political thinker and historian Alexis de Tocqueville and imparted in his classic 1835 analysis of society in the United States, *Democracy in America*. He believed that people coming together for a common purpose cultivated a strong sense of community:

Americans of all ages, all stations of life, and all types of disposition are forever forming associations. . . . If it is proposed to inculcate some truth or to foster some feeling by the encouragement of a great example, they form a society. . . . In democratic countries knowledge of how to combine is the mother of all other forms of knowledge; on its progress depends that of all the others. (Garraty, 1966, p. 294)

Even more lay ahead. By 1897, a writer for the *North American Review* dubbed this era the “Golden Age of fraternity” (Kaufman, 2002, p. 3). The forces that modernized, industrialized, urbanized, and secularized the nation also unsettled many of its citizens. Immigration and feminization transformed the look of daily life, and joiners clung to those they perceived to be their own kind for a semblance of order (Kaufman, 2002, p. 33). Americans congregated along racial, gender, ethnic, and occupational lines for social, political, and business purposes. The Golden Age set the stage for 20th Century organizational life: social clubs, reform movements, neighborhood action committees, civic improvement leagues, labor unions, trade associations, and special interest groups, and these organizations hired staff members to handle everyday affairs (Hurst, 1971, p. 85). As never before, corporations and military units developed principles of organizational science to streamline and bring efficiency to operations (Stark, “19th”).

Free Speech/Free Press

Free-speech activists such as the Footes adopted a lobbying model for their associations; while shielding members from perceived danger, they courted public opinion, campaigned for legislation, and monitored government reaction (Kaufman, 2002, p. 88). With a central message that personal liberties were being violated, they hoped to spark public debate and thereby influence legislators and government officials. They launched anti-Comstock grassroots campaigns with speeches, petitions, and pamphlets (Blatt, 1989, p. 128).

The three organizations in which the Footes worked for free speech had emerged from late 19th Century libertarian radicalism, the predecessor

of modern civil libertarian thought. Libertarian radicals, many of whom were avid freethinkers, abolitionists, or feminists, guarded against threats to individual autonomy from the government and religious institutions (Rabban, 1997, p. 23). Their interest in personal rights stood in sharp contrast to Comstock's intent on protecting society, whatever the cost to individuals (Curry and Goodheart, 1991, p. 137).

The Footes are generally credited as bankrollers of the anti-Comstock efforts (Sears, 1977, pp. 193, 199–200; Putnam, 1894, p. 729). As expressed by Edwin C. Walker, the first president of the Free Speech League, the two doctors for many years were the “heart, soul and purse” of both the League and the National Defense Association (Schroeder, 1913, p. 48). However, little evidence remains on the details of such monetary support.

After Foote Sr. was convicted of obscenity for promoting and selling contraceptives, he modified his medical books to follow Comstock Act limitations in order to continue his publishing business and medical practice to avoid another arrest and certain imprisonment. For the rest of their lives, he and his son believed that Comstock posed a continuing threat to their livelihood as publishers and doctors (Schroeder, 1913, p. 48). It was Foote Sr.'s ability to make money that he once acknowledged as the most valuable contribution he made to anti-Comstock efforts (Wakeman, 1906, p. 20). The Footes contributed liberally to many free-thought causes (Stein, 1996).

NATIONAL LIBERAL LEAGUE

The best sources of information about the National Liberal League are the general histories of the free-thought movement (Curry & Goodheart, MacDonald, Putnam, and Warren). Other materials were written by Thaddeus Wakeman, a New York attorney who developed legal strategies for the League, and Gordon Stein, who edited free-thought publications.

Both Footes were involved in the National Liberal League from its beginnings in 1876 (Curry & Goodheart, 1991, pp. 137–8). In response to the prosecution of Foote Sr. and other members, the League launched the first resistance to the Comstock Laws. Grown within the free-thought movement of the mid-19th Century, the League drew its members from across the spectrum of social, religious, and political beliefs to form a nationwide string of chapters. Members shared no core interest in obscenity or freedom of expression; instead, they united in the goal of preserving the separation of church and state. They preferred secularism over the church-based moral order that dominated society (Curry and Goodheart, 1991, p. 133).

Despite having no formal interest in obscenity, members pushed the Comstock Laws into the spotlight when the League first convened in

Philadelphia in early July 1876. Colleague Foote Sr. was on members' minds (Bates, 1995, p. 129; Brooks, 1996). He had just been convicted in June of violating the Comstock Act by mailing a pamphlet that promoted birth control and for offering items for sale that would prevent conception. He awaited sentencing, which was to take place on July 12. The League passed a resolution against laws that punished "honest and conscientious men, for presenting to the public what they deem essential to the public welfare, when the views thus presented do not violate, in thought or language, the acknowledged rules of decency" (Wakeman, 1881, pp. 39–40).

More fuel stoked the fire when shortly after the League's October 1877 meeting in Rochester, New York, two other members and Foote associates were arrested on obscenity charges: free-thought editor D. M. Bennett and Ezra Heywood, a leader of the free-love movement. Comstock had made good on his promise to destroy free-thought publications (Curry & Goodheart, 1991, p. 144), and League members felt unfairly targeted by antiobscenity legislation (Warren, 1966, p. 164).

Opposing Views on Obscenity

Despite its status as the lone organization to publicly denounce the Comstock Act (Wakeman, 1881, p. 40), the League was far from unanimous in its outlook on obscenity and remained sharply divided on the subject of the Comstock Laws for almost a decade. A small segment actually favored the Comstock laws, but two more formidable camps battled for control. One side opposed the Comstock Act but preferred that steps be taken to modify it before repeal was considered. They suggested that the law be revised to include a precise definition of obscenity and to exclude publications intended to benefit society, such as those produced by Foote and other their free-thought colleagues (Schroeder, 1913, p. 12). The other side, including the Footes, advocated repeal, based on the broader view that the Comstock Laws irredeemably infringed upon the constitutional rights of speech and the press (Curry and Goodheart, 1991, pp. 145–6). League members favoring repeal later formed the National Defense Association.

Petition to Repeal or Modify

When the Liberal League launched a petition drive against the Comstock Act in 1878, the group's dispute over whether to modify or repeal the laws was still apparent in the wording. According to the *Congressional Record*, Benjamin Butler—the former Civil War general elected to Congress from Massachusetts—presented the petition to the full House of Representatives on February 26, 1878, stating that it held 70,000 signatures. Those who signed the petition requested that the Comstock Laws be either *repealed or*

modified to prevent the government from using the laws to violate freedom of the press or of conscience in the guise of religious, moral, political, medical, or commercial purposes (“Section 1785, Etc.,” 1878).

Foote Jr. and other League members presented the huge petition to the House Committee on the Revision of Laws in February of 1878. Comstock and fellow vice crusader Samuel Colgate made such a powerful counterattack that the committee dismissed the petition. The matter is mentioned in Congressional records as the “petition of Robert G. Ingersoll and others, praying for the repeal or modification of [the Comstock Laws]” (“House Report,” 1878).

The name of League vice president and prominent free-thought lecturer Robert Ingersoll appeared first on the petition and provoked attacks from Comstock, clergymen, and other moralists (Broun & Leech, 1927, p. 177). Ingersoll favored modification but became more closely associated with the petition than the Footes or other League members, even though he never publicly promoted it (Wakeman, 1881, pp. 33–4). Comstock resented Ingersoll’s ability to draw large admission-paying crowds for lectures on agnostic topics and often assailed Ingersoll’s character, biographers have written (Broun & Leech, 1927, p. 191).

Foote Jr.’s Role Recorded

Comstock brought Foote Jr. to the forefront of his conflict with the League when he included a report of the House committee hearing in the 1880 book, *Frauds Exposed*, reprinted in 1969 (pp. 421–430). Comstock portrayed himself as summoned by Congress to defend himself in front of his enemies. Incongruently, it was Comstock himself who in the same book recorded a speech attributed to Foote Jr. in the hearing:

I am a physiological student. I am here to represent the physiological side of this subject. This law is not good, there has never been any good accomplished under it. There have been great outrages committed. I know of a reputable physician in the city of New York, who was convicted for sending a purely medical work through the mail. I know the men who . . . back this man Comstock; they are fanatics and bigots. I am a graduate of one of the medical colleges, and I know these men well. I have seen their names to papers presented to the Legislature of our State, where I have had occasion to go to have the laws changed that they helped pass. (p. 426)

The report touched off a war of words between the Footes and Comstock for years to come. Foote Jr. swore in a March 1881 affidavit that the

speech Comstock attributed to him was “shamefully garbled and misrepresented,” although he did not offer specifics to amend the aforementioned passage. The younger Foote stated that Comstock neglected to mention an incident in which he handed the crusader a copy of his father’s *Words in Pearl* brochure (for which the older doctor was prosecuted):

[I] challenged him then and there to point out to the Committee a single obscene passage in its pages; whereupon Comstock’s face visibly reddened as he nervously turned the leaves for some moments, and until the Committee mercifully relieved him from his dilemma by resuming the business before it. (Wakeman, 1881, p. 90)

The dispute between the Footes and Comstock over the Congressional hearing continued into 1882. Writing in *Dr. Foote’s Health Monthly*, Foote Sr. charged that Comstock lied when he testified that the Foote “womb veil” contraceptive was “an instrument of death both moral and physical to the youth of the land.” Foote Sr. defended the device, saying it was harmful to no one, least of all to youth because it was marketed only to married couples. Additionally, he denied Comstock’s claim that the repeal petition had been supported only by members of the National Liberal League, when actually the signatures covered a cross-section of society, Foote Sr. wrote (“Christian gentleman,” 1882).

More than a decade later Foote Jr. described the Liberal League’s fruitless efforts to repeal the Comstock Laws when writing to his father’s sister, Elizabeth Foote, who married William Denton, a professor known in reform circles. In a letter dated November 1890, he wrote found in the Denton Family Papers at the University of Michigan:

[W]e made a very decided effort for its repeal and it seemed to result more in strengthening Comstock than in giving success to our attempts. He made a great handle of it, and has made a great handle of it ever since. It is about as hard to get an egg back after the hen has laid it, as to repeal a law that has for its ostensible object any moral purpose.

Fate of the Liberal League

By 1884 the tide had turned for the National Liberal League. Members dropped many divisive issues, including obscenity and the Comstock Laws, returning to its core concerns of secularism. Consequently, members renamed the organization the American Secular Union, believing the new moniker more accurately reflected the group’s character (Warren, 1966,

pp. 167–8). Both Footes remained active after the League's transformation into the American Secular Union and supported other free-thought causes throughout their lives. Foote Jr. was serving as treasurer in 1910 just before the Secular Union faded into obscurity (Warren, 1966, p. 175).

NATIONAL DEFENSE ASSOCIATION

Of the three organizations involved in anti-Comstock activities, the least information is available on the National Defense Association, which demonstrates the dearth of research in the area. As an outgrowth of the Liberal League, the Defense Association also has been mentioned in the free-thought histories but to a lesser extent. More details are available in the Sears history of sex radicals, the Blatt biography of Ezra Heywood, and documents of the Labadie collections at the University of Michigan. Therefore, this study taps into previously undisclosed reports of the Defense Association from the Footes' magazine, *Dr. Foote's Health Monthly*.

Foote Jr. and eight other veterans of the League's petition drive gathered in New York to organize the National Defense Association on July 11, 1878. Each contributed \$10 toward initial operating expenses (Blatt, 1989, p. 128; Putnam, 1894, p. 538). From the Defense Association's inception, Foote Jr. served as secretary. His name appeared on association documents, such as a petition for the pardon of Ezra Heywood (Denton Papers, Labadie) as well as appeals for contributions. Additionally, his periodic reports appeared in the *Health Monthly's* section called "The Outlook."

Defense Association's Goals

As the only group formed exclusively to combat Comstock, the National Defense Association vowed in its Constitution "to employ all peaceful and honorable means to roll back the wave of intolerance, bigotry, and ignorance which threatens to submerge our cherished liberties," which members associated with Comstock (NDA, p. 38).

Enlightening the public became a high priority, which members attempted with a range of publications that displayed the association's challenge to Comstock's control over the courts and legislatures. They therefore circulated documents to raise funds, protest court decisions, influence proposed bills, and present alternative legal opinions with the intended audiences ranging from the public to lawmakers on the national and state levels (Blatt, 1989, p. 128). At least one of the brochures served multiple purposes. Ostensibly, it opposed two amendments to the Comstock Act being

considered in Congress, but it also included the text of the Defense Association's Constitution and a speech on the constitutional arguments to repeal the original Comstock Laws (NDA, pp. 3–33).

Defense Association Activities

The work of the Defense Association is best understood through articles in the *Health Monthly*. The Executive Committee regularly met to plan a concerted response to Comstock's Vice Society's actions ("Defense fund," 1885). When funds were available in the treasury, the money was applied to individual Comstock-related cases. For defendants without financial means, the association hired attorneys to represent them ("Defense fund," 1881) and appointed one of its own members to serve as a case manager for an individual being prosecuted ("Bleeding Kansas," 1894).

Raising funds was always a crucial issue. Active members frequently made contributions but never made withdrawals for themselves despite their own run-ins with Comstock ("Mr. Preston," 1881). The Defense Association opened a general fund as well as individual defense funds for specific cases. Members compared their coffers to those of Comstock's New York Society for the Suppression of Vice, whose meetings they attended ("Annual meeting," 1881) to hand out anti-Comstock literature (Blatt, 1989, p. 128). Comstock's supporters contributed about \$10,000 each year while the Defense Association had not raised a comparable total throughout its 10-year existence ("Comstock," 1888).

High-Profile Cases

Some of the Defense Association's best-known cases demonstrate the range of the group's activities to support clients. One committee met at the Foote home to plan an elaborate reception for free-thought editor D. M. Bennett when he was released from prison in 1881 (Wakeman, 1906, p. 53). Considered a free-speech martyr, Bennett was honored on a medalion the association forged to garner support and raise money for Moses Harman, prosecuted for the sexual content of his newspaper, *Lucifer, the Light Bearer* ("Comstockism," 1888). A Boston chapter was instrumental in getting charges dismissed against poet Walt Whitman when he refused to delete passages deemed obscene from a new edition of *Leaves of Grass* (Rabban, 1997, p. 31). The Boston and New York chapters collaborated in the defense of noted free-love editor Ezra Heywood.

Legislative Activism

The National Defense Association also mounted campaigns in Washington, D.C. and state capitals against attempts to strengthen existing Comstock

legislation, with varying degrees of success (Wakeman, 1906, p. 54; Sears, 1977, p. 200). Members also lobbied government officials for the release and pardon of clients and against pieces of legislation that reinforced the Comstock laws.

Recorded only in the *Health Monthly*, the Defense Association in 1881 sponsored a second petition drive demanding changes in the Comstock postal laws. Several separate petitions were merged into one that displayed between 15,000 and 20,000 names, and the Footes through the *Health Monthly* collected and assimilated various portions of the petition into a composite, which were mounted on canvas and presented to Congress in January 1881 (“The petition,” 1881). According to the *Congressional Record*, Rep. James W. Singleton of Illinois delivered the petition to Congress, where it was referred to the House Committee on the Post-Office and Post-Roads (“Postal Department,” 1881). In the petition signers requested that postal laws be repealed or modified to prevent the violation of constitutional rights and to keep the government from censoring the mails. They also asked that the fines and imprisonment imposed under the Comstock Laws to be reimbursed (“Postal department,” 1881). No information on the committee’s reaction to the petition could be found.

Legal Strategy

Many of the legal arguments and defense strategies presented by both the National Liberal League and the National Defense Association were designed by New York lawyer Thaddeus Wakeman. He was credited with writing the organizations’ speeches and materials that attacked the censorship inherent in the Comstock Laws on constitutional grounds (Schroeder, 1913, p. 14). Many of Wakeman’s speeches were published by the Footes’ Murray Hill Publishing Company (Schroeder, 1913, pp. 14–5).

Wakeman’s arguments fell into three categories: the Comstock Act was unconstitutional, unnecessary, and mischievous. First, it violated the “necessary and proper” powers the Constitution granted Congress for the supervision of the postal system. Congress exceeded the bounds by passing a law that that focused on content and morality, he asserted (Wakeman, 1881, p. 5). Secondly, the Comstock Act was unnecessary because state laws sufficiently served the purpose, Wakeman wrote. Instead of nationalizing obscenity law, as had occurred with the Comstock Act, he advocated that it be returned to state and local jurisdiction (Curry & Goodheart, 1991, p. 148). Lastly, he argued that the Comstock Act was malicious and dangerous because it did not sufficiently define the crime with which people would be charged. Wakeman and other Defense Association members wanted to

carve out a meaning for “obscenity” that precluded the work of their colleagues and attempted to move the courts away from the Hicklin rule.

Financial Support

Sources generally credit Foote Sr. with providing substantial financial support for specific defenses (Putnam, 1894, p. 538). No records of the Defense Association’s funds are available to substantiate the large gifts credited to the Footes. However, their small gifts of \$5, \$10, and \$15 to defense funds for specific individuals were reported among others in the *Health Monthly*. For many of the funds, the Footes made the first donations (“Heywood defense,” 1881; “Aunt Elmina’s,” 1887; “Harman & Walker,” 1887; “News of Wise,” 1894).

Diminishing contributions marked the Defense Association’s decline, according to the secretary’s reports that Foote Jr. submitted to the *Health Monthly*. In February 1886, the Defense Association’s presence had so waned that Foote Jr. reported that despite contrary appearances, the group “has not been dead nor sleeping” for the previous 2 or 3 years but gave no details. Without public notice, the officers had continued meeting, assisting Comstock defendants, and printing literature whenever funds were available. However, financial contributions had dwindled, especially after the death of popular free-thought editor D. M. Bennett in 1882, and substantially more financial support was needed to carry on the fight against Comstock’s forces (“All invited,” 1886).

By September 1894, the executive committee was meeting only on occasion, and a desperate appeal for funds included an acknowledgement: “Most of our earnest liberal reformers are poor in purse,” according to Foote Jr.’s report (“Bleeding Kansas,” 1894). However, no more information was given on the status of the organization. After October 1894, the National Defense Association was not mentioned again in the *Health Monthly*, which itself folded in 1896.

Assessment of the Defense Association

Developing the National Defense Association was one of the most practical measures taken by the Comstock opposition in providing relief for defendants, according to Comstock biographer Margaret Leech. It created “no small amount of worry and trouble” for the Society for the Suppression of Vice (Broun & Leech, 1927, p. 189). Samuel Putnam, who chronicled the free-thought movement, generously assessed the Defense Association’s success. “Many a worthy man, whom this [vice] society has set out to victimize, has owed his freedom to the influence of the Defense Association” (1894, p. 540). Putnam’s generalization was more congratulatory than

analytical; his supporting statements lauded the group's distribution of literature more than the outcome of specific cases.

The Defense Association harnessed anti-Comstock sentiment when members found thousands of supporters to sign petitions for repeal of the Comstock Act and for the pardon of particular defendants. The group developed a concerted legal argument against the Comstock Laws, which stressed constitutional rights, which it used to defend as many clients as possible. As indicated in Foote Jr.'s reports, the number of cases gradually overwhelmed the group's modest monetary resources.

NATIONAL DEFENSE ASSOCIATION & DR. FOOTE'S *HEALTH MONTHLY*

Edited by both father and son, *Dr. Foote's Health Monthly* debuted just after Foote Sr.'s prosecution in 1876. With a circulation estimated at 5,000 ("Many thanks," 1882), the *Health Monthly* covered a wide range of medical and reform topics. When the publication was suspended in 1896, the farewell editorial indicated that the *Health Monthly* had never made money ("Good-bye," 1896). As the unofficial newsletter of the Defense Association, the Foote publication updated readers on the organization and obscenity-related issues, all written from an anti-Comstock perspective. Additionally, the Footes commented on the Comstock Laws' impact on their area of specialty: health and medical issues.

"The Outlook"

Inside each issue, from 1 to 3 of its 16 pages were devoted to a section called "The Outlook" that emphasized free-speech topics. "The Outlook" chronicled the Defense Association's activities, court cases, and lobbying efforts; it also recognized all donations to defense funds, detailed in Foote Jr.'s periodic reports as the association's secretary. Additionally "The Outlook" included reports of Comstock's Vice Society meetings ("Annual meeting," 1881; "Annual meeting," 1886) and excerpts related to Comstock and obscenity prosecutions from other publications.

Foote Jr.'s reports are some of the few articles that carried a byline. Otherwise, the *editorial we* appeared frequently, and occasionally "the senior" and "the junior" indicated which Dr. Foote was pertinent to the situation mentioned. Trained first as a journalist before studying medicine, Foote Sr. professed to being more comfortable "sitting behind the pen than standing before an audience" ("What Foote, Sr.," 1881). However, any presumption that Foote Sr. wrote most of the magazine's contents can be tempered with the actuality that the authorship of most articles is indeterminable.

Anti-Comstock Rhetoric in "The Outlook"

As the written voice for the only organization dedicated solely to opposing Comstock, the *Health Monthly* was filled with anti-Comstock rhetoric used to rally the troops sympathetic to the National Defense Association. The Footes commonly referred to their adversary as "the Agent" ("Comstock's last," 1881; "Agent," 1883) and the era encompassing Comstock prosecutions and legislation as the "American Inquisition" ("Once more," 1882; "Valiant," 1883).

The conflict between the two sides was sometimes depicted in warfare terms. So free-love editor Ezra Heywood was called a "brave and invincible soldier of the cause of free press, free speech and free mails" ("Further," 1890). An offer to help defendants in Iowa was phrased: "The National Defense Association have [sic] the ammunition if our Western friends will find the guns to fire it off" ("Comstockism," 1882). Foote Jr., in a bylined article, once described Comstock as "being on the war-path again" in an appeal for contributions ("All invited," 1886). The "martyrs" opposed to Comstock were likened to abolition heroes John Brown ("Lend," 1890) and William Lloyd Garrison ("Once more," 1882).

Readers were often reminded that Comstock's forces posed stiff opposition, in terms such as "reign of terror" ("Reign," 1882), "post office tyranny" ("Post office," 1881), and "despotic censorship" ("Despotic," 1881). The Footes borrowed imagery from oppressive European governments. Comstock used "Russian methods" ("Russian," 1888) and a "Russian spy system" ("Is this," 1885). Post office censorship was similar to "the most meddlesome and restrictive decree of an Emperor or Czar" ("Losing," 1883). Defendants were "railroaded to some Bastille" ("How some," 1886).

The Footes painted many other colorful word pictures. Defendants had been "struck by Comstock lightning" ("Comstock's last," 1881) and "extracted from the jaws of the Comstockian dragon" ("Despotic," 1881). Prosecutions showed signs of "Comstock tar [being] very plentifully applied" ("Mr. Bennett's," 1882) and the "scorbutic [related to scurvy] taint of Comstockism" ("Comstock laws," 1883). According to the *Health Monthly*, the post office was becoming the "streaming tail on Comstock's kite" ("Postal," 1881).

Legislative Issues in "The Outlook"

The Footes criticized courts and legislative bodies for decisions and laws that favored Comstock. However, they generally left the crafting of legal arguments to attorney Wakeman, quoted at times in the *Health Monthly*. The Footes expressed opinions on legal matters that were consistent with

those espoused by Wakeman; they thought obscenity legislation should be made at the state and local level rather than national (“Losing,” 1883) and advocated a more specific definition of obscenity (“Health,” 1894).

The Footes lobbied against efforts to amend the Comstock Act. *Dr. Foote’s Health Monthly* regularly monitored the progress of obscenity-related legislation in Albany (“Checkmated,” 1886; “Defying,” 1890) and in Washington, D.C. (“Revival,” 1894; “More tinkering,” 1886). It further displayed the editors’ interest in medical legislation. For example, the *Health Monthly* denounced the New York legislature for proposing a medical regulatory board, calling it “medical trades-unionism.” The board would have slighted eclectics, the form of medicine the Footes practiced that favored natural remedies over the chemicals and surgery commonly used in mainstream medicine (“Medical legislation,” 1884). The Footes also showed concerns for legislative matters in other states, warning New Hampshire residents of a possible bribery scheme in the statehouse (“Improper influence,” 1887) and Iowans of Comstock and his associates heading their way (“Friends,” 1882).

Health and Medical Issues in “The Outlook”

The Footes as physicians were most concerned about the Comstock Laws’ impact on health and medical issues. As the first legislation to address abortion and contraception, the Comstock Act infringed upon the Footes’ right to practice medicine as they saw fit, they believed, and forged an ill-fitting bond between obscenity and health.

They objected to moralists determining how much knowledge about the human body could be presented and branding facts about reproduction unfit for dissemination. The Footes wrote:

This attempt to establish an [unenlightened] morality and by U.S. postal laws to enforce it on everyone else is what we call Comstockism, and we never tire of protesting, though we do tire of seeing how successfully it prevails under a mask of hypocrisy and superior values. (“Health & obscenity,” 1894)

Sex-Related Topics in “The Outlook”

By limiting the amount of information that people could obtain about sexual physiology, the Comstock Act posed health threats to society, the Footes wrote. Humans needed to study parts of the body in order to avoid bad habits that led to disease (“Mr. Conroy,” 1885). Satisfying people’s natural curiosity about the body prevented the development of prurient interests;

therefore, materials that explained the sexual functions actually served as an antidote to pornography (*"Health Monthly,"* 1884). Comstock particularly wanted information about sex kept away from children. However, the Footes advocated sex education for young people, lest they "go blundering along through the dangerous period of youth and enter into the greater responsibilities of marriage [and parenthood] without opportunity to learn about the origins of life" (*"Extending,"* 1895).

Social Issues in "The Outlook"

The Footes contended that the Comstock Act had other negative effects on health care. Abortion rates were rising, they wrote. Physicians who feared being exposed as providers of contraception had become even less likely to recommend birth control than before the Comstock laws were passed. Hence, women determined to limit the size of their families became more desperate for abortions, legal or not (*"Prevention,"* 1885). The absence of easily accessible contraception increased the number of children growing up in unfavorable living conditions, such as poverty and disease (*"Help,"* 1882). In addition, birth control influenced women's status:

Giving women more control over their bodies was a step toward elevating their role in society. Woman has a right to protect herself from unwelcome and consequently undesirable offspring, and it is nothing but brazen impertinence for the U.S. Government to join hands with Mr. Comstock in saying that American women who want and need such information cannot have it. (*"Heywood,"* 1883)

Health-Related Legislation in "The Outlook"

The Comstock laws paved the way for unwanted legislation on other medical matters. People would continue to suffer from venereal disease as long as laws forbade the dissemination of information on prevention and treatment (*"Another step,"* 1890). The Comstock Act set a bad example for lawmakers looking for easy ways to solve problems. For example, instead of banning the manufacture and sales of potentially dangerous medicines, federal lawmakers considered the indirect path of making it illegal to mail such compounds, they wrote. If laws were needed on medicine, state legislatures, not Congress, should write them, according to the Footes (*"More special,"* 1884).

The Footes suspended publication of *Dr. Foote's Health Monthly* in early 1896, shortly after the National Defense Association disappeared and several years before another organization was established to defend free speech: the Free Speech League.

FREE SPEECH LEAGUE

The most thoroughly examined of the three organizations in which the Footes were involved remains the Free Speech League, principally due to the work of legal scholar David Rabban in his book *Free Speech in Its Forgotten Era* and articles for legal journals (1981, 1992). He and David Brudnoy, the latter of whom compiled a biography of League administrator Theodore Schroeder, extensively researched Schroeder's personal papers, also incorporated into this study. Additionally, free-speech scholar Margaret Blanchard researched Schroeder's First Amendment scholarship for her own book and journal articles (1987, 1992b). The League's activities were reported in Moses Harman's *Lucifer, the Light Bearer*, after the *Health Monthly* had folded.

The early years of the 20th Century brought a previously unknown threat to free speech. Numerous antianarchist laws on the national and state levels had been sparked by the assassination of President William McKinley in 1901 by a self-proclaimed anarchist. The U.S. Congress facilitated the prosecutions of anarchists when it passed the Alien Immigration Act in 1903 (Rabban, 1977, p. 64). All along, Comstock continued prosecuting for obscenity.

New Blood for Free-Speech Work

By the time the Free Speech League was formed in 1902, Foote Sr. was in his 70s, and the torch of free-speech leadership had passed to Foote Jr. The son served as treasurer until his death in 1912; later he also was recognized as the League's founder on its letterhead (Schroeder, Box 11, Folder 4). Yet the father still exerted influence in the free-speech arena. In a November 9, 1906 letter to Schroeder, Foote Jr. explained that he and his father had been disturbed by recent cases and wanted the Free Speech League to take a different direction. Surviving records don't indicate which defendants or what direction they were discussing (Schroeder, Box 7, Folder 4). As his father had done with National Defense Association meetings, Foote Jr. hosted meetings of the Free Speech League at the Foote residence on 120 Lexington Ave. in New York City ("Latest," 1903). At one point, the Lexington Avenue home was the official address for the League.

Organized on May 1, 1902, according to its constitution (1903, p. 69), the League hoped the government's intensified interest in suppressing anarchist speech would galvanize the general public around the broader issue of freedom of the press (Rabban, 1992, p. 100). The League had evolved from discussions in anarchist and free-thought newspapers and inside the Manhattan Liberal Club, the local affiliate of the National Liberal League, where the Footes were members. The goal became to "devise

ways and means for a united and an effective movement in defense of that which is fundamental to all progress—liberty of investigation and expression” (Sears, 1977, p. 200).

The Free Speech League adopted as its mission “to maintain the right of Free Speech against all encroachments,” according to its constitution. Edwin C. Walker explained its work in a 1903 brochure:

The League demands freedom of peaceable assembly, of discussion and propaganda; an uncensored press, telegraph, and telephone; an uninspected express; an inviolable mail. For these we work by means of the press and platform and the courts; by persuasion, argument, petition, protest, and demand; through the agencies of election and rejection. But the education of brains and quickening of consciences are first in order of time and effect. (p. 69)

The same document that stated the League’s purposes also listed the founding officers, which included Walker as president, E. B. Foote Jr. as treasurer, and attorney Edward Chamberlain as vice president, all previously associated with either the National Defense Association or the National Liberal League.

Schroeder’s Work with the Free Speech League

Missing from the list of the league’s new generation of free-speech champions is the name of lawyer and author Theodore Schroeder, who joined around 1905 (Rabban, 1997, p. 52). As secretary and chief administrator he became more closely identified with the League than either of the Footes; he has even been erroneously credited as its founder (Stein, 1985, p. 608). However, Schroeder found with the Free Speech League a platform for his unconventional legal views that included an absolutist perspective on the First Amendment that precluded any government regulation of speech or the press; he did not exclude materials that others considered “obscene.” His best-known work was a book published in 1911, *“Obscene” Literature and Constitutional Law*, inspired by the longstanding conflict between Comstock and sex reformers, such as the Footes. Obscenity could not be defined because the First Amendment gave Congress no basis for regulating and prosecuting obscenity. He therefore denounced all attempts made by courts and legislatures to set standards for determining obscenity and claimed such “tests exhibit their utter absurdity” (Schroeder, 1911, p. 250).

Freedom of speech, according to Schroeder, meant “that every idea, no matter how unpopular, so far as the law is concerned, shall have the same

opportunity as every other idea, no matter how popular, to secure public favor” (Schroeder, 1911, p. 153). Yet it was a policy that he struggled to enforce with the Free Speech League. Radical members and clients did not necessarily support each other. Despite their common battles for freedom of expression, these defendants did not always advocate free speech for everyone else, as Schroeder admonished (Rabban, 1997, pp. 61–2).

High-Profile Cases

An early court case accepted by the Free Speech League exemplified the threats from antianarchist legislation. Meeting at the home of Foote Jr., League members planned a public rally for John Turner, a British anarchist arrested while on a speaking tour in the United States, and formulated a strategy to test the constitutionality of the antianarchist speech legislation, as told in *Lucifer, the Light Bearer* (“Latest,” 1903). They financed Turner’s defense, led by noted civil rights attorney Clarence Darrow and lawyer/poet Edgar Lee Masters.² The Supreme Court upheld Turner’s expulsion from the country for violating immigration laws. The Turner case brought anarchist and feminist Emma Goldman into the League (Goldman, 1970, p. 348). There she found legal support and provided financial backing on occasion before she was deported in 1918 for speaking against the government (Rabban, 1997, pp. 64–5).

Along with defending anarchists, the League continued to represent individuals being prosecuted under the Comstock Laws. The League sponsored a dinner to honor sex educator Ida Craddock on her release from prison. Chicago radical editor Moses Harman, who had helped develop the Free Speech League, also needed its services just as he had with the National Defense Association. Harman’s newspaper *Lucifer, the Light Bearer* not only faced regular conflict over sexual content but also favored anarchist politics (Rabban, 1997, pp. 64–5). Additionally, birth control activist Margaret Sanger ran afoul of Comstock in 1913 while writing a column for a New York-based socialist daily, a forerunner to her struggle to come with him over birth control. The League defended her as well as her husband William, who handed out one of his wife’s *Family Limitation* pamphlets on birth control to a Comstock agent (Gordon, 2002, p. 153).

Financial Contributions

Communication between members of the Free Speech League, including Foote Jr., has been preserved in the papers of Theodore Schroeder who, as chief administrator, coordinated much of the correspondence. Items in the Schroeder collection and *Lucifer, the Light Bearer* offer insights into Foote Jr.’s role inside the organization as financier and leader. As treasurer, he was

listed in articles in *Lucifer* and fund-raising literature ("What does," 1902; "New York," 1903, "Post office," 1905). Foote donations of \$2, \$3, and \$10 to defense funds were recorded ("Various," 1897; "Lucifer's," 1905; "Says editor," 1906). Additionally he wrote fund-raising letters in the cases of Ida Craddock and John Turner. In correspondence among Foote Jr., Schroeder, and attorney Gilbert Roe, the three men expressed doubts about finding financial contributors to League projects other than themselves (Schroeder, Box 8, Folder 3; Box 9, Folder 1).

By February 27, 1908, Foote Jr. had become concerned for the League's welfare upon his death and set up a fund that Schroeder would administer. He specified three priorities for the fund. Its primary use was to be for the "Free Speech League and its propaganda, for defense of victims, for encouragement of papers that favor it and postal progress reforms, and lastly, for comfort and relief of its friends when 'down and out.'" Secondly, the fund could be applied to publishing Schroeder's research on what Foote Jr. described as the "sex origin of religious motives," Schroeder's own form of sexually based psychology related to spiritual beliefs. Lastly, Foote Jr. requested that additional arrangements be made for someone to take charge of the fund in the event of Schroeder's death (Schroeder, Box 8, Folder 3), which did not occur until 1953.

Foote Jr. was also financially involved in other League-related matters. In a February 1909 letter to a Los Angeles lawyer interested in starting a California chapter, Schroeder wrote that most of the money spent in League matters for the previous 3 years had been provided by "a friend of mine," whom he did not identify; possibly it was Foote Jr. However, Schroeder did name Foote Jr. as his own benefactor in a February 1910 letter to League attorney Gilbert Roe, to whom he explained that he had paid printers from the income of a fund provided by Foote Jr. for the furtherance of his free-speech work (Schroeder, Box 9 Folder 2).

Leadership for the League

Correspondence between members of the Free Speech League during its early years indicates a common desire for a stronger organization. The proposals were addressed to Foote Jr. for approval. In a November 9, 1906 letter, Foote Jr. dismissed a suggestion submitted by Schroeder for renaming the League "Friends of Free Inquiry." Foote Jr. responded: "Free inquiry is a good thing, but free speech means more, i.e. the right to free your mind after inquiry" (Schroeder, Box 7, Folder 4).

Both Schroeder and Roe discussed with Foote the vision they shared for extending the League's role in influencing federal and state legislation. Schroeder once discussed a "Lobby for Liberty" based in Washington,

D.C., that would allow him to lecture across the country. He told Roe that he and the doctor had explored new avenues of income for the League, including Schroeder's books (Schroeder, Box 8, Folder 3). Roe encouraged Foote Jr. in a November 1910 letter to incorporate an organization that would serve free-speech/free-press needs nationwide and to make Schroeder its chief administrator (Schroeder, Box 9, Folder 1). Whether or not Foote Jr. was influenced by these discussions, he incorporated the Free Speech League on April 7, 1911, hoping to perpetuate its efforts for the greater good of society (Schroeder, 1913, p. 18). The League described its purposes in a brochure in 1913:

. . . by all lawful means to oppose every form of governmental censorship over any method for the expression, communication, or transmission of ideas, whether by use of previous inhibition or subsequent punishment; and to promote such legislative enactments and constitutional amendments, state and national as will secure these ends.

Legislative Concerns

The legislative interests of Foote Jr. reflected his dedication to free speech and the field of medicine. He pursued individual cases through legislative channels. A fund-raising letter signed by Foote Jr. encouraged readers to support efforts in Congress to repeal federal immigration laws on which John Turner had been convicted for anarchist speech (Schroeder, Box 7, Folder 1). He also lobbied against a New York bill to regulate the medical profession in 1906, using "Office of Treasurer, Free Speech League" stationery (Schroeder, Box 9, Folder 3).

The League's legislative slate also included issues involving free speech and health. League representatives lobbied against the passage of a New York bill prohibiting the distribution of information on preventing and treating venereal diseases, and Schroeder produced a brochure for the campaign (Schroeder, undated, p. 1). Additionally, Schroeder petitioned the post office on behalf of the League to relax guidelines, particularly those by which "all scientific books upon the subject of sex are penalized and their circulation, even among physicians, is a matter of toleration in spite of the law." Postal officials replied that they had no such authority to make allowances (Schroeder, Box 7, Folder 2). Schroeder also corresponded with Dr. Joseph Lebenstein, who identified himself on letterhead as "the successor to Dr. E. B. Foote," about the League's offer to help doctors wanting to advertise their services to interpret applicable New York laws (Schroeder, Box 9, Folder 3).

Assessment of the League

Rabban has written that despite legal setbacks, the Free Speech League primarily succeeded in establishing the country's first organization with a principled commitment to free expression for all people, whatever their perspectives. Its vision of free speech as a personal right had been shaped from the suffering of libertarian radicals, such as sex reformers, anarchists, and labor activists. Because most Americans did not relate to either the radical views or the experience of having their speech suppressed, they were not receptive to the League's purposes and work (Rabban, 1997, p. 75–6).

With the onset of World War I, the Supreme Court changed the tone of free speech debate to the government's interest in the consequences of expression in wartime, which produced the clear and present danger test (Rabban, 1997, p. 344). Justice Oliver Wendell Holmes introduced the clear and present danger test in the 1919 *Schenck v. United States* decision to determine whether speech created a threat to national security, one of the "substantive evils that Congress has a right to prevent."³ Consequently, the emerging American Civil Liberties Union, led by Roger Baldwin, focused on political speech; Baldwin first turned to the League's Schroeder and Roe for advice on free-speech issues (Rabban, 1997, p. 307). Schroeder declined to participate in the new group, finding no room for his own libertarian radical views (Walker, 1999, p. 22). His interests shifted to psychology, and without his guidance, the League gradually lost its position as defender of personal rights (Rabban, 1997, p. 309).

The correspondence cited earlier among Foote Jr., Schroeder, and Roe indicated that the Free Speech League never raised the money to take on all the battles to which they aspired as lobbyists across the country. The League's support of radical clients, such as anarchists and birth control advocates, met with considerable resistance in the courts, still unreceptive to free-speech claims, and they won few cases. Widespread public support never materialized (Rabban, 1997, p. 75).

SUMMARY

After struggling with legal problems against Comstock and the post office, the two doctors Foote became involved in three organizations that supported victims of Comstock prosecutions: the National Liberal League, the National Defense Association, and the Free Speech League.

For support, they looked no further than the National Liberal League and the free-thought community in which they were already active. Liberals were already fretting over the consequences of the Comstock Act for Foote Sr., although they were deeply divided over whether or not to support the

laws, whether to seek repeal or modification of the laws, and whether to defend all those prosecuted, even the proponents of free love. The conflict among League members ultimately led to its demise, with the most radical members forming the National Defense Association. Foote Sr.'s prosecution became an impetus for the Liberal League's activities, and Foote Jr. was a key presenter of the protest petition to Congress. The Footes bickered for several years with Comstock over what was said in the hearing before the House Committee on the Revision of Laws, each side claiming to have been misrepresented.

Mounting prosecutions necessitated the formation of another organization more concentrated on the anti-Comstock endeavors. Leaguers created the National Defense Association, the only group focused exclusively on dealing with the problems over the obscenity legislation. In 1878, Foote Jr. became a founding member and secretary of the organization; his father held meetings in their home and published the constitutional arguments against the Comstock Laws by lawyer Thaddeus Wakeman.

Both men edited *Dr. Foote's Health Monthly*, which reported the Defense Association's lobbying, fund-raising, and defense activities. Through the magazine, the Footes coordinated another petition drive for repealing the Comstock Laws. In "The Outlook" section, the anti-Comstock movement found a written voice through its vivid language and its survey of obscenity-related and medical legislation across the country.

At the turn of the century, the Free Speech League broadened the horizons for free speech beyond the Comstock prosecutions to defending anarchists, socialists, and other radicals. Founded by Foote Jr. in 1902, the League became the first group to advocate free-speech rights for all Americans and thereby worked on behalf of social radicals on Comstock-related issues as well as proponents of anarchism and socialism. As treasurer Foote Jr. established funds that helped keep it operating, even after his death in 1912. League members brought to Foote Jr. their visions for expanding the League to better serve national free-speech needs and to exert more influence over federal and state legislation. Foote Jr. incorporated the League in 1911.

As practicing physicians, the Footes devoted much time to seeing patients, writing medical books, and editing a magazine. Therefore, they may have accepted low-key responsibilities instead of highly visible roles, often held by lawyers, in the National Defense Association and Free Speech League.

Their monetary contributions to the organizations working for free speech cannot be fully documented. Only indirect evidence of their gifts exists, such as the reports of the Defense Association funds and the Free

Speech League documents in the Schroeder papers. Yet evidence shows that both groups languished in need of money, a seeming contradiction to previous statements about the Footes being the primary backers. They possibly intended their funds as seed money, but matching gifts never appeared.

Although behind the scenes the Footes loomed large inside the organizations, they may have been overshadowed in the public eye by Robert Ingersoll of the National Liberal League, Theodore Schroeder of the Free Speech League, and Anthony Comstock himself as the nemesis of the National Defense Association.

Chapter Five

Personal Involvement in Free-Speech Cases

Superlatives commonly characterized descriptions of the Footes' altruism. A personal correspondent told E. B. Foote Sr. that she had seen his name on every list of donors to charitable causes in free-thought newspapers (Schroeder, Box 6, Folder 1). The *Truth Seeker* once stated that it was impossible to count the recipients of E. B. Foote Jr.'s unequaled generosity (Schroeder, 1913, p. 82).

While it might be true that neither the list of contributions nor the names of recipients can be re-created, the statements bear witness of the impact the Footes made on individual lives. Just as formidable as tallying the contributions and names is finding the wide array of sources it takes to tell the stories behind the contributions and names. The sources are as diverse as the cases of Comstock defendants themselves and the variety of ways the Footes came to their aid. References range from studies of the free-thought and free-love movements, 19th Century histories, biographies of Comstock and those he prosecuted, to personal documents, scarcely available periodicals, and museum collections.

Therefore, this chapter will use the evidence that remains to document the Footes' involvement, to varying degrees, in free-speech cases and the private lives of free-speech defendants. Each of the individuals included enjoyed a relationship with at least one of the Footes, more than merely being mentioned in *Dr. Foote's Health Monthly*. The personal accounts are grouped to provide context about the people involved. The cases in which Foote Sr. participated are presented first, followed by those in which Foote Jr. was involved and a few in which both Footes took part.

Background

During the 19th Century, church-based philanthropy gave way to more public forms of giving for the benefit of society. The industrial boom

produced a crop of postbellum benefactors who endowed causes of their own choice rather than turning over money to churches for distribution; many preferred educational and scientific endeavors along with the arts, museums, and other public institutes (Bremner, 1960, pp. 89–90). The *New York Tribune* estimated there were 4,097 millionaires in the country by the early 1890s, and levels of philanthropy varied greatly among cities (Bremner, 1960, p. 109).

A few of these millionaire giants of industry in particular cast a long shadow over philanthropy and inspired others. Andrew Carnegie proposed ways to reconcile the “temporary unequal distribution of wealth” for the public good in a *North Atlantic Monthly* article considered the best-known document in the history of American philanthropy (Bremner, 1960, pp. 105–7). John D. Rockefeller strictly followed the Christian Bible’s injunction of tithing a minimum 10 percent of his income (Bremner, 1960, p. 111). Both Carnegie and Rockefeller set standards for donations and established foundations that long survived them, Carnegie in libraries and Rockefeller in higher education. Yet amid the flurry of giving, another magazine article written by an Ohio minister warned of a murky undercurrent. In “Tainted Money,” he questioned the motives behind the public donations of “robber barons,” although he mentioned none by name. He believed recipients of the generosity should ask, “Is this clean money?” (Bremner, 1960, pp. 112–3).

Other tycoons made indelible impressions in Victorian social reform circles. Cornelius Vanderbilt set up reformer Victoria Woodhull and her sister, Tennessee Claflin, in a Wall Street brokerage firm that brought them notoriety and high visibility. Industrialist Samuel Colgate and financier J. P. Morgan sponsored the Young Men’s Christian Association to provide housing and recreational activities for urban children most in need of moral guidance as a means of preventing poverty. They also backed Comstock in his pursuit of obscene materials (Bates, 1995, pp. 89–90).

Foote’s Philanthropy

Also in New York City, Foote Sr. demonstrated his commitment to free speech in the directives he left for his sons, Foote Jr. and his younger brother, Hubert. In a document attached to his will, he advised them to “give generously from the proceeds of my estate to all good movements for the maintenance of free press, free speech, and free mails” along with other causes that benefited mankind (Wakeman, 1997, p. 45).

Following his father’s last wishes may have established for Foote Jr. the reputation as a humanitarian that was noted in his obituary in an American Medical Association directory (AMA, 1993, p. 1555). In Foote Jr.’s will, he

left donations to the Free Speech League and at least 20 charitable organizations that Theodore Schroeder listed in a booklet paying tribute to the late doctor. Foote Jr. also endowed free-thought organizations and groups that promoted women's suffrage, historical preservation, prison reform, children's rights, and health-related issues (Schroeder, 1913, p. 19–20).

FOOTE SR.'S PERSONAL INVOLVEMENT IN CASES

The prosecution of Foote Sr. on obscenity charges in 1876 had compelled his colleagues in the National Liberal League to take a stand against the Comstock Laws. In turn, Foote Sr. and his business would survive to help other freethinkers in the first generation of Comstock defendants less capable of defending themselves in court. His arrest was closely followed by those of Ezra Heywood and D. M. Bennett, two of the best known clients of the National Defense Association who were frequently mentioned in Comstock biographies, free-thought histories, and contemporary publications, including *Dr. Foote's Health Monthly*. He offered what he had: money, magazine space, and status as a physician.

Ezra Heywood

Heywood, noted proponent of free love, worked as a Boston pamphleteer and editor of *The Word*, a combined free-thought/anarchist/free-love journal of the New England Free Love League. He was arrested in 1877 for publishing *Cupid's Yokes, or The Binding Forces of Conjugal Life*, which Comstock declared too foul for words. Foote Sr. presented Heywood's ordeal as "a case in the field of sociology" in his 1881 *Fable of the Spider and the Bees* pamphlet. The fable warned readers of the immediate dangers imposed by the Comstock Laws on freedom of the press, particularly for literature on sex education. Foote Sr. depicted Comstock as a venomous spider who cast a dangerous web over an insect community and portrayed lawmakers as bumblebees who did not care about the damage created by the spider's web. Foote Sr. believed that Heywood's criticism of the institution of marriage may have shocked Comstock, but the ideas had been voiced by philosophers throughout history (Foote Sr., 1881, pp. 14–5).

Martin Blatt, Heywood's biographer, wrote that the free-love leader had been inspired to write his legendary *Cupid's Yokes* by Comstock's prosecution of Foote Sr. (Blatt, 1989, p. 110). He wanted to add to the body of establishment-shaking ideas his own criticism of existing marital and gender relations while reiterating Foote's points that women should be able to control their bodies and reproductive capacity. However, not all freethinkers agreed; some, including lecturer Robert Ingersoll, considered

Heywood's notions about free love unworthy of support because conventional marriage should be protected as the bedrock of society (Blatt, 1989, p. 127).

Nonetheless, the Footes firmly believed the concepts of free love deserved to be discussed along with other sex-related topics. *Cupid's Yokes*, according to Foote Sr., could not reasonably be considered obscene because young readers "unless given to dry, philosophic or scientific study, would not be likely to proceed for more than a page or two without throwing it down as devoid of interest" (Blatt, 1989, p. 117).

Despite the Footes' support, Heywood was convicted in 1878¹ and sentenced to 2 years of hard labor in Boston's Dedham Jail. Members of the newly organized National Defense Association gathered in the Foote home in New York City to explore options for action. They presented a petition signed by 6,000 people demanding Heywood's release to President Rutherford B. Hayes, who pardoned him 6 months into his term; Hayes later was criticized (Rabban, 1997, p. 41; Sears, 1977, p. 170).

The Footes continued to support Heywood over the years. The *Health Monthly* established defense funds to raise money, and the National Defense Association represented him when the sexual content of *The Word* landed Heywood in court a few more times and in prison again ("Further suppression," 1890). Each time *Dr. Foote's Health Monthly* reported the details. Foote Sr., representing the Defense Association, became one of the few people allowed to visit Heywood in jail ("A visit," 1890). When Heywood died in 1893, a letter of tribute written by Foote Sr. was read at the funeral. Although the letter was not printed in the *Health Monthly*, an editorial revered Heywood for his uncompromising stands on reform issues and blamed Comstock's pursuit of Heywood for shortening his life. The article called Comstock a "sore-eared cur" and Heywood "a clean, clear-eyed, majestic mastiff" ("He is beyond," 1893).

Heywood's wife, the former Angela Tilton, worked alongside Ezra in publishing *The Word*. What set her apart was the "plain speech policy" she incorporated into the publication and her public speeches. Eschewing euphemisms in sexual matters, Angela drew fire for calling sexual organs by their proper names. *Dr. Foote's Health Monthly*, as quoted in an article on Angela Heywood, raised the issue of whether authorities allowed the husband to take the fall for the wife, adding: "the authorities had not the courage to deal directly with her" (McElroy, 2001, p. 29).

DeRobigne Mortimer "D. M." Bennett

Just as infamous as the Heywoods were, D. M. Bennett was highly respected among freethinkers. However, Bennett brought Heywood's *Cupid's Yokes*

to the forefront of Comstock's attention again by distributing it, and he too faced charges in 1878. Earlier, Bennett had been arrested for a tract he wrote that challenged conventional Christian thought, titled *An Open Letter to Jesus Christ*. His friend, E. B. Foote Sr., posted Bennett's bail of \$1,500 (Sears, 1977, p. 167), and the case was eventually dismissed. A free-thought historian has alleged that Comstock associates set a trap for Bennett, asking him to sell a copy of *Cupid's Yokes* (Stein, 1885, pp. 54–5). When he was arrested again, Foote Sr. posted bail, but the amount is unknown (Macdonald, 1929, pp. 191–2).

Bennett and Foote Sr. shared interests and friendship. Both worked in the health field. Bennett had worked as a physician in a Shaker community (Bradford, 2006, p. 34) and as a pharmacist before establishing the *Truth Seeker* free-thought journal in Paris, Illinois, in 1873, the same year that Congress passed the first Comstock Laws. Bennett immediately spearheaded the petition drive for repealing the laws within the National Liberal League. Foote Sr. donated money to the start-up of the *Truth Seeker* (Putnam, 1894, p. 728).

It was Bennett's first arrest that Foote Sr. outlined in *A Fable of the Spider and the Bees*, referring to it as a "case in the field of theology." Foote Sr. praised Bennett: "He might be persecuted into a conspicuous martyr, but no amount of persecution and imprisonment would ever stamp on his honest brow the brand of a criminal" (Foote Sr., 1881, pp. 13–4).

The National Defense Association lobbied for Bennett's release after his conviction in 1879. President Hayes had been disparaged for pardoning Heywood but was on the verge of doing the same for Bennett when Comstock provided what he considered evidence that Bennett had committed adultery. Although unrelated, the charge was enough to keep Bennett in an Albany prison a year on the obscenity conviction despite Robert Ingersoll's requests for lighter treatment. Foote Sr. corresponded with Bennett in prison, enclosing money and supplies (Horowitz, 2002, p. 435). Both Footes planned an elaborate reception for Bennett upon his release (Macdonald, 1929, p. 275), and the older doctor escorted him home (Putnam, 1894, p. 729).

With his health weakened while in prison, Bennett died in 1882 with Foote Sr. at his bedside ("Valiant comrade," 1883). Controversy followed Bennett to the grave. The trustees of Greenwood Cemetery in Brooklyn, New York, prohibited an inscription planned for the tombstone; it would have lauded Bennett as a martyr for liberty. As part of a monument committee, Foote Sr. refused to lay his friend and colleague to rest without the proper tribute. He joined in the purchase of a site for the monument just outside the cemetery where it was engraved as originally intended

(Wakeman, 1906, p. 53–4). The *Health Monthly* helped raise the funds (“Bennett,” 1883).

Dr. Sara Chase

Dr. Chase was portrayed in Foote Sr.’s *Fable of the Spider and the Bees* as educated, refined, and undeserving of her arrest in 1878 for selling a single syringe, commonly used for contraception (Foote Sr., 1881, p. 16). A homeopathic physician, Chase lectured on sex-related topics and afterward sold items used to prevent conception (Tone, 2001, pp. 32–3) to small-town audiences (D’Emilio & Freedman, 1988, p. 60).

According to Foote Sr.’s account, Comstock took the case to three grand juries before an indictment was returned (Foote Sr., 1881, p. 16). The charges were later dismissed, but Chase turned the tables on Comstock. Between his attempts to indict her, she filed a complaint against Comstock for false arrest. For a few hours, Comstock sat in jail until supporters bailed him out; the district attorney eventually dropped the charges (Bates, 1995, p. 168).

The Footes and Chase shared more than an interest in birth control and a disdain for Comstock. About the same time that the post office pulled the second-class mailing permit of *Dr. Foote’s Health Monthly*. Chase’s publication, *The Physiologist*, was excluded from the mail altogether for its sexual content (“Despotic censorship,” 1881). Decrying injustice, the Footes stated: “Again, we repeat, bear in mind we are on American and not on Russian soil” (“Despotic censorship,” 1881). The *Health Monthly* reported the incident and opened a defense fund for Chase. In a letter expressing gratitude for donations, she accused Comstock of trying to ruin her magazine because he had failed to build a case against her (“Chase fund,” 1881).

Subsequently, Chase was convicted of second-degree manslaughter when a patient died after a botched abortion in 1893. Upon her release from prison, she resumed a medical practice focused on birth control. Comstock arrested Chase again for selling a syringe in 1900, but a jury acquitted her (Bates, 1995, p. 168).

Charles Reynolds

Foote Sr. offered financial assistance when lecturer and freethinker Charles Reynolds was convicted of blasphemy. Deeply grounded in the Christian faith, Comstock viewed the expression of non-Christian views as blasphemy, which set up his public disputes with the National Liberal League. He was offended by freethinkers who publicly aired or published agnostic and atheistic ideas. Comstock called them “infidels” and “some of the basest

men of the 19th Century” in his 1880 book reprinted in 1969 (p. 444). He prosecuted some of them, such as Reynolds, for obscenity.

A former minister turned agnostic speaker, Reynolds faced blasphemy charges in New Jersey in July of 1886. After he started a lecture in the conservative town of Boonton, New Jersey, a group of citizens offended at Reynolds’ agnosticism, stoned his tent and silenced him. They also objected to the literature Reynolds distributed attacking scripture and Christian doctrine (Warren, 1966, p. 181).

In reporting the New Jersey incident, *Dr. Foote’s Health Monthly* concluded, “Our friends of Boonton have made a mistake. This freedom of speech must be preserved or all progress is at an end.” The editorial called on the courts to require the townspeople to replace the tent and thereby contribute to Reynolds’ future success (“Liberty,” 1886). Those who destroyed his tent paid no penalty, and a jury convicted Reynolds for the thoughts expressed in his brochure (“Reynolds’ case,” 1887). Fellow liberal lecturer Robert Ingersoll, also an attorney, donated his legal services for Reynolds’ defense, and his eloquent address to the jury was eventually published and widely distributed in the free-thought community (Warren, 1966, p. 182).

Reynolds was convicted, and Ingersoll paid the \$25 fine. Foote Sr. also stepped in to pay the fine; his money was used to defray other costs (Wakeman, 1906, p. 54). In a letter published in a free-thought periodical, Reynolds praised both Footes: “I very highly appreciate the generous donation, by Dr. E. B. Foote and son, of the entire amount of the fine. But it is just like them—genuine Liberals—the study and happiness of their lives is the alleviation of human suffering and the promotion of liberty” (“Blasphemy,” 1986).

Elmina Slenker

“Aunt Elmina” was actually the pen name of a former Quaker reformer, Elizabeth Drake, who was in her 60s when arrested. Active in the free-thought, spiritualist, free-love (Kirkley, 2002, p. 17), and temperance (Passet, 2003, p. 148) movements, Slenker regularly wrote columns on sexual matters for *Dr. Foote’s Health Monthly*, *Lucifer*, *the Light Bearer*, similar publications, and her own brochures (“American Inquisition,” 1887). Yet when she was charged with obscenity, it was for material in private letters instead of publications.

It was Slenker who wrote the letter to Foote Sr. mentioned in the first paragraph of this chapter, having seen his name on many lists of donors to charitable causes. She thanked him for offering advice during her court battle and shared the pain of being called a “human hyena” by

those unsympathetic to her work. She wanted to let the world know that "Aunt Elmina" counted among her friends such "great men" as Foote Sr. (Schroeder, Box 6, Folder 1).

Slenker served as the center of a correspondence circle, the purpose of which has been described variably as a discussion group who debated sex-related issues (Sears, 1977, pp. 217–9), a matchmaking service (Passet, 2003, p. 159), and a survey of sexual practices similar to the work of Alfred Kinsey in the 1940s and '50s (Stein, 1985, p. 9). One of the letters fell into the hands of a Comstock agent. The Footes made the first donations to a defense fund established for her ("Aunt Elmina's," 1887), and the *Health Monthly's* account of Slenker's ordeal described her as plain in appearance and speech. She earnestly studied human sexuality and straightforwardly talked about it. The Footes wrote that they could understand that other people might mistake her lack of refinement for vulgarity. Nonetheless, the purity of her intentions precluded obscenity. The National Defense Association eventually persuaded a Virginia court to dismiss the charges after she had spent a year in jail ("American Inquisition," 1887).

Lois Waisbrooker

Lois Waisbrooker, born Adeline Nichols, edited a journal called *Foundation Principles* for which she wrote the articles, set the type, and operating a small press (Passet 2003, pp. 113, 117). Her arrest under the Comstock Laws stemmed from a letter she printed that had been written by a lawyer who detailed his unsatisfying home life and extramarital affairs. In reply Waisbrooker advised him to divorce his wife, still a scandalous idea at the time, and then marry the woman he truly loved. She objected to maintaining the marriage just for the sake of public respectability while the husband, his wife, and his mistress were all unhappy, the *Health Monthly* stated. Its 1894 articles headlined "John Brown's Soul Marching On" and "Bleeding Kansas" compared Waisbrooker's spirit with that of the hanged abolitionist and the turbulent 1850s battles between forces that favored and opposed slavery in the Kansas-Nebraska Territory. When she was prosecuted in Topeka, Kansas, Foote Jr. wrote: "There is a John Brownian flavor to that which ought to rouse the courage of even frail women and bring recruits flocking to her aid" ("John Brown's," 1894).

The Footes befriended Waisbrooker, who had woven a colorful tapestry through the abolitionist, feminist, spiritualist, and free-love communities in nearly 70 years (Passet, 2003, p. 119). An educator of former African-American slaves, she was called the "she Abe Lincoln" for her power to move an audience on the lectern (Braude, 1989, p. 133). She also temporarily edited *Lucifer, the Light Bearer* and wrote novels. Married

three times, she was labeled a “man-hater” for efforts to free women from cultural and legal bonds and for statements such as: “Women prostitute their bodies daily to the abuse of legal brutes, called husbands” (Braude, 1989, pp. 122–3).

According to *Dr. Foote’s Health Monthly*, there was nothing obscene about Waisbrooker’s response to the lawyer’s letter, but some readers might consider his behavior immoral. Had the *Health Monthly* reprinted the letter’s content, postal officials probably would have suppressed the publication before it reached subscribers, they speculated (“John Brown’s,” 1894). Foote Sr. wrote to the U.S. attorney general on Waisbrooker’s behalf, saying, “[S]he will defend to the last inch her rights as a citizen to publicly discuss matters of sexual abuse and reform.” The charges were eventually dropped (Passet, 2003, p. 120).

However, Waisbrooker faced obscenity charges again in 1902. Living near Tacoma, Washington, she launched a newsletter for nudists called *Clothed with the Sun*, which also displayed her reformist views (Braude, 1989, p. 133). An article headlined “The Awful Fate of Fallen Women” caught the eye of a Comstock agent. Waisbrooker and the local postmistress (“Home prosecutions,” 1902) were convicted. Waisbrooker was fined \$100 (Passet, 2003, p. 121), and the post office closed soon thereafter.

FOOTE JR.’S PERSONAL INVOLVEMENT IN CASES

Following in his father’s footsteps, Foote Jr. took on many challenges inherent in free-speech cases, often fronting for either the National Defense Association or the Free Speech League.

John B. Wise

Foote Jr. managed an obscenity case in Kansas, that of John B. Wise, that involved a curious phenomenon among Comstock prosecutions: controversial passages of the Bible ruled obscene when sent through the mail. Cases, such as Wise’s, placed Comstock and the courts in the precarious situation of declaring the Christian church’s sacred book obscene, and freethinkers enjoyed watching them struggle with the issue (Sears, 1977, p. 107).

Wise, of Clay Center, Kansas, was charged with mailing obscene literature after he and a minister exchanged postcards in efforts to convert the other, according to *Dr. Foote’s Health Monthly*. Apparently, the minister was offended when Wise quoted on one of the cards a passage from the Old Testament book of Isaiah² and took it to a U.S. District Attorney (“Death knoll,” 1894). The National Defense Association intervened, and Foote Jr. served as the Wise case manager. He raised funds among readers

of *the Truth Seeker* and the *Health Monthly* and also hired an attorney. Convicted, Wise was fined \$50 ("Bleeding Kansas," 1894; Warren, 1966, pp. 182–3; Macdonald, 1931, p. 82).

Foote Jr. would later raise the issue of biblical passages being declared obscene with Free Speech League attorney Theodore Schroeder. In 1909, Foote Jr. asked whether pointing out to government officials that courts had ruled the Bible was obscene would help him argue against postal censorship. Schroeder advised against it and thought demonstrating peculiarities in how the Comstock Laws had been enforced was not likely to make postal officials any more consistent in their rulings. The correspondence initiated by Foote Jr. can still be found in Schroeder's personal papers at Southern Illinois (Box 9, Folder 1).

In his 1911 book "*Obscene Literature and Constitutional Law*," Schroeder used the Wise case to make a point about the ambiguity of the Hicklin rule, the test for obscenity commonly applied in courts of the time; it specified that an entire work was obscene if any part of it was found to be so. Had juries such as the one in the Wise case followed suit, the entire Bible would have been ruled obscene. While Schroeder did not want to see such a ruling with the Bible, he did want others to recognize the subjective nature of how the Hicklin rule was being applied; it left laws open to the interpretation of judges and juries who didn't see the contradictions (Schroeder, 1911, pp. 65, 309–11).

FOOTE JR. AND SEX EDUCATION

Second only to birth control, educating the public about sex as an integral part of life held a high priority for both Footes. The younger doctor made early efforts to add sex education to the curriculum of public schools in New York City (AMA, p. 1555).

Ida Craddock

The younger Foote extended a helping hand to sex educator Ida Craddock, one of the most tragic figures among Comstock's prosecutions. Plagued by charges of insanity and weary from her legal battles, the 45-year-old Craddock committed suicide in 1902 rather than serve another prison term for violating obscenity laws. Heavily criticized after her death, Comstock felt public sentiment turning away from him (Bates, 1995, p. 2; Broun & Leech, 1927, p. 231). Craddock had offered lectures, personal counseling, and pamphlets, the latter of which plunged her into conflict with Comstock. It was her brochure called *The Wedding Night*, intended to prepare Victorian honeymooners for sexual

intercourse that Comstock considered “indescribably obscene” (Broun & Leech, 1927, p. 228).

While Craddock served a three-month sentence for violating New York obscenity laws, Foote Jr. offered material and moral support, details of which are found in Craddock’s personal papers at Southern Illinois University. The documents were assembled after her death by Theodore Schroeder, who edited and published some of her other manuscripts. The collection includes several letters that Craddock wrote to Foote Jr. along with other materials that describe his involvement in her personal and legal matters, but no letters that Foote Jr. wrote are included. Craddock’s correspondence with Foote Jr. and her attorney, Hugh Pentecost, contains poignant accounts of the hardships of prison life and insights into the defense strategy for her court battle found nowhere else.

Initial Encounters

Craddock came to the attention of both Foote Jr. and Comstock in 1893 in Chicago, where she had set up an office. At the World’s Fair, she enjoyed a belly-dancing demonstration, called the *Danse du Ventre*, or dance of the abdomen, which Comstock tried to shut down. Craddock defended the dance as an ancient Oriental art form in an essay published by the *New York World*, and she circulated copies of it, only to find it suppressed by the post office (Stoehr, 1979, pp. 63–4). In a letter to a New York lawyer, Craddock wrote that renowned defense attorney Clarence Darrow had cleared up her legal problems in Chicago (Craddock collection, Box 1, Folder 1).

However, the Footes in their *Health Monthly* applauded her controversial essay, admiring Craddock’s unique perspective. They quoted her work describing the dance as a “religious memorial of a worship which existed thousands of years ago all over the world and which taught self-control and purity of life as they have never been taught since.” She added, “We have lost something and that something is the clean-minded consideration of the human form divine, and the recognition of sex as the chief educator of the human race in things material and things spiritual” (“On the scent,” 1893).

Craddock responded with a note of appreciation to Foote Jr., found among her papers. She also inquired about lecturing to the Manhattan Liberal Club, a local affiliate of the National Liberal League, renamed the American Secular Union (Craddock collection, Box 1, Folder 1). Craddock previously served as secretary to the Secular Union and found support among freethinkers. Later during her legal struggles in New York, the *Truth Seeker* free-thought publication sponsored a defense fund on her behalf (Stoehr, 1979, p. 67). She drew other organizational

assistance from the Free Speech League, which sponsored a dinner in her honor (Rabban, 1997, p. 64). Even after Craddock's death, Foote Jr. continued speaking on her behalf. Just a month afterward, he told the story of her prosecutions to the Manhattan Liberal League (Untitled, 1902, November).

After being prosecuted in Chicago, as well as Philadelphia and Washington (Bates, 1995, p. 190), Craddock felt "divinely led" to set up an office on Comstock's home turf in New York City (Stoehr, 1979, p. 64). Consequently, in March of 1902 she was convicted under New York's anti-obscenity law for mailing copies of *The Wedding Night*, and she served a three-month sentence in the spring of 1902 in the city workhouse. Upon her release from prison, she was convicted again on federal obscenity charges and drew a 5-year sentence in a federal facility, after refusing to use insanity as a defense. On the morning she was to start her term, she committed suicide (Bates, 1995, p.1).

Letters between Craddock and Foote Jr.

Many letters survive from the 3-month period of Craddock's jail term, from March to June of 1902. The correspondence tells of Foote Jr.'s attending to her personal needs, such as paying the rent on her office and supplementing her meager jail fare with treats such as fruit and crackers. It is not known whether the money he used in her case came from a defense fund raised from others or from his own pocket. She wrote that she considered the communication so important that she risked punishment to sneak an extra letter to Foote Jr. Had she been found out, she might have been banished to "the black cell," where prisoners languished "in foul air and among the cockroaches," living on bread and water only. Craddock enjoyed visits from the wife of Foote Jr. and planned to visit the couple's home when she was released (Craddock, Box 1, Folder 2).

Additionally, Foote Jr. heard from Craddock's mother, Lizzie Decker, seeking money for expenses related to maintaining her daughter's apartment in New York. Decker implored Foote Jr. to seek hospitalization for her daughter instead of imprisonment. "It was apparent that no woman in her right mind would publish such a work," she wrote of *The Wedding Night*. "I fail to see the wisdom of punishing the body, and degrade the spirit for a weakness of the brain" (Craddock, Box 1, Folders 1 and 2).

There is no indication that Decker's request affected Foote Jr.'s outlook on Craddock's case. He encouraged Craddock to trust her own judgment; she wrote to him: "I believe more and more that it will be as you once remarked to me: 'Mrs. Craddock, only yourself can save yourself.'" She broached the subject of changing attorneys before her next trial. Whoever was to defend

her, Craddock expressly did not want insanity used as a defense. She saw her case as establishing a landmark for prosecuted sex reformers:

He [the attorney] remarked that he thought it not worthwhile for me to go to prison and be martyred, all for nothing. . . . I said that somebody had to go first in such reform work, and I happened to be one of those who had to go ahead.

Liberals have never had a fair chance at our sex literature cases, because our lawyers have always been so apologetic for us, and have tried to make us out insane or to apologize for us in some other fashion. We have never had a chance to contest the issue on high ground, on the merits of the case. (Craddock, Box 1, Folder 2)

Along the way, Foote Jr. published *Comstock vs. Craddock* (1902), a pamphlet to solicit support and contributions. Foote Jr. chastised those who were “not entirely in sympathy” with her work.

They are only willing to stand for the rights of free press when the preachment is just what they think. They are willing to let anything be suppressed that does not fit their notions of what is right. While I am not able to say that everything that Mrs. Craddock says or does is *all right*, I do say that official or other interference is *all wrong*, entirely unnecessary, and of no advantage to public or private morals (p. 4).

Opposition, however, to Comstock mounted after Craddock died. A prominent clergyman, the Rev. W. S. Rainsford, addressed him publicly: “Mr. Comstock, I would not want to be in your shoes. You hounded an honest, not a bad, woman to her death. I would not like to account to God for what you have done.” Negative publicity generated by Craddock’s death adversely affected Comstock’s image, and his influence gradually dwindled (Bates, 1995, p. 191). In a letter left to the public and printed in a 1979 book, Craddock criticized her nemesis as a sex pervert “in whom the impulses of cruelty arise concurrently with the stirrings of sex emotion” (Stoehr, p. 311).

FOOTE JR. AND ANARCHISTS

Americans might have welcomed throngs of immigrants coming ashore, but they became suspicious of alien ideas such as Marxism and anarchism (Blanchard, 1987). A self-proclaimed anarchist assassinated President William McKinley in 1901. Rising fears led to numerous antianarchist laws on the national and state levels, and the U.S. Congress facilitated the prosecutions of

anarchists when it passed the Alien Immigration Act in 1903 (Rabban, 1977, p. 64). When the state of New York passed America's first criminal anarchy law in 1902, it defined the offense as "the doctrine that organized government should be overthrown by force or violence, or by assassination of the executive head or of any of the executive officials of government, or by any unlawful means" (Blanchard, 1992, p. 41).

Suspicions had been growing about anarchists since Chicago's Haymarket Affair in 1886. Anarchists involved in organizing laborers were holding a peaceful meeting in Haymarket Square when a bomb was thrown into a group of policemen, who opened fire on the crowd. Eight people were killed and 70 injured. No one ever discovered the source of the bomb, but eight of the anarchists were convicted, and eventually, four were hanged (Blanchard, 1992b, pp. 7–9).

Just as they did with many other contemporary issues, the Footes reported and commented on the Haymarket Affair in *Dr. Foote's Health Monthly*. At the time of the hanging in 1888, an editorial denounced the executions as a tragedy and an abuse of power. The Footes claimed no affiliation with anarchists but understood their frustration with a government that imposed what they saw as too many restrictions on individual freedoms ("Anarchism," 1886). Defending the Chicago anarchists' right to assemble and express their minds, the Footes wrote that the actions taken by the police, jury, and executioners made them martyrs for free speech ("Man's inhumanity," 1888).

When Foote Jr. founded the Free Speech League in 1902, the federal government and many states had enacted statutes against anarchist speech. Among the individuals that Foote Jr. met through the League's work were anarchists James Morton, John Turner, and Emma Goldman.

The Home Colony and James Morton

As one of the few anarchist communities already established at the time of McKinley's death, the Home Colony near Tacoma, Washington, became a target of government investigation. Newspapers with names such as the *Agitator*, the *Demonstrator*, and the *Discontent* were closely scrutinized for anarchist content and sexual content as well. Eventually, the Home post office was closed in April of 1902 (Sears, 1977, pp. 233–4).

Moses Harman with his free-thought/anarchist newspaper, *Lucifer, the Light Bearer*, took notice of the free-speech conflict in the Home Colony, and readers contributed to defense funds for residents being prosecuted ("Defense," 1902; "Home prosecutions," 1902). The Home cases factored into the establishment of the Free Speech League in 1902 by proving the need for legal assistance (Sears, 1977, p. 200).

One Home Colony publisher, James Morton, became an enthusiastic supporter for the Free Speech League. He joined the national free-speech efforts and solicited support for the group in a self-published brochure, “Do You Want Free Speech?” and in *Lucifer, the Light Bearer* (“The fight,” 1903). After Morton left Home, he wrote for free-thought publications, including the *Truth Seeker*.

When Morton was still publishing the *Demonstrator* in the Home Colony, Foote Jr. gave \$250 to Morton to buy a press, as Foote Jr. explained in a 1911 letter to Theodore Schroeder. But the press that Morton left back in Home stirred up controversy years later over which individuals or printing companies had the right to use it. The interested parties contacted Foote Jr. again to settle disputes over ownership and the purpose it was intended to serve. Foote Jr.’s response is unknown, but the memo to Schroeder and a letter from another Home publisher remain in the Schroeder collection (Schroeder, Box 9, Folder 3).

John Turner

An early court case defended by the Free Speech League exemplified the threats to free speech from antianarchist legislation. In 1903, the group accepted the case of John Turner, a British anarchist arrested while on a speaking tour in the United States (“Latest,” 1903). Eventually Turner’s expulsion from the United States was upheld by the Supreme Court; the Free Speech League financed his defense, led by attorneys Clarence Darrow and poet Edgar Lee Masters (Rabban, 1997, p. 65).

The Turner case provided a watershed moment for Foote Jr., according to Schroeder. By aggressively defending the right of free speech for an anarchist whose philosophy he radically opposed, Foote Jr. proved his mettle as a libertarian. With press accounts and government action vilifying anarchists, Foote risked his own respectability by aligning himself with such an unpopular cause (Schroeder, 1913, pp. 17–8).

Foote Jr. helped finance the defense and contributed to the support of Turner’s family while he was in prison (Schroeder, 1913, p. 17) and hosted in his home a meeting to plan the legal strategy and case-related activities (“Latest,” 1903). Free Speech League fliers signed by Foote Jr. encouraged readers to contribute to the Turner case and to support efforts in Congress to repeal the immigration laws on which Turner had been convicted (Schroeder, Box 7, Folder 1).

Emma Goldman

While the Free Speech League handled the Turner case, Foote Jr. first met anarchist and feminist Emma Goldman (Goldman, 1970, p. 348). The

League defended Goldman in court and provided financial backing on occasion (Rabban, 1997, pp. 64–5). By one count, Goldman was detained 40 times between 1894 and 1908 in connection with public speeches on anarchism; in some places, just making plans to speak was enough for police to hold her. Even though Goldman was never arrested for violence, she developed a reputation as a violent person (Schroeder, 1913, pp. 13–5). Her image was further marred when McKinley assassin Leon Czolgosz claimed that he had been motivated by a Goldman speech, even though she denied knowing him (Goldman, 1970, p. 296). Encouraging men not to register for the draft led to her expulsion from the United States in 1918 (Rabban, 1977, p. 65).

The Free Speech League came to Goldman's defense at times, but she also worked on the League's behalf. In her autobiography, Goldman exaggerated her role in establishing the Free Speech League (Rabban, 1997, p. 65), particularly in planning the John Turner defense. She likely organized chapters in cities other than New York where anarchist and socialist speech was under fire (Drinnon, 1961, p. 141).

Goldman also promoted birth control; in her autobiography, Goldman acknowledged both doctors Foote as trailblazers in the field (Goldman, 1934, p. 553). As part of the Free Speech League, she participated in discussions of Margaret Sanger's defense (Rabban, 1997, p. 69) and lectured in a mass meeting on birth control in 1916. Goldman had been eager to meet Foote Jr. because of his prominence in the free-thought community and offered her services as a nurse. Only after they met through League activities did he overcome his hesitance to employ "the dangerous Emma Goldman," she wrote (Goldman, 1970, pp. 348–9).

However, in a 1913 letter to Theodore Schroeder, the widow of Foote Jr. told a different story about Goldman. Mary Foote acknowledged that Goldman had been in their Lexington Avenue home but not for the crucial meetings held there in the Turner case. Neither Foote Jr. nor his wife knew that a nurse they had hired was in fact Goldman because she used another name, "Miss Smith," Mary Foote wrote, and she was fired for inadequately performing her nursing duties. Only later did the Footes learn her true identity (Schroeder, Box 11, Folder 1). Goldman worked as a nurse and midwife after earning diplomas in both fields in Vienna, Austria in 1896 (Drinnon, 1961, p. 65).

Goldman's mannerisms left an unfavorable impression on the Footes in other ways. Initially she had aggressively pursued Foote Jr.'s patronage, sending him generous numbers of tickets to her lectures and fund-raising events, Mary Foote told Schroeder. Finally, Foote Jr. was so offended by her bold advances that he asked to be removed from her mailing list. Therefore,

Mrs. Foote requested that Schroeder not name Goldman in the memorial booklet he was preparing as a tribute to her late husband. Despite the personality conflict, Foote Jr. would still have defended her right to free speech, his widow wrote (Schroeder, Box 11, Folder 1).

Whatever transpired between them, Goldman once characterized Foote Jr. as more than a liberal thinker. She wrote in her magazine, *Mother Earth*, that he was an avid proponent of free speech, even when he did not share the sentiments being expressed (Sears, 1977, p. 203). He most likely donated most of his earnings to charitable causes, she wrote (Sears, 1977, p. 203).

FOOTE JR.'S BEQUEST AND BIRTH CONTROL

No issue lay closer to the hearts of both doctors Foote than birth control, the matter that originally brought them into contact with Anthony Comstock.

Margaret Sanger

Although they never met Margaret Sanger, the Footes contributed to her work through financial support. In 1908, Foote Jr. arranged a secret fund with the Free Speech League, which Theodore Schroeder would administer. He specified as one of the conditions that the fund be used to assist “special friends” of the League, which would come to include Sanger. His provisions were spelled out in a letter found in the Schroeder collection (Box 8, Folder 3).

Sanger acknowledged benefiting from Foote Jr., but it was for his money instead of the contributions that he and his father made to the prevention of conception. In 1915, the Free Speech League offered Sanger and her husband legal advice and financial support after both Sangers were charged with obscenity for distributing birth control information. The Sanger case has been called Comstock’s “final crusade” by one of his biographers. Comstock died September 11, 1915, the day after William Sanger was convicted (Bates, 1995, p. 196).

Margaret Sanger had grown up in a home where free-thought lecturer Robert Ingersoll was revered. It was anarchist Emma Goldman who sparked her interest in advocating birth control (Gordon, 2002, pp. 142–3), and through Goldman Sanger met members of the Free Speech League. As early as 1912, Theodore Schroeder tried to discourage her from entering the birth control arena, warning that the public still would not support her, according to a free-thought newspaper (Cunningham, 1938, p. 1). Sanger traveled to France in 1913 to research contraceptive methods, apparently unaware of previous American discoveries, such as the Footes,’ in the 19th Century prior to the Comstock Act (Kennedy, 1971, p. 19).

Legal Problems Arise

Sanger first ran afoul of postal laws in 1913 while writing a column on controversial issues such as venereal disease for a New York-based socialist daily; the suppressed issues eventually were permitted to run (Gordon, 2002, p. 143). Not only did the subject matter of her articles violate the Comstock Act, but Sanger also appealed to readers to reinforce her efforts: "It is almost impossible for you to obtain this scientific knowledge unless SOMEONE defies these laws. Are you prepared to back up *The Woman Rebel* in this fight?" (Sanger, 1914, p. 9).

She had reserved the most explicit information for a pamphlet titled *Family Limitation*, which outlined the importance of birth control and gave graphic instructions on various contraceptive methods. With her trial postponed, Sanger fled the country but not before arranging for *Family Limitation* to be printed and distributed. She hoped to make time work in her favor and allow the public to adjust its attitudes toward birth control (Gordon, 2002, p. 150). In her autobiography, Sanger wrote that she had heard of a secret fund left by "a certain Dr. Foote" who had written a book on eugenics titled *Borning Better Babies*, and she contacted the Free Speech League for possible support (Sanger, 1938, p. 112).

The League donated a few hundred dollars to print 100,000 copies of her detailed pamphlet (Gordon, 2002, p. 150). League administrator Schroeder scolded League President Leonard Abbott, a magazine editor with anarchist leanings, for leaking the information to Sanger. Foote Jr. had wanted the fund kept secret to prevent such brash solicitation and to keep his wife from learning of the bequest, for unrevealed reasons (Schroeder, Box 11, Folder 4). Abbott stayed in touch with Sanger during the year she spent in England and sent her more money (Kennedy, 1971, p. 27), speculated to have been drawn from the Foote secret fund also (Rabban, 1997, p. 69).

William Sanger

Traveling under the alias "Bertha Watson," Sanger was out of the country and out of Comstock's reach when *Family Limitation* began circulating. Unable to catch Margaret Sanger, Comstock turned to her husband, William, an architect who stayed in New York with their three children. He was arrested in January of 1915 after falling for a decoy request from a Comstock agent and giving out a single copy of *Family Limitation*. Comstock bargained with him for a suspended sentence if he gave up the whereabouts of his wife in Europe, where Comstock wanted to track her down (Eastman, 1915, pp. 6–8).

Nonetheless, William Sanger fought the charges against him, hoping to keep public attention focused on his wife's battle for birth control.

Despite legal assistance from the Free Speech League, he was convicted. Given the choice of a \$150 fine or an 80-day jail term, he chose the latter and served 30 days (Bates, 1995, p. 200).

Return for Trial

By the time she returned to the United States in October of 1915, Margaret Sanger found a more receptive audience when she headed to court. She was willing to break the Comstock Laws in order to get birth control into the hands of women who needed it. Several well-publicized speaking engagements worked in her favor. Public sympathy and the media turned toward her side, especially after her 5-year old daughter died of pneumonia during the trial. With Comstock no longer leading the charge, the U.S. Attorney's office was less willing to risk a spectacular trial that would make Sanger a martyr. The charges were dropped in February of 1916 (Kennedy, 1971, p. 80).

For years to come, Margaret Sanger continued to challenge the Comstock Laws and promote contraception. She opened the first birth control clinic in Brooklyn in 1916 and organized the American Birth Control League, which gradually built a network of clinics across the country. The Free Speech League helped boost public acceptance; both Sanger and Emma Goldman lectured in a mass meeting on birth control in 1916, sponsored by the League (Goldman, 1934, p. 569). Sanger's persistent drive eventually led to the development of the birth control pill by Dr. Gregory Pincus in 1959 (Kennedy, 1971, Preface).

COMBINED EFFORTS OF FOOTE SR. AND FOOTE JR.

Both doctors Foote are known to have been closely involved in the work and defense of a controversial editor and his publication.

Moses Harman and Lucifer, the Light Bearer

Moses Harman became a lightning rod for Comstock-era prosecutions, and both Footes came to his rescue. Harman's devotion to equal rights for women allowed for free love as well as birth control. His refusal to edit letters to the editor meant many of Victorian America's taboo words and ideas about sex were printed in his newspaper, *Lucifer, the Light Bearer*, and they landed him in court. His sympathies toward free-thought and anarchist politics also made him no friends among postal officials. Harman took a civil-disobedience approach to obscenity laws, publishing delicate subjects while fully aware that he could be wind up in jail (McElroy, 1996, p. 2).

The Footes, with the National Defense Association, became involved when Harman was first prosecuted in Kansas, where he started publishing.

Foote Jr., in an 1890 fund-raising pamphlet, explained that Harman's legal problems centered on four letters containing explicit sexual language printed in *Lucifer*, two of which remained in the final indictment. One of them, known as the "Markland letter," described a husband forcing sex upon his wife while she recovered from an operation. The other letter advocated *Alphaism*, the belief that marital intercourse should serve procreative purposes only, while denigrating birth control. Harman's trial was disgraceful, Foote Jr. wrote, with the defendant being granted only incompetent counsel who claimed that Harman was insane (1890, pp. 11–2).

Kansas courts tried and convicted Harman in 1889 and 1891.³ Various technicalities kept him out of prison, with the exception of a 1-year sentence. Afterward, Harman moved *Lucifer* to Chicago and continued defying the Comstock laws, even to the point of reprinting the Markland letter. His last conviction and imprisonment came in 1906 when he, at age 75, spent a year at hard labor, sometimes breaking rocks for 8 hours a day in the snow around the prison at Joliet, Illinois (McElroy, 1982, p. 15). Integral in the development of the Free Speech League, Harman enlisted the aid of the League with a bevy of legal challenges. After much conflict over *Lucifer's* sexual content, the Chicago post office regularly reviewed the weekly newspaper before it was mailed ("Methods," 1904), and editions were suppressed several times. When *Lucifer's* second-class mailing permit was cancelled, the Footes offered medical books at half the original price to readers who paid their subscriptions to *Lucifer* in full ("Censor," 1903). In 1905, Harman was prosecuted again of mailing obscene material, and the League hired Clarence Darrow to represent him ("Methods," 1904). On occasion, letters from officers of the Free Speech League appeared on *Lucifer's* pages describing the legal situations in which Harman was embroiled and appealing for donations to defense funds ("Shall," 1905). The League provided a form used by Harman's supporters to petition President Theodore Roosevelt for his release (Schroeder, Box 70, Folder 8).

Support from the Footes

Both Footes supported Harman and *Lucifer, the Light Bearer* (Sears, 1977, p. 111, 116). Foote Sr. provided "no small amount" of financial aid to Harman (Putnam, 1894, p. 730). Edwin C. Walker, former *Lucifer* codefendant until he resigned as coeditor, once wrote that Harman's struggles would have destroyed him had Foote Jr. not offered generous assistance, although he provided no detail (Schroeder, 1913, p. 49).

Both Footes reported sending contributions to Harman, inviting readers of *the Health Monthly* to do likewise ("Great wrong," 1886), and they opened a defense fund for him ("Harman & Walker," 1887). Harman and his

daughter Lillian thanked the doctors for sending money and donated books that the Harmans used to raise funds, as indicated in letters found among Schroeder's papers (Schroeder, Box 6, Folder 1).

The Footes became veritable silent partners in *Lucifer*, especially after *Dr. Foote's Health Monthly* ceased publication, Lillian Harman wrote (Schroeder, 1913, p. 62). In the *Monthly's* farewell editorial in 1896, the Footes named *Lucifer* as one of the publications that would carry on their social concerns, particularly in the area of expanding women's sexual rights, including birth control ("Good-bye," 1896). Both Footes maintained a presence in *Lucifer*. The father was profiled on the front page of one issue (Untitled, 1885) and quoted in medical articles ("Supposed prenatal," 1905). The son's activities with the Free Speech League were frequently mentioned ("Various," 1902; "Latest," 1903; "What does," 1902).

Inside the pages of *Dr. Foote's Health Monthly*, Harman was regarded as a martyr for freedom of the press as readers were regularly updated on his plight in court. As a crusader for equality, Harman worked to protect the lives of women against the brutality they faced at times from husbands in marital rape and from a society that made it legal ("Making history," 1887).

The Footes hailed Harman as being braver than they were for printing the explicit language used in a doctor's letter to *Lucifer* that discussed cases of marital rape. The editors of the *Health Monthly* believed that Harman's use of the doctor's vivid wording ultimately contributed more to open discussions of sexual matters than edited versions more palatable to readers ("Again arrested," 1890). Yet, there is no evidence that the Footes followed suit in their own publication.

Foote Jr. labeled Harman a hero and likened his stands on women's rights to those of abolitionist William Lloyd Garrison on slavery. In a letter first printed in a feminist newspaper and reprinted in *Lucifer*, he wrote:

Garrison was in earnest, would not retreat, [and] would be heard. Harman is made of just that stuff; and we hope for a final parallel case that fifty years hence Harman's assault on the evils of marital slavery will be as much appreciated as is today Garrison's on black slavery. ("Alternating," 1906)

Lillian Harman and Edwin C. Walker

Both Footes again donated books for sale when Lillian Harman also was prosecuted, not for her *Lucifer* connections, but for her non-state-sanctioned marriage to Edwin C. Walker; at times they were called the "*Lucifer* couple" (Passet, 2003, p. 143). Walker was a former *Lucifer* coeditor who

later produced his own publication, *Fair Play*, and became the first president of the Free Speech League. Moses Harman conducted a ceremony to join them as partners as long as they chose to live together; a day later his daughter and Walker were bound over for trial and imprisoned. Through their widely publicized union, the couple demonstrated their beliefs that the government should play no role in matrimony, which traditionally had cost the wife her name and individuality as well as the right to control her own body ("Great wrong," 1886).

Walker and Lillian Harman served unequal prison terms for their offense: 75 and 45 days, respectively. They chose jail rather than pay fines (McElroy, 1982, pp. 9–10). Inside a Kansas jail, she scribbled a note to Foote Sr., found in the Schroeder papers (Box 6, Folder 1). She told the doctor about her sincere conviction that it was better to be imprisoned than appear to be a hypocrite on their controversial stand on marriage.

SUMMARY

Both doctors Foote were known for the assistance they gave others in free-speech cases. Evidence shows how they helped at least 15 defendants in a variety of ways. The cases indicate the range of speech that was prosecuted in the late 19th and early 20th centuries. Prosecuted under the Comstock Act were cases involving blasphemy, birth control, sex education, free love, and women's issues. At the turn of the century, anarchism emerged as an imposing threat to free speech.

After his own conviction on obscenity charges, Foote Sr. found support among the freethinkers in the National Liberal League, and he in turn backed other members facing Comstock charges. He worked through the National Defense Association activities to defend free lover Ezra Heywood, editor D. M. Bennett, and lecturer Charles Reynolds, contributing money, using his influence with officials, and promoting public awareness for freedom of speech. As a writer and an editor, Foote Sr. presented cases in his *Fable of the Spider and the Bees*, and *Dr. Foote's Health Monthly* chronicled the progress of cases through the legal process while opening defense funds to raise money.

In the same publications, Foote Sr. supported several women with whom he shared medical, publishing, educational, and reform interests. Appreciative of female doctors, Foote Sr. publicized the case of Dr. Sara Chase when her work brought her legal problems that paralleled his own. While the National Defense Association tackled the legal problems of reformers Elmina Slenker and Lois Waisbrooker, Foote Sr. provided moral support for both, spoke out on their behalf, and used *Dr. Foote's Health*

Monthly to raise funds and keep readers updated on the cases. Donating medical books that the Harmans could sell to raise money opened a new avenue for helping others.

Foote Jr.'s work with free-speech defendants was closely tied to the two organizations he helped to found, the National Defense Association in 1878 and the Free Speech League in 1902. Foote Jr. managed the Defense Association's case for Lois Waisbrooker on sex-related charges and the case of John B. Wise, prosecuted for blasphemy. Foote Jr. saw Comstock's influence dwindling after the suicide of sex educator Ida Craddock, who benefited from his close personal attention, from offering personal words to boost her spirits to shouldering financial burdens while she sat in jail.

With the turn of the century, laws against anarchist speech emerged, and Foote Jr. founded the Free Speech League to make sure that the expression rights of anarchists were defended. Although he never adopted their political views, Foote Jr. supported their rights and filled some of their needs. Financial support for James Morton in the Home Colony of Washington State made Morton a strong advocate of the Free Speech League. He also planned and promoted the defense of British lecturer John Turner and endured a difficult relationship with Emma Goldman for the sake of free speech.

The last free-speech case that Foote Jr. is known to have influenced—Margaret Sanger's—brought birth control back to center stage. The secret fund left by Foote Jr. for the Free Speech League helped support Sanger and her husband during their legal struggles. But neither Foote lived to see the public accept birth control, advanced by the determination of Sanger and the government's retreat after Comstock died.

Sanger and Harman were willing to face the consequences of breaking the Comstock Laws. While the Footes chose to fight the Comstock Act by working through the system, they admired the civil-disobedience approach. But they had more to lose than the Harmans and Sanger by intentionally violating the laws. Comstock had been so focused on Foote Sr. since the doctor's prosecution that he probably would have pounced on even a slight infraction of the law, intentional or not, from the Footes. Afterward, their medical practice and publishing business might have been shut down permanently while also ending their anti-Comstock efforts and considerable altruistic aid to individuals.

Chapter Six

Conclusions

A veteran reformer who advised the National Defense Association¹ wrote to E. B. Foote Sr. in 1886: “Try to remember that we are all now making history and giving example to the world of what we believe can ultimately [be] made successful in the cooperative work of reform” (Schroeder, Box 6, Folder 1).

The adviser, as a fervent abolitionist, had seen the vision of outlawing slavery brought to reality. But Foote Sr. had good reason not to share the optimistic view of reformers’ making history when it came to fighting Anthony Comstock in his crusade against obscenity. The opposition had been formidable, perhaps insurmountable.

The doctor had opposed Comstock in Congress and the New York legislature since 1872, only to find by 1886 that lawmakers in Washington and Albany were still debating amendments to strengthen the Comstock Laws on obscenity. In 1872, Foote Sr. moved his contraceptive mail-order business to Connecticut out of the reach of New York laws, but Comstock nonetheless prosecuted and convicted him of obscenity on federal charges in 1876. Foote Sr. relocated the printing of his magazine out of the country after his second-class mailing permit was suspended in 1882; Comstock stood behind the effort, he believed, when U.S. postal officials pressured Canadian authorities to deny Foote Sr. mailing privileges.

During his own prosecution, Foote Sr. had found support from the National Liberal League, organized to reduce the presence of the Christian religion in government affairs. However, Foote Sr.’s prosecution motivated the group to take action in defense of free speech, creating the first opposition to Comstock. Foote Jr. became one of the League members who presented to Congress a petition bearing 70,000 names of people who favored repeal or modification of the Comstock Act. Both Footes, as part of the Liberal League’s radical faction, helped organize the National Defense

Association, the only group founded for the sole purpose of supporting Comstock defendants and battling his influence; Foote Jr. remained an officer throughout the association's existence.

By 1886, several of the Footes' colleagues had suffered under the Comstock laws and died, and their organization, the National Defense Association, was fading. Within a decade, the Footes would shut down their magazine, established to assist the anti-Comstock operations, while admitting that the publication had never found a place in the market. Through the magazine, the Footes coordinated yet another petition drive to repeal the Comstock Act. Both doctors Foote continued to practice medicine and publish home medical books, ever mindful that the atmosphere was always subject to change when Comstock addressed lawmakers and juries. However disheartening the overall war against Comstock, the Footes' primary satisfaction probably came from fighting the smaller battles for others prosecuted by Comstock, those who lacked the funds, influence, and media access to defend themselves.

The picture remained bleak as the 20th Century approached. The Footes tried again to muster public support for free speech with the founding of the Free Speech League, as the number of antianarchist laws and prosecutions grew. As the League struggled to find other benefactors, Foote Jr. seemed discouraged while writing Free Speech League attorney Theodore Schroeder for advice on mailing books in the Comstock-inspired environment; he commented, "I doubt if either of us will live to see it [the Comstock Act] repealed." He didn't. It was not until after both Footes and Comstock died that federal authorities loosened their grip on the distribution of birth control, beginning with the 1915 case of birth control champion Margaret Sanger, a recipient of funds from an account that Foote Jr. established with the Free Speech League before he died in 1912. Their impact, Horowitz wrote, would be felt by posterity; Foote Sr. and a few close associates "fought openly in the courts, beginning a counter legal tradition that ultimately shaped the boundaries of freedom of speech" (2002, p. 14).

RESEARCH QUESTIONS

RQ1: What were the Footes' particular views on free speech?

The Footes became known as champions of free speech and free press for their involvement in anti-Comstock organizations and the assistance they gave to other defendants in obscenity cases. Both Footes were primarily focused on the specific free-speech issue of obscenity and campaigned for the repeal of the Comstock Laws. They believed obscenity should be regulated on the state or local level, rather than by Congress. In their

publication, *Dr. Foote's Health Monthly*, a nonbylined editorial explained that state and local governments could be more responsive to their communities' needs; national obscenity laws gave the Post Office too much power, thereby forming a censorship, which they considered worse than conditions under a czar or emperor ("Losing," 1883). Both men were outraged by injustices to individuals whose ideas about improving society were found obscene, and they had the financial resources to alleviate suffering and penalties.

More statements can be attributed to the father, whose name appeared on several pamphlets used in anti-Comstock literature. The son, who was directly quoted less often than his father, seems not to have digressed from the older man's statements. Both men were listed as coeditors of *Dr. Foote's Health Monthly*, which described their perspectives but included no byline to indicate which Foote wrote particular articles.

Foote Sr.'s own prosecution and conviction on obscenity charges for selling birth control may have ignited his interest in free speech, but his dedication, and that of his son, was nonetheless wholehearted. Having worked as a journalist before becoming a doctor may have sensitized Foote Sr. to First Amendment controversies; once he editorialized in support of an unpopular group's right to another First Amendment freedom: to practice their chosen religious beliefs (Putnam, 1894, p. 728).

Foote Sr. demonstrated his commitment to free speech in the directives he left for his sons, Foote Jr. and a younger brother, Hubert. Foote Sr. wrote in a document attached to his will that he expected them to "give generously from the proceeds of my estate to all good movements for the maintenance of free press, free speech, and free mails" along with other causes that benefited humanity (Wakeman, 1997, p. 45). Following his father's last wishes helped build for Foote Jr. the reputation as a humanitarian that was noted in his obituary in an American Medical Association directory (AMA, 1993, p. 1555). In Foote Jr.'s will, he left donations to the Free Speech League and to at least 20 charitable organizations that Theodore Schroeder listed in a booklet that paid tribute to the late doctor. Foote Jr. also endowed free-thought organizations and groups that promoted women's suffrage, historical preservation, prison reform, children's rights, and health-related issues (Schroeder, 1913, pp. 19–20).

Although the father may have appointed his son as a guardian of his personal values of free speech and social justice, Foote Jr. had not waited until his father's death to assume the role. As early as 1876, the year his father was convicted, Foote Jr. became an activist in free-speech organizations and related efforts to assist individuals prosecuted for expressing ideas that were important to society.

FOOTE SR.'s VIEWS

Foote Sr. acknowledged the need for laws against obscene materials but took strong exception to how the Comstock Laws were applied. Society did not need to be protected from the scientific and intellectual material on social issues such as birth control, free love, and free thought, he wrote; in fact, people needed to discuss the issues. Just a year after his own conviction for advertising and distributing birth control in 1876, Foote Sr. expressed opposition to obscenity in the form of stories and pictures that appealed to prurient interests, especially in children. He reinforced the common thought of his day that masturbation, associated with pornography, was detrimental to health and morality. Foote Sr. recognized a need to restrict erotic materials from the mail, he believed the Comstock Act exceeded its bounds when it added birth control to items considered obscene (Foote Sr., 1877, pp. 3–4). He further described the laws as vague and interfering with the practice of medicine and the spread of information about health and understanding the human body (Himes, 1970, p. 278).

Foote Sr.'s attempts to categorize types of obscenity paralleled the writings of Thaddeus Wakeman, considered the legal strategist of the National Liberal League and the National Defense Association. Defending *Truth Seeker* editor D. M. Bennett in 1879, Wakeman and his brother, Abram, unsuccessfully encouraged the court to separate the philosophical material that Bennett distributed for adult contemplation from the erotica sold on public streets often targeted to young people. When Theodore Schroeder developed his free-speech ideas in the early 20th Century, he abandoned all the categories previously used to define obscene materials. As a First Amendment absolutist, Schroeder believed that the Constitution gave lawmakers no premise to regulate speech, not even pornography.

Additionally, Foote Sr. expressed outrage that other individuals were not free to address issues important to society. He supported other Comstock defendants who were prosecuted for promoting free-love ideas (such as Ezra Heywood and D. M. Bennett), agnostic teachings (such as lecturer Charles Reynolds), and the open discussion of human sexuality (such as reformers Elmina Slenker and Lois Waisbrooker, Dr. Sara Chase, and publisher Moses Harman). Foote Sr. used vivid imagery in publications such as his 1881 *Fable of the Spider and the Bees* to demonstrate his belief that the Comstock Laws endangered society by censoring necessary information. In the *Fable*, Foote Sr. portrayed Comstock as an evil spider who developed a cozy relationship with Congress, described as sleek, fat bees, in a great central hive. The web that Comstock spun, with the bees'

permission, kept valuable information out of the garden they inhabited. Even bigger bees—the Supreme Court—upheld the spider's action (p. 10). The *Fable* supported the theological and sociological ideas of other Comstock defendants.

As much as Foote Sr. detested the Comstock Laws, he felt obligated to obey them while working to repeal them (Foote Sr., 1877, p. 8–9). This view set him apart from other Comstock defendants, such as Moses Harman, D. M. Bennett, and Margaret Sanger, who adopted a civil-disobedience approach and knowingly printed controversial material as legal challenges to the laws they found unjust.

Foote Jr.'s Views

Foote Jr. is not known to have disagreed with his father's views on free speech. Foote Sr. applauded his son's suggestion before a Congressional committee for the establishment of a board of examiners to hear appeals of post office decisions on alleged obscene materials, especially with scientific literature; under the Comstock Act, defendants had no recourse (Foote Sr., 1877, p. 56).

However, the son's perspective on free speech took a different direction with the founding of the Free Speech League in 1902 to assist individuals prosecuted for violating laws against anarchist speech. The League became known for advocating free speech for the holders of all viewpoints, however controversial, including sex radicals, anarchists, and socialists. Foote Jr. disagreed with the anarchist ideas put forth by British lecturer John Turner, Home Colony newspaper editor James Morton, and feminist Emma Goldman, but nonetheless contributed to the defense of their right to express unpopular ideas.

One of the boldest statements on free speech directly attributable to Foote Jr. originated in the fund-raising brochure that he wrote on behalf of sex educator Ida Craddock, who eventually killed herself rather than face another prison term for her advice to newlyweds, *The Wedding Night*. He acknowledged that Craddock's teachings did not parallel his own views; he had advised her against disseminating ideas so far outside the mainstream of acceptable materials. Yet Foote Jr. saw no legal or moral need to suppress the pamphlets she wrote for adults on sexuality (Foote Jr., 1902, p. 4).

Footes on the Hicklin Rule

Both Footes expressed opposition to the Hicklin rule, the guidelines commonly used by courts of the period to define obscenity. According to Hicklin, if any part of a publication was obscene, the whole publication

was obscene, and materials were judged on the basis of whether they would deprave those most vulnerable to their influence.

Relying on Hicklin, Foote Sr. wrote, the legal system kept all reading materials on the level of children, which constituted a form of social control (Horowitz, 2002, p. 435). The Hicklin rule prevented physicians from freely exchanging ideas in medical publications, Foote Jr. wrote in 1905. Particularly with sex-education literature, it seemed preposterous that material prepared specifically for adults was being judged on the basis of its fitness for children to see (Schroeder, 1909, p. 200).

On other aspects of the Hicklin rule, the Footes likely endorsed the legal opinions of Thaddeus and Abram Wakeman, who represented National Defense Association clients. Defending free-thought editor D. M. Bennett and free-love pamphleteer Ezra Heywood, they repeatedly tried to read passages into the record taken from the publications alleged to be obscene and were stopped by the judge. They attempted to show the overall context of the materials was not obscene; however, Hicklin specified the entire work was obscene if any part of it was obscene (*Trial*, 1879, pp. 40–3).

Dr. Foote's Health Monthly

A periodical co-edited by both Footes, *Dr. Foote's Health Monthly* waged a war of words against Comstock, depicting the antiobscenity crusader as the consummate enemy of free speech, free press, and free mails. The *Health Monthly* was introduced in 1876, and a section of each issue being dedicated to the free-speech concerns of the National Defense Association, in a section called “The Outlook.”

In articles that rarely carried bylines, the Footes reported in “The Outlook” on the Defense Association’s court cases, lobbying, and fund-raising activities as well as on meetings of Comstock’s sponsoring group, the New York Society for the Suppression of Vice. They employed anti-Comstock rhetoric, such as calling the era of obscenity prosecutions the “American Inquisition” and a “reign of terror” characteristic of czarist societies. Using colorful language, they described victims as being “extracted from the jaws of the Comstockian dragon” and the post office as becoming the “streaming tail on Comstock’s kite.”

In the columns of “The Outlook,” the Footes detailed their objections to the Comstock Act. While openly banning contraceptives, the Footes wrote, the laws also negatively affected other health-care issues, such as promoting abortion by outlawing birth control, impeding the flow of information about the human body, denying women’s rights, and curtailing the freedom of doctors to disseminate medical knowledge.

RQ2: What contributions did the Footes make to free speech?***Birth Control***

The Footes pioneered contraceptives in the mid-19th Century; the father developed an early form of the cervical cap and sold it along with condoms and an electrical device supposed to prevent conception. Foote Jr.'s term "contraceptics" evolved into the now-common "contraceptives." They have also been credited with paving the way for the public acceptance of birth control in the widely circulated Foote medical books (Himes, 1970, p. 276). Even though the Comstock Laws forbade the Footes from prescribing and selling contraceptives, their books and *Dr. Foote's Health Monthly* continued to stress the need for birth control to preserve women's health, prevent abortion, and decrease the number of children born into unhealthy living conditions.

In addition to their own work, the Footes supported other reformers who championed birth control. Dr. Sara Chase battled Comstock multiple times over the sales of contraceptive syringes, and the Footes raised funds and awareness for her when postal officials retracted the mailing permit for her magazine, *The Physiologist*. The Footes maintained a close relationship with Moses Harman and his radical newspaper, *Lucifer, the Light Bearer*, which included birth control as one of the essential women's rights it promoted. Additionally, it was the secret fund of Foote Jr. that the Free Speech League used to help defend and support Margaret Sanger in 1915, linking the Footes to wider acceptance and use of birth control than they knew during their lifetimes.

Financial Contributions

The most common association made between the Footes and free speech has long been their financial contributions, particularly to the free-speech organizations they helped found, the National Defense Association and the Free Speech League. Conventional wisdom has held that they channeled the money they made from their medical books into anti-Comstock efforts. Unfortunately, the assumptions cannot be documented as true or false in the absence of the Footes' personal records and financial statements of the organizations, none of which are known to exist.

The evidence that survives shows only modest \$5 to \$25 donations to National Defense Association funds and general discussions about Foote Jr.'s gifts to the Free Speech League in Theodore Schroeder's personal papers. Despite the assumptions that the Footes bankrolled the Defense Association and the Free Speech League, reports in *Dr. Foote's Health Monthly* and letters in the Schroeder collection show that both groups

suffered financial deficiencies. It seems plausible that the Footes set limits on their donations, perhaps scaling them to the groups' successes. They may have intended their funds to be used as seed money, but matching gifts from other sources never materialized. Their gifts may have been directed more toward the individuals they assisted than to the organizations. A cynical interpretation might suggest that the Footes' personal success and wealth led others to believe they were more generous than they actually were. Yet, the preponderance of the evidence found in this study indirectly positions them as key financial contributors to the Comstock opposition.

The only known occasion of either Foote acknowledging their gifts was recorded by George Macdonald, who edited the *Truth Seeker* free-thought newspaper. Macdonald recalled a conversation that he had with Foote Sr. about early National Liberal League members who had fought diligently for freedom of speech. The doctor, when pressed, admitted that his own monetary contributions had been important, and the statement indicates Foote money was used for low-key purposes that went unrecorded:

But he [Foote Sr.] was a reasonable man, and on being shown to him that these men could scarcely have kept the field without his assistance, that when they needed funds for printing and hall rent, he supplied them, he was constrained to admit that his gift for making one dollar earn another had been useful to the cause. (Wakeman, 1907, p. 20)

Organizations

Although the Footes' contributions, financial and otherwise, to the National Defense Association and the Free Speech League remain vague, it is clear that the organizations were important to them. The nebulous phrase used by colleague Edwin C. Walker that the Footes served as the "heart, soul and purse" of the two organizations (Schroeder, 1913, p. 48) implies that they invested time, energy, and enthusiasm into the groups along with any money they may have given. Foote Sr. seems to have served as an adviser to the Defense Association and League while the son performed more public duties as an officer for both free-speech groups and lobbyist in Congress and the New York state legislature. After founding the Free Speech League in 1902, Foote Jr. was the central point for other members' ideas on restructuring and expanding the League's work. Foote incorporated the League in 1911, and after his death, the Free Speech League administered a fund he left and recognized him as its founder on the group's stationery.

The Footes dedicated many pages of their own magazine to the National Defense Association, which included Foote Jr.'s reports as secretary as well as

Foote Sr.'s representation of the group in lobbying efforts and prison visits. It would have required enormous efforts to compile the numerous reports on legislation and court cases from around the country as well as keep track of Comstock's activities and the media coverage of him for "The Outlook," which served the informational needs of the National Defense Association. Other materials written by Foote Sr., such as his *Fable of the Spider and the Bees*, were intended to advance the Defense Association's work.

Letters in the Schroeder collection among Free Speech League members indicate that Foote Jr. stayed in close touch with Schroeder on League business and their plans for development. He corresponded with Schroeder up until his death, even through periods of illness when he was so weak that other people wrote the notes. After he died, Foote Jr.'s widow wrote to Schroeder to maintain the link.

Helping Individuals

Evidence identifies the Footes as crucial supporters of individuals being prosecuted in free-speech cases; some had no help from other sources. Foote Sr. remained closely involved with his friends in the National Defense Association, Ezra Heywood and D. M. Bennett after they were convicted and imprisoned, looking for ways to help. Another colleague among liberals, Charles Reynolds, received financial support for expressing agnostic ideas. Foote Sr. also supported female reformers he knew: Elmina Slenker, who discussed sex-related issues in private letters; Lois Waisbrooker, who frankly discussed marital life in her newspaper; Dr. Sara Chase, who was prosecuted in connection with birth control and her magazine that discussed sex-related topics.

Foote Jr. followed suit, taking special interest in National Defense Association cases, such as John B. Wise, convicted of obscenity for using a Bible verse on a postcard. Sex educator Ida Craddock had found no backing from her family when Foote Jr. stepped in. Both Footes assisted the radical Moses Harman and his daughter Lillian for challenged traditional notions on marriage. He was also involved when the Free Speech League defended anarchists, such as John Turner, James Morton, and Emma Goldman.

Mary E. Bond Foote, the widow of Foote Jr., appraised the free-speech work of her late husband, whom she called "Ned," as more important on an individual basis than in the grand scheme of bettering society. In a letter dated June 29, 1913, she wrote to Theodore Schroeder:

I am not unmindful that great strides have been made in the direction in which you and he have always been interested, but it is my opinion

that it is the result of the trend of the times rather than any specific efforts that have been made by the zealous few! I am sure no one could be intimately associated with Ned and not be the better for it, but how far his influence extended beyond those who loved him personally, I have grave doubts. (Schroeder, Box 11, Folder 1)

Medical Issues

More than a decade after the conviction of Foote Sr., the Footes claimed credit in an 1886 issue of *Dr. Foote's Health Monthly* for changing attitudes on the discussion of medical issues without specifying how they were influential. The article compared the Foote prosecution with that of a New York physician, whom the Footes did not identify, who mailed an illustrated pamphlet on venereal disease geared toward men. In the latter case, an attorney successfully argued that the pamphlet in question was not obscene because other recognized medical authorities had written on the same subject; the charges were dropped. The Footes welcomed the decision and called it progress in the discussion of health issues. In the Foote ruling in 1876, the court ruled that no special conditions made medical information an exception to the Comstock Laws:

Of course we are glad to observe this growth of common sense on the very important subject of the providing of anatomical, physiological and medical instruction for the masses, and we take the flattering unction to our souls that our many years of effort to arouse and reform the general opinion on this subject has had great influence in bringing it about. Perhaps our own martyrdom was worth all it cost in the opposition it aroused against those who would throw obstacles in the path of medical liberty and progress, and attempt to regulate the morals of the "dear" public on the mediaeval plan. ("Popular medical," 1886)

Endurance in Battling Comstock

The Footes together waged a battle against the influence of Anthony Comstock for 43 years, almost the length of 11 presidential terms and longer than most political careers. Foote Sr. started lobbying against Comstock in 1872, and Foote Jr.'s fund administered by the Free Speech League benefited Margaret Sanger in 1915.

The Footes' motives were probably multifaceted. They might have been pushed into action by Foote Sr.'s conviction, which he feared would

tarnish his professional reputation. They might have harbored grave concerns that their business could be threatened again. However, all their efforts were extended for the sake of free speech, and there is no reason to doubt their sincerity. They seemed incapable of tolerating the price paid by individuals for Comstock's abuse of power.

The Footes chose to work within the system, trying to influence lawmakers and persuading the public to join their efforts to change the laws. With an intense interest in legislation in Congress and the statehouse of New York, the Footes likely made progress in lobbying, however minor, and *Dr. Foote's Health Monthly* reported a few successful campaigns. A history of the 19th Century Post Office acknowledges that lobbyists for the National Liberal League enjoyed occasional victories as Congress debated amendments to the Comstock Act, although neither Foote is named. Ultimately, Comstock sympathizers ruled the day (Fuller, 2003, pp. 119–20).

Author and obscenity lawyer Morris Ernst would not have commended the Footes' persistent lobbying efforts as an effective way of challenging the Comstock Laws. With the benefit of hindsight, which the Footes did not have, Ernst wrote in 1939 about the futility of opposing obscenity through the political process, quoted by LaMay (1997):

Year after year those who espoused the legislative methods [against obscenity measures] made their pilgrimages to Washington and to state capitols, argued with heat and eloquence, adduced incontrovertible data, submitted repeal bills, worked tirelessly. The lawmakers listened politely, made promises, and did nothing. There was inertia, and religious pressure and the whole complex of political "expediency."

With more immediate concerns for their business and the welfare of the people around them being prosecuted, the Footes would have disagreed with Ernst's conclusion that the passage of time was the best way to invalidate the Comstock Laws. They could not have sat quietly by and accepted as inevitable that nothing could be done to change conditions they felt violated the constitutional right to free speech.

But social progress did not wait. The people and the courts did what elected representatives failed to do . . . nullification was the wise process of life, having always been practiced by mankind, and being society's only effective answer to the stupidity of those that governed it . . . law always lags a half century behind social progress, and in some things—as in birth control—we couldn't afford to wait until the law caught up. (LaMay, 1997, pp. 58–9)

RQ3: How did the Footes' backgrounds as physicians affect their free-speech work?

The Footes' work as physicians became the impetus for the father's arrest and, in turn, for the efforts made by both the father and the son to support free speech. Even before the Comstock Laws were passed, Foote Sr. had tapped into a budding market for contraceptives with his own products and for accurate information about the human body, including sexuality, with his home medical books. The responsibility for distributing both belonged to physicians, he believed, and no laws should encroach upon a doctor's freedom to discuss with patients what they considered important, an area invaded by the Comstock Act's proscriptions against birth control.

As doctors and medical writers/editors, the two Footes rarely distinguished themselves from each other. When the son took over his father's publishing business, Foote Jr. revised the home medical books for which his father was known (Schroeder, 1913, p. 21). Both men edited *Dr. Foote's Health Monthly*, but no bylines identified the writers of particular articles. Foote Jr.'s best-known book, *The Radical Remedy in Social Science, or Borning Better Babies*, used Malthusian principles on overpopulation to make a case for birth control. The book also cited his father's achievements in contraceptives (Foote Jr., 1886, p. 60) and included several pages of letters written to his father (pp. 103–118). It was described in *Dr. Foote's Health Monthly* as “our Borning Better Babies” [emphasis added] (Untitled, 1894, p. 12). Previously, Foote Sr. also incorporated Malthusian ideas in his pamphlet, *A Step Backward* (Foote Sr., 1877, p. 6). Additionally, the widow of Foote Jr. told Schroeder that her late husband would have been pleased with the booklet that Schroeder prepared to pay tribute to the younger doctor because it reflected well on his father (Schroeder, Box 11, Folder 1).

Stature as Physicians

One historian has suggested that the public spectacle and stigma of being prosecuted and convicted of obscenity bruised Foote Sr.'s professional ego and marked a turning point in his life. An otherwise respectable doctor was transformed into a radical reformer (Stoehr, 1979, p. 564). Comstock enjoyed identifying him as “the quack” among the people he prosecuted.

Foote Sr., and subsequently Foote Jr., used the stature attached to the medical profession when they lobbied lawmakers in Washington and Albany on health-related topics as well as free-speech issues. When Foote Sr. wrote to government officials on behalf of Comstock defendant Lois Waisbrooker, and perhaps others, he implied that his name, or at least his title, would send a message in itself.

Other chroniclers have ranged in their views of the Footes' place among physicians. One claimed that Foote Sr.'s business in contraceptives and other commercial endeavors would have made him unacceptable as a guest in many American homes (Sappol, 2002, p. 244). Another suggested that the Footes, as eclectics or irregulars, probably never acquired professional respect from mainstream practitioners (Himes, 1970, p. 278). Eclectic physicians preferred natural remedies to the chemicals used in mainstream practice. Eclectics avoided traditional surgery with a range of less invasive and trendy procedures, such as hypnotism, electricity, hydrotherapy, herbal treatments, and dietary restrictions. From another perspective, the better educated son, who studied at Columbia University, enjoyed more professional acceptance than his father, a product of an eclectic school, until late in life (Gordon, 2002, p. 113)

Within the free-thought and reform communities, the Footes, especially the father, earned prominent positions, as seen in their regular presence in the free-thought newspapers, *Lucifer*, *the Light Bearer* and the *Truth Seeker*. Books on history of the free-thought movement are filled with anecdotes of individuals who admired and remembered both men fondly.

Source of Income

Whatever researchers conclude about the Footes' medical status, most acknowledge their extraordinary financial success, even though their magazine never made money. Foote Sr. displayed market savvy at selling books and medical devices as well as promoting himself as a spokesman on sexual matters. After the Comstock Act curtailed doctors' sales and advertisements of birth control, the Footes felt obligated to follow the laws while disagreeing with the principle behind them. One source suggests that the Footes feared further threats to their business from Comstock, but there is not enough information to determine how strong an incentive this was for their free-speech work.

RQ4: What contributions did the doctors Foote make to the National Liberal League, the National Defense Association, and the Free Speech League?

As members of all three organizations, the Footes placed themselves squarely in the anti-Comstock camp of each. The prosecution of Foote Sr. pulled the National Liberal League into efforts to repeal or modify the Comstock Laws on the strength of his friends being repulsed by a member's arrest and conviction, even though the League had not been intended as a defender of speech and the press. Foote Jr. launched his career as a free-speech activist in 1876 when the League presented its 70,000 signatures to Congress on a petition

to repeal or modify the Comstock Act. Had its members not been so divided on the issue of obscenity, the League might have developed a more effective resistance movement to the Comstock Laws. The group eventually unraveled over whether the Comstock Act should be modified or repealed.

There was a natural progression for the Footes between the Liberal League and the newer National Defense Association, formed by more radical League members determined to repeal the Comstock Laws. Foote Jr. served as a founding member and the Defense Association's secretary. Whereas Foote Sr. was a major influence in the National Liberal League's decision to oppose Comstock, little evidence remains to document a central role for him in the National Defense Association beyond the unsubstantiated references to making major monetary contributions, hosting a few meetings, and printing the group's brochures.

Available evidence places Foote Jr. in a leadership role in the National Defense Association as a founding member and officer. Foote Jr. served as the organization's secretary, a role that Theodore Schroeder later served for the Free Speech League and Schroeder's biographer claimed was the central force of the organization (Brudnoy, 1971, pp. 144–5). He gathered defense funds, submitted organizational reports, and represented the association in managing resources for particular cases. It seems possible that Foote Sr. served in a guiding and planning capacity for the Defense Association, leaving the legwork to his son. There is no recorded communication between the father and son.

The publication of *Dr. Foote's Health Monthly* may have been their most valuable contribution to the Defense Association in disseminating information and maintaining morale. Had there been a better, or comparable, source on the resistance to Comstock, the Footes would have quoted it in "The Outlook" section of the *Health Monthly*. With its powerful images and vivid rhetoric, "The Outlook" aimed directly at Comstock and updated Defense Association members on court cases, lobbying activities, and other news related to free-speech work.

By the time the Free Speech League was founded in 1902, Foote Sr.'s age limited his involvement, but there is at least one incident of Foote Jr.'s reporting to Schroeder his father's opinion on League matters. Foote Jr. was influential in the establishment, incorporation, and early cases of the Free Speech League, his death in 1912 diminished how he is remembered. Schroeder reported that Foote Jr.'s views on free speech expanded with the League's dedication to upholding all perspectives, however unpopular, especially with his work to defend anarchists. Officially listed as treasurer of the League during his lifetime, members honored him as "founder" after he died.

RQ5: To what extent were the Footes involved with specific cases and/or defendants?

However unclear the Footes' roles were in the Defense Association and the Free Speech League, more evidence supports their role in individual lives. As doctors, both Footes found themselves able to ease the suffering of others caused by Comstock prosecutions. The Footes stepped in when individual defendants had no resources of their own to get themselves out of trouble with the law, which most had never before experienced.

Foote Sr. offered money for fines and bail. He printed fliers, gave away books, wrote letters to officials, visited prisons, and used his own publications to publicize cases involving free love, free thought, sex reform, women's rights, and birth control. The defendants he assisted were personal acquaintances who criticized marriage, Christian beliefs, and repressive attitudes toward sexuality in magazines, newspapers, speeches, and personal letters.

New Englander Ezra Heywood unleashed a barrage of legal problems for himself and for distributor D. M. Bennett when he wrote *Cupid's Yokes*, a free-love attack on conventional marriage as an institution that stifled women's rights. To the contrary, Foote Sr. found nothing obscene in the publication, pronouncing the philosophical treatise dry and boring to the children whom Comstock feared would be damaged from reading it.

The cases of Heywood and Bennett activated the National Defense Association. Foote Sr. opened his home for meetings to plan strategies and opened defense funds for both men in *Dr. Foote's Health Monthly*. He visited Heywood in prison and escorted Bennett home when his term was finished. Foote Sr. knew Heywood well enough to write a postmortem tribute and Bennett well enough to be at his bedside when he died.

Foote Sr. had developed friendships with three women involved in sexual reform before they were charged with obscenity, and he presented their cases in publications such as his monthly magazine and his pamphlets written for the National Defense Association. He exchanged supportive correspondence with female reformers he knew: Elmina Slenker, arrested in Virginia for the sexual content of personal letters, and Lois Waisbrooker in Kansas, whose principles on sex-related issues he commended to legal authorities. The plight of Dr. Sara Chase paralleled his own ordeal with Comstock and the post office. Both had been arrested for distributing birth control, and both suffered suspensions of their mailing permits for health-based periodicals. Foote Sr. publicized her legal problems in his *Fable of the Spider and the Bees* as well as *Dr. Foote's Health Monthly*, which sponsored a defense fund for Chase.

Additionally, lecturer Charles Reynolds was convicted for blasphemy for writing and speaking about the free-thought ideas common to Foote Sr.'s colleagues in the National Liberal League. When Foote Sr. paid his fine, Reynolds praised his generosity.

While Foote Sr. discovered needs to fill among his friends, Foote Jr. aided individuals with whom he came into contact primarily through the National Defense Association and the Free Speech League. He is known to have contributed to cases involving violations of the Comstock Laws in sex education and religious matters, but his altruism also reflected the Free Speech League's dedication to First Amendment rights for all viewpoints, which included anarchists. Foote Jr. applied the same tools that his father used: writing, money, visits, moral support, and the legal resources provided by the two free-speech organizations.

Obscenity cases originating in Kansas merited his attention. Radical editor Moses Harman was convicted of obscenity for a letter that he refused to edit in his newspaper, *Lucifer, the Light Bearer*, that detailed marital rape. In the years to come, both Foote Jr. and Foote Sr. financially backed Harman and *Lucifer*. Foote Jr. also managed for the Defense Association the Kansas cases of his father's friend, Lois Waisbrooker, for frankly discussing sexual issues in her newspaper, and that of John B. Wise, whose scribbling of a controversial Bible verse, seen as crude, on a postcard led to his prosecution and conviction on obscenity charges. Foote Jr. found legal counsel for them, raised funds, and provided moral support.

Foote Jr. worked with anarchists through the Free Speech League at the turn of the 20th Century. He helped James Morton, a beleaguered newspaper editor in the anarchist Home Colony of Washington State, by giving him money to buy a new press. Foote Jr. opened his home to meetings when the Free Speech League planned the defense of British anarchist John Turner, and he supported Turner's family before the Supreme Court voted to expel him for violating immigration laws. The Turner case brought Foote Jr. into contact with anarchist/feminist Emma Goldman; although their personal relationship was acrimonious, Foote Jr. stood behind her right to express controversial views.

SIGNIFICANCE

This study fills in details of the broad-based thesis presented by David Rabban as a forgotten era of free speech, the previously neglected period between the Civil War and World War I, considered devoid of First Amendment significance. This research reiterates the hostility of judges and legislators toward free speech and individual rights while adding examples

of personal lives being ruined by steep fines, prison terms, business losses, and damaged reputations. This study bears witness of Rabban's citations of the National Defense Association and the Free Speech League as bastions of free-speech ideals despite their limited success in changing attitudes and laws. The earlier groups set the stage for the emergence of the American Civil Liberties Union. However, their approaches to free speech were so different that ACLU members distanced themselves from the earlier groups that had been guided by civil libertarian principles of free speech as a natural right of individuals. Alternatively, the ACLU and post-World War I court decisions emphasized the value of free speech to political democracy. As Rabban points out, the change of priorities obscured the earlier groups but did not make them less important.

The Rabban book cited the work of both Footes in general terms, but this study focused specifically on their individual efforts. This research is the first to examine more than a few issues of *Dr. Foote's Health Monthly* and discover that its section called "The Outlook" was more than an information source for the National Defense Association. It was also the written voice of anti-Comstock resistance, filled with courtroom and legislative reports, rhetoric to charge up the forces, and the Footes' philosophy of free speech as it pertained to the practice of medicine. As the most extensive review of the magazine, this study revealed that its editors sponsored a second petition drive to repeal the Comstock Act, in addition to the larger one earlier by the National Liberal League. It also demonstrated the amazing efforts the Footes attempted to evade legal entanglements, which included moving their mail-order business to another state and their magazine out of the country.

By assembling accounts of the Comstock-related problems faced by the Footes and the many people whose lives they influenced, this study created a unique picture of the Comstock years from the view of those who opposed him and were prosecuted by him. Researching the Footes provides the appropriate frame for such a portrait of the Comstock years because they had the money to take drastic measures, to sponsor organizations, and to extend assistance to those less fortunate. Additionally, no other research has connected and detailed the work of the National Liberal League, National Defense Association, and the Free Speech League, again appropriate because the Footes were the common bond among them.

LIMITATIONS

All historical research is limited by the availability of evidence, and this study was no exception. The absence of personal files belonging to either

Dr. Foote narrowed the possibilities to materials that were written for publication or those found by chance. It is known that their papers were destroyed on at least two occasions, once by a house fire and again by the widow of Foote Jr., who wrote to Theodore Schroeder that she deliberately burned pieces of correspondence that had been her husband's and her father-in-law's (Schroeder, Box 11, Folder 1). However, valuable insights were gleaned from the serendipitous discovery of Mrs. Foote's letters, along with a few of Foote Sr.'s, including the letter with the quotation that opened this chapter. The two surprising groups of letters were found in the Schroeder collection, where materials pertaining to Foote Jr. were expected to be found—and were.

Other sources offered limitations. Despite reports of the Footes' lobbying activities, official documents, such as the *Congressional Record*, do not reflect their presence in Congress or in the New York state legislature. Many of the sources available for this study were promotional in nature, including histories of the free-thought movement of the 19th Century. Additionally, with names so similar, E. B. Foote Sr. and E. B. Foote Jr., sources confused their identities on occasion, casting doubt on the credibility of many other books that have discussed their work.

Both Footes also seemed to have preferred that their gifts and activities go unrecorded or undetected. While modesty can be a flattering personality trait, it frustrates the efforts of historians. For example, Foote Jr. wrote a letter to Schroeder to explain the background behind the money he gave James Morton of the Home Colony in Washington to buy a press only because a third person had contacted Schroeder when a dispute arose over the ownership of the press. Foote Jr. commented that he had already destroyed other materials related to the gift and recommended that Schroeder also throw away the correspondence. Instead, Schroeder retained it, making it available for this research.

Another source that turned out to be more helpful than anticipated was *Dr. Foote's Health Monthly*. Research of its contents produced details about the Footes' lobbying, organizational work, and efforts to help others that were available nowhere else. Yet its contents are best used as indicators of the Footes' perspective on issues rather than as facts because of the magazine's highly propagandistic nature. The publication is available only in five or six libraries, none of which stocks a complete set of issues from 1876 to 1896. Additionally, its coverage of events, such as Chicago's Haymarket Affair in 1886, provided important contextual information.

This research also was limited by the availability of funds for travel. The writer acquired copies of materials directly connected to the Footes from the Library of Congress' arrest records of the New York Society for

the Suppression of Vice and the University of Michigan's Labadie Collection, which holds papers of noted American radicals pursued by Comstock, such as Moses Harman and Ezra Heywood. One source indicated that the Labadie contains papers that belonged to the National Defense Association, which a librarian could not locate. However, a thorough investigation of both libraries would probably produce more valuable evidence. The Ralph Ginzburg Collection of materials that its original owner planned to use to research Comstock now held at the State Historical Society of Wisconsin contains correspondence between Foote Sr. and free-thought editor D. M. Bennett. Possibly other items are applicable to studying the role of the Footes in free speech. Additionally, a persistent search of New York public records might turn up more information about the Footes, who spent most of their professional lives in New York.

FUTURE RESEARCH

Inevitably, research uncovers other topics that need to be studied, as this project did. Several inquiries pertaining to the National Liberal League and National Defense Association were detected.

Rabban has written two journal articles on the Free Speech League along with his book on the "forgotten" era of free speech. However, the history of the National Defense Association has not been compiled, outside of free-thought books. Particularly interesting would be the writings of attorney Thaddeus Burr Wakeman, known to have written the legal arguments used in speeches and brochures for both the Liberal League and Defense Association. Wakeman's work against the Comstock Act might be among the first constitutional arguments for free speech, written in a period when many attorneys defended their clients by finding loopholes in the law. Wakeman's papers, and those of his brother Abram who did legal work for the Footes, are available through the New York Historical Society.

Also deserving of further study is the involvement of free-thought lecturer Robert Ingersoll in free speech. As one of the most noted Americans of his time, Ingersoll became inadvertently drawn into the National Liberal League's controversies with Comstock. Ingersoll's letters, found in the Gordon Stein collection also at Southern Illinois University, could shed new light on his relationship of Comstock, who frequently referred to Ingersoll as a symbol of all who opposed him. Ingersoll's support for modifying the Comstock Laws led to the Liberal League's split from those who favored repeal. Later, Ingersoll used his influence on behalf of convicted editor D. M. Bennett and represented fellow free-thought lecturer Charles Reynolds in court when he faced obscenity charges. A study that

focused on Ingersoll's views on free speech, taken from letters, collected lectures, and media coverage, would shed new light on Ingersoll and the free-thought movement. The study might also consider his disdain of free love, which was strong enough to influence his view of obscenity and those of his followers.

However, researchers looking for resources on Ingersoll's efforts and other anti-Comstock efforts face another challenge. Free-thought publications of the 19th Century are commonly not listed in directories of "alternative" or "dissident" publications throughout American history. The most recent directory, Streitmatter's *Voices of Revolution*, was published in 2001 but excluded the free-thought publications. Ezra Heywood's journal, *The Word*, and Moses Harman's *Lucifer, the Light Bearer* were included in a "free love" chapter (p. 61). Totally neglected were the major free-thought paper, the *Truth Seeker*, as well as others such as the *Boston Investigator* and *Man*, issued from the National Liberal League. There were also no categories given for medical journals, either those intended for physicians or the popular health journals targeted at the public such as *Dr. Foote's Health Monthly*, Dr. Sara Chase's *The Physiologist*, and Dr. Caroline Winslow's *The Alpha*, all mentioned in this study of the Footes. In a 1984 directory of dissident newspapers compiled by Kessler, neither the free-thought publications nor the free-love publications were listed. A directory that compiles information on these publications would guide scholars studying the Comstock era.

Also appropriate for future study would be further research on certain aspects of Comstock's career, such as his relationship with the medical profession. The Comstock Act's provisions on birth control and abortion tied health care to obscenity. With claims and counterclaims, the Footes and Comstock often alluded to Comstock's association with mainstream medicine, claims that should be examined to consider whether doctors supported Comstock's work. For example, Comstock stated that most reputable physicians supported his campaign against contraceptives, which Foote Sr. rebutted with assertions that many prominent doctors favored birth control.

FAST FORWARD TO THE PRESENT

If by the miracle of a time machine, the Footes could be transported into the present, they would recognize parts of American life. Foote Sr. might enjoy seeing that the *Village Voice* early in 2004 featured his series of children's books more than a century after they were written (Collins, "Spanking"). In the books, a kindly doctor guided an African-American boy through

the dissection of two pet monkeys who had died, both named “Sponsie.” Sappol, a medical researcher, analyzed the children’s books (1996). Foote Sr. wanted children to learn about the human body from an authoritative source, which he thought would keep them from being enticed by pornography. He probably would have thought the psyche of children, if properly educated, would not be damaged by occasional glimpses of nudity, as some parents and politicians feared after pop singer Janet Jackson exposed her breast during the nationally broadcast 2004 Super Bowl halftime show.

However, both Footes would have recognized the bluster of condemnation afterward as a show of concern for children’s welfare. They might be annoyed that a sudden wave of morality forced some performers off the air but might be moved to action if educational programming about health-related issues had become too risky to show. They might not be shocked by a newspaper article about an antiobscenity campaign being mounted by the U.S. attorney general to placate ultraconservative voters in a year that his boss, the president, faced reelection (Sullivan, 2004). They knew all too well the connection between obscenity and politics.

The Footes would learn that birth control is no longer a free-speech issue but a matter of privacy between a woman and her health-care provider, as they often recommended. They might be amazed that the Red Scare of the 1950s created hysteria again around free speech. They would want to know that the Supreme Court favored the First Amendment right of speech over extreme measures to protect children from pornography when it overturned the Communication Decency Act of 1997. In their day, courts repeatedly did the opposite when enforcing the Comstock Act.

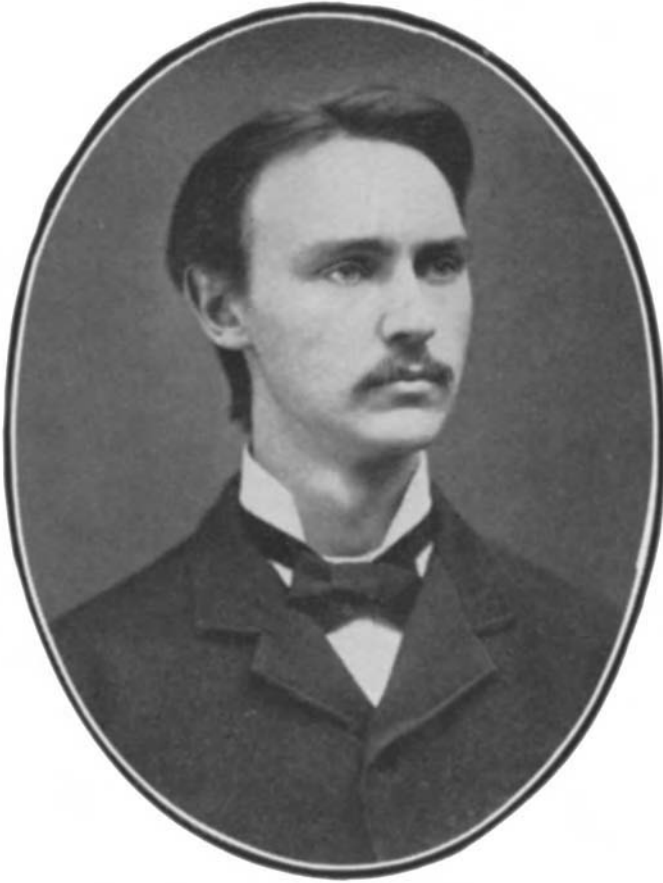
What the Footes might not understand is the notion of a forgotten era of free speech. The term itself might not be as offensive as the background behind the term coined by David Rabban; previous historians had deemed the period encompassing the 43 years they tackled Comstock as insignificant in the history of free speech. Not that the Footes actually sought the spotlight for themselves, but they might wonder why it had not seemed important that their friends were prosecuted, ridiculed, fined, imprisoned, and financially ruined just for the words they spoke or wrote.

To have previously judged the forgotten era merely for its relevance to later times was a commission of the historian’s error of present-mindedness. The Footes, their colleagues, and even Anthony Comstock deserve to be portrayed within the context of their own times. For the Footes, their era holds a story in American history that needs to be told. The people they helped were not just characters headed for unhappy endings; they were real people, flesh and blood. They suffered losses for the sake of free speech, and the two doctors Foote were on call.

Appendix



Dr. Edward Bliss Foote (E. B. Foote Sr.)



Dr. Edward Bond Foote (E. B. Foote Jr.)

Photographs courtesy of the Special Collections Research Center, Morris Library, Southern Illinois University Carbondale.

Notes

NOTES TO CHAPTER ONE

1. *Reno v. American Civil Liberties Union*, 117 S. Ct. 2329 (1997).

NOTES TO CHAPTER TWO

1. Foote Sr. was assaulted in his medical offices by a man claiming to be a patient. In 1879, August Woehler of Hartford, Connecticut, attacked the doctor while wielding a pistol, which discharged and wounded Woehler instead of Foote. The assailant escaped, but police found him a few days later after he had killed himself in a local hotel and left a suicide note blaming Foote for ruining his health even though the doctor claimed to have never seen him before. The *New York Times* insinuated the incident might have been a publicity stunt but concluded that Woehler was deranged. The story was reported Nov. 2, 7, 17, and 18, 1879.
2. Brodie (1994) offered financial details on Foote Sr., quoting New York City credit reports that rated him “fairly well off, though spread out” and heavily mortgaged; the Foote home on Lexington Avenue was worth about \$30,000. Foote Sr. reportedly was a “splendid specimen of the genus humbug” who “keeps a fair bank account” and was generally “believed well off” (p. 240). When he launched Murray Hill Publishing in 1872, it was with an authorized capital of about \$20,000; Foote Sr. held most of the stock himself (p. 347).
3. Hubert Townsend Foote graduated in 1881 from the Eclectic Medical College of New York; he lived and practiced medicine in New Rochelle, New York. At age 53, he died on May 18, 1912 (AMA, 58:1769). On Oct. 12 that same year, his older brother - Edward Bond Foote - died at age 58, extensively paralyzed from an ailment he called “neuritis.” Alfred Herschel, the youngest of Foote Sr.’s three children, had died at age 12 of appendicitis. None left descendants (Schroeder, 1913, pp. 73-4, 78).
4. *Dr. Foote’s Health Monthly* reported that a man claiming to be Dr. E. B. Foote Jr. and “son of the famous author” set up medical practice in Salt

- Lake City, Utah; Portland, Oregon; Bismarck, [South] Dakota; and other Western cities. In 1885, the Footes obtained a court injunction to prevent such impostors ("Facts," 1885).
5. Mary E. Bond Foote died in 1924, leaving the bulk of her estate to nieces Elsie Winchester Coolidge and Mary Rosamond Coolidge, distant relatives of President Calvin Coolidge, as reported in the *New York Times* on March 18, 1924 and March 22, 1925.
 6. Foote Sr. died October 5, 1906 after a long period of invalidism, from senile debility, at age 77. He was buried in Cypress Hill Cemetery, Long Island, New York. Foote Jr. placed a copy of one of his father's medical books inside the coffin (Cirillo, 1973).
 7. A 2005 book by Paul Collins describes the role played by both doctors Foote in establishing a tribute to Thomas Paine (pp. 130–70). Collins also wrote that Foote Sr. held an interest in a device called an "earth closet," a toilet that operated with dirt instead of water (pp. 151–2).

NOTES TO CHAPTER THREE

1. *Gitlow v. New York*, 268 U.S. 652 (1925).
2. *Queen v. Hicklin*, 3 Q.B. 360, 371 (1868).
3. *United States v. Bennett*, 24 Fed. Cas. 1093, 1104 (S.D.N.Y.) (No. 14,571).
4. *Roth v. United States*, 354 U.S. 476, 487–89 (1957).
5. *Griswold v. Connecticut*, 381 U.S. 479, 499 (1965).
6. Sources vary on the date of the arrest. Several that list it as 1874 (Macdonald, 1929, p. 179; Brodie, 1994, p. 239; Rabban, 1977, p. 39; Sears, 1977, p. 193) rely on an account in Samuel Putnam's 1894 history of the free-thought movement (p. 52); his reason for using 1874 is unknown but could have been related to a statement attributed to Comstock in his 1880 book: ". . . the first thing accomplished after the signing of the law in 1873 by President Grant, was to oblige Mr. E. B. Foote . . . to suppress several thousands of circulars, advertisements, and books that he was sending through the mails." No further explanation was offered (p. 426). The arrest records, court documents, and Foote publications point to an 1876 arrest.
7. *United States v. Foote*, 25 F.Cas. 1140, 1141 (S.D.N.Y. 1876) (No. 15,128).
8. Id.
9. Id.
10. Id.
11. Bennett reported that the jury deliberated for 20 minutes (1878, p. 1039).

NOTES TO CHAPTER FOUR

1. The writer of this column was identified in the newspaper only as a "prominent officer of the Free Speech League." However, a letter from

Lucifer coeditor Lillian Harman found in the Theodore Schroeder collection acknowledged that the writer was Foote Jr. (Box 7, Folder 2).

2. *Turner v. Williams*, 194 U.S. 279, 283 (1904).
3. *Schenck v. United States*, 249 U.S. 47, 52 (1919).

NOTES TO CHAPTER FIVE

1. *United States v. Heywood*, Circuit Court Federal Records, vol. 78, 1877–78, District Court of U. S. A., for District of Massachusetts at Boston (handwritten volume, n.p.), pp. 539–41, 692–96.
2. The biblical passage at the center of the Wise case was cited in the *Health Monthly* as Isaiah 36:12, which in the King James Version of the Bible reads: “But Rabshakeh said, Hath my master sent me to thy master and to thee to speak these words? Hath he not sent me to the men that sit upon the wall, that they may eat their own dung, and drink their own piss with you?” (“Death knoll,” 1894).
3. *United States v. Harmon* [sic], 38 Fed. 827 (D.C.Kan. 1889); *United States v. Harmon* [sic], 45 Fed. 414 (D.C.Kan. 1891) rev’d 50 F. 921 (C.C.).

NOTES TO CHAPTER SIX

1. The letter was written by Stephen Pearl Andrews, abolitionist, anarchist, noted free-love advocate, and mentor to Victoria Woodhull. Andrews died at age 74, just 2 months after writing the letter to Foote Sr.

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