



Black Market Birth Control: Contraceptive Entrepreneurship and Criminality in the Gilded Age

Author(s): Andrea Tone

Source: *The Journal of American History*, Vol. 87, No. 2 (Sep., 2000), pp. 435-459

Published by: Organization of American Historians

Stable URL: <http://www.jstor.org/stable/2568759>

Accessed: 24/08/2008 09:25

---

Your use of the JSTOR archive indicates your acceptance of JSTOR's Terms and Conditions of Use, available at <http://www.jstor.org/page/info/about/policies/terms.jsp>. JSTOR's Terms and Conditions of Use provides, in part, that unless you have obtained prior permission, you may not download an entire issue of a journal or multiple copies of articles, and you may use content in the JSTOR archive only for your personal, non-commercial use.

Please contact the publisher regarding any further use of this work. Publisher contact information may be obtained at <http://www.jstor.org/action/showPublisher?publisherCode=oah>.

Each copy of any part of a JSTOR transmission must contain the same copyright notice that appears on the screen or printed page of such transmission.

---

JSTOR is a not-for-profit organization founded in 1995 to build trusted digital archives for scholarship. We work with the scholarly community to preserve their work and the materials they rely upon, and to build a common research platform that promotes the discovery and use of these resources. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

# Black Market Birth Control: Contraceptive Entrepreneurship and Criminality in the Gilded Age

Andrea Tone

---

Sarah Chase's arrest in May 1878 caught her by surprise. For four years she had been selling contraceptives in Manhattan and Brooklyn without incident. A graduate of the Cleveland Homeopathic College, Chase had moved to Manhattan with her young daughter in 1874, earning a living lecturing on physiology and sexology to men's and women's groups at church and meeting halls. At the conclusion of her talks, Chase sold birth control, which she also advertised in circulars sent through the mail.<sup>1</sup>

Chase's activities violated an 1873 federal law that banned the dissemination and distribution of contraceptives through the mail or across state lines. In 1878 its chief enforcer, Anthony Comstock, chief agent of the New York Society for the Suppression of Vice (NYSSV) and postal inspector by congressional appointment, plotted her arrest. Adopting the pseudonym Mr. Farnsworth, he wrote Chase and arranged a meeting at her home to purchase a douching syringe for his wife. The day after the sale, Comstock returned to Chase's dwelling with the detective James G. Howe of the Twenty-sixth Precinct, who pretended to need a syringe for his wife too. When Chase sold him one, Howe disclosed his true identity, served her with an arrest warrant, and seized six other syringes found on the premises. Comstock and Howe escorted Chase to the Tombs, the city jail, where she was released on fifteen hundred dollars bail. In a letter to his boss at the United States Post Office, Com-

Andrea Tone is an associate professor of history at the Georgia Institute of Technology. The author wishes to thank Susan Armeny, Michael Bellesiles, Bill Deverell, Lawrence Friedman, Lou Galambos, Gus Giebelhaus, Sally Gordon, Elke Kluge, Karen Lystra, Margaret Marsh, Greg Nobles, David Nord, Phil Scranton, David Thelen, John Tone, Steve Usselman, Liz Watkins, and anonymous reviewers for their suggestions. Research for this article was funded by the National Endowment for the Humanities, the Huntington Library, and the Georgia Tech Foundation. Drafts of this article were presented at the American Association for the History of Medicine conference, the Hagley Center for the History of Business, Technology, and Society, the California Institute of Technology seminar on Public Policy, Science, and Ethics, the Caltech-Huntington Committee for the Humanities, and the George Dock Society in the History of Medicine.

Readers may contact Tone at [andrea.tone@hts.gatech.edu](mailto:andrea.tone@hts.gatech.edu).

<sup>1</sup> Anthony Comstock to David B. Parker, June 1, 1878, box 27, Postal Inspection Service Records, Post Office Department Records, RG 28 (National Archives, Washington, D.C.); *New York Times*, May 10, 1878, p. 1; *National Police Gazette*, May 21, 1878, p. 14. Sarah Chase listed herself as a physician in the city directory. See 1882–83 *New York City Directory* (New York, 1882), s.v. "Chase, Frank B." D. M. Bennett, *Anthony Comstock: His Career of Cruelty and Crime* (1878; New York, 1971), 1074.

stock derided Chase's gullibility. The contraceptive entrepreneur had misjudged her ability to "keep out of the clutches of the law."<sup>2</sup>

But it was Comstock who had miscalculated. At Chase's hearing, an all-male grand jury decided there was insufficient evidence to warrant a trial. Comstock was outraged and demanded a second hearing. The prosecuting attorney refused. Not to be thwarted, Comstock sneaked into the grand jury room and persuaded the foreman to sign two bills of indictment Comstock had prepared. The prosecutor reprimanded him and then entered a *nolle prosequi* for both indictments at Chase's arraignment, formally dismissing all charges. Chase picked up where the prosecutor left off. She filed a ten thousand-dollar civil suit against Comstock for false arrest.<sup>3</sup>

Although Chase lost the countersuit, it was she, not Comstock, who emerged the victor in their frequent skirmishes. Between 1878 and 1900 Chase was arrested five times. Only once, when a patient died following an abortion, did arrest lead to a jail term for Chase; that conviction was not for birth control, but for abortion. Significantly, Chase's imprisonment did not affect her views or business practices. After her release she resumed her open endorsement and sale of contraceptives. On June 4, 1900, she was again arrested by Comstock on the charge of circulating articles to prevent conception. Once again, a grand jury refused to indict her. As in the past, Chase's brush with the law left her free to continue her trade in black market birth control.<sup>4</sup>

We know little about Sarah Chase and other contraceptive entrepreneurs who carried on their businesses after birth control became a crime. Scholars who have studied the modern birth control movement have typically framed its history as a tale of physicians, policy makers, and reproductive rights activists. As a result, we know a lot about such figures as Margaret Sanger, legal impediments to reproductive rights, and the medicalization of contraception but little about the business of birth control as it evolved from an illicit trade into one of the most successful "legitimate" industries in American history.<sup>5</sup>

<sup>2</sup>"Report of Persons Arrested Under the Auspices of the New York Society for the Suppression of Vice for the Year 1878," container 1, Records of the New York Society for the Suppression of Vice (Manuscript Division, Library of Congress, Washington, D.C.); Comstock to Parker, June 1, 1878, box 27, Postal Inspection Service Records; Bennett, *Anthony Comstock*, 1074-75; *New York Times*, May 10, 1878, p. 1; *National Police Gazette*, May 21, 1878, p. 4.

<sup>3</sup>*New York Times*, June 26, 1888, p. 1; Comstock to Parker, June 1, 1878, box 27, Postal Inspection Service Records; "Report of Persons Arrested . . . 1878"; *National Police Gazette*, June 26, 1888, p. 1; *ibid.*, July 20, 1878, p. 1; Bennett, *Anthony Comstock*, 1080.

<sup>4</sup>"Report of Persons Arrested Under the Auspices of the New York Society for the Suppression of Vice for the Year 1900," container 3, Records of the New York Society for the Suppression of Vice; Janet Farrell Brodie, *Contraception and Abortion in Nineteenth-Century America* (Ithaca, 1994), 132.

<sup>5</sup>The most comprehensive histories of modern birth control examine the evolution of the post-1873 industry only peripherally. See, for instance, an otherwise brilliant book, Linda Gordon, *Woman's Body, Woman's Right: A Social History of Birth Control in America* (New York, 1974); David M. Kennedy, *Birth Control in America: The Career of Margaret Sanger* (New Haven, 1970); James Reed, *From Private Vice to Public Virtue: The Birth Control Movement and American Society since 1830* (New York, 1978); Ellen Chesler, *Women of Valor: Margaret Sanger and the Birth Control Movement in America* (New York, 1992); Brodie, *Contraception and Abortion in Nineteenth-Century America*; Constance Chen, "The Sex Side of Life": *Mary Ware Dennett's Pioneering Battle for Birth Control and Sex Education* (New York, 1996); Carole McCann, *Birth Control Politics in the United States, 1916-1945* (Ithaca, 1994); and Donald T. Critchlow, *Intended Consequences: Birth Control, Abortion, and the Federal Government*

This article explores the social and economic character of the black market birth control trade to address a question crucial to understanding the history of reproductive control, business, and the law: What happened to the national contraceptive industry after it was declared illegal? Historians have often characterized the period between criminalization in the 1870s and Sanger's movement of the 1910s as birth control's bleakest chapter, a time when only a privileged few could afford the services of sympathetic doctors or of a dwindling number of merchants who would discreetly ignore the law for the right price. Sanger herself was among the first to voice this interpretation, insisting that an almost year-long search for contraceptive information in 1913 yielded "no information more reliable than that exchanged by any back-fence gossips in any small town." Sanger's claim has enjoyed a remarkable shelf life. The most recent book-length history of fertility control, for instance, while offering important new insights on the practice of birth control and abortion in the nineteenth-century United States, concludes that the new laws of the 1870s "overrode a generation of commercialization and growing public discourse and drove reproductive control, if not totally back underground, at least into a netherworld of back-fence gossip and back-alley abortion."<sup>6</sup>

Yet an abundance of evidence—from arrest and Post Office Department records to credit reports, trade catalogs, trial transcripts, advertisements, patents, medical literature, and private letters between friends and lovers—points to a very different scenario in which legal leniency, entrepreneurial savvy, and cross-class consumer support enabled the black market in birth control to thrive. Such findings hardly point to a hitherto unrecognized golden age of safe or effective birth control. Even before birth control became a crime, popular methods such as douching were neither reliable nor entirely safe, especially by modern standards. They do, however, call into question assumptions of draconian enforcement of birth control restrictions and tell us new things about law, commerce, and everyday sexual practice in the turn-of-the-century United States.

The ability of entrepreneurs such as Chase to violate the law with impunity underscores the need to examine criminal birth control not only as a statutory event but also as a dynamic process shaped by manufacturers, retailers, consumers, and the

---

in *Modern America* (New York, 1999). On the birth control business in relation to the development and mass marketing of oral contraceptives, see Bernard Asbell, *The Pill: A Biography of the Drug that Changed the World* (New York, 1995), 156–69; Elizabeth Siegel Watkins, *On the Pill: A Social History of Oral Contraceptives, 1950–1970* (Baltimore, 1998), 21–27, 48, 51; and Lara Marks, *Sexual Chemistry: An International History of the Pill* (New Haven, forthcoming).

<sup>6</sup>Margaret Sanger, *Margaret Sanger: An Autobiography* (New York, 1938), 93–95; Brodie, *Contraception and Abortion in Nineteenth-Century America*, 288. Brodie acknowledges that Sanger's remarks were exaggerated but accepts their basic premise. See also Carl N. Degler, *At Odds: Women and the Family in America from the Revolution to the Present* (New York, 1980), 222; Shirley Green, *The Curious History of Contraception* (London, 1971), 15; Carol Flora Brooks, "The Early History of the Anti-Contraceptive Laws in Massachusetts and Connecticut," *American Quarterly*, 18 (Spring 1966), 22; Kathleen Endres, "Strictly Confidential: Birth-Control Advertising in a Nineteenth-Century City," *Journalism Quarterly*, 63 (Winter 1986), 748–51; and C. Thomas Dienes, *Law, Politics, and Birth Control* (Urbana, 1972), 50–73. Two notable exceptions, neither of which explores the social or economic impact of criminalization in depth, are: Michael Grossberg, *Governing the Hearth: Law and the Family in Nineteenth-Century America* (Chapel Hill, 1985), 175–95; and John D'Emilio and Estelle B. Freedman, *Intimate Matters: A History of Sexuality in America* (New York, 1988).

justice system. Paralleling Americans' response to other forms of regulated vice, a zone of tolerance was created in which birth control was routinely made, sold, bought, and used. Not openly endorsed, contraceptives were nonetheless accepted. Court decisions sanctioned sexual and commercial disobedience, adumbrating an implied right to personal and entrepreneurial privacy that superseded the right of the federal government to interfere in the bedrooms and businesses of the nation.<sup>7</sup>

Although Americans defined the law in their own terms, some were affected by its presence more than others. In theory, antiobscenity legislation applied to all purveyors of contraceptives, including established rubber and pharmaceutical houses that manufactured and distributed items commonly used for birth control. In practice, smaller players, such as Sarah Chase, were more likely to be investigated. Investigators viewed contraceptive entrepreneurs—often immigrants, women, and Jews—not only as businesspeople breaking the law, but as a criminal class. The legal vulnerability of small proprietors illuminates how perceptions of criminality and commercial legitimacy were constructed at the turn of the century. It also suggests the need to incorporate both the illicit and the small into our understanding of the evolution of federal business regulation.<sup>8</sup>

The history of the birth control business in the age of Comstock broadens our understanding of everyday contraceptive realities. Measuring attitudes toward and use of contraceptives is inherently difficult, especially for an era when birth control was a crime, few people recorded their contraceptive encounters, and medical, marketing, and opinion surveys of national practices did not exist.<sup>9</sup> Studying bootleg birth control helps fill in these gaps, connecting commerce and consumption to birth control as it was experienced “from the bottom up,” revealing a resilient, robust, and segregated industry that accommodated a broad spectrum of budgets and inclinations. Long before Margaret Sanger rescued her fellow citizens from contraceptive ignorance, Americans of all backgrounds had turned to the market, seeking control over their fertility and their lives.

<sup>7</sup> Much has been written about antiobscenity measures and the judicial rulings that curbed and finally struck them down, but little about the everyday evasion and enforcement of contraceptive laws.

<sup>8</sup> For the first interpretation of Progressive business regulations as serving the interest of big business, see Gabriel Kolko, *The Triumph of Conservatism: A Reinterpretation of American History, 1900–1916* (New York, 1963). For a more recent exploration of the regulatory road to corporate capitalism, see Gerald Berk, *Alternative Tracks: The Constitution of American Industrial Order, 1865–1916* (Baltimore, 1994). See also Charles W. McCurdy, “The Knight Sugar Decision of 1895 and the Modernization of American Corporation Law, 1869–1903,” *Business History Review*, 53 (Autumn 1979), 304–42. On small and medium-sized businesses, see Philip Scranton, *Endless Novelty: Specialty Production and American Industrialization, 1865–1925* (Princeton, 1997); and Wendy Gamber, *The Female Economy: The Millinery and Dressmaking Trades, 1860–1930* (Urbana, 1997). On female entrepreneurship, see Wendy Gamber, “A Gendered Enterprise: Placing Nineteenth-Century Businesswomen in History,” *Business History Review*, 72 (Summer 1998), 188–218; Kathy Peiss, “Vital Industry and Women’s Ventures: Conceptualizing Gender in Twentieth-Century Business History,” *ibid.*, 219–41; Katina L. Manko, “Now You Are in Business for Yourself: The Independent Contractors of the California Perfume Company, 1886–1938,” *Business and Economic History*, 26 (Fall 1997), 5–26; Rickie Solinger, *The Abortionist: A Woman against the Law* (New York, 1994); and Lucy Eldersveld Murphy, “Business Ladies: Midwestern Women and Enterprise, 1850–1880,” *Journal of Women’s History*, 3 (Spring 1991), 65–89.

<sup>9</sup> The exception for the Victorian era is a survey by Dr. Clelia Duel Mosher that investigated the marital relations and sexual habits, between 1892 and 1920, of 45 women, a majority of whom were college-educated, middle-class, and white. See James Mahood and Kristine Wenburg, *The Mosher Survey: Sexual Attitudes of Forty-five Victorian Women* (New York, 1980).

## The Law

At its inception, the Comstock Law was antibusiness legislation. Invoking its authority to regulate interstate commerce and the United States postal system, Congress enacted the antiobscenity statute to end the “nefarious and diabolical traffic” in “vile and immoral goods” that purity reformers believed promoted sexual licentiousness. Passed in the early hours of March 2, 1873, the statute forbade the importation or dissemination of any “book, pamphlets, paper, writing, advertisement, circular, print, picture, drawing, or other representation, figure, or image on or of paper or other material, or any case, instrument, or other article of an immoral nature, or any drug or medicine, or any article whatever for the prevention of conception.”<sup>10</sup>

It was not the first time obscenity had been made a crime. In 1842 Congress had passed without explanation a tariff act authorizing customs officials to seize “obscene or immoral” imported prints and pictures (but not printed matter). By the 1860s a lively domestic trade in cheap novels, pamphlets, and photographs revealed not only that the tariff act had failed but also that native, not foreign, hands were to blame. In 1865 Congress approved a bill introduced by Sen. Jacob Collamer of Vermont, postmaster general during the Taylor administration, that made the mailing of any “obscene book, pamphlet, picture, print, or other publication . . . [of] vulgar and indecent character” a misdemeanor. In 1872 Congress strengthened the 1865 provisions, adding envelopes and postcards to its list of “suspicious” articles.<sup>11</sup>

The Comstock Law thus continued a policy of federal obscenity regulation that by 1873 was more than thirty years old. Eliminating loopholes in the 1872 law, it expanded its scope, codifying an extraordinarily long list of “obscenities.” Ominously, contraceptives made the list for the first time. The decision to include them was Comstock’s. Born in 1844, the former dry goods salesman from Connecticut had impressed social purity reformers in the New York Young Men’s Christian Association (YMCA) in the 1860s with his one-man crusade to eradicate sexual vice. An enthusiast molded by the tradition of evangelical reform, Comstock took sin seriously, fearing that exposure to vice—be it pornography, prostitution, or contraceptives—would lead inevitably to moral decay, physical ruin, and spiritual damnation.<sup>12</sup>

Comstock identified birth control as an increasingly conspicuous and profitable business operated, in part, by small-scale “smut peddlers” who sold diaphragms along with dildos, photographs of naked women, and impotence cures. Although birth control had been used by Americans since colonial times, developments since the 1830s had enhanced its commercial visibility. Vulcanization technology

<sup>10</sup> Comstock Act, ch. 258, 17 Stat. 598 (1873).

<sup>11</sup> *Congressional Globe*, 38 Cong., 2 sess., Feb. 8, 1865, p. 661; *Appendix to the Congressional Globe*, 42 Cong., 2 sess., June 8, 1872, p. 790; Mary Ware Dennett, *Who’s Obscene?* (New York, 1930), 210; James C. N. Paul and Murray L. Schwartz, *Federal Censorship: Obscenity in the Mail* (New York, 1961), 12, 17; Dorothy Garfield Fowler, *Unmailable: Congress and the Post Office* (Athens, Ga., 1977), 55; D’Emilio and Freedman, *Intimate Matters*, 159.

<sup>12</sup> Heywood Broun and Margaret Leech, *Anthony Comstock: Roundsman of the Lord* (New York, 1927), 46–47; Bennett, *Anthony Comstock*; Charles Gallaudet Trumbull, *Anthony Comstock, Fighter* (New York, 1913); Nicola Beisel, *Imperiled Innocents: Anthony Comstock and Family Reproduction in Victorian America* (Princeton, 1997).

invented by Charles Goodyear in 1839 permitted the domestic manufacture of condoms, male caps, diaphragms, intrauterine pessaries, and douching syringes; Goodyear himself mentioned self-acting syringes, pessaries, and “gonorrhoea bags” as examples of the many uses of his discovery in his 1853 book, *Gum-Elastic and Its Varieties*. Concomitant improvements in printing technology and reductions in postal rates enabled contraceptive entrepreneurs to advertise their rubber wares inexpensively in newspapers, broadsides, home medical manuals, and private cards placed strategically on street corners, in railway and steamship depots, and in hotel lobbies. Established firms and respected physicians and druggists also distributed birth control devices. But what Comstock and his cronies found so threatening was the prominence of contraceptives in the vice trade—a robust and increasingly visible commerce in illicit products and pleasures, from prostitution to pornography, that seemed to encourage sexual license by freeing sex from the constraints of marriage and childbearing.<sup>13</sup>

With the financial and political backing of his YMCA patrons, Comstock went to Washington in December 1872 to marshal support for a new federal bill he had drafted to clamp down on the escalating obscenities trade. Congressional debate on the measure was brief. To no avail did Rep. Michael Kerr of Indiana warn that a bill proposing such sweeping regulatory powers ought not to be endorsed in “such hot haste.” In a rush of legislation, the Forty-second Congress passed Comstock’s bill along with some 260 others, the precise details of which remained unknown to many members. Three days later it appointed Comstock special agent of the United States Post Office, with all of the enforcement rights the office bestowed.<sup>14</sup>

Basking in victory, the country’s newly ordained vigilante of vice missed the warning signs. Finding political enthusiasm in indifference and studied endorsement in last-minute scurrying, Comstock left Washington convinced of the reality of a broad political consensus supporting his views on vice. He was wrong. Like Kerr, many other Americans questioned the advisability and constitutionality of such far-reaching congressional interference. Others simply refused to consider contraception in any form a crime. The “sins” Comstock had conflated would be disaggregated after 1873 and judged, one by one, where it mattered most—in the marketplace and in the court of Americans’ conscience.

## Enforcement

From the beginning, enforcers of the new law faced many obstacles, including the scope of the regulations and inadequate funding. The Comstock Law banned

<sup>13</sup> Charles Goodyear, *Gum-Elastic and Its Varieties, with a Detailed Account of Its Applications and Uses and the Discovery of Vulcanization* (New Haven, 1853), 170, 172–74. On the visibility of the contraceptive trade, see, for example, Ezra Heywood, *Uncivil Liberty: An Essay to Show the Injustice and Impolicy of Ruling Woman Without Her Consent* (Princeton, 1872), 21; Ely Van de Warker, “The Criminal Use of Proprietary or Advertised Nostrums,” *New York Medical Journal*, 17 (Jan. 1873), 23; Nicholas France Cooke, *Satan in Society: By a Physician* (Cincinnati, 1882), 24, 150. Published in 1882, Cooke’s book was written in 1870. See also D’Emilio and Freedman, *Intimate Matters*, 158; and Brodie, *Contraception and Abortion in Nineteenth-Century America*, 191–92.

<sup>14</sup> Register of Post Office Inspectors, box 16, Postal Inspection Service Records; Bennett, *Anthony Comstock*, 1017.

the distribution of contraceptives but also dozens of other obscenities, from lewd photographs to pornographic trinkets. Under the law, the policing of each was accorded equal status. Because the antiobscenity provisions were embedded in a postal statute, the herculean task of enforcing them became the responsibility of post office inspectors, also called special agents. By 1873 their duty roster, which included the enforcement of postal laws and regulations governing the interstate transport of goods by common carrier, was full. With the Comstock Law, it swelled further. Had Congress insisted on the hiring of dozens of additional agents, it might have increased the chances of successfully enforcing the law. It did not. Between 1872 and 1873 the postmaster general hired 4 new inspectors, increasing the total number from 59 to a still-paltry 63. Few in number and strapped for time, inspectors could do only so much. Of the 410 arrests made by all post office agents in the United States between May 1, 1875, and April 30, 1876, only 27 were for violations of the Comstock Law.<sup>15</sup>

The difficulty of eliminating the birth control trade was exacerbated by the balance of federal and state regulatory power. Although abortion had long been a matter of state regulation, birth control was different.<sup>16</sup> The Comstock Law was the first statute that explicitly outlawed contraceptive commerce. Following Congress's lead, twenty-four states enacted so-called mini-Comstock laws prohibiting the dissemination or advertisement of contraceptives within state lines. State statutes did not seek to shift power from the federal government to the states so much as they sought to affirm the congressional classification of contraceptives as obscene. Because the birth control business depended on interstate commerce and the United States Post Office, its regulation by federal authorities was recognized and accepted. Tellingly, the majority of persons arrested for birth control crimes in the post-1873 United States were indicted, tried, or sentenced in federal courts for breaking federal law.<sup>17</sup>

<sup>15</sup> Embezzling letters and mail and post office robberies accounted for 259 arrests; embezzling government funds, 11; using the mail for fraudulent purposes, 18; other offenses, 95. See P. H. Woodward, *The Secret Service of the Post-Office Department* (Columbus, Oh., 1886), 20. U.S. Post Office Department, *Annual Report of the Postmaster-General of the United States for the Fiscal Year Ended June 30, 1873* (Washington, 1873), xxii. See also Trumbull, *Anthony Comstock*, 188; and Mary Ware Dennett, *Birth Control Laws: Shall We Keep Them, Change Them, or Abolish Them* (New York, 1926), 30.

<sup>16</sup> By 1880 in every state criminal abortion laws permitted medically necessary abortions, an exemption that made determinations of wrongdoing both frequently contested and a state responsibility. Leslie J. Reagan finds, even among medical professionals, widespread use and toleration of abortion, which she refers to as an "open secret" in 1860–1940. Leslie J. Reagan, *When Abortion Was a Crime: Women, Medicine, and Law in the United States, 1867–1973* (Berkeley, 1997), 19–45, 62–73. On the growing distinction between abortion and birth control in the late nineteenth century, see Grossberg, *Governing the Hearth*, 193–95. On the regulation of abortion in colonial and antebellum America, see James C. Mohr, *Abortion in America: The Origins and Evolution of National Policy, 1800–1900* (New York, 1978); Cornelia Hughes Dayton, "Taking the Trade: Abortion and Gender Relations in an Eighteenth-Century New England Village," *William and Mary Quarterly*, 48 (Jan. 1991), 19–49; and Susan E. Klepp, "Lost, Hidden, Obstructed, and Repressed: Contraceptive and Abortive Technology in the Early Delaware Valley," in *Early American Technology: Making and Doing Things from the Colonial Era to 1850*, ed. Judith McGaw (Chapel Hill, 1994), 68–113. See also Brodie, *Contraception and Abortion in Nineteenth-Century America*, 254–88.

<sup>17</sup> Grossberg, *Governing the Hearth*, 187–93; Dennett, *Birth Control Laws*, 268–71; Brooks, "Early History of the Anti-Contraceptive Laws in Massachusetts and Connecticut"; Reagan, *When Abortion Was a Crime*; H. S. Pomeroy, *The Ethics of Marriage, Also with an Appendix Showing the Laws of Most of the States and Territories Regarding Certain Forms of Crime* (New York, 1888), 185–97; Dienes, *Law, Politics, and Birth Control*, 42–47.

Designating the contraceptive industry a federal issue, state legislatures made regulation of it a federal burden.

The most successful apprehender of birth control "criminals" was Comstock himself. His zeal, ridiculed in the press, coupled with his post office colleagues' chronic overwork, ensured that the NYSSV, an offshoot of the YMCA incorporated in March 1873, performed the lion's share of obscenity policing. Comstock received his authority from Congress and the 1875 criminal code of the state of New York, which deputized NYSSV agents to enforce state and federal obscenity laws.<sup>18</sup> Because he and other agents painstakingly cataloged details of each arrest, including charges filed, the outcomes of each legal proceeding, and arrestees' business addresses, aliases, inventories, and occupations, we have a remarkable repository of information about contraceptive entrepreneurship and criminality in the late-nineteenth-century United States. Although a little over half (54 percent) of those arrested resided in the state of New York, it would be a mistake to assume that this is a purely New York story. NYSSV agents typically pursued entrepreneurs who advertised in New York's sensationalist and working-class tabloids, a medium that privileged local merchants. But contraceptive entrepreneurs, especially those who advertised in newspapers, depended on mail-order commerce and used the postal system to transcend obstacles keeping distant and rural customers from buying birth control. Indeed, NYSSV arrestees included dozens of contraceptive purveyors who advertised in New York papers but whose mail-order outfits were based in states as far away as Iowa and Tennessee. In addition, until the adoption of latex and mass-production technologies in the 1930s, birth control manufacture was never so expensive or difficult that ordinary people could not make contraceptives in small shops or in the home. Surviving records, including newspaper advertisements, private letters, court cases, and patents, support Comstock's fear that New York's contraceptive "troubles" paralleled those of the nation.<sup>19</sup>

A striking feature of the NYSSV records is the infrequency of contraception-related arrests. Notwithstanding the society's broad discretionary powers, its chief's devotion, and the existence of a vibrant bootleg market, NYSSV agents (including the indefatigable Comstock), arrested only 105 men and women between March 1873 and March 1898 for the crime of birth control, fewer than 5 per year.<sup>20</sup> One expla-

---

Of 105 persons arrested for birth control crimes from 1873 to 1898 by the New York Society for the Suppression of Vice (nyssv) agents, all but 12 were prosecuted in federal courts. See containers 1–3, Records of the New York Society for the Suppression of Vice.

<sup>18</sup> *Sixth Annual Report of the New York Society for the Suppression of Vice* (New York, 1880), 27–28; Register of Post Office Inspectors, Postal Inspection Service Records; Dennett, *Birth Control Laws*, 32.

<sup>19</sup> The breakdown of arrests recorded in the NYSSV arrest ledgers between 1873 and 1898 is: New York 57; Illinois 12; Massachusetts 9; Pennsylvania 7; New Jersey 6; Connecticut 3; Indiana 3; Ohio 2; New Hampshire 2; Michigan 1; Kentucky 1; Tennessee 1; Iowa 1. Containers 1–3, Records of the New York Society for the Suppression of Vice. Comstock depended on postal agents to enforce obscenity laws where NYSSV agents could not be present, particularly in the West and South. On contraceptive technology, see, for example, T. J. B. Buckingham, "The Trade in Questionable Rubber Goods," *India Rubber World*, March 15, 1892, p. 164; and Vern L. Bullough, "A Brief Note on Rubber Technology and Contraception: The Diaphragm and the Condom," *Technology and Culture*, 22 (Jan. 1981), 104–11.

<sup>20</sup> The number includes those whose primary offense was making or selling birth control as well as those whose inventory included contraceptives, evidence that would justify an additional criminal charge.

nation was the variety and volume of offenses claiming agents' attention and time. But equally significant was inspectors' tunnel vision. Ignoring the intricacies of the contraceptive industry, agents pursued a select group of birth control sellers—those whose activities most resembled their stereotypes of smut peddling—but left other, equally important, participants in the trade alone. Such elitist understandings of sexual criminality, spawned by a virulent union of nativism, sexism, and classism, were not new. It was the social purity movement's success in linking contraceptives to sexual licentiousness, brothels, and bars that had prompted Comstock to classify contraceptives as obscene in the first place. Once the law went into effect, contraceptives remained tied to a street and saloon culture profiting men and women presumed to be devoid of scruples, morals, and class: "bad" men, "sly" Jews, "moral-cancer-planters," and "old she villians." Purity crusaders' compartmentalization of the world into separate spheres of vice and virtue encouraged inspectors to view the elimination of the rubber vendors and "infidel quacks" who conspicuously advertised their wares in tabloids and circulars as key to the suppression of the industry. Such entrepreneurs were disparaged as soulless vermin, "ghouls and vampires." By contrast, patrons of the NYSSV who sought their arrest were, in Comstock's words, "honest, brave men."<sup>21</sup>

Ironically, Comstock need have looked no further than his "honest men" to detect a crime in progress. The perpetrator was none other than Samuel Colgate, president of the NYSSV and millionaire heir of Colgate and Company, a New Jersey-based soap firm. Colgate held exclusive United States distribution rights to Vaseline and in the mid-1870s launched an aggressive campaign advertising the substance's therapeutic value. The cornerstone of his initiative was a twelve-page promotional pamphlet that included a doctor's endorsement of Vaseline's contraceptive benefits. Reminding readers that "prevention is better than cure," the practitioner observed that "vaseline, charged with four to five grains of salicylic acid will destroy spermatozoa, without injury to the uterus or vagina."<sup>22</sup>

Colgate's hypocrisy—serving as president of an organization that opposed contraceptives while profiting from their sale—exemplified the class bias undergirding enforcement efforts, and it did not go unnoticed. The anarchist and free-love advocate Ezra Heywood, who was arrested four times between 1878 and 1890 for violating the obscenity laws, correctly identified enforcement, NYSSV-style, as a class issue. There was no justice, he argued, in a world where ordinary people had to "lie and cheat like the devil in order to get an honest living" but privileged men such as Colgate got "rich making and selling vaseline for preventing conception." Nor was Colgate

<sup>21</sup> Comstock to S. Murphy, Dec. 11, 1905, box 17, Medical Interests, Office of Messrs. Rockefeller, Rockefeller Family Collection (Rockefeller Archives, Tarrytown, N.Y.); containers 1–3, Records of the New York Society for the Suppression of Vice; Anthony Comstock, *Frauds Exposed; or, How the People are Deceived and Robbed, and Youth Corrupted* (1880; Montclair, 1969), 5, 308, 434; *The Second Annual Report of the New York Society for the Suppression of Vice* (New York, 1876), 11, 14.

<sup>22</sup> The promotional pamphlet is quoted in D. M. Bennett, *An Open Letter to Samuel Colgate* (New York, 1879), 8–9. Edward B. Foote, *The Radical Remedy in Social Science; or, Borning Better Babies through Regulating Reproduction by Controlling Conception* (New York, 1886), 90; Edwin C. Walker, *Who Is the Enemy: Anthony Comstock or You?* (New York, 1903), 16.

the only entrepreneur whose crimes were conveniently ignored. Heywood charged that the contraceptive trade was teeming with “‘pure’ Shylocks [who] make and vend tons of syringes to prevent conception, yet are unmolested [because they are] well-beloved fellow members of Brooklyn Churches with Comstock [and] Colgate!” Freethinkers dubbed the NYSSV the “Society for the Manufacture and Suppression of Vice” and boycotted Colgate’s products for years.<sup>23</sup>

While the NYSSV spared Colgate, Morris Glattstine was arrested. The twenty-six-year-old Polish Jew, described by Comstock as “shrewd and lazy,” bought condoms and diaphragms from the Milwaukee-based Stuart Rubber Company. Most of his stock was reserved for resale to outlying retailers, but Glattstine also sold birth control directly to consumers at his druggist’s sundries and rubber goods store at 77 East Broadway in New York City. In March 1878 Comstock paid a visit and arrested Glattstine, seizing his inventory—a damning “6 womb veils and 15 caps and capotes”—for evidence. Comstock reported to his superior in the post office that he had “discovered where [Glattstine and his clerk] get their stock, of a manufacturer in the West.” But he left the Stuart Rubber Company alone.<sup>24</sup>

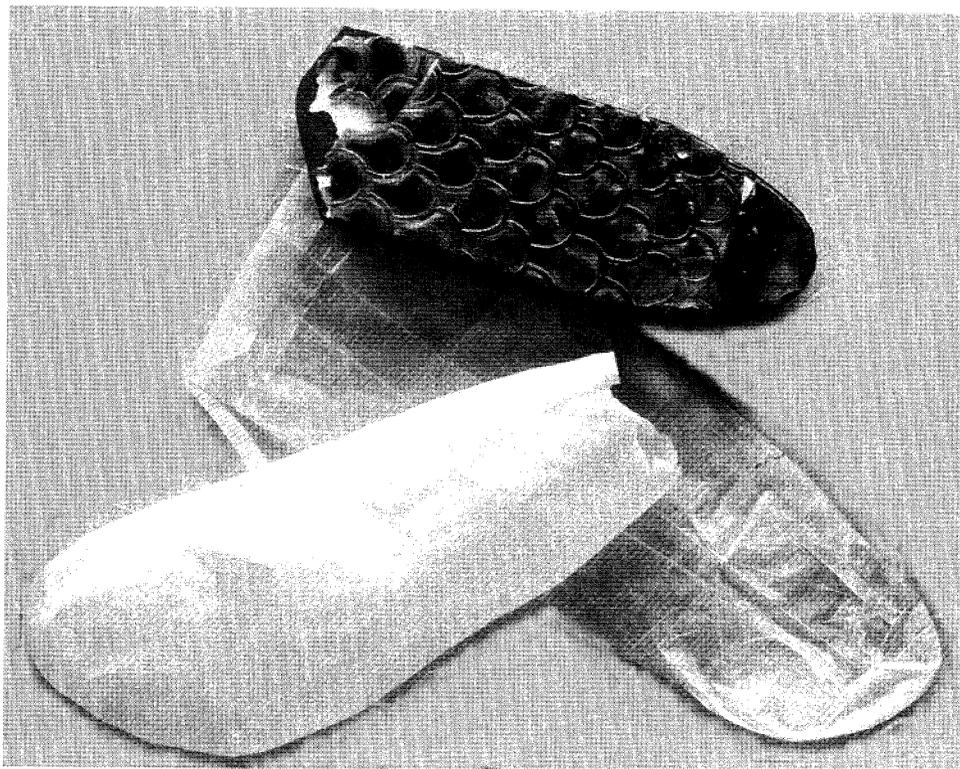
The legal handling of Colgate, Glattstine, and the Stuart Rubber Company illuminates the selective enforcement of laws against contraceptives. A majority of businesspeople arrested for the crime of birth control were petty proprietors. Many were immigrants, women, or Jews. Few possessed a formal education. Denied the credit and social or educational credentials needed to claim professional respectability or ascend the financial ladder, they were drawn to a trade whose illicit character and low capital requirements made it welcoming to ordinary people. After months of joblessness and nights passed on park benches, the German Jewish immigrant Julius Schmid began selling skin condoms made out of freshly slaughtered sheep intestines in the late 1880s, when he was in his early twenties. Joseph Backrach, a Jewish immigrant with a “common education,” supported a family of nine making rubber womb veils, condoms, male caps, and ticklers in his Brooklyn residence.<sup>25</sup>

Because we cannot enumerate the firms that participated in the contraceptive trade, we cannot be certain of the statistical *extent* of enforcement bias. No census or even informal inventory of bootleg birth control firms exists. What we *can* say is that established companies that made, distributed, and advertised contraceptives

<sup>23</sup> Bennett, *Open Letter to Samuel Colgate*, 9; Broun and Leech, *Anthony Comstock*, 189; Anthony Comstock, *Traps for the Young*, ed. Robert Bremner (1883; Cambridge, Mass., 1967), 148.

<sup>24</sup> Credit report for Morris Glattstine, New York, vol. 257, p. 3342 (entries for Jan. 29, Aug. 1, 1881), R. G. Dun and Company Collection (Baker Library, Harvard Business School, Boston, Mass.); “Report of Persons Arrested . . . 1878”; Comstock to Parker, March 21, 1878, box 27, Postal Inspection Service Records; Brodie, *Contraception and Abortion in Nineteenth-Century America*, 234. The company went unnamed in Comstock’s letter to Parker, although Comstock’s notes in the NYSSV 1878 arrest record indicate that he knew the name when he wrote the letter.

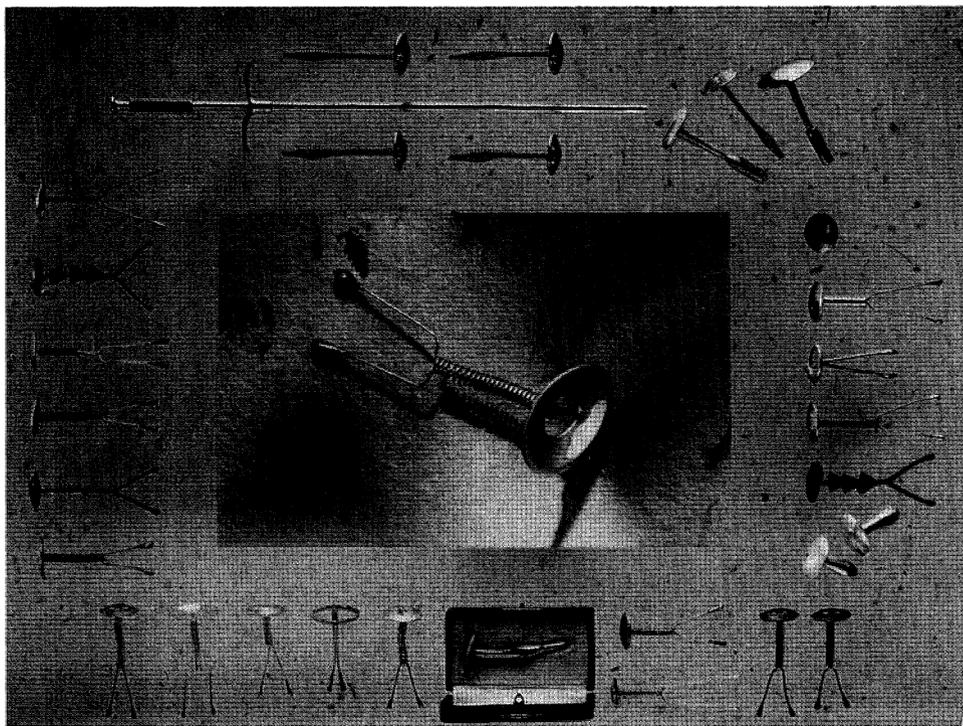
<sup>25</sup> “Report of Persons Arrested Under the Auspices of the New York Society for the Suppression of Vice for the Year 1885,” container 2, Records of the New York Society for the Suppression of Vice; “Report of Persons Arrested Under the Auspices of the New York Society for the Suppression of Vice for the Year 1889,” *ibid.*; Manuscript Population Schedules, Enumeration District 622, Borough of Queens, New York City, New York, Twelfth Census of the United States, 1900, Schmid household; “The Accident of Birth,” *Fortune*, 17 (Feb. 1938), 108; James S. Murphy, *The Condom Industry in the United States* (Jefferson, 1990), 10–12. See Andrea Tone, *Devices and Desires: Women, Men, and the Commercialization of Contraception* (New York, forthcoming).



Animal membrane condoms, typically advertised as “skins,” predated vulcanized rubber and latex models and were traditionally imported from Europe. By 1890, however, the condom entrepreneur Julius Schmid had launched a successful business in skins in New York, which by the 1930s would make the immigrant a millionaire.

*Courtesy History of Contraception Museum, Janssen-Ortho Inc., Toronto, Canada.*

were not prosecuted. Catalogs circulated by B. F. Goodrich, Goodyear, Sears, Roebuck, and wholesale drug supply houses such as McKesson and Robbins advertised a full line of contraceptives, from intrauterine devices to vaginal pessaries, douching syringes, toilet sponges, and male caps. Companies' reputations as ethical vendors who sold exclusively to licensed doctors and druggists and reputable mail-order houses gave them legal cover, while the diversity of their product line helped camouflage articles' illicit uses. The pharmaceutical firm H. K. Mulford sold antiseptic tampons but also hair tonics, tapeworm remedies, and a breakthrough diphtheria antitoxin; U.S. Rubber made diaphragms along with tires and footwear. Intriguingly, the only contraceptive mentioned by brand in the Mosher report, a survey of the marital relations of forty-five women at the turn of the century, was a “Good-year rubber ring,” worn by a woman for two years following the birth of her first child. Though that woman had no difficulty associating birth control devices with



Early-twentieth-century intracervical and intrauterine pessaries.  
*Courtesy History of Contraception Museum, Janssen-Ortho Inc., Toronto, Canada.*

dignified commerce, law enforcers did. It was more comforting to declare the vice trade something other than business as usual.<sup>26</sup>

## Evasion

In the 1930s regulations enforced by the Food and Drug Administration and the Federal Trade Commission and the expense of new manufacturing technologies

<sup>26</sup> See, for example, "Preliminary Hearing of William C. Halleck," 1919, pp. 118, 140, Transcripts of Hearings on Fraud Cases, 1913–1945, box 11, Post Office Department Records; Goodyear Rubber Company, *Physician's Friend and Nurse's Guide* (Washington, 1898), 1–7, 9, pamphlet, box 2, Rubber Trade Catalogues, Warshaw Collection of Business Americana (National Museum of American History, Smithsonian Institution, Washington, D.C.); B. F. Goodrich Company, *India Rubber Druggists' Sundries* (n.p., c. 1895), 23–24, 33–47, 74–76, 81–83, 87, box 1, *ibid.*; Perry, Stearns & Company, *Rubber Goods of Every Description* (Chicago, 1890), 28–34, box 8, *ibid.*; Tyer Rubber Company, *Illustrated Catalogue and Price List of Druggists' Sundries and Miscellaneous Rubber Goods* (Andover, Mass., 1908), 10, 10a, 40, 40a, 88, 88a, box 8, *ibid.*; McKesson & Robbins, *Illustrated Catalogue of Druggists' Sundries, Fancy Goods, Surgical Instruments, Sponges, Chamois etc.* (New York, 1883), 112, 132, 151, 191; Sears, Roebuck & Co., *1897 Sears Roebuck Catalogue*, ed. Fred L. Israel (New York, 1968), 32; Sears, Roebuck & Co., *1902 Sears Roebuck Catalogue*, ed. Cleveland Amory (New York, 1993), 455; Sears, Roebuck & Co., *1908 Sears Roebuck Catalogue*, ed. Joseph J. Schroeder Jr. (Chicago, 1981), 795; Louis Galambos with Jane Eliot Sewell, *Networks of Innovation: Vaccine Development at Merck, Sharp & Dohme, and Mulford, 1895–1995* (New York, 1995), 17; Brodie, *Contraception and Abortion in Nineteenth-Century America*, 215; Mahood and Wenburg, *Mosher Survey*, case 47. On the social camouflaging of other medical devices in this era, see Rachel P. Maines, *The Technology of Orgasm: "Hysteria," the Vibrator, and Women's Sexual Satisfaction* (Baltimore, 1999).

would shut smaller players out, concentrating contraceptive production and profits in the hands of a few. But in the age of Comstock, small entrepreneurs held their ground. They knew they were being hunted. Adopting strategies of concealment, they resisted the criminalization of their trade.

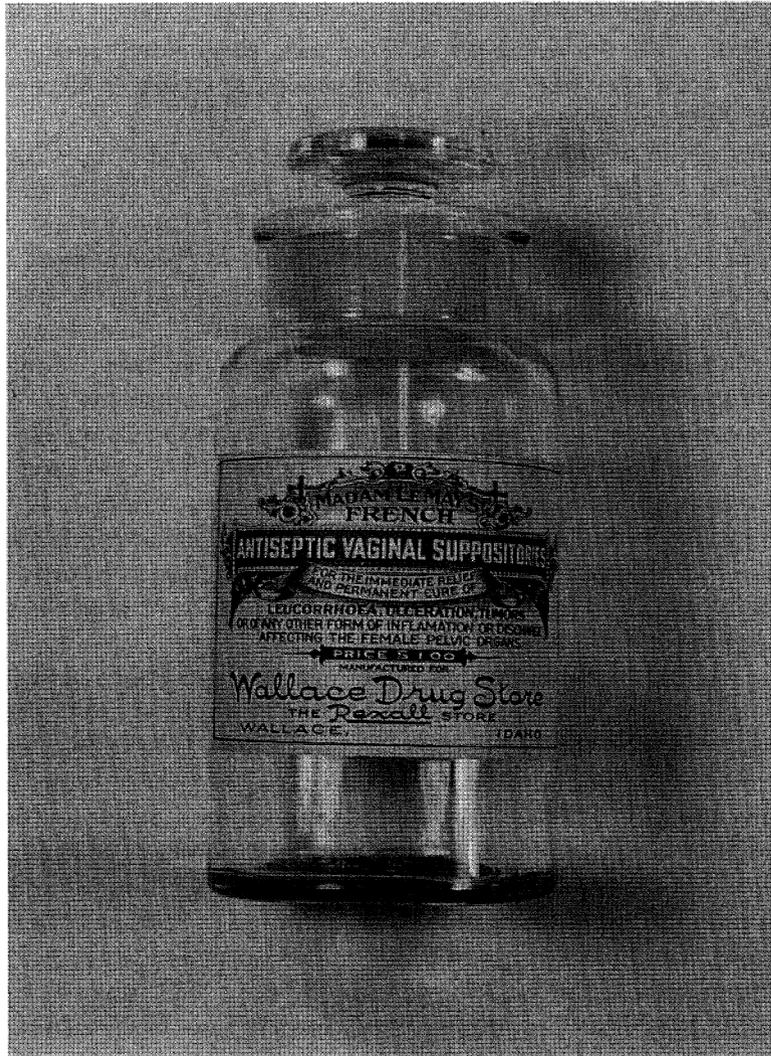
Proprietors disguised their products through creative relabeling. Classified ads published in the medical, rubber, and toilet goods sections of dailies and weeklies indicate a flourishing contraceptive trade in the post-1873 United States. The hitch was that contraceptives were rarely advertised openly as “preventives.” Condoms were sold as sheaths, male shields, capotes, and as one 1889 ad in the weekly crime tabloid, the *National Police Gazette*, read, “rubber goods . . . [for] gents. 25 cents each.” Women’s pessaries were advertised as uterine elevators, ladies’ shields, protectors, womb supporters, “married women’s friends,” and “copper molds. You know. \$1.”<sup>27</sup> Because many of those labels had figured in advertisements published before the Comstock Law was enacted, their reappearance after 1873 signaled to consumers what was being sold. The more discernible shift after criminalization was in advertised uses. Birth control previously marketed openly for the prevention of conception was repackaged under legal euphemisms—“protection,” “security,” “safety,” and “reliability for married women”—that highlighted contraceptive properties while shielding retailers from criminal prosecution.

Inventors resorted to similar acts of subterfuge to disguise their activities. Late-nineteenth- and early-twentieth-century patent records are replete with descriptions of birth control devices that, in contrast to descriptions from earlier years, omit explicit mention of the inventions’ contraceptive uses. Take, for example, the case of the Texas inventor Uberto Ezell. In 1904 Ezell applied for a patent for his recently designed condom, which he referred to only as a “male pouch.” The item illustrated on his application certainly looked like a condom, and it functioned like a condom as well. According to Ezell, whose patent was approved in 1906, his rubber pouch was meant to go “on the male organ to catch and retain all discharges coming therefrom.” An intrauterine device (IUD) patented in 1894 is equally suggestive of inventors’ abilities to respond to consumer desire for birth control in the face of legal and medical opposition. It included a streamlined retaining feature and a self-insertion device that made the entire IUD insertable “with the exercise of a minimum degree of skill,” freeing users from dependence on medical experts.<sup>28</sup>

Camouflaging their products, contraceptive entrepreneurs concealed themselves too. Most adopted commercial aliases, forcing post office inspectors to work harder to discover their true identities. Of the 105 men and women arrested for birth control–related offenses by the NYSSV between 1873 and 1898, 91 (87 percent) used aliases. Although those aliases did not prevent arrest, their widespread adoption indicates the importance entrepreneurs assigned to them and suggests that a strategy of subterfuge may help account for low overall arrest rates. Horace Brown of

<sup>27</sup> *National Police Gazette*, Jan. 3, 1885, pp. 14–15; *ibid.*, Nov. 16, 1889, p. 14; *ibid.*, March 24, 1900, pp. 14–15.

<sup>28</sup> “Male pouch” by Uberto Ezell, U.S. Patent, 824,634 (June 26, 1906); “Pessary,” by G. J. Gladman, U.S. Patent 544,091 (Aug. 6, 1895). See also “Pessary” by T. Brauns, U.S. Patent 168, 711 (Oct. 11, 1875).



Used for a variety of purposes, including birth control, antiseptic vaginal suppositories were a familiar part of the over-the-counter contraceptive trade.

*Photograph by Andrea Tone.*

Albany, New York, sold contraceptives as “Dr. H. M. Brown”; Orson Robb, a health officer in West Troy, New York, sold them under the name of Madame L. Colton. Many birth control entrepreneurs used multiple aliases. When Henry Hunter of New Hampshire was arrested on September 22, 1873, he admitted to twenty-six.<sup>29</sup>

Retailers also relied on strategies of geographic concealment to disguise their stock-in-trade. Hiding inventory was astute: Stock on hand at the time of arrest

<sup>29</sup> Containers 1–3, Records of the New York Society for the Suppression of Vice.

supplied evidence of criminal activity for prosecutions. Edward B. Foote sold birth control in Manhattan but sequestered his inventory elsewhere, filling orders only twice a month. Francis Andrews operated a fancy goods and auction store in downtown Albany, but kept five thousand condoms—most of his stock—stashed in a room off his bedroom. When credit reporters tracked down George Brinckerhoff, a vendor of rubber contraceptives, they found his office “arranged for privacy” and its cautious inhabitant unwilling “to make any disclosure of his financial condition.”<sup>30</sup>

Although the small scale of their operations increased entrepreneurs’ vulnerability, it also helped shield them from detection. An 1892 report on the underground condom trade noted the invisibility of condom workshops. The typical condom firm, the author observed, “would mean little to the uninitiated.” Small, dark, and almost bare, it consisted of a “moderate-size room, with windows so draped that the outside world may not peer in. . . . Everything looks as if the proprietor was all ready to pull up stakes and hurry away.” The spare environment indicated the low-tech nature of condom production, but it probably also reflected entrepreneurial savvy. Discretion and portability were advantageous in a world where Comstock-inspired raids were infrequent but possible.<sup>31</sup>

Such strategies of subterfuge forced inspectors to struggle to catch birth control purveyors in the act. Adopting aliases of their own, agents posed as consumers in search of black market birth control. They perused “suspect” publications—commercial circulars, lowbrow dailies, and sensationalist sex-and-crime weeklies such as the New York-based *National Police Gazette*—and investigated formal complaints. Identifying probable offenders, they contacted them, purchased advertised items, and made arrests once the contraband was in hand. In court, the original ad, follow-up correspondence, and the articles purchased supplied evidence that the accused had broken the law. The detection, hunt, and capture could take weeks, even months.<sup>32</sup>

## Tolerance

The endeavor was not only time consuming; it was often unrewarding. Among entrepreneurs’ allies were the prosecutors, judges, and jurors who decided their fate. The NYSSV had people arrested for offenses from staging obscene plays to publishing half-dime novels, printing pictures of naked women, and operating lotteries. Arrests for reproductive control crimes were the least likely to result in conviction.<sup>33</sup> Had Anthony Comstock had his way, every person arrested would have received a five-thousand-dollar fine and ten years’ imprisonment, the maximum sentence allowed under federal law. But the wheels of justice turned differently.

<sup>30</sup> “Report of Persons Arrested Under the Auspices of the New York Society for the Suppression of Vice for the Year 1873,” container 1, *ibid.*; “Report of Persons Arrested Under the Auspices of the New York Society for the Suppression of Vice for the Year 1876,” *ibid.*; credit report for George Brinckerhoff, vol. 370, p. 700 a/145 (entry for Oct. 6, 1883), R. G. Dun and Company Collection.

<sup>31</sup> Buckingham, “Trade in Questionable Rubber Goods,” 164.

<sup>32</sup> Comstock, *Traps for the Young*, ed. Bremner, xx; Anthony Comstock, “The Suppression of Vice,” *North American Review*, 135 (Nov. 1882), 486.

<sup>33</sup> Broun and Leech, *Anthony Comstock*, 160, 164.

As they did with Sarah Chase, grand jurors let many arrested suspects go free. More frequent than outright acquittals were indictments that did not go to trial. Fully 38 percent (40 of 105) of the individuals arrested by NYSSV agents between 1873 and 1898 for birth control crimes were not convicted. Even those convicted rarely faced stiff sentences. Judges gave 4 of the 65 convicted entrepreneurs suspended sentences and fined and released another 45. Only 16 of the 65 persons convicted on birth control charges went to prison. Prison terms varied from ten days to three years, but most were for one year or less. At the time of Comstock's death in 1915, not a single person convicted for the crime of birth control in the United States had received the maximum sentence allowed under federal law.<sup>34</sup>

Although the decisions of jurors, prosecutors, and judges were unique to each case, court rulings suggest some common themes that supported tolerance of birth control. One was the right to privacy. After 1873 judges confirmed Congress's jurisdiction over the mails and interstate commerce to uphold the constitutionality of the Comstock Act. But, raising the specter of unchecked centralized power, they set limits on how far federal regulation could go. In *Ex parte Jackson* the Supreme Court ruled that Congress's right to regulate the mails could not abridge the First and Fourth amendments, which protected free speech and defended citizens from unreasonable searches and seizures. The privacy of the mails was sacrosanct. "No law of Congress can place in the hands of officials connected with the postal service," the court stated, "any authority to invade the secrecy of letters and sealed packages in the mail." Insisting that sealed materials deposited in the mails remain "as fully guarded from examination . . . as if they were retained by the parties forwarding them in their own domiciles," the Supreme Court insulated mail-order commerce from the very inspection that could have curtailed the traffic in contraceptive contraband.<sup>35</sup>

Applying similar logic, judges challenged the legitimacy of decoy methods used by postal inspectors to apprehend contraceptive proprietors. Courts distinguished between the detection of criminal wrongdoing and inducement of it through entrapment. Decoy letters sent by agents posing as consumers threatened both the privacy of the mails and the rules of fair commerce. In 1894 an Oregon district court condemned the methods used by a postal inspector to demonstrate the guilt of Mrs. C. J. Adams, a contraceptive entrepreneur in Portland. To encourage her to break the law, the agent had written and begged Adams for contraceptives, falsely assured her that "you can correspond with me with absolute secrecy," and enclosed for Adams's "convenience" postage stamps for her return correspondence. After several increasingly desperate letters, Adams sold the agent a "preventive remedy." The court decided that although Adams had broken the law, it was the agent's own actions that had triggered the crime. Citing previous federal rulings denouncing "the practice of decoying or conniving with persons suspected of criminal designs,"

<sup>34</sup> Containers 1–3, Records of the New York Society for the Suppression of Vice; Broun and Leech, *Anthony Comstock*, 167; Dennett, *Birth Control Laws*, 48.

<sup>35</sup> *Ex parte Jackson*, 96 U.S. 727, 733 (1877).

the Oregon district court declared the agent's conduct "reprehensible" and found Adams not guilty.<sup>36</sup>

Courts also invoked the principle of federalism. In *United States v. Bott*, the first test of the Comstock Law, a federal court in New York upheld the conviction of John Bott for "depositing in the mail a certain powder designed and intended for the prevention of conception." But it warned that although Congress could prohibit the use of the mails "for the transmission of any article," only the states could make "the intent to prevent conception an offence." A ruling from a federal court in Missouri, *United States v. Whittier*, went a step further. The case involved the indictment of a St. Louis contraceptive entrepreneur, Clarke Whittier, who, responding to a decoy letter from the NYSSV agent Robert McFee, sent instructions on buying birth control to a Miss Nettie G. Harlan of Butler, Georgia, a fictitious identity established by McFee. Granting the motion to quash Whittier's indictment, the circuit court ruled that Congress has "no power to make criminal the using of means to prevent conception."<sup>37</sup>

Both rulings distinguished between commerce and use, delineating a careful division of power that allowed the federal government to regulate importation and dissemination of contraceptives but reserved to the states the right to criminalize their actual use. Yet only Connecticut enacted such a ban.<sup>38</sup> Revealing, here, was the political path not taken. Connecticut's singularity was not the consequence of political inertia. After 1873 most state legislatures enacted new or revised obscenity statutes mindful of, even inspired by, congressional action. In choosing not to outlaw contraceptive use, even after federal courts had sanctioned such legislative activity, lawmakers paid silent tribute to the legitimacy of birth control as a private matter and an individual choice.

Navigating the boundaries between personal and entrepreneurial privacy on the one hand and the powers of Congress on the other, courts also struggled to define contraceptives. What was the legal status of an article that prevented pregnancy but had "legitimate" uses as well? This was the central question in the obscenity trial of Ezra Heywood, arrested in October 1882 after he advertised a vaginal syringe in his newspaper, the *Word*. Heywood had long denounced contraceptives as physically dangerous and aesthetically revolting. But he loathed Comstock, whom he referred to during his trial as a "religio-monomaniac," and he was appalled by Comstock's classification of douche vendors as criminals, given widespread use of syringes by women for hygienic purposes. To assert a principle and to bait his foe, he advertised "the Comstock syringe for Preventing Conception, sent prepaid on receipt of price, \$10" in three editions of the *Word*. As predicted, Comstock arrested Heywood.<sup>39</sup>

<sup>36</sup> *United States v. Adams*, 59 F. 674, 675 (1894).

<sup>37</sup> *United States v. Bott*, 24 F. Cas. 1204, 1205 (C.C.S.D. N.Y. 1873) (No. 14, 626); *United States v. Whittier*, 28 F. Cas. 592 (1878 C.C.E.D. Missouri) (No. 16, 688).

<sup>38</sup> Ch. 78, 1879 Conn. Pub. Acts 128. On the singularity of the Connecticut law, see Brooks, "Early History of Anti-Contraceptive Laws in Massachusetts and Connecticut"; and Grossberg, *Governing the Hearth*, 177, 187.

<sup>39</sup> The label "Comstock," though deliberate, was not Heywood's invention; New York vendors had previously advertised Comstock syringes to signal the device's contraceptive uses. Ezra Heywood, *Free Speech: Report of Ezra H. Heywood's Defense* (Princeton, Mass., c. 1883), 6, 14–18; Martin Henry Blatt, *Free Love and Anarchism: The Biography of Ezra Heywood* (Urbana, 1989), 144–45.

The crux of Heywood's defense was the multiple uses of a vaginal syringe. There was nothing about the technology of a syringe that made it inherently a preventive, he argued. "Thousands of physicians and druggists in the States . . . declare [it] invaluable, indispensable in the treatment of female diseases and for applying local remedies to preserve personal health and purity." Supporting the contemporary belief in the therapeutic value of douching (which had gained credibility with the germ theory of disease), Heywood asked: "Of the seven clefts, apertures, opening in woman's body the vagina is one; who says it may not need cleansing as well as the ear, or the nostril?" As a health tool, the syringe had become nothing less than a "necessary accompaniment of every lady's toilet." Seen in this light, the syringe was no different from, and at least as beneficial as, other popular hygiene utensils "like a tooth brush or towel."<sup>40</sup>

The logic of Heywood's argument was compelling, especially to a sympathetic judge. From the beginning of the trial, Judge T. L. Nelson had supported Heywood, permitting him to conduct his own defense and to use the courtroom as a soapbox by calling more than three dozen witnesses to the stand to relate the obscenity charge to broader issues such as women's rights, free speech, and government conspiracy. In his charge to the jury, Nelson specified, "Whatever the words of the advertisement may mean, unless the [Comstock syringe] is designed or intended for [the prevention of conception] the charge has not been proved." The jurors, unable to view the syringe as exclusively a preventive, found Heywood not guilty. Heywood's acquittal muddied the legal waters, making it significantly harder to indict and convict contraceptive makers and distributors. Almost every contraceptive—syringes, sponges, condoms, intrauterine devices, vaginal pessaries—could be said to possess medicinal or therapeutic value. As the birth control advocate and entrepreneur Edward B. Foote proclaimed in 1889, "articles themselves . . . will not be possible to suppress. . . . while there remains a legitimate use for such things as syringes, sponges, cotton, pessaries and vaseline." It became the prosecutor's job to prove sellers' guilty intentions and, to be certain of conviction, the advertised article's proprietary use.<sup>41</sup>

Even United States presidents rejected Comstock's rigidity. Ulysses S. Grant, who had signed the Comstock Law, pardoned five of the twelve individuals sentenced to jail on birth control charges during his term. Two of the five were Seth Hunsdon and James Patterson, former operators of the Albany Medical Institute, who had originally been sentenced to one year of hard labor each. Arrested by Comstock on April 24 and 26, 1873, respectively, they were pardoned by Grant in late November of the same year. Comstock viewed the decision as an error. "O, that I had known of this in time to have got the facts before Grant," he wrote in his diary. "It would not have been granted." Yet the facts were precisely the issue. After Hunsdon's and Patterson's convictions, a petition signed by local clergymen and their congressman,

<sup>40</sup> Heywood, *Free Speech*, 17–18; Blatt, *Free Love and Anarchism*, 144–45. On Americans' preoccupation with hygiene and cleanliness in the 1880s, see Nancy Tomes, *The Gospel of Germs: Men, Women, and the Microbe in American Life* (Cambridge, Mass., 1998), 1–67.

<sup>41</sup> Heywood, *Free Speech*, 43; Blatt, *Free Love and Anarchism*, 144; Foote, *Radical Remedy in Social Science*, 98.

Lyman Tremain of Albany, insisted that the two had been convicted on a misrepresentation of facts. Grant, reviewing the file, agreed. Five years later President Rutherford B. Hayes pardoned Heywood, who before his “syringe” trial had been sentenced to two years of hard labor for circulating *Cupid’s Yokes*, a pamphlet defending free love and fertility limitation. In Hayes’s eyes, the pamphlet advocated “wrong ideas,” but it was hardly “obscene, lascivious, lewd or corrupting in the criminal sense.” Evaluating Heywood’s guilt through his own moral lens, Hayes let Heywood go.<sup>42</sup>

After 1873 others, too, let their own views on morality and privacy guide their assessments of contraceptive criminality. Although Comstock took solace in blaming repeated acts of clemency on the ineptitude of officials or the treachery of his enemies, it was the reasoned deliberation of those who made up the court system, not its corruption, that returned birth control proprietors to the streets. To be sure, the leniency accorded birth control offenders may have been related to widespread loathing of Comstock, the man. Comstock’s belligerence and courtroom histrionics offended judges, alienated prosecutors, and prompted a steady stream of derogatory editorials, cartoons, and poems in turn-of-the-century newspapers and journals. But, although the frequent ridiculing of Comstock may help explain support for violators of the Comstock Law in general, it cannot account for the special leniency accorded birth control offenders in particular.<sup>43</sup> Rather, those entrusted with the responsibility for enforcing contraceptive laws made choices that bespoke tolerance of birth control and compassion toward those who sold it, a willingness to see as gray what Comstock could see only as black-and-white. The judicial decisions of an age when popular attitudes toward criminal behavior and reproductive control are often difficult to gauge index broad-based support of bootleg birth control. Such support had economic ramifications. Favoring acquittal almost as often as conviction and light sentencing as a rule, judges and jurors created an environment in which black market birth control could thrive.

And so it did. Although the industry’s illegal operation in the United States after 1873 makes accurate monitoring of its economic status impossible, we can gauge its commercial vigor from a variety of sources. Credit reports, for example, indicate that most birth control proprietors did well after 1873; for many, the trade provided decisive, long-term upward mobility. Because the trade required little start-up capital, individuals of limited wealth could enter it with ease. Such was the case with George Brinckerhoff of Brooklyn. In 1863 Brinckerhoff, aged thirty-five, was a member of the firm of Groom, Brothers, and Company, a grocery and tea business. The firm borrowed so heavily that in June 1867 it failed, \$85,000 in debt. The collapse initially ruined Brinckerhoff’s professional reputation. When he tried to

<sup>42</sup> “Report of Persons Arrested . . . 1873”; Broun and Leech, *Anthony Comstock*, 168; E. H. Heywood, *Cupid’s Yokes; or, The Binding Forces of Conjugal Life* (Princeton, Mass., 1877); Rutherford B. Hayes Diary, Jan. 10, 1879, in *Diary and Letters of Rutherford Birchard Hayes*, ed. Charles Richard Williams (Columbus, Oh., 1924), 518; *Index to the Congressional Record*, 43 Cong., 1 sess., x.

<sup>43</sup> In cases resulting from Comstock-initiated arrests, conviction rates were lowest for those charged with violating birth control and abortion restrictions. See Broun and Leech, *Anthony Comstock*, 160, 164–66.

resume the business alone, “he found he had no credit” because of the “unfavorable impression entertained by the community relating to his failure in the Tea business.” In 1871, he retired from the grocery business and became sole owner of the Eugenic Manufacturing Company, specializing in the production of “several different styles of Ladies Rubber Goods.” Although Comstock eventually caught up with him and had him arrested, the case was dropped, and Brinckerhoff’s profits and confidence grew. In August 1878, credit reporters described Brinckerhoff as a man whose business in rubber articles “yields him fair profits” and who “pays promptly and is considered good for small lines [of credit].”<sup>44</sup>

Equally telling is the frequency with which men and women who crossed paths with Comstock returned to their criminal ways. Multiple arrests of birth control purveyors such as Sarah Chase amounted to more than bad luck. They reflected a determination among contraceptive proprietors to stay with a business whose financial benefits outweighed its legal risks. Chase, a single mother, sold birth control to provide for her family’s needs. In an economic culture that restricted opportunities for female entrepreneurship and branded businesswomen deviant, the contraceptive business (like prostitution and abortion, two kindred illicit trades) was more welcoming of female proprietors than other businesses. Like other contraceptive purveyors who ran afoul of the law, Chase refused to give up her business.<sup>45</sup>

Julius Schmid’s career followed a similar trajectory. After Comstock arrested him in 1890 for selling skin condoms, the immigrant resumed his life of condom crime. At the time of Comstock’s death in 1915, Schmid had branched out into rubbers and launched what would become the company’s signature Ramses condom line. In 1938, in its first report on the birth control business, *Fortune* magazine pronounced Julius Schmid—founder and president of a company that even today claims the second-largest market share of prophylactic sales in the United States—the undisputed king of the American condom empire.<sup>46</sup>

Consumers sustained contraceptive entrepreneurs with their hopes and their dollars. Inventory listings hint at the volume of traffic involved. Horace Brown was arrested with 5,000 condoms on hand, Martin Phillips with 150 womb veils. Although those figures cannot tell us how many contraceptives were sold daily, they communicate retailers’ expectations that such stock was needed to keep pace with demand. Arrest records occasionally reveal more precise statistics that corroborate this assessment. When Glattstine was arrested on March 1, 1878, he admitted to

<sup>44</sup> Credit reports for George Brinckerhoff, vol. 202, p. 577 (entries for Sept. 25, 1867, Aug. 15, 1871), vol. 370, p. 700 a/64 (entries for May 27, Aug. 30, 1875, Oct. 10, 1881), p. 700 a/145 (entry for Oct. 6, 1883), R. G. Dun and Company Collection; “Indictment of George Brinckerhoff,” Oct. 7, 1873, box 12, Criminal Case Files of the U.S. Circuit Court for the Southern District of New York (National Archives, Regional Office, New York, N.Y.); “Report of Persons Arrested . . . 1873.”

<sup>45</sup> “Report of Persons Arrested . . . 1878”; credit report for Sarah B. Chase, vol. 389, p. 2293 (entries for Oct. 20, 1879, March 8, 1889, Feb. 12, 1890), R. G. Dun and Company Collection. On female entrepreneurship, see Peiss, “Vital Industry and Women’s Ventures”; Gamber, *Female Economy*; Murphy, “Business Ladies.”

<sup>46</sup> U.S. Patent Office, *Official Gazette*, March 31, 1931, p. 75; *ibid.*, May 26, 1931, p. 883; “Accident of Birth,” 108; “Report of Persons Arrested Under the Auspices of the New York Society for the Suppression of Vice for the Year 1890,” container 2, Records of the New York Society for the Suppression of Vice; Murphy, *Condom Industry in the United States*, 10–12.



This paper condom package containing “One Good Game Cock” was sold at Tristram Pharmacy in Brenham, Texas (c. 1910).

*Photograph by Andrea Tone.*

selling 432 diaphragms in the previous five weeks. Henry Hunter’s annual profits from selling birth control were estimated to be as high as \$1,700 per year in 1873. Each day, he received an average of three to four hundred letters of inquiry from prospective customers across the country. After the diaphragm vendor Henry Hymes was arrested, he confessed that as many as “500 Brooklyn ladies were using his article.”<sup>47</sup>

Medical commentary likewise attests to the existence of a flourishing contraceptive business. While many physicians, guided by their own beliefs rather than the American Medical Association’s policy against contraception, supported contraceptive use, those who did not found plenty to condemn in post-1873 America. “American people,” observed one physician in 1880, “suppress the family increase by every device that the arch fiend can suggest.” The Boston physician H. S. Pomeroy, author

<sup>47</sup> “Report of Persons Arrested . . . 1873”; “Report of Persons Arrested . . . 1878”; “Report of Persons Arrested Under the Auspices of the New York Society for the Suppression of Vice for the Year 1874,” container 1, Records of the New York Society for the Suppression of Vice.

of the 1888 manual, *The Ethics of Marriage*, found Americans' preoccupation with childlessness so widespread that he termed it simply "the American sin." Certain that those who casually broke the law must be ignorant of its existence, he concluded his book with a thirteen-page appendix cataloging existing contraceptive and abortion restrictions.<sup>48</sup>

How universal was contraceptive use? Demographic evidence suggests the continued importance of fertility control after 1873. National fertility rates for both white and black women dropped steadily after 1880, reaching an all-time low in 1940. Other factors may help account for this shift, but it is apparent both that contraceptives played a critical role and that Americans of widely varying socioeconomic backgrounds used them. Indeed, although Margaret Sanger insisted that low incomes and ignorance prevented working-class people from purchasing contraceptives, evidence supports a different view. Working people's limited access to physicians, for instance, did not significantly impede their ability to use contraceptives. Until the Food and Drug Administration approved prescription-only oral contraceptives in the 1960s, a majority of Americans, including the most affluent, acquired birth control over the counter, not from doctors. In addition, the turn-of-the-century birth control trade was highly stratified, offering contraceptives at a range of prices, from \$.11 condoms to \$1.25 douching syringes. A deterministic view of affordability such as Sanger's, moreover, masks the complexities of consumer behavior. Although household incomes may be fixed, perceptions of what constitutes a luxury and what a necessity are not. The thousands of letters working-class Americans sent to Sanger and other birth control proponents reflect their view that contraceptives were not a prohibitively costly luxury but a commodity few working people could afford to be without. Significantly, in the first large-scale clinical study of birth control methods in use in the United States, more of the predominantly working-class women and men surveyed had relied on purchased contraceptives—the condom, douche, cervical cap, or suppository—than on natural methods.<sup>49</sup>

<sup>48</sup>"The Fashionable Crime," *Michigan Medical News*, 3 (1880), 341. Only in the mid-1960s did a majority of family practitioners and internists endorse contraception openly as a legitimate field of medical practice. Physicians' opposition and ambivalence amplified the importance of over-the-counter methods. See, for example, S. S. Spivack, "The Doctor's Role in Family Planning," *Journal of the American Medical Association*, April 13, 1964, p. 152; N. H. Wright, G. Johnson, and D. Mees, "Physicians' Attitudes in Georgia toward Family Planning Services," in *Advances in Planned Parenthood*, ed. American Association of Planned Parenthood Physicians (3 vols., New York, 1968), III, 37; Morton A. Silver, "Birth Control and the Private Physician," *Family Planning Perspectives*, 4 (Spring 1972), 43; Pomeroy, *Ethics of Marriage*, 56, 59–60, 185–97.

<sup>49</sup>Margaret Sanger, "The Prevention of Conception," *Woman Rebel*, 1 (March 1914), 8. Between 1880 and 1940 the average fertility rate of white women dropped from 4.40 children to 2.10, of black women, from 7.5 to 3. See Wilson H. Grabill, Clyde V. Kiser, and Pascal K. Whelpton, *The Fertility of American Women* (New York, 1958); Stanley P. Engerman, "Changes in Black Fertility, 1880–1940," in *Family and Population in Nineteenth-Century America*, ed. Tamara K. Hareven and Maris A. Vinovskis (Princeton, 1978); Gordon, *Woman's Body, Woman's Right*, 48; Jessie Rodrigue, "The Black Community and the Birth Control Movement," in *Passion and Power: Sexuality in History*, ed. Kathy Peiss and Christina Simmons (Philadelphia, 1989), 138–39; and Mary P. Ryan, "Reproduction in America," *Journal of Interdisciplinary History*, 10 (Autumn 1979), 330. On prices, see, for example, *National Police Gazette*, Nov. 16, 1889, p. 14; Sears, Roebuck & Co., *1897 Sears Roebuck Catalogue*, ed. Israel, 32; and Mahood and Wenburg, *Mosher Survey*, case 1. For working-class attitudes toward contraceptives, see, for example, the *Birth Control Review*, the American Birth Control League's monthly organ, and the underused Benjamin B. Lindsey Papers (Manuscript Division, Library of Congress).

Cheap did not automatically mean less reliable. Almost all birth control in this era, including the doctor-endorsed “safe” period or the Vaseline method, had a high potential for failure. Before birth control production was standardized and devices were inspected for safety and reliability, retailers were free to make outlandish claims and charge exorbitant prices. Although sites of birth control buying varied by class, the safety and efficacy of products typically did not. Whether they acquired bootleg condoms from doctors or “first-class druggists,” or by mail order through the *National Police Gazette*, consumers assumed similar risks, for the production technologies, absence of regulation, and economics of patent medicine blurred class distinctions in contraceptive experience.<sup>50</sup>

Identifying birth control as an issue that crossed class and ethnic lines, contraceptive entrepreneurs aggressively courted working-class and immigrant dollars. The success of Antoinette Hon of South Bend, Indiana, who launched a mail-order birth control business in 1905, is instructive. A Polish immigrant, Hon advertised her douching powders and womb suppositories in Polish newspapers such as Chicago’s *Zgoda*. Hon found loyal customers in Polish women, who paid \$1.00 for a box of powders and \$3.25 for a batch of suppositories made of chemicals that scientists begrudgingly conceded were spermicidal. In 1917, Hon’s annual salary, sustained by the dollars of working and immigrant women, was \$3,600.<sup>51</sup>

Birth control advertisements in black newspapers similarly point to a mail-order and drugstore contraceptive trade within the African American community. Cultivating an image of African American propriety within a cultural milieu that portrayed black men as hypersexualized and then punished them for it, black newspapers advertised sexual devices less frequently. But they printed some such advertisements, and as birth control became more respectable in the 1920s, they printed more.<sup>52</sup>

Although surviving correspondence privileges the views of affluent Americans, it offers important evidence of the casualness with which sexually active individuals discussed the intended and actual procurement of contraceptives after birth control became a crime. The correspondence of Violet Blair Janin and her husband Albert is illustrative. The couple were married May 14, 1874, fourteen months after the Comstock Law was passed. From Albert’s boasts of “hymen breaking” we can sur-

In the survey of birth control, of 1,208 patients, 800 stated that they had used contraceptives. Of these, the douche was used by 60%, the condom by 42%, the sponge by 4%, the intrauterine device (IUD) by 2%, the cervical cap by 10%, the tablet by 2%, the powder by 5%, the suppository by 12%, and the “douche plus chemical” by 50%. Among nonmarket methods used by the 800, “nursing baby” was favored by 30%, male withdrawal by 40%, “holding back” by 30%, and complete abstinence by 4%. See Dorothy Bocker, *Birth Control Methods* (New York, 1924), 4–7.

<sup>50</sup> As Linda Gordon has argued, class differentials in contraceptive practice in the nineteenth century “were not as great as they are today, because the best available methods were not so good as they are today.” Gordon, *Woman’s Body, Woman’s Right*, 70.

<sup>51</sup> Hearings of Mrs. A. S. Hon, Sept. 21, 1917, box 63, Transcripts of Hearings on Fraud Cases, 1913–45, Post Office Department Records.

<sup>52</sup> See, for example, *Omaha Afro-American Sentinel*, June 6, 1896, p. 3; and *Atlanta Independent*, June 4, 1904, p. 6. On the contraceptive agency of blacks in the late nineteenth and early twentieth centuries, see Rodrigue, “Black Community and the Birth Control Movement,” 138–54; Dorothy Roberts, *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty* (New York, 1997), 82–86; and George Schuyler, “Quantity or Quality,” *Birth Control Review*, 16 (June 1932), 165–66.

mise that Violet's first experience of intercourse occurred that night. From then on, the bride awaited the onset of her period with new anxiety, since a fear of dying during childbearing because of long-standing gynecological problems had forged in her mind a resolve to stay childless. Begrudgingly, Albert supported Violet's goal. Since May the couple had been using the rhythm method, with Albert carefully recording what he believed were Violet's safe and unsafe days. But Violet did not trust the technique, and her letters to Albert, who worked in New Orleans as a lawyer much of the year, were plagued with worry. At a time when the safe period was generally believed to be the midway point in a woman's menstrual cycle (the very time when, we now know, conception is most likely to occur), too many women and men had seen this and other natural methods of birth control fail. Only the arrival of her menstrual period could put Violet's mind at ease, and yet its appearance invariably set the stage for a new monthly drama to begin.<sup>53</sup>

By November she had had enough. When a female homeopath confirmed Violet's suspicions that pregnancy could be fatal, she wrote Albert that "it is best that we should have no children. . . . So I renounce all ideas of it." Renouncing children was one thing, renouncing sex another. The couple discarded the maligned rhythm technique for condoms, a commercial method they both considered more reliable. On November 26 Violet discreetly asked Albert: "Would it be possible for you to find something you told me about?" By the time her letter arrived, Albert, willing to forego intercourse until Violet's health improved but preferring not to, had already stocked a supply. "I have managed to procure some things I have once or twice spoken to you about," he wrote playfully. "Can you guess what they are? I have often wished since the 14th of May [their wedding night] that I had some of them." Buying condoms in New Orleans apparently presented no obstacles worth mentioning.<sup>54</sup>

What emerges from the Janins' prose is not pangs of guilt for breaking the law but a shared resolve to keep Violet from becoming pregnant, whatever the cost. Whether Violet and Albert even knew about the new prohibitions is unclear. Both were ardent followers of national politics, but the Comstock Law was not headline news, and it would have been easy for them to miss. Whatever their knowledge of the law, Violet and Albert turned to the contraceptive market because they believed purchased birth control meant better birth control.

In post-1873 America, they represented two of many women and men who felt that way and acted accordingly. Contraceptives were discussed in private correspondence, not as bootleg goods, but as a useful bedroom commodity whose availability

<sup>53</sup> Albert Janin to Violet Blair Janin, July 3, 1874, Janin Family Collection (Huntington Library and Archives, San Marino, Calif.); Violet Blair Janin to Albert Janin, Aug. 22, 1874, *ibid.* On medical views of, and women's firsthand experiences with, the safe period, see Margaret Marsh and Wanda Ronner, *The Empty Cradle: Infertility in America from Colonial Times to the Present* (Baltimore, 1996), 84–85; Eric Matsner and Frederick Holden, *The Technique of Contraception* (Baltimore, 1938), 33; John Rock and Marshall K. Bartlett, "Biopsy Studies of Human Endometrium," *Journal of the American Medical Association*, June 12, 1937, pp. 2022–28; Irving F. Stein and Melvin R. Cohen, "An Evaluation of the Safe Period," *ibid.*, Jan. 22, 1938, pp. 257–61; Kennedy, *Birth Control in America*, 210; Abe Laufe, ed., *An Army Doctor's Wife on the Frontier: Letters from Alaska and the Far West, 1874–1878* (Pittsburgh, 1962), 165.

<sup>54</sup> Violet Blair Janin to Albert Janin, Nov. 23, 26, 1874, Janin Family Collection; Albert Janin to Violet Blair Janin, Nov. 24, 1874, *ibid.*

and efficacy were worth noting to lovers and friends. In 1885 Rose Williams wrote to her newlywed friend Allettie Mosher, "You want to know of a sure preventative. . . . They are called Pessairre or female preventative. . . . They cost one dollar. . . . The Directions are with it." In the same spirit Mary Hallock Foote of Idaho advised Helena Gilder of New York in 1876 about "a sure way of limiting one's family." They "are called cundums and are made either of rubber or skin. They are to be had at first-class druggists." About a year later, Mary provided her friend with an update. She and her husband found condoms unpleasant, Mary admitted, but they continued to use them anyway, for good reason: condoms worked, whereas the rhythm method did not. Mary knew whereof she spoke. She had become pregnant counting her "safe days." "The 'French shields' have saved me," Mary told Helena. "Everything is dreadful except nature and Nature is like the letter of the law which faileth."<sup>55</sup>

Such letters offer more than a touching tribute to the determination of women and men in late-nineteenth-century America to restrict their fertility. They call into question traditional interpretations of the impact of birth control laws in the United States post-1873. As moral reformers found in other attempts to restructure behavior, the presence of a law on the books did not work the fundamental change its proponents desired. The volume of smut traffic, the limited number of agents assigned to police it, and contraceptive purveyors' own cunning thwarted efforts to apprehend birth control offenders. Those arrested, moreover, frequently discovered that those who broke and those who enforced the law were on the same side. From jurors to prosecutors to judges to presidents of the United States, the men who would define the legal meaning of contraceptive criminalization let birth control offenders go free.

The social, sexual, and economic landscape of post-1873 America was populated with individuals who defined the meaning of contraceptive criminalization in their own terms. There was the Honorable T. L. Nelson, whose charge to the Boston jury specified that Ezra Heywood was guilty only if the government could prove the impossible: that the "Comstock syringe" was exclusively a contraceptive. There was Sarah Chase, who defied convention, Comstock, and the law by lecturing on and selling contraceptives. Down in Texas, there was Uberto Ezell who, with thoughts of commercial grandeur, invented the "male pouch." And then there was Albert Janin, who could scarcely wait to try out his New Orleans condoms with his Washington, D.C., wife. These individuals did not cast their votes on the Comstock bill. Yet through their actions—some quiet, others openly defiant—they made their views known. Collectively, they helped sustain a trade Congress had declared a crime.

<sup>55</sup> Elizabeth Hampsten, ed., *Read This Only to Yourself: The Private Writings of Midwestern Women, 1880–1910* (Bloomington, 1982), 104; Degler, *At Odds*, 224–25.