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THE FREE SPEECH LEAGUE

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“THE FREE SPEECH LEAGUE: A STUDY ON THE IDEAS
ABOUT THE FREEDOM OF SPEECH DURING THE
PROGRESSIVE ERA”

A Master’s Thesis

by

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“THE FREE SPEECH LEAGUE: A STUDY ON THE IDEAS ABOUT
THE FREEDOM OF SPEECH DURING THE PROGRESSIVE ERA”

The Graduate School of Economics and Social Sciences

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İhsan Doğramacı Bilkent University

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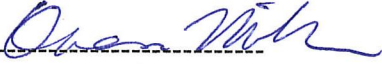
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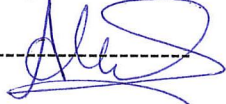
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ABSTRACT

“THE FREE SPEECH LEAGUE: A STUDY ON THE INTELLECTUAL FIGHT FOR THE FREEDOM OF SPEECH DURING THE PROGRESSIVE ERA”

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The period of Progressive Era that predates the World War I was vivid with government involvement in freedom of speech in different forms. The censorship laws as well as the prevention and criminalization of public speeches that were raided by the police force, while officials claimed to target the anarchists of the time, extended into the personal lives of the ordinary people. Personal mails and different forms of literature were the targets of censorship.

The law and the judges made decisions that did not fully comply with the U.S. Constitution in regard to the First Amendment. The intellectuals of the time began to raise their voices against these violations of the civil liberties. They used their

knowledge in their profession to tackle with and reveal the wrongdoings of the decision makers.

The Free Speech League comes to the forefront amidst these forms of suppressions against the freedom of speech *fin de siècle*. This work aims to present and discuss the ideas discussed and published for the readers of the country by the members of this League. These ideas shed light on the earlier approaches on the civil liberties before the World War I and prior to the organizations like American Civil Liberties Union, and help us understand the roots of the later civil liberties movements.

Keywords: Censorship, Comstockery, Constitutionality, Freedom of Speech, Theodore Schroeder

ÖZET

“İFADE ÖZGÜRLÜĞÜ CEMİYETİ: İLERLEMECİ DÖNEMDE İFADE ÖZGÜRLÜĞÜNÜN FİKİRSEL MÜCADELESİ ÜZERİNE BİR ÇALIŞMA”

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İlerlemeci Dönemin 1. Dünya Savaşı öncesindeki süreç, hükümetin ifade özgürlüğüne yaptığı farklı müdahalelerle doludur. Gerek sansür yasaları gerekse polis kuvvetlerinin bastığı halka açık konuşmaların engellenmesi ve suç kabul edilmesi, -o dönemin anarşistlerini hedef alıyor görünse de aslında sıradan insanların kişisel yaşamlarına kadar inmişti. Kişisel mektuplar ve farklı yazılı eserler bu sansürün hedefleri altındaydı.

Yasalar ve hakimler Birinci Anayasa Değişikliği maddelerine ilişkin ABD Anayasası ile tam uygunluk göstermeyen hükümlerde bulunuyorlardı. Dönemin entelektüelleri sivil özgürlüklere yönelik bu ihlallere karşı seslerini yükseltmeye başladılar. Uzmanlık alanlarındaki bilgilerini karar vericilerin yanlışlarıyla mücadele etmek ve bunları gün yüzüne çıkarmak için kullandılar.

İfade Özgürlüğü Cemiyeti, on dokuzuncu yüzyıla girerken ifade özgürlüğüne karşı yapılan bu tür baskıların ortasında sahneye gelir. Bu çalışma Cemiyet üyelerinin tartıştığı ve ülkedeki okurları için de yayın yaptığı fikirleri sunup tartışmayı amaçlar. Cemiyet üyelerinin tartıştığı bu fikirler 1. Dünya Savaşı öncesinde ve Amerikan Sivil Özgürlükler Birliği gibi kuruluşlardan evvel sivil özgürlüklere yönelik yaklaşımlara ışık tutacak ve bu dönem sonrası meydana gelen sivil özgürlük hareketlerini anlamamıza yardımcı olacaktır.

Anahtar kelimeler: Anayasaya Uygunluk, Comstockery, İfade Özgürlüğü, Sansür
Theodore Schroeder

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CHAPTER I

INTRODUCTION

This work covers the period from 1902 until 1917 during the Progressive Era, when the Free Speech League - a civil liberties organization - was active. They were different from the post-World War I free speech advocates in the sense that, rather than seeing free speech as an important element to political democracy, the Free Speech League focused on the idea that the free speech league was a natural right which had no boundaries in terms of expression. This was the fundamental right in ensuring autonomous citizens of the country. They were committed to defending free speech in a way that embraced every conflicting idea, because they supported both the radicals and the freethinkers for the same cause.¹ They focused on the pre-war issues that were not emphasized such as the obscenity laws and censorship. In order to support their cause of

¹ David M. Rabban, "The Free Speech League, the ACLU, and Changing Conceptions of Free Speech in American History," *Stanford Law Review*, Vol. 45, No. 1 (Nov., 1992), 88.

defending free speech for everyone, they used the League's secretary and lawyer Theodore Schroeder (1864-1953) to provide legal assistance in those cases that limited or breached the free speech rights. The Free Speech League defended a freethinker Moses Harman (1830-1910), who was accused of publishing obscene materials in 1905. Similarly, the women's reproductive rights defender Margaret Sanger (1879-1966) received legal assistance from the League in finding ways to defend the circulation of her journal on birth control and women's suffrage called *The Woman Rebel*.

The aim of this work is to show how the intellectuals of the time considered certain aspects of the period from the perspective of freedom of speech. Some of these aspects were on the matters of censorship, religion, sexuality, and anarchism. It can be argued that the importance of these intellectuals is that they allow us to see the perspective of the intellectuals of an era, which is rich with laws that suppress different modes of expression. The obscenity laws that came into power through the work of the Postmaster Anthony Comstock (1844-195) are the main focus of the content in the discussions of these intellectuals. Through the eyes of these intellectuals, organized at a time so as to defend the civil liberties and to openly discuss controversial topics such as religion and sexuality, it can be seen that they saw a need to defend the freedom of speech and to make these issues known by all the people of the country. Their role was important in showing that it was not only the radicals of the time but in fact all citizens who were equally suppressed from expressing their ideas to a certain extent.

The Free Speech League was officially incorporated at Albany, New York in 1911, but it was active as early as 1902. The League was run from this sole office located in New York and did not have any other branches. Instead of being physically present around the country, this organization was mostly using publications written by their own members to make their voices heard and to reach every part of the country. The founders of the Free Speech League were: Leonard D. Abbott (1878-1953) as its President, who was also one of the editors of *Current Literature*; Brand Whitlock (1869-1934) as its Vice-President, who was also the mayor of Toledo, Ohio; Dr. E. B. Foote (1829-1906) acting as its Treasurer and the author and lawyer Theodore Schroeder, who was the Secretary of this organization. These founders were not equally active within the League, yet they were supporting its cause mainly by funding the publications and the costs of the office located in New York. In addition, the Free Speech League had members such as the birth control activist Margaret Sanger and the political activist Emma Goldman (1869-1940). Although these names are accessible to show us as the members of the Free Speech League, there were other people like Rev. Eliot White or John R. Coryell (1851-1924), who was an anarchist writer working for Emma Goldman's newspaper *The Mother Earth*; they also worked with the members of the Free Speech League throughout its existence until 1917.

The members of the Free Speech League stated their goal to become the promoters of the equal liberty and they thought it was possible to achieve this end through the lawful construction of the Constitution of the United States. For this purpose, the Free Speech League published various books and articles written by its members. The secretary of

the League, Theodore Schroeder, gave legal advice to suppressed and illegally arrested people, with names like Sanger and Goldman being the primary examples. Some of the members were active outside the League, but they continued to pursue its aims. As an example, Foote was a physician and was running a clinic while at the same time writing books on personal hygiene and using these books to discuss controversial issues like sexuality and prostitution. He considered the public discussion of these issues to be of vital importance, since ignorance of them would take its toll on the physical and mental health of the society. Therefore, he emphasized in his works the dangers of prohibiting the discussion on such matters. Altogether, the members were against any form of censorship that came from the government and they were ready to use any lawful means to oppose them. This censorship included any methods of expression and communication of ideas. They aimed to highlight the importance of the protection of freedom of speech as the First Amendment right, through securing this right for every citizen of every state without any limitations or partiality. They promoted equality and consistency in the application of the Constitution.²

Theodore Schroeder is the main figure in the activities of the League. Throughout the first decade of the twentieth century, he was the contact person just like a representative of the League for the persons who needed legal assistance. These legal assistance circumstances were caused by the illegal suppression of free speech, punishing the citizens of America that wanted to exercise their First Amendment rights. There were a lot of people with similar cases that needed serious legal counseling so that they could

² The Free Speech League Articles of Incorporation, March 1911.

be set free or charged with bare minimum for violating the state laws in regard to public speeches and personal mails. Therefore, it is important to understand the background of all these laws seemingly surrounding and having an impact on the daily lives of the American people.

The Comstock Laws were the federal acts that criminalized any obscene material, including in written form, from being circulated through the postal service of the United States. These laws were enacted in 1873 and was named after their number one advocate Anthony Comstock, who was later appointed to be the Postmaster General, granting him authority to oversee the activities of the postal services around the country. Along with his follows within his commission, Comstock was the chief proponent of these acts, ensuring they were applied without any exclusive conditions. The origins of these laws can be found as early as the 1820s, when America was experiencing the Second Great Awakening movement where the whole nation was called for morality. This movement increased the number of evangelicals that strongly advocated the idea of purity and morality, aiming to prevent alcohol, obscene images along with prostitution and slavery. These years, there were already conflicts of these groups with the free thinkers that basically rejected these purist ambitions.

New York, was the target of this ever-growing population of evangelicals, since it harbored many immigrants as well as working class that increased prostitution, boarding houses, pubs and sexual literature. In response to this growth, the evangelicals formed the Young Men's Christian Association so as to create an alternative to "sinful" places

and options provided by the cities such as New York. Anthony Comstock was one of the members of the YMCA while living in Connecticut. He worked as a clerk until 1873, when he was appointed as Postmaster General. One of his first targets, prior to his position as Postmaster, was the activities of Victoria Woodhull (1832-1927), who was a leader of the women's suffrage movement. After her public announcement that she was a supporter of the free love, Comstock targeted her and in 1872 arrested her through the postal law of 1865 due to the obscene contents of the newspaper she was publishing, called *Woodhull & Calflin's Weekly*. Since this law of 1865 did not cover newspapers, he worked towards extending the meaning and application of the postal laws along with the obscenity laws. Thus, began the career of Comstock, pursuing the obscene materials as well as the persons that create them. Not only the publicly made speeches but even your personal mails were under the threat of the Comstock Acts.

The nature of the Comstock Laws can be defined as ill intended as they sought every opportunity to criminalize the contents of any kind of literature, publication, newspapers and even personal letters without having any standard criteria to label them as obscene in the first place. The fact that the judges of the states followed suit regardless of the highly questionable application of these laws within the context of Constitutionality emphasizes the importance of the foundation of the Free Speech League. They were the first important body of people that saw the necessity of criticizing these dubious acts, and the vitality of preserving the First Amendments rights as a whole.

The active years of the Free Speech League was between 1902 and 1917 until they were disbanded in 1919. This time period can also be considered as the active Comstockery that heavily worked against the public speeches and the spread of information in regard to the discussions on constitutionality, anarchy, sexuality, and marriage. This term Comstockery comes from the name Anthony Comstock, who was the Postmaster in the beginning of the 20th century who took an active role in a series of censorship laws, which as a result formed a threat against the First Amendment rights on free speech. Thus, any form of suppression and prohibition in regard to the free speech was coined with the term Comstockery. Looking at their articles of incorporation shows a clear picture about the era. Their statements show that there were problems in regard to the applicability of the First Amendment and the overall interpretation and application of the Constitution of the United States in general. These problems were the lack of proper Constitutional interpretation made by the judges and the blatant baseless arrests and accusations made against the citizens of the United States.

The time frame for this organization also coincided with the height of the Progressive Era. Progressivism is hard to define, as historian Daniel Rodgers in his article³ *In Search of Progressivism* notes that “a historical sketch of the term ‘progressivism’ has yet to be written”.⁴ Regardless, an attempt to determine the frame of the period that covers the late 1890s up to the First World War is a must to understand the struggles the changes brought to the American society. There has always been and continues to be a variety of

³ Daniel T. Rodgers, “In Search of Progressivism,” *Reviews in American History*, Vol. 10, No. 4, The Promise of American History: Progress and Prospects (Dec., 1982).

⁴ Rodgers, “In Search of Progressivism,” 127.

definitions offered for the term progressivism. The main reason for this variety in the opinions stems from the multivocality of the era itself.

One of the widely encountered definitions of the era would be the one provided by historian Emily S. Rosenberg who states the era ran from the 1890s up to World War I, during which both the domestic and foreign relations were impacted by the clashing ideas.⁵ In this paper, Progressivism is approached as a period during which the intellectuals understood the shift of political and ideological power from the upper class to middle and working class, and with this awakening it turned into a battle of ideas between the authorities of the government such as the judges and the police force, and the intellectuals.

Overall, the timeframe for the era is highly debated as the desired focus varies from author to author as in the example of the historian and political thinker Martin J. Sklar, who agrees with the limitation of the movement to the acts of Wilson. According to his suggested timeframe, there are three periods that basically cover the years 1879 up to 1912.⁶ Regardless of these various time frames given to the Progressive Era, it was clear that the discussions on the matters of free speech were necessary since the problems about its limitation were really there and it was difficult for the intellectuals of the time to express their ideas because the censorship laws prevented this. A majority of the literature dealing with this era focuses on the writings of the historian Zechariah Chafee.

⁵ Emily S. Rosenberg, *Spreading the American Dream: American Economic and Cultural Expansion, 1890-1945*, (New York: Hill and Wang, 1982), 41-42.

⁶ Martin J. Sklar, *The Corporate Reconstruction of American Capitalism: 1890-1916*, (Cambridge: Cambridge University Press, 1988).

His articles dealt with the freedom of speech, yet instead of individual rights, he focused on the necessity of protecting social interests.

One of the major works of Chafee is called “Freedom of Speech in War Time.”⁷ In this article, although realizing that the government officials took extreme measures to the point that unfairness fell upon the undeserving, he continues to see the social interests as he states: “Undoubtedly some utterances had to be suppressed.”⁸ This showed that Chaffee was selective in his interpretation of the First Amendment rights. It can be argued that supporting this argument would mean that anything prior to World War I in regard to the freedom of speech was not of importance. However, the study on the ideas set forth by the Free Speech League members shows that freedom of speech was a great concern for the intellectuals of the time and they extensively discussed its importance and the vitality to protect it against the attempts at prohibiting it through the means of obscenity laws and censorship in general.

Constitutional law scholar David M. Rabban comes into the picture when it is about the free speech fights dating before World War I. He makes a similar observation that the part of the history is missing from the accounts of these highly-held historians and progressives that became civil libertarians after the war. His works and articles are, therefore, carry the word “forgotten”. In his article “The First Amendment in Its Forgotten Years”⁹, he states that whether taking into consideration the Espionage Act as

⁷ Zechariah Chafee, Jr., “Freedom of Speech in War Time,” *Harvard Law Review*, Vol. 32, No. 8 (Jun., 1919), 932-973.

⁸ Chafee, “Freedom of Speech in War Time,” 972.

⁹ David M. Rabban, “The First Amendment in Its Forgotten Years,” *The Yale Law Journal*, Vol. 90, No. 3

the beginning for the free speech discussions or the postwar resistances as the root of the freedom of speech movements, the works lack an important period from the late 18th century up to 1917. He states that Chafee and his followers created an impression that nothing of significance happened and they clearly left the publications of the Free Speech League and Schroeder untouched and unmentioned.¹⁰ Rabban's main focus, thus, moves on the causes that led to these big outbursts of the postwar period and he finds the Free Speech League and especially the works by Schroeder as significant resources that contributed to the intellectual study of the Progressive Era and the pre-war atmosphere in general. He argues that these discussions on free speech brought up by the Free Speech League through its official publications as well as the individual publications created by its members paved the way for the free speech discussions that gained public importance following the First World War and eventually led to the foundation of American Civil Liberties Union in 1920.

Rabban's following work titled "The Free Speech League, the ACLU, and Changing Conceptions of Free Speech in American History"¹¹, thus, attempts to set the background for the causes and necessity of the creation of such organization. Using the accounts found in the magazine that represented the radical sex movement of the 1880s and founded by publisher Moses Harman, Rabban shows that the connections between the lawyer Theodore Schroeder, anarchists like Emma Goldman and the other free love advocates such as Victoria Woodhull were established. Free love, as a movement,

(Jan., 1981), 514-595.

¹⁰ Rabban, "The First Amendment in Its Forgotten Years," 518.

¹¹ David M. Rabban, "The Free Speech League, the ACLU, and Changing Conceptions of Free Speech in American History," *Stanford Law Review*, Vol. 45, No. 1 (Nov., 1992), 47-114.

sought to advocate the separation of the state and sexual matters such as marriage and birth control. During the peak of Comstockery that intensely sought to censor immoral materials, a small group started to be formed against it. Following the McKinley assassination, the stigmatization of the anarchists was on the rise, yet E. B. Foote, who was the leader of the Manhattan Liberal Club at the time, decided to initiate a committee that fought against such suppression in a more organized way, under the same roof as an organization with its founding members and a headquarters to allow its members to meet and to run the organization.¹² This committee, after being heard by Louis F. Post, who was an editor of a progressive journal titled *The Public*, was supported financially, and thus Post became its chairman. This meant that the League would be able to maintain its publishing activities without financial problems, and moreover, having an experienced editor as its chairman would prevent any obstacles that might be encountered during the publication processes.

The Free Speech League welcomed the work, ideas, and support of anyone that shared their view on the importance of defending their civil liberties, the First Amendment being the vital one. Its members included anarchists along with lawyers, editors, and feminists. They were the intellectuals of the time. Their busy schedule meant that they were not contributing to the specific works of the Free Speech League, leaving most of its publications to be written by Theodore Schroeder. Schroeder is the jack of all trades in his works. He openly criticizes Comstock and the ideas of censorship along with the religiosity that seemed to shape the policies of the time. Issues on sexuality are dealt

¹² Rabban, "The Free Speech League, the ACLU, and Changing Conceptions of Free Speech in American History", 71.

with the close analysis of the human psyche in his works. He deals with the legislation and legal practices aiming to punish free speech by representing the Constitution itself. Showing its history and demanding answers for any unconstitutionality, he is fearless. Figures like Post were able to support the works of the Free Speech League by funding it, as the majority of the free speech advocates did. While the birth control activist and writer Margaret Sanger was busy with her agenda for setting up clinics for helping the women's reproductive rights and the spreading of the information on contraceptives, she received support from the League. Although a controversial figure due to her anarchist affiliations, Emma Goldman was also supported by the League on the grounds that the First Amendment was meant for everyone in this country. The League members went to the extent of signing up petitions for the fair trial and fair treatment of Goldman and they demanded that she be given the freedom of expression in these lands. The chapter on religion presents a different perspective in terms of free speech. The topic of religion, being one of the most controversial topics as can be argued even for today's world, is discussed through the experiences of Schroeder. He considers the time period he spent with the Mormons in Utah while he was working as an attorney at the beginning of the twentieth century as an eye-opener for understanding the power relations between the religious institutions and the levels of government. He harshly criticizes the weakness of the government towards the denominations such as the Mormons and states that the unnecessary sacredness brought upon this subject of religion prevents people from seeing the corruption that comes with the wrong practices of it.

Overall, the Free Speech League reflects the unity of ideas that managed to come together on the middle ground of freedom of speech despite the differences of their backgrounds. Most importantly, the Free Speech League shows us that the free speech in the Progressive America was more than the free speech itself. The bigger aim of the Free Speech League was to protect the circulation of the ideas on any issues that the society deemed worthy to deal with. When the society needed a deeper understanding of marriage, obscenity laws, censorship and limited access to birth control and when they needed answers, they had the right to know and to discuss and to seek for answers. This need to know and to search and to discuss was the vital edge that propelled the actions of the Free Speech League. Prior to the official organizations for civil liberties such as the American Civil Liberties Union, which was founded following the First World War, the Free Speech League is one of the undeniable examples for the existence of an organized defense comprising like-minded intellectuals that strived for the equal access to civil liberties despite the risks and punishments they faced. They were active in creating publications that covered the different aspects of free speech such as censorship, gender, sexuality, and religion. They represented the voice of the intellectuals of the time that had different roles in society, where they actively tried to create an impact on it. They were lawyers like Schroeder who defended the First Amendment rights of the citizens; they were publishers who worked towards ensuring everyone had access to any information; they were birth control activists who ran clinics so as to provide the healthiest and safest birth control methods, as well as the most affordable, for everyone.

CHAPTER II

THE FREE SPEECH LEAGUE AND ANARCHISM

2.1 Introduction

Anarchism first became visible on American soil through labor movements in the mid-19th century and maintained its existence from then on with a heavy pressure received by the government via police forces in the late 19th century. Anarchism of the time was an ideology that sought to promote societies run by the people who had no hierarchy and no form of government. In the forms of free love, free thinking and individual anarchy, the variations of this ideology became the hot topic of the country when the assassination of President McKinley was committed by the anarchist Leon Czolgosz in 1901. Emma Goldman, who immigrated from the Russian Empire into the United States, was also becoming a prominent figure that gave or at least attempted to give public speeches in advocating the rights of the laborers, women, and the poor alike. Yet, the growing

negativity through the help of the newspapers, judges, and the lawmakers as a whole made it impossible for the leaders of the anarchists to have any public representation in the country. It meant that they were not allowed to talk about their ideas anywhere. The arrests, unlawful detainments, and limitations on their expression became regular occurrences. The scary part for the Free Speech League members in the midst of this chaos was the fact that freedom of speech was under threat. The power holders did not only interfere with the anarchists' actions but they extended their powers arbitrarily to justify unlawful prohibitions on the exchange of ideas among the commoners.

The Free Speech League considered this issue a great risk to the free government they supported. Similarly, Schroeder was aware of the possibilities of having dangerous outcomes based on the extreme ideas of the speakers and the sharers of their ideas. This can be seen in one of the definitions of freedom of speech given by Schroeder:

by freedom of speech I do not mean the right to agree with the majority, but the right to say with impunity anything and everything which anyone chooses to say, and to speak it with impunity so long as no actual material injury results to anyone, and when it results then to punish for the contribution to that material injury and not for the mere speech as such.¹³

In this chapter, it is aimed to show the different opinions of the Free Speech League members in regard to anarchism. How they evaluate the suppression from the police force on the famous anarchists like Emma Goldman is key to understanding their principles about the First Amendment rights and overall civil liberties. They bring in the

¹³ Theodore Schroeder, "The Lawless Suppression of Free Speech in New York," 13.

perspective that anyone protected under the Constitution of the United States, whether they are anarchists or not, deserve to be judged, tried, and prosecuted lawfully.

2.2 Emma Goldman

B. O. Flower was one of the Free Speech League members as well as one of the famous muckraker journalists of America. In a liberal magazine *The Arena*, where he was the editor, he along with the other Free Speech League members discussed the current issues of the United States during the Progressive Era. *The Arena* was a project created by Flower in the hopes of bringing different ideas together that would help the betterment of the society through the intellectual input of progressive minds.

In his article under the republished Free Speech League version as part of the five essays that discussed free speech in *The Arena*, Flower directly criticizes the events that took place in regard to the speech to be given by Emma Goldman, the infamous anarchist. In “The Sinister Assault on the Breastworks of Free Government,” Flower firstly explains what free government stands for. For him, free government allows free speech for the masses. This idea of a free government was a prominent belief amongst the other Free Speech League members as well. Flower begins his article by quoting a speech given by a Supreme Court Justice William J. Gaynor. The Justice talks about the danger that limiting free speech can bring for the whole country. His speech resonates with Flower’s idea of a free government. He stresses that limiting free speech creates secrecy and plotting. “It is the worst policy in the world to drive people to secret meetings and plottings. Let them speak in the open and you will have no secret plottings, throwing of

bombs and assassinations.”¹⁴ These accusations of plotting, bombing and assassination were not just random examples of violence. The assassination of President McKinley “proved” to the concerned Americans that the anarchists were one of the threats against the American way of life. According to this generalization and assumption of the anarchists, they were capable of attacking a president of a free government and free people. They could take away your right to live in a country with elected representatives. These acts were the trademarks of anarchy and the anarchists. Using these terms, in fact, Flower also sets forth two opposing pictures. In a free government where free speech is allowed for the masses, there will be no assassinations, bombings, or plotting as opposed to under the suppression experienced in Russia, where such events were common.

Thus, in preventing the speech of Emma Goldman just because she was an anarchist, could create the consequences experienced in Russia, was the main idea of Flower. This idea was further supported by a radical journalist and reformer William Dudley Foulke as quoted by Flower: “But no matter how wild the theory, every human being in this country has a right to advocate it by any argument, short of the direct instigation to crime.”¹⁵ A similar comparison between the United States and Russia in regard to the limitation of free speech comes from Foulke as well. The conservative Foulke gives the example of Russia, where he was for a while. He observed that while the Russians witnessed as much as 500 assassinations a month, it was because of their free press and free speech rights were stifled. Even for Foulke, the absence of these rights would create

¹⁴ B. O. Flower, “The Sinister Assault on the Breastworks of Free Government,” *In Defense of Free Speech: Five Essays from The Arena*, (New York City: The Free Speech League, 1908), 3.

¹⁵ Flower, “The Sinister Assault on the Breastworks of Free Government,” 6.

the logical anarchist approach to things. Similarly, Schroeder shares this side of Russia in his writings.

Louis F. Post, who was a prominent figure in defending free speech and who later became Assistant Secretary of Labor in 1913 during the Wilson administration, saw the threat that prohibiting public speeches given by anarchists such as Emma Goldman. He stated that they still did not see anything from her speeches that called for a criminal action. By criminal action, he meant that Goldman could rally people and plot an assassination, order her supporters – the fellow anarchists – to overthrow the government or start bombing the whole country, as these were the general assumptions made about the anarchists. Post explained further that, in case Goldman gives order about such criminal activity, then the intervention should not be performed by the police. On the contrary, due to her actions being criminal and against the law, she should have been lawfully prosecuted. He also adds that it should be obvious that since public speeches are harmless for ordinary citizens, any criminal person can be only punished through the law rather than by suppression. Most importantly, for Post the suppression of the public speech creates resentment among people and thus actually such suppressions create harm for the society, destroying the relationship of trust between the citizens and the law enforcers.¹⁶

Similarly, Schroeder in his article “The Lawless Suppression of Free Speech in New York” firstly compares what having and not having a free government indicates. He also uses Russia as a bad example. For him, it is a country that lacks free government, hence free speech. Russia is in a state of terror due to the suppression of free speech enforced

¹⁶ Louis F. Post, “Free Speech and Good Order,” 17-18.

by the government, the police etc. He states: “The peasants desire to discuss their grievances and the remedies therefor. Their utterances are suppressed by a brutal and arbitrary censorship.”¹⁷ He compares England and Russia, claiming that England has the greatest freedom while Russia has the most active censorship. It is the emphasis of Schroeder that in this sense America is no different than Russia. He states that in case the lawlessness from the police force continues, the freedom of speech and freedom of the press will be unconstitutionally in danger. The police force must be aware of what they are preventing while denying the people access to their well-deserved rights. This unconstitutionality eventually likens the United States to the oppressive and terrorizing countries like Russia.¹⁸

Overall, it can be argued that the prohibitionist and punitive behavior against Emma Goldman’s speeches as a whole was considered as a threat against a free government by the Free Speech League members such as Flower, Schroeder and Post, as well as Rev. White, who was not part of the League but worked with the members in supporting the cause of the defense of free speech. They saw these forceful police interventions as first steps towards becoming a suppressive state. For them, it was really dangerous to continue with these acts. It was in the foreseeable future and was very likely to turn into Russia.

¹⁷ Schroeder, “The Lawless Suppression of Free Speech in New York,” 9.

¹⁸ Ibid.

2.3 Anarchism as Target and Excuse

Anarchism was seen as a serious threat by the government as it was evident from the actions of the police force. They arrested Emma Goldman for plotting the assassination of President McKinley with Czolgosz though they had no evidence of her involvement. The meetings by anarchists, held for example in New York, were disbanded by the police force. Such events were considered to be an excuse by the free speech advocates.

According to the Free Speech League, the actions of the police force pointed out that the main aim was not only to target the anarchists but anyone that wanted to speak critically against the government and the laws that limited the freedom of the expression people in any topic.

In addition, anarchists who wanted to give public speeches were forbidden to do so, on the baseless reasons. As Schroeder pointed out, there was no lawful judicial hearing, since they did not hear the defense of the accused. In the case of Goldman, there was no evidence to her violence or the violence of others caused as a result of her orders.¹⁹

Schroeder's letter to the Commissioner of Police states that the Manhattan Liberal Club was threatened by the police force in regard to the publication of Goldman called *Mother Earth*. That particular work was considered as anarchist propaganda being advocated by the club during that meeting. Stating that there was no statute to confirm the actions of the police department or to prove the authority that the police department has over these meetings Schroeder explains how there was no violation of any law and

¹⁹ Schroeder, "The Lawless Suppression of Free Speech in New York," 10.

he further adds: *“It is precisely such police lawlessness as this which breeds anarchists of the violent type.”*²⁰

Furthermore, these arrests came to the point, where the anarchists did not even have to give a speech or discuss any ideas concerning anarchism. As Flower stated, they were abhorred by the actions of the police against the anarchists. The newspapers followed suit of the actions of the police as well. He was sure that these actions were deliberate with the hopes of smearing the anarchists through using the prejudice against them. While doing that, they easily punished and persecuted the innocents as well. It is safe to assume that, with the assassination of President McKinley, any behavior of the anarchists was followed and false accusations were likely. They were presented as if all of them were plotting against the government, while in fact, the police themselves attacked the freedom of speech.²¹

As was in the example provided by Schroeder in the case of Goldman, there were other times that the accusations against the anarchists were wrong and misguided. In a striking example, the anarchists that were accused with the complicity in the killings of the police in Haymarket, known as the Haymarket affair of 1886, were later found to be innocent by the extensive research conducted by the Governor of Illinois. The Haymarket affair is used to describe the bombing that took place following the labor demonstration held in Haymarket, Chicago. The bombing was claimed to be the work of the police which resulted in the death of several workers. Schroeder calls these falsely

²⁰ Schroeder, “The Lawless Suppression of Free Speech in New York,” 12.

²¹ Flower, “The Sinister Assault on the Breastworks of Free Government,” 4.

accused “martyrs for entertaining unpopular opinions.”²² As further explained by Flower, events that included killings were used against the Anarchists so as to justify the attempts in limiting free speech. One example of that was the killing of a Russian Jew, which was turned into an anarchist assassination attempt successfully busted.

These false accusations turned into a wave of suspicion. This was really dangerous for the American society as was told by Schroeder. In regard to the cancellation of meetings by the police on the “mere” suspicion of a likelihood of an anarchist gathering, Schroeder accuses the commissioner with the lawlessness. He argues that there is no authority given to them. The authority and the boundaries of the powers of all these institutions and officials are clearly determined by the Constitution. Thus, as Schroeder states, when the anarchists were blamed for the killings of the Chicago policemen, the accusers were acting unconstitutionally.²³

Post points out the tendency of the police force and lawmakers to abuse their power merely on the bases of suspicion as it was the case for Emma Goldman’s meeting with the laborers. He states that the police force was acting as if there was no permit received for the meeting, which was required for all meetings held in the streets. However, this accusation was not correct since they had applied for the permit but were denied. Post considers this as a deliberate refusal because while any type of meeting was allowed and common in the street, they were refused with the intent of restraining their freedom of

²² Schroeder, “The Lawless Suppression of Free Speech in New York,” 12.

²³ Schroeder, “The Lawless Suppression of Free Speech in New York,” 13.

speech. The people, the workers who were experiencing difficulties were denied to right to freely express themselves.²⁴

The free speech advocate Rev. Eliot White discusses the possible bad outcomes of the anarchist labeling and targeting. In Massachusetts, the anarchists had secured a lecture to be given by their leader Alexander Berkman. The Rev. Eliot White was one of the participants of the meeting when he witnessed the police surrounding the meeting place.

According to White, “[b]y this ruling the police might close all the rooms on the floor of a building where an “objectionable” person was announced to speak, regardless of injury to business and affairs of those actually opposed to the sentiments of the would-be speaker.”²⁵

Later, when the group was about to be dispersed, the Reverend wanted to have a word with a friend, a policeman warned him about possible arrest if he did not leave the premises. Though the Reverend defended himself against this ridiculous accusation, he was taken into custody. His conclusion was as follows:

I do not deny that orders were to suppress Berkman, and to close the rooms besides of those who had refused to let him speak in their quarters. But so subversive of the rights of which men – many thousands of our now honored citizens – fought, bled, went to prison and died, did I deem such orders, that I acknowledge I was prepared to endure whatever penalties might be involved, to make a protest that should be openly known of by my American fellow-citizens.²⁶

²⁴ Louis F. Post, “Free Speech and Good Order,” 17.

²⁵ Rev. Eliot White, “Denial of Free Speech in Massachusetts,” 15.

²⁶ White, “Denial of Free Speech in Massachusetts,” 16.

As the above quote further illustrates, the Free Speech League members came to the conclusion that the limitation of the public speaking turned against any American. For them, as their experience shows, every American citizen was in danger. When a group of people from New York, no anarchists, wanted to discuss the Constitution, they were prevented from doing so. In response to that Schroeder stated that an ordinary police commissioner acted lawlessly and without basing his actions on the constitution. He prevented American citizens, who were not anarchists but accused of being so by this police commissioner, from expressing themselves in a place that they had previously rented for that specific purpose alone. According to Schroeder, the content of the speech was about the unconstitutionality of certain statutes and therefore was deliberately attacked by the government officials themselves.²⁷

When lawyer Francis B. Hart wanted to criticize the decisions of his state's Supreme Court, he was found guilty and disbarred. "Every lawyer in Minnesota takes an oath to conduct himself "with all good fidelity to the court," and the statutes declare it his duty to "maintain the respect due to the courts of justice and judicial officers."²⁸ However, this definition of fidelity to the court is really arbitrary, according to Schroeder. He stated that they were faced with the interpretation that fidelity to the court means to defend the actions and decisions of the court whether they are constitutional or not. This type of top-down approach, according to him, encouraged the courts to dominate the constitutional interpretations without the fear of being challenged about their

²⁷ Schroeder, "The Lawless Suppression of Free Speech in New York," 11.

²⁸ Theodore Schroeder, "The Growing Despotism of our Judiciary," 20.

constitutionality. In return, the lawyers expected to be suppressed and to have to defend the courts.²⁹

This was the line that was crossed that carried the risk of losing the essentials of a free government. Schroeder called this action of the police as despotism that deprived the very citizens within the country of essential elements of being a free individual.

Schroeder stated that the constitutions ensured that no man can be deprived of life, liberty or property. The only exception to that is the due process of law. This due process of law is a uniform and predetermined set of rules accepted by everyone. Yet, the judiciary is slowly growing into despotism and instead of being the servants of the people, they slowly aim to become the despotic leaders arbitrarily acting to suppress people and prevent them from criticizing them, although this type of criticism is their natural right and is not prohibited.³⁰

Foulke further asks: “if the police can decide in regard to the propriety of what I intend to say, where is to be the limit of their arbitrary power?”³¹ According to the Free Speech League members, this arbitrariness and great power of the police carried a great risk of leading the way towards more and more restrictions on different forms of free speech as can be shown by the example provided to us by Post. Post showed how this despotism had the tendency to spread into other freedoms. Postal offices were also the targets of “mere” suspicions. This was the likelihood of how preventing public speeches as a first step led to the restrictions of other forms of free speech. He stated that the Post-Office

²⁹ Theodore Schroeder, “The Lawless Suppression of Free Speech in New York,” 20.

³⁰ Schroeder, “The Lawless Suppression of Free Speech in New York,” 19.

³¹ Flower, “The Sinister Assault on the Breastworks of Free Government,” 6.

Department exceeded its boundaries determined by the Presidential orders by prohibiting the publication of a newspaper in New Jersey. The accusation was that this newspaper printed in Italian included parts that carried the elements of “seditious libel.” This decision outraged Schroeder because such an accusation was easily lodged, and without holding a trial and hearing the defense of the accused party and the punishment was readily given. Thus, a bureau that is supposed to serve the people is somehow given the power to deny the newspaper its mailing rights, as long as anyone with power decided to accuse it with being seditious.³²

2.4 Further Implications of the Limitations on Public Speech

According to the members of the Free Speech League, free speech could not be granted to specific individuals only. It was a matter of the whole nation. The whole American population was given this right and it made America a free country that set it apart from oppressive governments as in Russia. The events that prevented anarchists and non-anarchists alike from giving public speeches were alarming for the free speech defenders. It did not only target the speakers but any American prospective speaker as well. The actions of the police, the way they interrupted the gathering and civilized discussion of the citizens were really alarming. It was as if the police were testing the boundaries of the people to see how much more they can be limited and controlled by brute force.

³² Louis F. Post, “Free Speech and Good Order,” 18.

For Flower, the nation had earned its free speech rights through the blood and tears shed. Not so long ago, they overcame a civil war that necessitated the rebuilding of half of the country. Remembering that he states the following: In comparison to the ideas that supported slavery and the time that anything uttered against it was punished, he states that although the discussions on slavery passed beyond that of the past prior to the Civil War, there is a more dangerous situation with the conduct of today's police force in Chicago. The reason for claiming it to be far more dangerous is due to the police force always looking for ways to undermine law or assume a non-existent authority to be able to deny people the freedom of speech, which is guaranteed to the people by their constitution.³³

Post observed that the things that were won by great sacrifices were meant to be protected. For him as well the freedom of speech stood for the foundation of the country. "It is in faithfully conserving that great inheritance of ours – free speech and a free press – and in the spirit largely, as well as in the letter narrowly, that we shall find our best guarantees of peace and order and progress."³⁴ While, Flower, in the hopes of comparing what things were at risk when the freedom of speech even in the form of speaking to a person or persons was jeopardized, quotes Wendell Philips: "The community that does not protect its humblest and most hated member in the free utterance of his opinion, no matter how false or hateful, is a gang of slaves."³⁵

³³ Flower, "The Sinister Assault on the Breastworks of Free Government," 6.

³⁴ Post, "Free Speech and Good Order," 19.

³⁵ Flower, "The Sinister Assault on the Breastworks of Free Government," 5.

The distortion of the way the American nation came together was a similar outcome expected by Flower, if the continuous harassment of the citizens regardless of their gender, beliefs and political tendencies continued, as he states: “The hope of Republic lies in appealing to the reason and the judicial spirit of men and women who think and who are not the easy victims of prejudice, insane passion or hysteria.”³⁶

In addition to the risk of attacking any forms of free speech and damaging innocent people and more importantly the fundamental principles of the American nation, the members of the Free Speech League analyzed that these excessive interventionist approaches and limitations to free speech instigated violence amongst men. As Schroeder further illustrates with the cancellation of the Union Square meeting, whose permission was taken beforehand, that one of the prospective listeners threw a bomb according to New York Times as it quoted the men who allegedly threw the bomb:

“Yes, I made the bomb and I came to the park to kill the police with it. The police are no good. *They drove us out of the park and I hate them.*”³⁷ This was the perfect example of how baseless accusations and labeling created a negative response. The unfairness of the system towards innocent people with good intentions creates resentment and thus provokes them into other ways so as to acquire justice with their own hands. This was the message the Free Speech League wanted to convey.

³⁶ Flower, “The Sinister Assault on the Breastworks of Free Government,” 9.

³⁷ Theodore Schroeder, “The Lawless Suppression of Free Speech in New York,” 13.

It was important for the free speech advocates that all the voices be heard without being judged. Otherwise, the prevention of even uttering the ideas and personal opinions in a friendly gathering for the purpose of exchanging them would create huge resentment. Being aware of the suspicions of the police officers and officers alike, the Free Speech League members wanted to point out that advocating public speech did not necessarily mean supporting whatever is said or believed by the speaker in question. As quoted by Flower, Post emphasized that the actions of the anarchists were totally against what he believed in. Further, he added: “For our rejection of her opinions is no reason for joining in the riotous demand that she be forbidden to utter them.”³⁸

2.5 Conclusion

At the beginning of the twentieth century, public speeches attracted police attention upon themselves. These speeches were given during the demonstrations held for the workers, who wanted to strike for reasons such as low pay, long working hours, and benefits in general. These speeches welcomed different types of public speakers. Some of the public speakers were anarchists and socialist that wanted to discuss the rights of the laborers, importance of unions and the meaning of anarchy and socialism. Following in these footsteps, there were also other public figures with different backgrounds and professions that wanted to publicly criticize the way the law enforcers worked, the interpretation of the Constitution made by the judges and the like. These attempts, with

³⁸ Flower, “The Sinister Assault on the Breastworks of Free Government,” 7.

the excuse of stopping dangerous anarchist movements, were stopped mostly by force and resulted in arrests and jail time.

Free Speech League members saw these actions as a threat to the very American way of life. As Post states: “Freedom to speak and write without restraint, subject only to punishment in the courts and by due process of law for criminal utterances actually made, is a fundamental American right.”³⁹ It was true that the anarchists were the primary targets in such speeches: “For the most part, however, the tendency to restrain freedom of speech and of the press is exhibited against persons known as ‘anarchists’.”⁴⁰ However, this meant that these interventions were extended people who had committed no wrongdoing or unlawful action which could further suggest that any person was possibly in danger of being arrested and persecuted unlawfully.

The members of the Free Speech League felt responsible for warning the people against the dangers of these interventions. It was not only the dangerous anarchists that were targeted, but there were many innocent anarchists as well as the non-anarchist, good-willed people, concerned about their country, that were under the threat of unlawful actions.

As Post underlined, it was a different thing if a person wanted to speak. He believed that, in the case that this particular speech instigates violence, it should be punished accordingly. “But punishment for unlawful utterances after lawful trial and conviction, is a very different thing from prevention of utterances arbitrarily and without trial, upon

³⁹ Post, “Free Speech and Good Order,” 17.

⁴⁰ Ibid.

the judgment of a postal or police official”.⁴¹ Thus, the dangers of the arbitrary definitions of crimes and the passion with which the police force acted upon these arbitrary clues were apparent for the free speech advocates. “The right to speak and print is subject to responsibility for what is said and printed. But the right itself is absolute.”⁴² The Free Speech League members’ focus on the protection and maintenance of free speech for all people in the country had two characteristics. They saw this right to freedom of speech as the foundation of a free government that set the United States apart from the other countries, where suppression and limitation of the free speech and expression of ideas in spoken and written form was the norm. The primary example of such a country for them was Russia.

The second characteristic of free speech for the Free Speech League was the solution in keeping the rightfully earned free government of the country. This included even the radical and extreme views of the anarchists. As Post states: “Above all things, let us not be so mean as to deny to the advocates of weaker opinions that freedom of speech which we claim for ourselves, nor so cowardly as to see this done without our protest.”⁴³

The suppressions and the restrictions by government officials towards the free speech rights of the citizens came with the need to stand up against them. This was already the conclusion drawn by the members of the Free Speech League. It necessitated a resistance that could defend the fundamental rights that came naturally for being an American citizen. Accordingly, Schroeder made a similar call when he said that it was

⁴¹ Post, “Free Speech and Good Order,” 18.

⁴² Ibid.

⁴³ Post, “Free Speech and Good Order,” 19.

time for people to be aware that the liberty provided by our Founding Fathers is in danger. Schroeder stated that the growing despotism visible especially in our judiciary system abuses the constitution and its authority to make unconstitutional and unlawful decisions on the freedom of the citizens. These judicial authorities and the public officials try to override the law and execute their own subjective justice and in order to achieve that they do not hesitate to deprive the people of their rights and liberty.⁴⁴

Schroeder further argued that this call meant that the earned rights such as freedom of speech required a constant awareness and willingness to fight for them even in small instances of compromises. It was seen as too great a risk to allow for any compromise big or small.

Flower named his article that suited that understanding. He called these rights as the “breastworks” of free government. Breastworks are the material pieces that cover the most vital parts of the body during an assault or attack. Thus, Flower considers the freedom of speech as the materials that cover the most vital parts of the country. They have a vital importance to the existence of the nation for today and the foreseeable future. Not surprisingly, Flower made the same call for the fight to protect the vital right of free speech when he stated that when the First Amendment is fully realized in this country, it will become the savior of this nation and also will ensure the free government, against which the enemies were plotting. According to him, it will give no room for the futile attempts to bring about violence, oppression, and unconstitutionality on these lands and it will discourage any public official to attempt to exceed his

⁴⁴ Theodore Schroeder, “The Growing Despotism of our Judiciary,” 21.

boundaries.⁴⁵ Otherwise, the consequences would be dire for the rest of the nation. Schroeder resembles the people who do not act upon these facts to stand up for it as mere observers and witnesses of the fall of the nation.



⁴⁵ Flower, "The Sinister Assault on the Breastworks of Free Government," 9.

CHAPTER III

THE FREE SPEECH LEAGUE AND OBSCENITY

3.1 Introduction

Obscenity was the number one cause for the limitations brought upon any written, published, and mailed work thanks to the contributions of Comstock. He was the crusader for the search of purity and for the elimination of all the vices. For him, any uninvestigated and unanalyzed piece of writing, drawing and the like had the worst possible outcomes to dirty the minds of the young and the elderly alike. The things that were under scrutiny included the novels, medical books, as well as the personal letters. The ever-expanding authority of Comstock and his comrades prevented the free expression of different ideologies with different political and intellectual backgrounds. The accusation directed towards the anarchists was at the same time directed towards the

medical professionals in terms of public health and sex and artists in terms of human biology and human body in general as can be seen in the chapter on gender discussed by Dr. Foote, and in the discussions of constitutionality made by lawyers such as Schroeder as can be seen in the chapter on obscenity. These accusations of dangerous acts towards the public discussions and intellectual arguments had no boundaries. It seemed, expression of opinion on any issue that was not desired by the public officials to be expressed, was under threat.

The fear by the intellectuals that were part of and/or affiliated with the Free Speech League was that the arbitrariness and uncertainty of the laws. Schroeder and his friends considered the obscenity laws as unconstitutional, since the majority of the time the Congress used unassigned authority in regards to postal laws and the arrests did not include trials or the arrestees were accused with ex-post facto laws. These all pointed towards a near future that resembled the suppressions experienced in Russia. The unconstitutionality meant for the United States a possible regime of despotism, which started to show its ugly face in the random closings of the publishing companies, journals, and the activities of art schools.

3.2 Comstockery

The author Alyssa Picard quotes the historian Timothy Gilfoyle, who talked about Comstock as a figure that aspired to create: “an ideal world of public and private spheres separating vice from virtue, the illicit from the licit, the disreputable from the

respectable.”⁴⁶ Regardless of this rather positive description, Anthony Comstock was the lead figure in organizing raids to art schools, newspapers, publishing houses as well as in inspecting the personal letters thanks to the power handed to him. He was the United States Postal Inspector and started his active fight against the obscene materials with the foundation of the New York Society for the Suppression of Vice in 1873. He, along with his followers, sought to eradicate any written or spoken work that did not fit his criteria of purity. Comstockery was the term that was used for all the series of laws that were present starting with the late nineteenth and early twentieth century which included the obscenity and postal laws mentioned earlier. It went beyond the mere definition of the laws but the ideology that supported the censorship and limitation of the free speech that came with it. “Comstockery, as we know it, is apparently an organized effort to regulate the morals of the people.”⁴⁷

There were some instances that can create in the mind for the reasoning of such outbursts of censorship. The city of New York was in fact flooded with vice as Picard quotes Gilfoyle in his book *City of Eros*: “By 1901 the thirty-three blocks comprising the city’s rapidly expanding and diffusing Tenderloin district contained sixty-three brothels, sixty-one tenements, eight apartments and ten hostels used by prostitutes.”⁴⁸ Regardless, for Sanger, the Comstockery had a sinister purpose: “The passing of the

⁴⁶ Alyssa Picard, “To Popularize the Nude in Art: Comstockery Reconsidered,” *The Journal of the Gilded Age and Progressive Era*, Vol. 1, No. 3 (Jul., 2002), 197.

⁴⁷ John R. Coryell, “Comstockery,” 30-31.

⁴⁸ Picard, “To Popularize the Nude in Art: Comstock Reconsidered,” 209.

Comstock laws in 1873 was designed to aid and abet both *moral* and *religious prejudice and persecutions*.”⁴⁹

The perverseness of these laws was an idea shared by Post as well. He considered that they wanted to suppress the freedom of the people in a way not to stir any resistance among them. “But what could not be done directly because the people would resent it, might be done indirectly and surreptitiously because the people would not realize that it was being done.”⁵⁰ As he further states the power is getting stronger as it meets with the weakness before it. In a progressive pace, the certain definitions of criminal and evil become obscure and this power attacks any unpopular view that starts to reach even the popular consensus. This is a sinister movement that aims to conquer and limit all the hard-earned civil liberties. In this country, this ominous power already took its steps towards this horrible end through these heavy censorship laws.⁵¹

This was a commonly shared opinion among the Free Speech League members that the Comstock and the ideas he presented were big threats to such scales that exceeded the boundaries of the United States. Accordingly, Coryell points out that Comstockery is the society’s enemy. It twists the ideas, even the most common ones that the impure one become pure all of a sudden while the ignorance is praised to represent the innocence. The right to access any information was labeled to be criminal due to this ideology.

⁴⁹ Margaret Sanger, “Comstockery in America,” *The International Socialist Review*, 1915, 46-47.

⁵⁰ Louis F. Post, “Our Advancing Postal Censorship,” 4-5.

⁵¹ Post, “Our Advancing Postal Censorship,” 23.

Whatever is eminent about humanity, the search for truth and the constant questioning, are buried deep down with the fear of punishment.⁵²

The inability to standardize what constituted obscenity even from the point of view of Comstock was quite apparent. “Marking privileged ‘literary men’ as the ‘few,’ Comstock argued that a classic Italian text should be censored because ‘The number of literary men who find pleasure and profit in [it]...is comparatively few.’”⁵³ Comstock, in some instances, crossed the line and attempted to magnify his authority. Yet, there was, though little, resistance to his generous accusations. Comstock had accused a wholesale dealer of the distribution of lewd photographs although this judge who was “presiding over the case dismissed the charges against Storm on the grounds that neither the judge himself nor any of his colleagues had been able to find anything prurient in the photographs which Comstock presented as evidence against Storm.”⁵⁴ Although there were such instances, where the actions of Comstock met with resistance, for the Free Speech League members and its supporters evaluated the consequences of his actions as very harmful to society and to the integrity of the country. “It has reared an awful idol to which have been sacrificed the best of our youth; with hypocrisy the high-priest, ignorance the creed, and pruriency the detective.”⁵⁵

⁵² John R. Coryell, “Comstockery,” *Mother Earth*, (New York: Emma Goldman, 1906), 34.

⁵³ Picard, “To Popularize the Nude in Art: Comstock Reconsidered,” 217.

⁵⁴ Picard, “To Popularize the Nude in Art: Comstock Reconsidered,” 220.

⁵⁵ Coryell, “Comstockery,” 37.

3.3 Definition of Obscenity

Although obscenity could have an exact definition as a work of literature and art that includes, talks about, and shares sexual and indecent materials that can corrupt the mind of the reader, in terms of its legal applications as law in the United States, nobody was able to provide a clear definition for it. As Schroeder mentions that particular problem, he states the legislation and the interpretations made by the judicial branch in regard to the definition of obscenity is absurd. Since it is mentioned as if it represents the real qualities of a work of literature, while it is not the case. Therefore, when it is proposed to test it through methods accepted universally and applied equally, they are somehow exempt from them. Thus, any work of literature, when met with one of these authorities in question subjectively analyzed and judged to comprise of obscene elements or not.⁵⁶

In his attempt to point out the impossibility of reaching a common definition, Schroeder underlines how the reader is responsible of his emotions rather than the work itself in his work the *Unconstitutionality of All Laws Against 'Obscene' Literature*.⁵⁷ He states that the statutes, the tests of obscenity or the judicial authorities are able to come up with a uniform definition of the purity of a work. This is due to the psychological nature of the impacts of the book on the person, which is already speculative and baseless, that they are not able to give an equal verdict.⁵⁸

⁵⁶ Theodore Schroeder, *What is Criminally Obscene?*, (New York: The Free Speech League, 1906), 53.

⁵⁷ Theodore Schroeder, *Unconstitutionality of All Laws Against 'Obscene' Literature*, (New York: The Free Speech League, 1908).

⁵⁸ Schroeder, *Unconstitutionality of All Laws Against 'Obscene' Literature*, 6.

One of the problems with defining obscenity lies within its characteristics as “the word ‘obscene’, like such words as delicate, ugly, lovable, hateful, etc., is an abstraction.”⁵⁹ Therefore, there are many dependents on the actualization of obscenity since it is very personal and unique. Schroeder states that every person brings in his own fears, educational background as well as neuro-sexual and psycho-sexual health.⁶⁰

In line with the psychological and sexual aspects of the matter, Schroeder points towards the different reactions of the individuals towards the subjects in regard to sex. A study of ethnology and psychology shows that emotions of disgust, and the concept of indecency or obscenity, are often associated with phenomena having no natural connection with sex, and often in many people are not at all aroused by any phase of healthy sexual manifestation; and in still others it is aroused by some sensual associations and not by others; and these, again, vary with the individual according to his age, education and the degree of his sexual hyperaestheticism.⁶¹

The task of defining obscenity was so impossible that the courts had to give specific reasoning in their decisions that even had a religious background. In *Arderly v. State*, 56 Ind. 329, the Supreme Court of Indiana stated the following: “Immediately after the fall of Adam, there seems to have sprung up in the mind, an idea that there was such a thing as decency, and such a thing as indecency, and since that time, the idea of decency and indecency have been *indistinctive in and indeed, a part of, humanity.*”⁶²

⁵⁹ Schroeder, “Psychological Study of Modesty and Obscenity,” *Obscene Literature and Constitutional Law*, (New York: Privately Printed, 1911), 277.

⁶⁰ Schroeder, “Psychological Study of Modesty and Obscenity,” 277.

⁶¹ Schroeder, “What is Criminally Obscene?,” 59.

⁶² Theodore Schroeder, “Legal Obscenity and Sexual Psychology,” *The Medico-Legal Journal*, (New York: Medico-Legal Journal, 1907), 197-198.

When it comes to the works of literature, the U.S. courts had more difficulty in applying the test of obscenity since it meant that the literary works had to be criticized by the judges who had little to no competence in this field. Schroeder states that such law does not give authority to a jury to determine whether a piece of literature is a good or a bad one. Good, for literature, indicates useful and unharmed content that does not fill the minds of the readers with illegal, impure and unnatural thoughts. While bad, for literature, indicates useless and harmful content that corrupts the minds of the readers with illegal, impure and unnatural thoughts. This type of approach and classification only supports the assumption that children are not competent enough to make decisions in regard to what kind of information they would like to access. What is worse, the adults were treated in the same way with the assumption about their incompetence as to their preference of reading materials.⁶³ This type of limitation on these publications based on whether they were deemed obscene or not by the lawyer, who depended on his limited capacities in criticizing the works in question, also created specific instances where an access to a certain type of work was exclusive to certain people and groups. This situation induced “some American courts, under the guise of “interpretation,” to amend the statute judicially, so as to exempt some medical book, otherwise “obscene”, from being criminal if circulated only among some professional men.”⁶⁴

As Schroeder further illustrates, these types of differences in providing a certain definition of obscenity stems from the fact that it is very personal and depends on the psyche of the men as he states: “The ‘immorality’ resulting from reading a book

⁶³ Schroeder, “What is Criminally Obscene?,” 54.

⁶⁴ Schroeder, “What is Criminally Obscene?,” 53.

depends, not upon its ‘obscenity,’ but upon the abnormality of the reading mind, which the book does not create, but simply reveals.”⁶⁵ In addition to being personal and hard to find a definition that is de facto, the obscenity cannot be detected scientifically to convict a person or persons with such a crime. “Such speculative psychological tendencies are never found with certainty in any book, but are read into it, with all the uncertainty of the *a priori* method, as an excuse for a verdict of guilty.”⁶⁶

Therefore, it was difficult for the courts to come up with one certain definition of the crime for obscenity since it was a very personal issue to begin with. Moreover, the judges in each case came up with a different definition and different types of punishments for the supposed crime. Schroeder points out the scientific impossibility of the crime as well because this type of obscene quality cannot be deducted from the written works.

The absurdity was that the courts in the United States were so confused about the definition of the crime that they came up with their own interpretations. Some of them claimed that the ‘obscenity’ was common sense. As quoted by 38 Fed. R. 733, the jury says: “These are as precise definitions as I can give. The case is one which addresses itself largely to your good judgment, common sense,” etc.⁶⁷ On the other hand, some others related it to biblical causes or inevitable human characteristic shared universally. “In harmony with the predominant opinion of that time, legislators assumed, and courts

⁶⁵ Theodore Schroeder, “Obscenity Prudery and Morals,” *Obscene Literature and Constitutional Law*, (New York: Privately Printed, 1911), 102.

⁶⁶ Theodore Schroeder, “Concerning Uncertainty and Due Process of Law,” *Due Process of Law in Relation to Statutory Uncertainty and Constructive Offenses*, (New York: The Free Speech League, 1908), 27-28.

⁶⁷ Schroeder, “What is Criminally Obscene?,” 65.

decreed, that all humanity have an innate, and uniform sense of modesty and decency, by which we may acquire a direct sense-perception of the 'obscene' qualities of a book or picture."⁶⁸

3.4 Unconstitutionality

The argument Schroeder gave the most importance to in regard to the discussions on obscenity laws was the unconstitutionality of the law. One of his main points to make in this matter was the lack of standardization and objectivity. He states that if the judges could provide a test for the determination of obscenity that would analyze the elements of literature objectively and if they could decide based upon this scientific test without mistake and equal application whether that piece of literature was obscene or not, we would be assured that no unconstitutionality was at work and that our judicial system was just as it should be to all the citizens.⁶⁹

Since the determination of what is guilty or not is not possible through a standardized test, it goes beyond the powers of the U.S. courts. As a result, these laws penalizing the obscenity "do not prescribe a uniform rule of conduct, and are therefore beyond the power of any English or American legislature to enact."⁷⁰ For obscenity to be a punishable crime there has to be an action that occurs as a result which damage and harm a person, an institution and the like. "All punishable crimes must be based upon

⁶⁸ Schroeder, "Legal Obscenity and Sexual Psychology," 195.

⁶⁹ Schroeder, "What is Criminally Obscene?," 54-55.

⁷⁰ Schroeder, "What is Criminally Obscene?," 53.

demonstrable and ascertained, or imminent material injury to someone.”⁷¹ It is based on the interpretation of the readers and when it comes to the judgment before the trial, this again depends on how the judges evaluate it. As he further states, obscenity is subjective on the contrary of the forced and false representation of it as an objective fact. It can only be felt with specific emotions and these emotions can be triggered by various factors that can no way be narrowed down to create a checklist for it to be tested. That is why it depends subjectively on the person being exposed to it and this person’s emotions along with his psyche are at work. These emotions do not exist in the work of literature but rather are read into it.⁷²

Thus, the case by case applications and the interpretations of the courts, for Schroeder, were the biggest sign for their unconstitutionality. For Schroeder, the root of the problem was quite clear. It was not about the ethics or law but always a question of science. Looking from this scientific perspective, he came to the conclusion that all these obscenity laws had to be void because they were not clear about the definition of that particular crime. Having no clear definition of the crime means the punishment was not possible by the statute. He again repeated his contention that the obscenity was about the reader not the content of the material being read.⁷³

“What that law shall be in any case depends on the experiences, education and the degree of sex-sensitiveness of the court, and not upon any statutory specification of what

⁷¹ Theodore Schroeder, “The Constitution and Obscenity Postal Laws,” *The Albany Law Journal*, Vol. LXIX, (Albany: The Albany Law Journal Company, 1907) 334.

⁷² Schroeder, “What is Criminally Obscene?,” 56.

⁷³ Schroeder, “What is Criminally Obscene?,” 54.

is criminal.”⁷⁴ Schroeder tells us that, while Jesuit José Sanchez Labrador, who was a plant scientist in the late 18th century in the Spanish Empire, wrote a book about the sexes of the plants and later his writings were prohibited in the Papal States that constituted the regions of central Italy such as Lazio, Umbria, and Marche, these ideas were permitted in the current America but yet again whomever circulated his works would be sent to jail. Thus, he showed how arbitrary and how subjective the treatment towards obscenity is.

The unconstitutionality manifests itself very clearly in the application of the obscenity laws on the postal system. “The very creation of a postal system necessarily involves a determination of the gross physical characteristics of that which is to be carried or excluded and therefore implies the power to determine such qualities.”⁷⁵ However, when it comes to the posting of the ideas within those mails, the Congress is not authorized to judge them. Therefore, this assumption “bears no conceivable relation to the establishment of post offices or post roads for the transmission of physical matter only.”⁷⁶

The postal laws were directly related with the freedom of speech and of the press. Thus, Schroeder evaluated these laws against obscenity as unconstitutional. “The postal laws against ‘obscene’ literature are void under the constitutional prohibition against the abridgment of freedom of speech and of the press. Likewise, all similar State legislation is void under State Constitution.”⁷⁷ This, unconstitutionality was directly related with the

⁷⁴ Schroeder, “What is Criminally Obscene?,” 61.

⁷⁵ Schroeder, *Unconstitutionality of All Laws Against ‘Obscene’ Literature*, 4.

⁷⁶ Schroeder, *Unconstitutionality of All Laws Against Obscene Literature*, 4.

⁷⁷ Schroeder, *Unconstitutionality of All Laws Against Obscene Literature*, 5.

authority of the Congress and the courts alike. An interesting point was made by Schroeder when he stated that the mail, though could be used for crimes such as gambling or lottery, it was not the case for adultery and similar actions. Thus, the Congress, within the boundaries of its authority cannot intervene with the postal system of the state.⁷⁸

As the authority of the Congress in regard to the postal services states, the “Congress is not expressly authorized to discriminate according to the intellectual or ‘moral’ qualities of that which may be expressed upon, or suggested by that which is transmitted through the mails.”⁷⁹ Although it may seem like the interstate commerce was under surveillance, as Schroeder states: “It includes Intrastate transmission as well as that of private letters, or gifts which are not at all matters of commerce either Inter-state or otherwise, and so cannot be upheld as a regulation of Inter-state commerce.”⁸⁰ As Post states in his article, the intention of the Founding Fathers in regard to the freedom of the press was evident. According to Schroeder, they did not have the intention to give freedom to the press to the point that they were free to attack personal reputations. They were sure that the publishers were also responsible for the seditious libel and they would be punished for the existence of these indecent elements. Yet, they also emphasized that these decisions must be left to the juries and the judicial body because they would provide an equal

⁷⁸ Theodore Schroeder, “On the Implied Power to Exclude Obscene Ideas from Mails,” *Obscene Literature and Constitutional Law*, (New York: Privately Printed, 1911), 134.

⁷⁹ Schroeder, “On the Implied Power to Exclude Obscene Ideas from Mails,” 133.

⁸⁰ Schroeder, *Unconstitutionality of All Laws Against Obscene Literature*, 4-5.

hearing for both parties and this would eliminate any assumed authority other than the judicial branch.⁸¹

In connection with the personal and psychological experience of the reader with the work and/or letter, the Congress cannot grant power to a jury so that the arbitrary crime can be detected. “The Congress...has no power to authorize a jury to determine guilt of crime according to varying personal standards, such as must control the opinion of a jury on the psychological tendency of a book upon an undescribed hypothetical reader...”⁸² As the New York Society for the Suppression of Vice, which was a governmental body that aimed to determine obscenity in the published works and to prevent their circulation, added that the works of freethinkers could be classified with additional characterizations such as indecent, filthy and disgusting. These classifications were used in the arrests of the author De Robigne Mortimer Bennett for his work “An Open Letter to Jesus Christ.”⁸³

Schroeder quotes one of the senators ‘Honest John’ Davis: “It would be claiming on the part of government a monopoly, and exclusive right either to send such papers as it pleased, or to deny the privilege of sending them through the mail.”⁸⁴ This power was seen by Davis as a real threat as he asks: “Once established the precedent, and where will it lead to?”⁸⁵ On this threat of the illegitimate power, Davis further elaborates that

⁸¹ Post, “Our Advancing Postal Censorship,” 1-2.

⁸² Schroeder, *Unconstitutionality of All Laws Against Obscene Literature*, 9.

⁸³ Theodore Schroeder, “Etiology and Development of Our Censorship,” *Obscene Literature and Constitutional Law*, (New York: Privately Printed, 1911), 45.

⁸⁴ Theodore Schroeder, “On the Implied Power to Exclude Obscene Ideas from Mails,” *Obscene Literature and Constitutional Law*, (New York: Privately Printed, 1911), 140.

⁸⁵ Schroeder, “On the Implied Power to Exclude Obscene Ideas from Mails,” 140.

the government may find it right to prevent the publication and spreading of these materials in regard to politics, religion and even moral issues. It is up to their liking whether to label something offensive and it would take upon itself to decide on a punishment.⁸⁶ As Schroeder points out, the authority of the Congress over the matters in regard to the postal system was clear. Yet, it was seen again and again that, the Congress used this power over the postal system for the specific crimes in regard to the content of the things being delivered through them. It is quite clear that Congress can, within its jurisdiction, inspect the post office buildings and determine that the gambling through which the post office mailing system was used to be criminal and with this conclusion, the Congress uses his power to punish gambling or prevent the commission of it through the postal system.⁸⁷ It was understandable that, when the criminal statutes were really clear about the gambling, the people were able to identify whether they crossed the line about their actions. However, the unclarity of the crime being punished takes away the authority of the Congress. In the laws of the United States, the Congress “has no power to authorize a jury to determine guilt of crime according to varying personal standards, such as must control the opinion of a jury on the psychological tendency of a book upon an undescribed hypothetical reader...”⁸⁸

Another aspect that supports the argument that the obscenity laws are unconstitutional is the fact that they undermine due process of law. As its definition shows, “all legal procedures set by statute and court practice, including notice of rights, must be followed

⁸⁶ Ibid.

⁸⁷ Schroeder, “The Constitution and Obscenity Postal Laws”, 337

⁸⁸ Schroeder, *Unconstitutionality of All Laws Against Obscene Literature*, 9.

for each individual so that no prejudicial or unequal treatment will result.”⁸⁹ This problem, again, was caused by the uncertainty of the crime of obscenity. Accordingly, one of the first results caused by this uncertainty that the laws in regard to this issue do not provide any specific so as to guide the citizens. This causes them to be unsure about what violates the law and most importantly it makes the statute in question to be applied without due process of law. There is no clarity about what constitutes crime and what is expected from the citizens as well as the possible consequences.⁹⁰

As the saying goes, *ubi jus incertum ibi jus nullum*, when there is uncertainty, there is no law. Accordingly, the obscenity laws do not meet two criteria for due process of law to be valid. “First there must be a valid ‘law’, within the meaning of that word in the constitutional phrase ‘due process of law’, and secondly the process prescribed by that law must be accurately pursued.”⁹¹ Due process of law includes the terminology of another unconstitutionality checklist for the obscenity laws, which is called constructive crime. “Where by a strained construction of a penal statute, it is made to include an act not otherwise punishable, it is said to be a ‘constructive crime’”⁹². It means that it is a crime “built up by the court with the aid of inference and implication.”⁹³

Therefore, when the Congress acts upon the authority that was granted through postal laws in the matters of gambling, it does not actually convict a crime that is being committed. Thus, the Congress cannot “punish the constructive crime of sending

⁸⁹ Law.Com, <https://dictionary.law.com/Default.aspx?selected=595>

⁹⁰ Schroeder, *Unconstitutionality of All Laws Against Obscene Literature*, 7.

⁹¹ Schroeder, “Concerning Uncertainty and Due Process of Law,” 19.

⁹² <https://thelawdictionary.org/constructive-crime/>

⁹³ [Ibid.](#)

through the mail matter which merely expresses or suggests the idea of gambling, entirely separate from any particular scheme for accomplishing gambling.”⁹⁴ As Schroeder further states, the Constitution does not allow the construction of psychological crimes.

Our Constitution precludes the construction of mere psychological crimes. The creation of offenses which are based only upon ideas, such as were once punished as constructive treason, witchcraft and heresy, either religious or ethical, and all kindred psychological or constructive crimes are prohibited.⁹⁵

The courts attempted to avoid these direct accusations against using constructive crimes for convicting people by using the so-called tests of obscenity. The tests were the primary tools for the courts to evaluate the level of purity of the objects in question. These were used by the judges to prove the crime being committed. Yet, these tests were nowhere scientific and did not have any standard applied to them. “The so-called judicial ‘tests’ of obscenity are not standards of judgment, but on the contrary, by every such ‘test’ the rule of decision is itself uncertain...”⁹⁶ As it is suggested by Schroeder, the nature of the tests did not have any standard and the tests varied from person to person. The test applied to each person, unavoidably, become subjective and moves further away from the necessary objective standard. Changing from person to person being subjected to as well as changing based on the person applying the test with different results and experiences fail to become a test. The uncertainty and thus the

⁹⁴ Schroeder, “The Constitution and Obscenity Postal Laws,” 337.

⁹⁵ Schroeder, “The Constitution and Obscenity Postal Laws,” 334.

⁹⁶ Schroeder, “What is Criminally Obscene?,” 63.

objectionable method of the judicial system can be found throughout all the cases against obscenity.⁹⁷

The nature of these tests was not problematic only in the sense that there was no standardization, but also it was based on the assumption of a possible tendency. “Here the uncertainty is one of evidence not of statutory tests of crime. An unrealized psychologic potential tendency of a book upon its hypothetical future reader, has only a speculative future existence...”⁹⁸ The fact that these tests did not have a set of unchanging evaluation methods immediately makes them unfit for being used as a proof of crime – hence unconstitutional.

If neither science nor the statute furnishes us with a definite test by which to determine the existence of those things expressed by statutory words and which are essential to a definition of a crime, then the law is void for uncertainty and the lack of statutory test of criminality cannot be supplied by the courts since that would be judicial criminal legislation and *ex post facto* at that.⁹⁹

3.5 Role of the Judicial Branch

The role of the judicial branch comes into the picture with these abuses of power. As Free Speech League publications point out, the justice system had to give direction to the people and inform them of the dangers of the obscene materials. Schroeder explains how the statute in question violates the seventh amendment. Since this amendment

⁹⁷ Schroeder, “What is Criminally Obscene?,” 63.

⁹⁸ Schroeder, “Concerning Uncertainty and Due Process of Law,” 26.

⁹⁹ Schroeder, “Concerning Uncertainty and Due Process of Law,” 24-25.

demands a clear definition of the crime explaining what constitutes the crime and what are its elements, the statute lacking these characteristics in the matter of obscenity lacks the constitutionality and therefore this statute cannot authorize the jury to be the sole decision maker on the criminalization and punishment of obscenity.¹⁰⁰

These obscenity laws lacked a checklist to guide the citizens. The law itself did not guarantee any specific indication for the crime. “No man, by reading the statute, can tell whether a particular book is criminal or not, because the criminality does not depend upon the statute, but upon the incompetent jurors’ speculative opinion about the psychological tendency of the book.”¹⁰¹ This speculative and thus subjective approach to each case did little to nothing for the prevention of the crime of obscenity. Due process of law cannot be found within this criminal statute due to the doubt created by this uncertainty and definitive words. So, Schroeder claims that the condition for a criminal statute to contain the due process of law is that it has to provide a clear and simple definition of the crime, which can be grasped and fully understood by the ordinary citizen. In this way, the citizen would be clear about what constitutes a crime and he would understand what things are prohibited.¹⁰²

However, rather than helping out the people that struggle with comprehending what was allowed and prohibited material, the justice system expected the citizens to assess the signs of obscenity. “Because it is a matter wholly of emotions, it has come to be that ‘men think they know because they feel, and are firmly convinced because strongly

¹⁰⁰ Schroeder, *Unconstitutionality of All Laws Against Obscene Literature*, 9.

¹⁰¹ Schroeder, “What is Criminally Obscene?,” 64.

¹⁰² Schroeder, “Concerning Uncertainty and Due Process of Law,” 28.

agitated.”¹⁰³ As Coryell states, the prohibition created more problems rather than a solution to end them. When the book in question was convicted since it was established to be obscene, “it was removed from circulation. In other words, the symptom of the disease was hidden. But was anything done to eliminate the disease, or to remove its cause? On the contrary, everything possible was done to perpetuate the disease...”¹⁰⁴ The matter was presented as common sense, when in fact it was not. In *Rosen v. United States* dated 1896, it is deemed that “everyone who uses the mails...for carrying papers of publications must take notice of what, in this enlightened age, is meant by decency, purity, and chastity in social life, and what must be deemed obscene, lewd, and lascivious.”¹⁰⁵

This was the expected outcome by the justice system. The judicial branch was convinced that the matter was pretty clear and it was a matter of common sense. Yet, when the people were left to their own devices, they focused on the inner selves and started blaming themselves. Schroeder believed this shame towards such emotions were shared by certain judges as well and they reflected this feeling towards the common people. “If, on the other hand, they esteem lascivious thoughts and images as a mark of depravity, they seek to conceal their own shame by denouncing all those things which stimulate sensuality in themselves, and they naturally and erroneously believe that it must have the same effect upon all others.”¹⁰⁶ Funny enough, these judges were not in denial as Schroeder states that some of these judges “with the *naivete* which evidences

¹⁰³ Schroeder, “What is Criminally Obscene?,” 62.

¹⁰⁴ Coryell, “Comstockery,” 34-35.

¹⁰⁵ <https://supreme.justia.com/cases/federal/us/161/29/>

¹⁰⁶ Schroeder, “What is Criminally Obscene?,” 60.

their consciousness of what they do, quite freely admit that it is not a matter of law, but a matter of discretion, which determines the character of a book, and,...the ‘guilt’ of its vendor.”¹⁰⁷

Due to this passive position of the justice system in America, the Free Speech League members considered that the regulations in regard to the obscenity laws had a different agenda rather than helping people out. It was claimed by the members of the League that the real purpose of these regulations was to take control over the postal patrons of the states that were deemed to carry out sexual activities. It was to prevent such illicit activities to find ways to spread their obscenity through the governmental services provided to its citizens. Regardless of the intention, however, the Congress was not authorized with such duty to accomplish such ends.¹⁰⁸

So, “the statute in practical operation violates the constitutional guarantee against ex post facto laws.”¹⁰⁹ Therefore, the Free Speech League considered these laws as unconstitutional both because of the reasons above but also because it did not fit the characteristic of the constitutional history of the United States. As Schroeder points in a closer past, he states: “If, prior to 1837, there had existed an authoritative judicial decision affirming the power over the mails, it would have been made crime to send abolition literature through the post office.”¹¹⁰ Yet, this was not the case. What is worse, these laws became more and more arbitrary to make obscenity laws meaningful and just. “Laws defining crimes are required to be made by the lawmaking branch of government

¹⁰⁷ Schroeder, “What is Criminally Obscene?,” 64-65.

¹⁰⁸ Schroeder, “On the Implied Power to Exclude Obscene Ideas from Mails,” 140-141.

¹⁰⁹ Schroeder, *Unconstitutionality of All Laws Against Obscene Literature*, 9.

¹¹⁰ Schroeder, “On the Implied Power to Exclude ‘Obscene’ Ideas from the Mails,” 138-139.

because of the necessity for limiting and destroying arbitrariness and judicial discretion in such matters”¹¹¹.

Looking back towards the works of the Founding Fathers, Schroeder uses the historical foundations of the country. He references how the existence of the United States is based on the laws and constitution, unlike the countries where the hierarchy and despotism ruled over all. “That is what we mean when we say ours is a government by law and not by men.”¹¹² In his striking article titled “No Obscene Literature in Common Law”, Schroeder points out that in the history of America, obscenity did not find a place for itself in common law. Looking at the history of England prior to and immediately after the American Revolution, even with the foundation of new authorities, the law on obscenity was not a crime as part of the common law. Thus, Schroeder makes the point that the newly founded country with its newly found freedom, in its past, never considered the obscenity to be part of the common law.¹¹³

3.6 Conclusion

For the Free Speech League, the discussion in regard to the obscenity laws and the postal laws under the leadership of Comstock’s initiatives had its analysis in terms of the Constitution of the United States. Giving example as early as the sixteenth century, Schroeder wants to lay the foundation for the customs of these lands and wants to

¹¹¹ Schroeder, “Concerning Uncertainty and Due Process of Law,” 28-29.

¹¹² Schroeder, “Concerning Uncertainty and Due Process of Law,” 29.

¹¹³ Schroeder, “No Obscene Literature at Common Law,” *Obscene Literature and Constitutional Law*, (New York: Privately Printed, 1911), 39.

contrast that such laws did not exist. “Of course, even before this, we find ascetics of unbalanced mind, who declaimed against all that stimulated their unhealthy sex-sensibilities, but no law as yet had made their diseased conditioned the standard of virtue.”¹¹⁴ He claims that the Americans of the time forgot about this and found solace with the moral aspect of all these censorships as he states: “The advocates of our present censorship of literature believe that their work is justified by the claim of its moralizing tendency.”¹¹⁵ Yet, he directs the attention towards Comstockery as the source of all possible immorality as he states that “there is no organized force in American life which is more pernicious or more productive of moral evil in the domain of sex, than the very work which has come to be known as Comstockery.”¹¹⁶

Sanger quotes Comstock to show that how proud he was with the work he has done in terms of purity crusade, as there was an increasing rate of immorality in the big cities. “He records that he has destroyed 160 tons of literature and brought 3,760 ‘criminals’ to ‘justice’ during these years (since 1873).”¹¹⁷ However, these laws of obscenity were not limited to the crimes that were actually committed but depended on the vague interpretations and personal opinions of the judges. According to Schroeder, this paved the way of constructive crime, which was non-existent in the laws of the United States. “There is all the difference in the world between punishing the use of the mails for

¹¹⁴ Theodore Schroeder, “No Obscene Literature at Common Law,” *Obscene Literature and Constitutional Law*, (New York: Privately Printed, 1911), 33.

¹¹⁵ Schroeder, “Obscenity Prudery and Morals,” 101.

¹¹⁶ Schroeder, “Obscenity Prudery and Morals,” 101.

¹¹⁷ Sanger, “Comstockery in America,” 46.

disseminating opinions advocating the morality of gambling and punishing the use of mails to accomplish the crime of gambling.”¹¹⁸

So, regardless of the pride Comstock had towards the success of his interventions, the Free Speech League warned of the dangers of mere limitations and censorship of the so-called obscene literature as a solution. The suppressive approach of censorship had all the worst possible outcomes as Post states that with the censorship a certain harm is given to the society. The rejection of the abolition of the public rights eventually caused the perversion of the morals once known by the public as a whole, which are then replaced by the false ones. According to him, most importantly and unfortunately, the officials are under the pretense that they are looking for the well-being of their citizens while undermining their civil liberties.¹¹⁹

Accordingly, the critic R. E. Sammons considered the Comstock laws as suppressive and therefore having a harmful effect on the society. Rather than doing good deeds with the idea of protecting the minds and the bodies of the people from evil, he made them curious in regard to the topics they could not discuss – thus creating further perversion in their minds.¹²⁰ Post points out the difficulty of objecting to these crimes due to this very reason of perverseness. It was really easy to see the vices presented by Comstock as he states: “No appeal to the principle of freedom of the press could be made which would not seem like an attempt at shielding vile offenses.”¹²¹ The solution, according to Post,

¹¹⁸ Schroeder, “The Constitution and Obscenity Postal Laws,” 337.

¹¹⁹ Post, “Our Advancing Postal Censorship,” 2.

¹²⁰ R. E. Sammons, “Anthony Comstock’s Crime,” *Tomorrow* (Chicago, 1907), 15.

¹²¹ Post, “Our Advancing Postal Censorship,” 10.

was “to punish offenders after they, having had an opportunity to be heard upon specific charges, have been convicted by a jury of their fellow citizens.”¹²²

For Schroeder, too, the Comstock laws added fuel to the flame of the ever-increasing curiosity towards the forbidden subjects that had fatal results. More than that, these laws considered that “every hindrance to sexual intelligence must be an aid to sexual vice, and all the sexual vices and diseases are chargeable to ignorance...and most of it is chargeable to prudery legalized and unlegalized – that is Comstockery.”¹²³

It was this uncertain and arbitrary and unfortunately very dangerous characteristic of Comstock’s obscenity laws that made the Free Speech League members speak up about how it was uncharacteristic of the American nation, how it was non-existent as an application, how it lacked proper definition and testing and therefore unconstitutional. In addition to that, the psychology behind them was not properly understood, which was one of the biggest concerns for Schroeder. He considered that keeping the people ignorant of one of the essential matters such as sex was dangerous to health. The desire for learning about such topics showed that the mind was healthy and in need of satisfying the curiosity, while the suppression of accessing information on the matters of sex would create unhealthy mind and body.¹²⁴

Coryell considered these censorship laws as unfit for the age that America was in. “This is an age of radical ideas. Radicalism in politics, in religion, in ethics is ripe; which is

¹²² Post, “Our Advancing Postal Censorship,” 26.

¹²³ Schroeder, “Obscenity Prudery and Morals,” 102.

¹²⁴ Schroeder, “Obscenity Prudery and Morals,” 104.

only another way of saying that we are beginning to dare to think.”¹²⁵ Post saw it as one of the steps that the United States was taking towards becoming a despotic country if not stopped. “The only difference between such a power and that of Russian censorship is a difference neither in kind nor degree. It is a difference only in scope of execute on. And scope of execution widens with use.”¹²⁶

The attack on the literature and the personal letters was the ultimate attempt at abridging the freedom of speech in the United States during the golden years of Comstock from 1873 up to his death in 1915. In this matter, Schroeder states that the Constitution changed the status of the press in a deliberate manner from a mere permission to a Liberty. Through this significant change of status of the citizens were protected by law so there would be brought no restriction on their intellectual liberties. It meant that the Constitution trusted its citizens’ capabilities in choosing the materials and information they desired to hear and read as well as share.¹²⁷

In the following years, the suppression of the art and intellectual and personal works had a progressively explosive reaction. As the historian Amy Werbel stated the Comstock’s efforts caused the art institutions to assume the authority to have a say in a professional sense and thus initiated more organized self-regulating art institutions. Eventually this reaction by the intellectuals into a movement that created the basis of modernism in America. As Amy stated: “aesthetics associated with the concept of obscenity were

¹²⁵ Coryell, “Comstockery,” 35.

¹²⁶ Post, “Our Advancing Postal Censorship,” 27-28.

¹²⁷ Schroeder, *Unconstitutionality of All Laws Against Obscene Literature*, 5.

swept up into an emerging definition of modernism in America, thus ensuring that the new century would be filled with increasingly provocative visual culture.”¹²⁸



¹²⁸ Werbel, “The Crime of the Nude Anthony Comstock, the Art Students League of New York, and the Origins of Modern American Obscenity,” *Winterthur Portfolio*, Vol. 48, No. 4 (Winter 2014), 250.

CHAPTER IV

THE FREE SPEECH LEAGUE AND RELIGION

Our constitutions declared for the whole of mental freedom and for all people. Many there are who still believe the priest and his theologies, or the millionaire and his millions, more sacred and useful than the chemist and his formulae. Our constitutions, however, guaranteed equality in freedom and so no special protection can be given to the teaching of theologians or employers which are not accorded to the teachings of the chemist and mathematician, or the revolutionary.¹²⁹

4.1 Introduction

Religion was of importance at the beginning of the twentieth century in America due to the way the role of the Churches increased with the progressive movement. With the

¹²⁹ Schroeder, "Psychology of Fear, Democracy and Free Speech," 385-386.

order of President Theodore Roosevelt, the Country Life Commission¹³⁰ was established so as to find solutions to rural problems. In line with that, the Churches took part in this Commission, assuming the role of being an example and a guide to the rural societies. They were actively preaching about the daily matters of a community such as education, family relationships and religious practices from a religious perspective. Since these localizations were something common for the whole country, personal experiences and influences of the Church and surrounding communities could not be undermined. Based on this involvement by the Church and the related denominations like Protestants, Catholics, and Mormons, it is aimed to show how the Free Speech League analyzed the matters of religion within the context of political decisions, political power and the interventionist approach on the daily lives of the people. The person most heavily involved in this discussion about the relationship between the religious and governmental institutions was Schroeder. His first-hand experience coming from living with the Mormons while he was in Utah working as a lawyer helped him reevaluate the commonly accepted notions about the religions in general.

These notions included the sacredness of the Church and the undiscussable nature of the religious texts and unopposable judgments of the religious leaders, which directly threatened the freedom of speech. Schroeder was aware of the division that was created between the Americans. This was a division over whether the religious issues were too sacred to be discussed or whether it was necessary to point out the wrong religious practices so as to prevent power abuses that are against the Constitution and thus the

¹³⁰ Brian W. Beltman, "Rural Church Reform in Wisconsin during the Progressive Era," *The Wisconsin Magazine of History*, Vol. 60, No. 1 (Autumn, 1976), 3.

foundation of their freedoms. The publications he made through Free Speech League in the discussions of blasphemy were the result of his first-hand experiences during his life in Utah. “In June 1898, Schroeder embarked on the most ambitious project of his busy anti-Mormon career, the publication of a journal, *Lucifers’s Lantern*.”¹³¹ It was a radical journal of sex reform in the 1880s founded by Moses Harman.¹³² His hard work through this magazine lasted for nine issues from 1898 up to late 1900. “With it, he reached a new plateau in anti-Mormon invective.”¹³³ He saw that many reformers put theology above morals, unable to deal adequately with Mormonism because they overgeneralized about Mormon inadequacies.”¹³⁴ He “was Mormonism’s most persistent and irksome opponent from an agnostic stance, and that was unique in its time.” “The Mormons provided Schroeder’s first test case both of his church-state position and his psychological theories.”¹³⁵

Schroeder’s writings show that the religious leaders were keen on shaping the public opinion through the use of religious arguments that considered the Church with the final say over the Constitution of the United States and the workings of the government system in America. It can be argued that these attempts in shaping and judging the lives and thoughts of society were used so as to silence any opposition against any likelihood of unconstitutionality and unlawfulness that could be linked with the religious figures in

¹³¹ David Brudnoy, “A Decade in Zion: Theodore Schroeder’s Initial Assault on the Mormons,” 253.

¹³² David M. Rabban, “The Free Speech League, the ACLU, and Changing Conceptions of Free Speech in American History”, *Stanford Law Review*, Vol. 45, No. 1 (Nov., 1992), 69.

¹³³ Brudnoy, “A Decade in Zion: Theodore Schroeder’s Initial Assault on the Mormons,” 253.

¹³⁴ Brudnoy, “A Decade in Zion: Theodore Schroeder’s Initial Assault on the Mormons,” 254.

¹³⁵ Brudnoy “A Decade in Zion: Theodore Schroeder’s Initial Assault on the Mormons,” 256.

the Church or religious representatives in different levels of governmental offices, be it judge in a local court or even Supreme Court.

Schroeder, having lived and worked as an attorney in Utah, was no stranger to this religious experience. Thus, his works reflect the opinions of a first-hand experience that is more personal and more passionate from the perspective of the reader. Starting by being an advocate for the visibility of the Mormon community, he soon turned against them seeing their practices and customs in more detail at first hand. He saw that the polygamous acts of the Mormons gathered unnecessary attention and public accusations that demanded further legislation as far as specific amendments against these practices. Yet, he was convinced that the evils within such religious practices posed a bigger threat to the American society. Namely, Schroeder was concerned that the Church demanded people bow down to certain religious leaders or limited the freedom of women - in the case of Mormonism through polygamy and allowing no escape for women to be free from humiliating situations imposed by their religion. These practices showed that the intention was not to provide salvation and peace within a community but rather the total obedience by the members of the society regardless of the mental and physical abuse it involved as a result of certain extremisms. The biggest problems with these were the ability to cover them up with the pretense of the sacredness of the rituals and the commandments that the said religion imposed on its followers.

In summary, these practices had the power to reshape the societies and the power relations that originally protected by the separation of power under any circumstance, and twist it in a way to compromise everything that was founded after the Revolution. In his analysis through the publications he made under the Free Speech League, Schroeder

warns Americans of the dangers that lie elsewhere in regard to the religiosity. His discussions emphasize the power relations that come with the religion and how politics can be influenced due to the ignored influence of the spiritual leaders and beliefs over the individuals. He emphasizes the importance of non-theological education and making use of the arguments of the religious leaders as a tool against them rather than punishing them and coercing them into submission.

4.2 Religion and Free Speech

Schroeder states that “religion is always largely a matter of feelings, and the emotions are predominant just in proportion as our mental processes in relation to religion are relatively primitive.”¹³⁶ In this definition he provides us, he shows that religion is a personal and consequently a very subjective matter. As is in the case of other freedoms that protect the individual Americans, he gives the example of the amendments in the U.S. Constitution and points out that there is no difference between the freedom to exercise and to talk about a specific religion. The liberty for the religious practices lies in the American fundamentals of state and church being separated. Therefore, freedom of speech, in general, has to include the religious mental freedom.¹³⁷

This religious mental freedom is the main argument in Schroeder’s works. He thinks that it is essential that disbelief along with piety should coexist in these lands. Yet, his further

¹³⁶ Theodore Schroeder, “Constitutional Construction and Intellectual Method,” *Constitutional Free Speech Defined and Defended in an Unfinished Argument in a Case of Blasphemy*, (New York: The Free Speech League, 1919), 40.

¹³⁷ Theodore Schroeder, “Statement of the Case,” *Constitutional Free Speech Defined and Defended in an Unfinished Argument in a Case of Blasphemy*, (New York: The Free Speech League, 1919), 16.

analysis of the roots of religiosity illustrates something more than this. For him, the religion is quite open to abuse and to be abused. This, with the already visible influences of the religious figures and representatives in various parts of the United States governance, concerns him.

Thus, the further analysis of the roots of religiosity is essential for Schroeder since he wants to show how inconsistent it can be with the concepts that are democratic in the legal history of America. He calls it the “divine right dogma” and this dogma creates a defensive shelter for an elect few. These privileged people’s existence is the very thing that Schroeder is against it because the people create the states and their laws. It is not a top-down process as was the case under the British rule.¹³⁸ Accordingly, he lays out a schema. This schema is about the relationship between the Church and the State. He divides this relationship into three stages. The first of these stages talks about a Church authority that accepts the supremacy of its rule and the populace is governed with the theological laws. The second of these stages talk about a relationship in which the Church is hand in hand with the State but the church is the tool of the secular government. The third stage is about full divine authority and the government is under the total control of the ecclesiastics.¹³⁹ These ecclesiastics were the members of a church.

Schroeder claims that there is a relationship between religion and lust. But this cannot be discussed in society. “In the mob, absence of scientific zeal for truth, the presence of

¹³⁸ Theodore Schroeder, “Christianity and the Law,” “Constitutional Construction and Intellectual Method,” *Constitutional Free Speech Defined and Defended in an Unfinished Argument in a Case of Blasphemy*, (New York: The Free Speech League, 1919), 441.

¹³⁹ Schroeder, “Christianity and the Law,” 441.

religious bigotry, and an unsuspected ignorance of psychology, combine to make it resent all analysis of religious emotions, such as tend to expose its sexual origin, or destroy its evidentiary value as a support for theologies and for moral sentimentalizing.”¹⁴⁰ He thinks this inability to make it a public opinion is caused by the fact that they alienate and almost blame the abnormalities of the religion. Thus, the extremes of the religion are easier to be undermined or quite the opposite, the devout ones get triggered to be really offended as if they are all being marginalized. Yet, Schroeder’s claim is that this issue associates this topic with the ordinary religious experiences if it wants to make real change and a real contribution to the topic. As can be seen, not stirring the emotions of the religious is not the aim of Schroeder. Rather, he wants the discussions to be as realistic and as fact-based as possible. He considers these discussions very conservative in the sense that they are afraid of hurting or agitating the religious people, while for Schroeder they are doing the worse for the society by not revealing the origins of the relationship between lust and religion openly.

The extremists are also under the spotlight of Schroeder. He recommends the evaluation of these people within the field of psychology. Thus, he means that a more in-depth analysis is required to understand how their minds work and thus he offers a reconsideration in regard to the definitions of religion.”¹⁴¹ As mentioned above, since religion and religiosity are very personal experiences, the followers of faith without a doubt carry these personal and humane characteristics into it. Schroeder states that

¹⁴⁰ Theodore Schroeder, “Religion and Sensualism as Connected by Clergymen,” *The American Journal of Religious Psychology and Education*, Vol. 3, (Worcester: Louis N. Wilson, 1909), 16.

¹⁴¹ Theodore Schroeder, “The Differential Essence of Religion,” (New York: Reprinted from the New York Truth Seeker, 1914), 1.

religious men are no different although they might have the tendency to see themselves above others in regard to their piety and morality. Yet he says, these people also commit the same crimes and same offenses maybe under the name of religion.¹⁴²

Furthermore, these people should not feel privileged since belief in God and any holiness that comes with it does not only belong to a religion. As a supportive fact, Schroeder quotes Rev. Batchelor from his work titled “Religion Its Own Evidence” where he says that the religion could be powerful even when the ethical obligations are not present could be interpreted that any of the claims made by the religious people of the Progressive Era in regard to the unique elements of belief in God and preserving the prominent ethics are actually null. There are no unique elements that are solely tied to the religious beliefs and thus Schroeder quotes this Reverend¹⁴³ to show that how easy to twist and manipulate a long-living existence of human phenomenon which is religion for the sake of making themselves privileged. Therefore, Schroeder calls for a thorough study and discussion of the origins and current uses and purposes of religion.

4.3 Blasphemy

Blasphemy came into existence with the establishment of religion. The inclusion of it as a crime within the state legislation has a more recent history. Some states adopted this blasphemy law and included them into their constitution as they saw fit for their needs and beliefs. The preservation of their moral and cultural values was of great importance

¹⁴² Schroeder, “The Differential Essence of Religion,” 8.

¹⁴³ Schroeder, “The Differential Essence of Religion,” 5.

for the survival of these said states. Connecticut's statute on blasphemy as early as 1642 states the following:

Every person who shall blaspheme against God, either of the persons of the Holy Trinity, the Christian religion, or the Holy Scriptures, shall be fined not more than one hundred dollars, and imprisoned in a jail not more than one year, and may also be bound to his good behavior.¹⁴⁴

One of the most striking facts about the quotation above is that it creates a doubtful position in regard to its compliance with the Constitution of the United States. The states have their own constitutions in which the extension of certain laws can vary. Although these may not create a doubtful case in their compliance with the Federal Constitution, this very issue in terms of blasphemy laws becomes problematic according to Schroeder. In order to support his case, he directs us to the fourteenth amendment that creates that very distinction between the power of the states and the federal government. "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States..."¹⁴⁵

As can be seen, the states as separate entities do not have the authority over the freedoms of the American people regardless of the statutes covered in their specific constitutions. Thus, the unconstitutionality arises from the attempted special application of a statute that has an attack on personal freedoms. Schroeder further elaborates this issue by saying that "...the fourteenth amendment protects against State infringement all that

¹⁴⁴ Schroeder, "Statement of the Case," 14.

¹⁴⁵ Amendment 14, U. S. Constitution.

‘liberty’ which was of sufficient importance to have been previously protected against congressional encroachments.”¹⁴⁶ It means that liberty is not an issue that could be endangered or easily ignored through the introduction of other laws. They are protected across the country under the surveillance of the federal government. “[T]he Federal amendments are limitations upon state powers.”¹⁴⁷ And this is the intended purpose, as the states are meant to be kept under a union, which was the main idea behind the Civil War. Therefore, the denial of this federal authority was the denial of the earned victory in a war, whose outcome determined the future path of a country in a form of union.

The historical gains of the United States over the years in the fields of constitution, liberties and the intellectual progress were seen by Schroeder to be under threat because of these varying approaches to the cases of blasphemy across the country. “Our constitutional guarantees, like our concepts of liberty, are the product of previous development.”¹⁴⁸ According to Schroeder, the old English practice that used canon-law along with the common law was the tendency among the supporters of such laws on religion. Founding Fathers’ intention was to repeal the law aiming to include cannon-law as part of the common-law¹⁴⁹, since they clearly set forth the separation of the church and state as one of their main distinguishing elements for the creation of this country. When we analyze and study the Constitution for this purpose, “we must look not merely its language, but *to its historical origin*, and to those decisions of this court in which its

¹⁴⁶ Schroeder, “Statement of the Case,” 17.

¹⁴⁷ Ibid.

¹⁴⁸ Schroeder, “Constitutional Construction and Intellectual Method,” *Constitutional Free Speech Defined and Defended in an Unfinished Argument in a Case of Blasphemy*, (New York: The Free Speech League, 1919), 42.

¹⁴⁹ Schroeder, “Constitutional Construction and Intellectual Method,” 35.

meaning and the scope of its operation have received deliberate consideration.”¹⁵⁰

Therefore, Schroeder calls for a careful study of the history when these laws are made in order to see the attempted meaning and idea that lie behind them. One of the sources for the people to look into so as to understand the tendencies in the interpretation of the laws is the Bill of Rights.¹⁵¹

The history showed Schroeder that the heresy was the number one target under the umbrella term of blasphemy. Here, the heresy meant any argument or statement against the commonly accepted beliefs and opinions on religion. However, this was the displayed meaning while underneath lay the purpose of protecting a small group of people. As he states: “the objection to heresy was that it attacked the privileges and prerogatives that were claimed as a matter of divine right, founded on Christian ‘orthodoxy’.”¹⁵² The definition of this crime made a progress over the years in a way that it narrowed down in meaning hence radicalized so as to create an air of despotism in the society. Just an utterance that contradicted Blasphemy as such was conditioned on the meaning of one’s utterance, in comparison with and as a contradiction of orthodox doctrine.¹⁵³ Since the orthodox doctrine cannot be used in the American legal system and thus “Under our constitutional guarantees of a separation of church and state and for religious liberty, the reason for blasphemy utterly fail.”¹⁵⁴

¹⁵⁰ Schroeder, “Constitutional Construction and Intellectual Method,” 33.

¹⁵¹ Schroeder, “Constitutional Construction and Intellectual Method,” 41.

¹⁵² Schroeder, “The Origin, Meaning and Scope of Blasphemy,” 353.

¹⁵³ Schroeder, “Constitutional Construction and Intellectual Method,” 35.

¹⁵⁴ Ibid.

In conclusion, certain privileged groups are afraid of the ideas that might possibly bring harm to their status. Schroeder calls them “aristocratic impulses”¹⁵⁵ as he believes that they brought dogmatism upon the free speech. “From such viewpoint every efficient criticism of the prevailing system of church, state or prevalent system of exploitation was of ‘dangerous tendency’, that is, it endangered the privileges of the privileged.”¹⁵⁶

4.4 The Case of Mormons

Utah was the state in which Schroeder started his career as a lawyer and he forged close relations with the residents that were practicing Mormonism. His extensive study of the Mormonism and the Mormons during his stay there while practicing law showed him how corrupt these religious societies could be. The danger stemmed from their rejection of scientific studies and their demonization of any criticism directed towards the reasoning of certain practices such as polygamy. These all threatened the fundamental characteristics of freedom of speech according to Schroeder. Therefore, he was able to outline a detailed case study on the Mormons so as to come up with reasonable conclusions about the dangers of such close-minded societies that are under the heavy influence of religion. As Brudnoy explains, “[a]n agnostic, bitterly antagonistic toward organized religion, he came to Utah convinced that the Saints were a persecuted minority...”¹⁵⁷ In the beginning he worked really hard to make Utah more recognizable and become part of the Democratic Party through the creation of certain clubs and

¹⁵⁵ Schroeder, “Psychology of Fear, Democracy and Free Speech,” 378.

¹⁵⁶ Schroeder, “Psychology of Fear, Democracy and Free Speech,” 380.

¹⁵⁷ Brudnoy, “A Decade in Zion: Theodore Schroeder’s Initial Assault on the Mormons,” 243.

publications. That club was the first Democratic Club of Utah and the publication was called the *Salt Lake Herald*.¹⁵⁸ However, upon learning the details about the lives and practices of the Mormons, Schroeder became one of their biggest enemies. It was not until 1862 that the polygamy was discovered by the Congress. So sudden was the reaction that abolishing this practice came soon after the initial discovery.

In the Prolegomena, he talks about the case of Brigham H. Roberts who was a Congressman-elect from Utah and they were prosecuting him before a Congressional Committee. The attention of the people was directed towards the fact that he was a Mormon, rather than he was a polygamist. The clergymen were using a similar argument in that particular case when he saw it as the: “exclusion of a Mormon representative.” Though Schroeder also condemns the Mormonism due to its polygamy, he considers another element as the most worthy of attention when he states:

To my mind, the most dangerous element of Mormonism is the existence of a priesthood, whose voice is the voice of God, whose will is the will of God, and this doctrine made applicable to all affairs of life, including temporal government.¹⁵⁹

Schroeder considers that in such cases of above-mentioned problems, the laws can be valuable. In his first example of cases, “a fear of punishment may serve as a counter-irritant, and thus supply a moral strength sufficient to overcome an immoral tendency, often produced by only incipient physical abnormality.”¹⁶⁰ In his second example of cases

¹⁵⁸ Brudnoy, “A Decade in Zion: Theodore Schroeder’s Initial Assault on the Mormons,” 244.

¹⁵⁹ Theodore Schroeder, *Thoughts on the Mormon Problem and Its Solution*, (Utah: Lucifer’s Lantern, 1900), 155.

¹⁶⁰ Schroeder, *Thoughts on the Mormon Problem and Its Solution*, 156.

he considers the laws “may sufficiently supply the want of moral dynamics, to overcome lawless tendencies, at least in their most demoralizing manifestations.”¹⁶¹

Regardless of his suggestions in the legal sense that may bring about a solution, Schroeder underlines the inevitable power-relations existing among the followers of this faith. “Mormon clannishness and co-operation, coupled with the increased opportunity offered by the undeveloped resources of the west, still make it possible for the “Saints” to improve the material welfare of most converts.”¹⁶² With this, he shows how these people have a relationship based on material interests and thus through this corrupt and never close to piety attitude, they pave their own way as they gain economic independence. Schroeder points out this hypocrisy: “...when they apostatize it is because they have become economically independent, and cease to feel a necessity for the continued payment of tribute to the supposed dispensers of divine blessings.”¹⁶³ Basically, the blasphemy laws do not find and punish the real perverseness of the religions due to the fear of being found wrong and guilty about how Christianity etc. works. They focus on the wrong things, as was in the case of Mormonism, or basically not sufficient things. Thus, these laws on blasphemy cannot be defended as they are not really watching out for the peace and piety or even pureness of the society.

He talks about the fanatics as the most dangerous class of Mormons. As he states: “They really believe proper church authorities to be the ‘Living Oracles of God,’ of whose utterances it is said that whether it is by God’s own voice, or the voice of His servants, it

¹⁶¹ Ibid.

¹⁶² Schroeder, *Thoughts on the Mormon Problem and Its Solution*, 157.

¹⁶³ Schroeder, *Thoughts on the Mormon Problem and Its Solution*, 157

is the same.”¹⁶⁴ He calls some of the religious people - who are also very dangerous - as the laggards since Schroeder considers all religions in a process of growth. “These laggards have not profited by the improvement which modern civilization has made upon the crudities of Christianity’s childhood, and they look upon the advanced minister and his ‘higher criticism’ with misgivings and suspicion.”¹⁶⁵

Mormonism, being aware of the weaknesses of these Christians, assumes the role of the saviors of the original religion. They believe “that Mormonism is a necessary re-establishment of the gospel in its original purity.”¹⁶⁶ Their members are deluded into thinking that they see visions and they continue their lives and make their decisions in according to these fairy tales. This level of ignorance is one of the hardest to get rid of according to Schroeder. “The difficulty in reaching even the children by theological methods lies in this, that the testimony of their friends and parents to marvelous occurrences are quite as convincing as the miraculous tales of the Jewish patriarchs and the early Christian fathers.”¹⁶⁷

Moreover, Schroeder points out that they are in denial of science and scientific facts. For want of a personal experience in miracle work, he is open to conviction that all alleged suspension of the natural laws are untruths.”¹⁶⁸ Therefore, there is a danger that cannot be avoided that comes with this problem.

¹⁶⁴ Schroeder, *Thoughts on the Mormon Problem and Its Solution*, 158.

¹⁶⁵ Schroeder, *Thoughts on the Mormon Problem and Its Solution*, 159.

¹⁶⁶ Ibid.

¹⁶⁷ Schroeder, *Thoughts on the Mormon Problem and Its Solution*, 160-161.

¹⁶⁸ Schroeder, *Thoughts on the Mormon Problem and Its Solution*, 161.

When such an uninstructed horde, still living in the middle ages, is marshalled under the leadership of a few whose human follies and passions are invested with the authority of divine sanction, they become a seriously dangerous element in our civilization.¹⁶⁹

In an attempt to find solution to these ever-growing number of followers, other sects of Christianity organize missionary schools as Schroeder observes. These schools also provide service to the Mormons that left their Mormon church for one reason or another, yet the missionary schools were not successful in keeping them away from Mormonism. He considers the mistake of the “mission school has been that it dared not, or did not, supply the doubter with the specific facts and arguments which directly tend to discredit Mormonism, and would best enable the Mormon student to defend his skepticism.”¹⁷⁰

Overall, the considerations in regard to the possible dangers of the continuation of Mormon practices were not limited to Schroeder. There were literary works that dealt with the subject and there were many churches that individually attempted to correct those mistakes through the deliverance of their teachings. Schroeder states that “there are about 2000 books, pamphlets and magazine articles relating to the subject, some of which have been run through many editions, and thousands of newspaper articles besides.”¹⁷¹ However, similar with these laws, none of these works of missionary schools or literary discussions seem to be focusing on the real problem. “Anti-Mormon

¹⁶⁹ Ibid.

¹⁷⁰ Schroeder, *Thoughts on the Mormon Problem and Its Solution*, 162.

¹⁷¹ Schroeder, *Thoughts on the Mormon Problem and Its Solution*, 164.

literature was sold for money-making purposes beyond Utah and not gratuitously distributed for educational purposes within Utah.”¹⁷²

4.5 Censorship and Blasphemy

Censorship as previously discussed under the Comstock laws included the field of religion to no one’s surprise. The written works as well as the public speeches and utterances that had the potential to fall under the possible accusation of blasphemy were under threat. Schroeder traces the history in order to show how these pressures and limitations on the intellectual expression existed when he states:

From the days of pagan antiquity to the present hour, there has never been a time or country wherein mankind could claim immunity from all persecution for intellectual differences. This cruel intolerance has always appealed to a ‘sacred and patriotic duty’ and masked behind an ignorantly made and unwarranted pretense of morality.¹⁷³

However, as Schroeder states, the religious advocates of “morality” in the cases of censorship are actually hiding under the façade of pureness. This pureness meant that there was no presence of evil or wrongdoing, so as to say there was nothing that was against the commandments of the God. This double standard and hence the hypocrisy are the main concerns for him. He states that the study over many years proved him the following fact: “Every intense and widespread religious revival has produced increased

¹⁷² Ibid.

¹⁷³ Theodore Schroeder, “On the Liberty of Conscience, Speech and Press,” *Liberal Review*, Vol. III, March 1906, 333.

sexual irregularity. Every organized effort toward ostentatious sexuality has found its justification in religion.”¹⁷⁴ As “[e]very concerted effort at the establishment of compulsory sexual excesses, either of repression or indulgence, has found its warrant in religion and its beginnings amid religious excitement.”¹⁷⁵ The tendency towards suppression of the conflicting intellectual utterances, writings and so on result from the lack of logic of the advocates of censorship.

The concurrence of many in like emotions, associated with and centered upon the same focus of irritation, makes the effective majority of the state view the toleration of their opponents a crime, and their heresy, whether political, religious, ethical or sexual, is denounced a danger to civil order, and the heretic must be judicially silenced.¹⁷⁶

He talks about the English history in regard to the translation of the Bible into the English language and how the king Edward VI ordered the burning of the copies. Later on the translator William Tyndale was burnt as well. On a similar note, Schroeder talks about how the censorship laws based on the ‘moral’ arguments is the same attitude of Edward VI towards his subjects. This same authoritative and despotic attitude against the masses under the guise of morality is more pronounced in the topic of sex. Similarly, the prohibition of the materials regarding to sex is something of primitive nature: “This is repeating the old folly that the adult masses cannot be trusted to form an opinion of

¹⁷⁴ Schroeder, “Religion and Sensualism as Connected by Clergymen,” 27.

¹⁷⁵ Ibid.

¹⁷⁶ Schroeder, “On the Liberty of Conscience, Speech and Press,” 334.

their own.”¹⁷⁷ As if the people of this country are not free and thus cannot be authorized to make amendments on the statute laws concerning sex.¹⁷⁸

Not surprisingly, the women are the main targets and victims of this very particular topic of purity crusade. The women are limited in their access of education in the matters of sexuality so as to “assert their ‘natural right and necessity for sexual self-government’” because it is “now a crime, and we call it ‘obscenity’ and ‘indecent’.”¹⁷⁹ These prove Schroeder’s thesis, as the United States in his time portrays itself in key matters of personal freedoms as a state of despotism feeding upon the habits of the primitive societies as it fits the preferences of the elect few. Under the present verbal disguise, the same old superstition punishes the psychological crime of immoral thinking, because it may discredit the ethical claims of religious asceticism, and now we call it ‘obscenity’ and ‘indecent’.”¹⁸⁰ There is no difference.

To support a sex superstition by law is just as reprehensible as, in the past, it was to support the, now partially exploded, governmental, scientific and theological superstitions by the same process. This be it remembered, was always done in the name of ‘morality,’ ‘law and order,’ etc.¹⁸¹

The subjectivity of the matter as in the case of all censorship laws was one of the allegations of Schroeder. He suggested looking inwards might be the possible solution to see where the origins of these ‘immoral’ ideas were found. “Just in proportion to our

¹⁷⁷ Schroeder, “On the Liberty of Conscience, Speech and Press,” 336.

¹⁷⁸ Ibid.

¹⁷⁹ Schroeder, “On the Liberty of Conscience, Speech and Press,” 337.

¹⁸⁰ Schroeder, “On the Liberty of Conscience, Speech and Press,” 337-338.

¹⁸¹ Schroeder, “On the Liberty of Conscience, Speech and Press,” 339.

physical lewdness are we sensitive to lewd suggestions.”¹⁸² For this end, he presents the difference between science and religion from the point of devotion. He thinks the devotion is one of the key factors that is easily mistaken with the religious devotion, while the former is focusing on being useful to the world of science, the latter just creates its frenzy and extremist followers. For him, an ordinary scientist obsesses over his work in the hopes of being successful in his findings. Thus, the underlying purposes comes to the fore in an act committed with devotion. Then, he contrasts this with another action that is comprised of transcendental experiences and questions its existence in relation to and beyond the physical universe, it is an inevitable religiosity.¹⁸³

Such distinction between the logic-based and emotion-based actions makes the argument about the possible crime of blasphemy a very personal experience. Just on the basis that there are certain people who approach matters in his daily life with such openness to the seduction are triggered by the very limitations that aimed at destroying these seductions. However, the fault lies not on the intellectual works that discuss religion or sex, but on the uneducated minds. “That person who knows only shame as a motive for continence is the easiest victim of seduction, because such need only be fooled by a sufficient assurance of secrecy to yield to temptation.”¹⁸⁴

Then comes the question for morality as it is stated to be the fundamental aspect of these ‘preventions’ of blasphemy. As article 6 of the U. S. Constitution states: “In all criminal prosecutions, the accused shall enjoy the right...to be informed of the nature and cause

¹⁸² Theodore Schroeder, “Our Prudish Censorship,” *The Forum*, Vol. LIII, (New York: Mitchell Kennerley, 1915), 90.

¹⁸³ Schroeder, “The Differential Essence of Religion,” 20.

¹⁸⁴ Schroeder, “Our Prudish Censorship,” 91.

of the accusation.”¹⁸⁵ It means that there has to be a clear-cut definition of the crime so that the accused can be informed of it. Further, it should be standard that regardless of the location and circumstances of the trial, the accused would be aware of the charges. Most importantly, the standardization ensures the populace about what to be aware of and how to avoid the possible infringement. Unfortunately, the standard for morality is: “a norm of action prescribed by a personal God.”¹⁸⁶

Because of these uncertainties no one can guess which piece of literature or art carries the ‘moral tendency’. “It is very plain to me that our present numerous censorships cannot be justified out of our constitutions but are read into them.”¹⁸⁷ Thus, when the law in the particular matter is not based on the constitution but rather than the personal interpretations make it unconstitutional. “Whatever doubt exists about the meaning of religious liberty, intellectual equality and freedom, does not arise out of the constitutions, but out of the judicial amendments that have been made thereto.”¹⁸⁸ For Schroeder, this is in connection with the psychology of the reader or the observant – which is a judge in our case – that decides on the criminality of the subject. This psychological point of view is explained by Schroeder as a process of evolution. Thus, [t]he formal statement we call law is but the outward symbolization of the feelings and thoughts of men.”¹⁸⁹

¹⁸⁵ Article 6, Constitution of the United States.

¹⁸⁶ Schroeder, “Our Prudish Censorship,” 95.

¹⁸⁷ Schroeder, “Psychology of Fear, Democracy and Free Speech,” *Constitutional Free Speech Defined and Defended in an Unfinished Argument in a Case of Blasphemy*, (New York: The Free Speech League, 1919), 374.

¹⁸⁸ Schroeder, “Constitutional Construction and Intellectual Method,” 32.

¹⁸⁹ Schroeder, “Psychology of Fear, Democracy and Free Speech,” 376.

Understanding the on-going growth in the intellectual and psychological aspects of the topic of blasphemy comes to the forefront of Schroeder's arguments. According to him, "...our concepts of justice and liberty are always in the making and are always in conflict with the new invasion resorted to by individuals and governments, sometimes sanctioned by Courts."¹⁹⁰ In contrast, the privileged want to make this progress lose its pace further through pushing for severe punishments. So, kings, priests and other privileged classes, always impede the progress of democratization."¹⁹¹ However, when the dominant motive is service and more democracy, we do not fear the loss of political or other power and so we no longer desire censorship."¹⁹² In the case a judge decides that a given speech denounces religion, Schroeder suggests that looking for the committing of an actual crime that brings harm. As he states: "this speech under the particular circumstances of its delivery did not produce the feared disturbance."¹⁹³

Since every topic can be discussed, the matters in regard to religion should be freely discussed as the matters in mathematics etc. Because "our constitutions make no exception."¹⁹⁴

4.6 Solution for the Unwanted Impacts of Religion

Schroeder saw the solution of the problem in the blasphemy laws in general as lying in a non-religious education with the emphasis on intellectual growth overall, as he states: "If

¹⁹⁰ Schroeder, "Constitutional Construction and Intellectual Method," 43.

¹⁹¹ Schroeder, "Psychology of Fear, Democracy and Free Speech," 377.

¹⁹² Schroeder, "Psychology of Fear, Democracy and Free Speech," 377.

¹⁹³ Schroeder, "Psychology of Fear, Democracy and Free Speech," 383.

¹⁹⁴ Ibid.

we are to promote growth toward a more uniform solution of this problem of religious liberty, it must be one by finding a solution on a higher intellectual level...”¹⁹⁵ To achieve this end he points towards scientific methods as the norm.

Understanding the root of the cause is one of the first steps into eliminating the sense of needing such laws that limit the access of people to any literature on the any given topic. For Schroeder, the force behind the censorship laws could be found when the genetics and evolutionary psychology is studied. Yet, he finds them the majority of the lawyers lack these characteristics and therefore focus on the verbalism of the laws. “In consequence of this, legal arguments resolve themselves largely into disputes about the acquired meaning of words rather than painstaking effort to understand the behavior of the conscious and subconscious forces which determine the choice of the words and verbal forms, and control the changing concepts which these legal formulas symbolize.”¹⁹⁶

He quotes Comstock when he stated that he had to endure at the mouth of a sewer for forty years while working against these obscene works, because Schroeder thinks Comstock proves the point that people can remain pure regardless of the ‘impurity’ they embody. So, anything immoral can be dealt with just letting them be until they get no attention.

The remedy against the alleged evils of ‘obscenity’ is more ‘obscenity’ until, by making sex as commonplace as noses, its representation will be equally void of

¹⁹⁵ Schroeder, “Constitutional Construction and Intellectual Method,” 37.

¹⁹⁶ Schroeder, “Psychology of Fear, Democracy and Free Speech,” 375.

stimulating qualities and all of us will have become as immune against 'evil' results as our wild animals, and Mr. Comstock.¹⁹⁷

In addition to allowing these works to eliminate their possible dangerous effects caused by the limited access and thus the high chances it creates for the wrong information to dominate due to being one of the few that is being spread around, Schroeder shows how the content of the works to be exposed must look like. In the example of anti-Mormon literature, he shows the danger of careless work as the widespread of the sole belief in regard to the polygamist practices. This was, though truthful in some aspects, lacked the logic and scientific facts to educate the minds. "To be more effective, reformatory literature should be devoted to showing the human origin of Mormonism, its follies and its iniquities, by a critical examination of the system itself."¹⁹⁸

The topic of legislation that aims at putting an end to the open criticisms against religion as well as bringing severe punishments for the polygamy is also under scrutiny by Schroeder. He thinks this legislation would not work, since they would not create any reform. "By real reform I mean a removal of the desire for wrongdoing, and not simply to supply an increased pleasure to be derived from the added zest of a necessary secrecy."¹⁹⁹ He further thinks that the request for such legal actions actually highlight the weakness of the system in general. "The present demand for an anti-polygamy amendment to the Constitution is a confession that our coercion (largely because it stood unaccompanied by appropriate education) has been an utter failure as a reformatory."²⁰⁰

¹⁹⁷ Schroeder, "Our Prudish Censorship," 88.

¹⁹⁸ Schroeder, "Thoughts on the Mormon Problem and Its Solution," 165.

¹⁹⁹ Schroeder, "Thoughts on the Mormon Problem and Its Solution," 166.

²⁰⁰ Schroeder, "Thoughts on the Mormon Problem and Its Solution," 178.

Physical punishments would cause resentment and nothing more and therefore his solution is through education. “By proper educational methods, I mean something more elevating ethically and more practical than theological discussions or Bible interpretation.”²⁰¹

When it comes to dealing with Mormonism, the organizations come to the forefront along with the legal demands. Schroeder finds them faulty in several aspects. One of the things he mentions is the Utah Gospel Mission, which was founded so as to send young men to Mormons in Utah and teach them about the monogamy of Solomon. Expectedly, this goal was quite shallow as Schroeder states: “The Utah Gospel Mission’s narrowness is endorsed by leaders of the movement for an anti-polygamy constitutional amendment...”²⁰² Instead, he suggests the creation of a bureau that can provide “free of charge and accurate statements of fact” in regard to the Mormon missionary in order to put an end to it. There should be prepared certain materials and these “...literature should be sent free of charge to every Mormon willing to read it. It should be especially forced upon the attention of that thoughtful class of young people who attend the various academies under Mormon control.”²⁰³ The non-theological education is another suggestion by him for the battling of the lack of logic and information regarding the discussions on the Mormonism and such. The scope of this education is explained by Schroeder as follows:

By non-theological education I do not mean a useless duplicating of the secular work of the public schools, nor the distinctive theistic or agnostic arguments, but

²⁰¹ Schroeder, “Thoughts on the Mormon Problem and Its Solution,” 167.

²⁰² Schroeder, “Thoughts on the Mormon Problem and Its Solution,” 171.

²⁰³ Ibid., 172.

a non-religious direct argumentative attack upon Mormon fundamentals, accompanied by such purely ethical assistance as the special features of the problem would seem to require.²⁰⁴

In the light of these principles he further emphasizes how the education and experience provided under equal terms contribute to the longevity and assurance of democracy. As he further states in regard to the outcome that will result in: “those whose interests are equally centered on both will never be tempted toward censorship, even without a written constitution that prohibits censorship.”²⁰⁵ His conclusion in regard to the solutions through amendments is “that a constitutional amendment alone can work little real improvement, and like all coercion the motive of which must be misunderstood, it will be more productive of treasonable sentiments and haughty martyrs, than of substantial reform.”²⁰⁶ He suggests to “[m]ake your solution of this problem a work of broad critical education, not solely a matter of legislative coercion possibly induced or enforced in part by religious zeal, or as an aid to theological mission work.”²⁰⁷

4.7 Conclusion

Schroeder wanted to reveal to Americans the dangers of misinformation when it came to the topic of religion. “When secular societies are not called into being by a necessity for the defense of personal liberty or material justice, they are prone to die for want of

²⁰⁴ Ibid., 175.

²⁰⁵ Schroeder, “Psychology of Fear, Democracy and Free Speech,” 377.

²⁰⁶ Theodore Schroeder, “Thoughts on the Mormon Problem and Its Solution,” 176.

²⁰⁷ Ibid., 175.

dynamics...” He saw that “A careful reading of the blasphemy cases makes it plain that at no time before our revolution did the blasphemous character of an idea depend upon the rhetorical form or the politeness of literary style.”²⁰⁸

He considered the lack of education on the issue as being directly caused by the censorship and blasphemy laws further triggered the formation of unrealistic and unhelpful ideas. Similar attitude towards Mormonism, not on its other dangers but towards their polygamy, can be seen in the promotion of an amendment aimed solely on polygamy. This suggested amendment was about “giving Congress power to legislate upon the subject of polygamy. That was to be followed by the passage of criminal laws which, among other things, will, by the test-oath method, disfranchise all polygamists.”²⁰⁹ The said test-oath method was as follows: “In 1862, U.S. Congress passed a law requiring that all federal office holders take an oath declaring that they had ‘never voluntarily borne arms against the United States or ‘voluntarily given...aid...” to those making war against the United States.”²¹⁰ Following the Civil War, this was extended from federal office holders to other workforce such as teachers, lawyers, college professors etc. These should have been outdated according to Schroeder but still the energy on the issue was wrongly spent. They “spend thousands for anti-Mormon agitation to stimulate religious hatred, while refusing to spend anything in effective methods to reform Mormonism from within.”²¹¹ Being able to discuss these issues freely was the main goal to achieve for Schroeder. He stated that the best scientific thinkers in

²⁰⁸ Theodore Schroeder, “The Origin, Meaning and Scope of Blasphemy,” 352-353.

²⁰⁹ Schroeder, “Thoughts on the Mormon Problem and Its Solution,” 165.

²¹⁰ <http://uscivilliberties.org/cases/4581-test-oath-cases.html>

²¹¹ Schroeder, “Thoughts on the Mormon Problem and Its Solution,” 168.

the country considered morality as relative and progressive while the great number of people considered everyone's actions on the basis of being moral or immoral. However, for him "[o]nly the generous exercise of the most free discussion can help us out of this chaos."²¹²

In conclusion, for Schroeder, the Constitution was the source for all the solutions. In the case of this matter, Schroeder points out that "...so far as the blasphemy statutes are concerned, it makes no difference whether, considered under one or the other of these constitutional provisions, the line of demarcation between liberty and its unconstitutional abridgment is the same."²¹³

²¹² Schroeder, "On the Liberty of Conscience, Speech and Press," 341.

²¹³ Schroeder, "Statement of the Case," 16.

CHAPTER V

THE FREE SPEECH LEAGUE AND GENDER

5.1 Introduction

Gender was a controversial topic during the Progressive Era because the discussions in regard to women and men, their relationships outside and within a marriage and their sexuality were all considered to be sensitive and taboo subjects. It meant that the writings on the matters of gender would not be welcome by the society and would be labeled as indecent and impure. The Free Speech League considered each individual male and female as part of the greater society, and thus any restriction in providing insight into their lives, psyche and sexual and mental health was met with the writings of Free Speech League members such as Dr. Foote and Schroeder that stood against these restrictions.

The common topics of the discussions brought up by the Free Speech League and its members included abortion, marriage, sexuality, and overall social interactions between the sexes. Majority of the states accepted abortion as a crime by the 1870s and this created an unexpected outcome for the country. The unexpected outcome was the spread of illegal, hidden and therefore unhealthy and quite risky attempts of abortions and different contraception methods that put the women in danger. The most affected part of the society was the working class since they have limited access to anything safer or less risky since the high-class women, regardless of the laws preventing abortion, still were able to get the procedure done under much better conditions. Seeing these differences among women, and finding that women of the working class were put in even more disadvantageous position, triggered the creation of bigger attempts in informing the society of the methods and building establishments aimed to perform these operations. The lead figure for these efforts was Margaret Sanger, who during the 1910s published the *Woman Rebel* and included the equally fierce writings of Emma Goldman for the cause of women's reproductive rights as well as women's role in a society.

Necessity of the open discussions of sexuality and healthier methods of interactions between the sexes were the main goals of Schroeder. He provided a variety of approaches to the topic of sexuality, rather than the mere tendency to see it as a matter of physicality. Rather, Schroeder along with Foote, who was a doctor and part of Free Speech League, focused on the psychological and physical problems the lack of social interaction, misinformation about sexual health and the prevention of open discussions in regard to the vital establishment of society, and marriage.

Sanger's struggles for safe and healthy contraception deeply resonated with social liberty advocates. The Woman Rebel and the works of the Free Speech League members such as Schroeder warned the American people and authority against the intentional ignorance spread by the church and governmental institutions in regard to the topics of gender. Some of the works of the Free Speech League include various articles written by Schroeder are as follows: "On Moral Sentimentalizing", and "Why do Purists Object to Sex Discussions?", as well as the medical perspective provided by Dr. Foote on the matters of sexuality with *Plain Home Talk* being the primary example. These members of the League claimed that certain religious and governmental institutions of America used religion, patriotic feelings and deliberately aimed to prevent access of health and safety for the helpless women and men alike through coercion and punishments. The Free Speech League was the exemplary organization before civil liberties organizations like ACLU that aimed to provide different approaches to the important gender problems and advocated free speech as the way to find a solution.

5.2 Sexuality

In his article "On Moral Sentimentalizing,"²¹⁴ Schroeder argues that the reactions of the society towards any issue becomes the judgment of the case and thus decides whether to punish it or not. When this issue was about sexuality whether encountered in public or in private, the American society was quick to respond to that as the history shows. He

²¹⁴ Theodore Schroeder, "On Moral Sentimentalizing," *Pacific Medical Journal*, Vol. L, (San Francisco, 1907), 704-710.

points out that the feelings of the society as a whole become the determinant of an issue as delicate and as vital as sexuality can be dangerous when these feelings are rewarded with power as well. When the society is left to its own devices or even worse, when the public officials and the government institutions take it upon themselves to follow the passions of the society that acted like a mob, chaos and destruction are to be expected. Schroeder does not claim to take ethics out of the picture, but he stresses the necessity of having scientific or rational ethics.²¹⁵ Thus, any type of analysis through scientific or rational thought is bound to create objectivity.

According to Schroeder, the lack of this very objectivity and the strong presence of ignorance are the main observations for the society that specifically define themselves as purists. He states: “The crowd, with its sensitive vanity and incapacity for critical thinking so long as no personal material interests are involved, readily endorses whatever is labeled ‘moral’ and claims an ‘eminently respectable’ rating.”²¹⁶ Similarly, Pivar states the following:

Since they believed in ‘eternal’ values, men needed only to be ‘good’ and rely on science to serve the public. Morality, and invisible force within men, guided administrations toward just decisions; scientific management guided them toward efficient decisions. New leaders, dedicated to altruistic social service, performed as stewards of morality.²¹⁷

²¹⁵ Schroeder, “On Moral Sentimentalizing,” 704-705.

²¹⁶ Theodore Schroeder, “Why Do Purists Object to Sex Discussion?,” *The American Journal of Eugenics*, (Chicago: M. Harman, 1907), 118.

²¹⁷ David J. Pivar, *Purity Crusade: Sexual Morality and Social Control 1860-1900*, (Westport, Greenwood Press, Inc., 1973), 168.

The sensitivity they attribute themselves with somewhat gives these purists the right to speak on behalf of the society and decide on what is acceptable or moral. “That one set of symbols is associated with emotions of approval and another with emotions of disapproval, concerns exclusively the style of expression and has nothing whatever to do with morality.”²¹⁸ This black and white approach to morality by the public, based on such sentimental perspectives, limited the possibility of having any meaningful argument. When the arguments arose in regard to these issues, it was due to an excessively sensual or different modes of thought.²¹⁹ It was the case when the Mormons with their polygamy were attacked by the monogamists and thus a very rare topic became the agenda of the society, whereas the impact of the unnatural approach to sex on society was easily ignored or hushed down. Due to this tendency to see themselves as prudent and very pure, such purists cannot benefit the society as Schroeder states: “No wonder then, that the few who can or try to reason, even about sex-ethics, stand aghast at the achieved results of such mania, and the general public remains densely ignorant in spite by the ‘arguments’ of mere ‘righteous’ vituperation.”²²⁰ Although there was the existence of intellectuals that had a say on these issues that approached them scientifically, they were not allowed to be discussed in public.

Similarly, Foote used his expertise as a doctor in his publications in order to enlighten the public why the society needed to be open about the discussions on sexuality. As the aim of the Free Speech League was to make discussions on important matters accessible to the public, he wanted to create articles that talked about the health, gave tips on how

²¹⁸ Schroeder, “Why Do Purists Object to Sex Discussion?”, 121.

²¹⁹ Schroeder, “On Moral Sentimentalizing,” 705.

²²⁰ Ibid., 706.

to cure certain diseases and more importantly why certain symptoms were observed. He named the journals as “harmlessly” as possible, i.e. *Plain Home Talk*. Foote knew the importance of directly reaching the smallest groups of society, the families.

As his title suggests, in these publications Foote uses plain language and does not hold back on topics of sexuality. For him, one of the aspects of sexuality was prostitution. It was a real and serious issue since the number of these workers were as high as 100.000 in big cities like New York.²²¹ The growing number of brothel houses and prostitutes meant an increase in the number of sexually transferred diseases. When Sanger made similar observations of the problem, she pointed out the responsible factors as she stated that “some force, some living, powerful, social force is at play to compel these women to work at a trade which involves police persecution, social ostracism and the constant danger of exposure to venereal diseases.”²²²

On the other hand, Foote first wanted to tackle the problem of why in the first place such houses and such workers came into existence at an accelerating rate. One of the first reasons was that with the growing population in the big cities meant the number of people looking for jobs increased. The majority of these newcomers were the working class and the women from these households were needed to bring food to their homes as well. Yet, the unfairness of the system ensured that working women got paid less. As Foote further states, in a big city like New York, this number was also high. The women

²²¹ Edward B. Foote, “Prostitution,” *Plain Home Talk*, (New York: Murray Hill Publishing Company, 1896), 180.

²²² Margaret Sanger, *The Woman Rebel*, Vol. 1, No. 1, March 1914, 1.

had to either work for sixty cents and not be able to provide for any vital necessities or they had to choose prostitution.²²³

It was through not only these poor working conditions but also the great support it received that the prostitution grew as an institution. As Foote states: “It is estimated that six and one-half millions of dollars are annually paid in this city alone to ‘pretty waiter girls’ and courtesans!”²²⁴ Undeniably, the opportunity given to this “trade” was caused by the business method that made it impossible for the elimination of such an option for the poor women. This was known and somehow accepted by all its participants. Yet, the open discussion of it was of great importance since this needed to be heard and understood by the rest of the society as well. They had to know and find solution to the abuse and the despair these young women had to endure as well as the men who sought to receive such service.

Men were the easy targets for the blame game as the society labeled them with reckless passion and anger that everyone must act accordingly. The women and young girls would be in danger if such institutions did not exist. So, it was a necessary evil. Yet, according to Foote, this archetypical definition of men was outdated and it lacked an important fact: men and women are social animals and though living in “civilized” societies, they still needed the attention and the acknowledgment received from the opposite sex. According to Schroeder, the wrong understanding of civilization put pressure on the individuals that created anti-natural sex-lives that were further supported by pressures of economy, superstition and law that punished. These, when came together

²²³ Foote, “Prostitution,” 180.

²²⁴ Ibid.

prevented the liberal discussion on what was wrong in the society, what needed change and reform. Since these discussions were not heard, the idea of a healthy-minded sensualism was out of the picture.²²⁵

In addition to providing space and freedom for these healthy-minded individuals, Foote suggested ways of creating such individuals as well. It was quite clear that the economic conditions of the women forced them into these houses of prostitution. Yet, education was another important step to be taken by the government with special attention given to the girls. Just as when training the boys, the girls must have been educated in the practical matters so they would be able to have different employment opportunities. Thus, they would not be limited only to laborious work. Moreover, the restrictions brought by the society on the interactions of the men and women are also to blame, since the very strict isolation of the sexes, the lack of physical and mental exchange with rational and acceptable boundaries inevitably create the tendency for places like brothels. These outcomes are clearly seen by Foote as the faults of the society as a whole. The women are limited in their work choices and forced into prostitution, and the women and men are not free in their social interactions and thus misconceptions and unhealthy choices take place.

It can be argued that the Free Speech League aimed to bring forth these discussions that concerned all and through these public discussions, also to bring both women and men in the same platform. This was evident in the writings of Foote when he stated that the association of the sexes was of vital importance and the society as well as the state had

²²⁵ Schroeder, "On Moral Sentimentalizing," 707-708.

equal responsibility in providing any means possible to achieve this end. Thus, he suggested the creation of reading and conversation rooms that allowed both men and women to come together. There should be a known and publicly recognized gentleman or lady to supervise or chaperone them. In this way, both parties would feel less pressured about being alone with a stranger for the first time and it would provide the opportunity to leave the place safely in case of any unwanted behavior.²²⁶

Competing with the saloons where excessive drinking and gambling took place along with the brothel houses was the main purpose of Foote's suggestion. He wanted to create an alternative for people and aimed to eliminate the harmful institutions that got in the way of healthy relationships. Therefore, he likens the idea of having these places to the public schools that benefit the society in the same way that these rooms will. The men and women would be improving themselves intellectually, and morally; in turn they would be improving the wellbeing of their societies. This is the responsibility of the country towards its people and it has no age differences. As he asks: "At what fixed age should the State abandon the intellectual and physical culture of its people?"²²⁷

5.3 Marriage

As the historian Priscilla Yamin stated, marriage was one of the central venues that the Progressive Era used to tackle some of the problems it deemed most significant and in need of urgent solutions. Among these, the important problems were the preservation of

²²⁶ Foote, "Sexual Starvation," 173.

²²⁷ *Ibid.*, 174.

the traditional norms during a wave of change, stabilization of the immigration and the identity of the immigrants as well as establishing a national uniformity of law.²²⁸ She further states that “the institution itself was transformed and reflected Progressive Era imperatives of bureaucratization, democratization, centralization, the fostering of national uniformity, and eradication of difference, either by exclusion or assimilation.”²²⁹

In the hopes of bringing stability, order, and functionality, the policymakers looked at the marriage institution and wanted to solve the problems in regard to gender roles, sexuality, and reproduction, because they closely related marriage to the state. In other words, marriage, with the beginning of the twentieth century, was regarded as the small role model for the state on which the perfection could hope to achieve. Thus, we see countless statements made by the officials that favors the new eugenic science, which sought to provide the purest and the most perfect human beings that represented the country when considered as a whole. “Marital regulation simultaneously concerned the fashioning of sexual and familial norms, bureaucratic and legal rationalization of marital practices, and control over who would be considered genetically suitable current and future members of the polity.”²³⁰ The family, then, was and must be considered as the holy place that included the perfect mother and father that were pure bloods – that is to say, non-immigrants. Their union had to produce healthy and perfect babies to populate the country. This meant the preservation of the nation-state but it also meant that this

²²⁸ Priscilla Yamin, “The Search for Marital Order: Civic Membership and the Politics of Marriage in the Progressive Era,” *Polity*, Vol. 41, No. 1 (Jan., 2009), 87.

²²⁹ *Ibid.*, 89.

²³⁰ *Ibid.*, 111.

was foreseen to be achieved through an interventionist government. “Policymakers justified the unprecedented level of state regulation of private relationships on the grounds that the preservation of the nation’s social order, moral character, and political stability demanded extraordinary forms of intervention.”²³¹

The interventionist government could in one way play a role to help the reestablishment of the country as a whole, yet the power desired by the Free Speech League members was limited and direct towards the problem. The means should not possess such authoritative and limiting power on the people and the root of the problems must be thoroughly analyzed with the help of scientific methods. The limitation brought upon those topics with the idea that open discussions on sexuality, prostitution, marriage and women all together would corrupt the society was unacceptable to the free speech advocates. The government in this aspect had a role to play and had to be interventionist but that role was really clear. The government should create more opportunities for speakers on any matter, and the security and peace of the place and people for this speech must be guaranteed by the federal and local police. There must be areas built specifically for men and women to safely socialize and improve their intellectual capacities as well as their perceptions in regard to the opposite sex.

This perception in regard to the gender roles became prevalent with the introduction of new eugenic science. Eugenics stands for a set of practices that aim to improve the genetic quality. In this case, with the twentieth century, this practice attributed huge roles to women in creating genetically healthy children. The women, while put in a

²³¹ Ibid.

position to be kept pure and innocent by religion, were with the twentieth century put on a sacred position. It was not a mere word play but rather another radical aspect of the reformers. The woman was responsible for the unity of the family and her success depended on her self-image. As O'Neill stated: "A related theme which engaged the attention of divorce critics was the role of a woman. It was generally believed that the family was woman's special responsibility and its protection her primary concern."²³²

This meant that the woman was to be seen as a servant of the community that had to be perfect in sacrificing herself for the good of her family – thus the community.

Responsibility brought along new social duties and statuses. "Motherhood was to be social religion sanctified through self-abnegation. By stressing mothers' responsibility for 'well-born' children, women reformers reinforced the idea that the mother was the 'handmaiden of the Lord'."²³³

5.4 Divorce

Divorce was an unwanted and unwelcome outcome of a marriage in the Progressive Era. Yet, it still took place and the interpretations by the moralists varied. Regardless of the reasons, the failure of a marriage that resulted in a divorce was seen as a moral problem and hence a social problem. Basing their positions on religion and the religion teachings in general, the Protestant denominations were the catalyzers in convincing the officials

²³² William L. O'Neill, "Divorce in the Progressive Era," *American Quarterly*, Vol. 17, No. 2, Part 1 (Summer, 1965), 208.

²³³ Pivar, *Purity Crusade*, 170.

or the institutions so as to have an impact on the laws in regard to divorce.²³⁴

Unsurprisingly there were many proposals of amendments coming from the lead figures of such denominations that wanted the extreme punishments for people who got divorced. As a result, the fear of a divorce came into existence and people started to consider divorce as a sinful and overall a bad thing that smeared the society. Dr. Foote, from the Free Speech League, discussed divorce as a cure to unhappy marriages. He considered that this sacredness attributed to the marriages damaged more than it brought good impact on the society.

In the Progressive Era, the role of the women was centered on the idea that these unions should be maintained and protected by her. It meant that the responsibilities of women were not limited to within the household where she had to take care of the children the husband and the house itself, but exceeding these already-set duties she was now seen as the key figure in keeping this unity intact for the sake of the rest of the society.

Therefore, when the marriage that carried such vital meanings for the society such as unity, strength, order, purity, and survivability, as well as sustainability of a sound nation-state, attention turned directly towards women ready to put the blame on them. In a way, their actions were likened to the anarchists who aimed to destroy the society.

Thus, there were huge accusations against the people who rejected the idea of stigmatizing divorce. “The attack on divorce hinged on the common belief that divorce destroyed the family, which was the foundation of society and civilization.”²³⁵ It was a rare case to see the other party of the marriage, the husband, as responsible. The women

²³⁴ O’Neill, “Divorce in the Progressive Era,” 205.

²³⁵ Ibid., 207.

were to blame. Sharing the views of *The North American Review*, it was clear that the magazine “reflected this point of view when it entitled one of its divorce panelists charged women with responsibility for the divorce rate, and accused them of being spoiled, romantic, impatient, jealous of men and usurpers of male’s time-honored functions.”²³⁶

Focusing on both the wife and the husband within marriage, Foote made important observations about marriages. He stated that there is a big social pressure once people got married that both parties were expected to preserve this holy union no matter what happened. Although there were many unhappy couples that no longer wanted to be in this relationship, thinking that they were bound to this marriage through a moral contract, could not break it and willingly accepted the life-long suffering instead of getting a divorce and facing life-long public shame and isolation.²³⁷

Sufferers in Foote’s writings clearly become both men and women within a marriage. While married, women also may encounter some unwanted behaviors and/or habits of the husband again caused by the aforementioned misconceptions and misinformation about sexuality. This is further enhanced by the sacred position given to the married women. Since she is seen as the epitome of the holy union, she no longer is a female for her husband but a holy mother for her family. Her only purpose in sexual contact thus becomes reproduction – a healthy and perfect one for the sake of society. She is thus entrapped in this undesired situation where enjoying the company of the opposite sex

²³⁶ Ibid., 208.

²³⁷ Edward B. Foote, “Unhappy Marriage,” *Plain Home Talk*, (New York: Murray Hill Publishing Company, 1896), 188.

besides her husband is no longer possible.²³⁸ This fact alone, was really important according to Foote, because he considered the social gathering of the opposite sexes as a must for the mental and physical wellbeing of the individuals.

The similar case could be seen in the husband as well. Due to the sacredness attained by his wife and the motherhood role she had to perform from now on, his relationship with her dramatically changed. As a result, the husband could no longer express his sexuality and rather seeks for these needs in patronizing prostitution. This, however, creates a vicious cycle:

They may become the fathers of illegitimate children, with the applause of the vulgar, the harmless jests of their associates, and the mild censure of staid people; while the mothers of illegitimate children are turned out of good society, and frequently from their mother's door, without shelter for themselves, or the innocent victim of their thoughtlessness.²³⁹

5.5 Abortion

The subject of abortion was not merely about ending the pregnancy before the full birth took place. It was also about the contraceptive methods and the sexual hygiene in general. Free Speech League, with the influence of the works and the endeavors of Sanger became an advocate for the prevention of pregnancies, sexual hygiene, and abortion. As Foote stated, the education was the most reliable means of ensuring that the

²³⁸ Foote, "Sexual Starvation," 168.

²³⁹ Ibid., 170-171.

individuals had access to correct and sufficient information prior to, during and after the sexual contact.

The education on the sexual matters had to have certain criteria. They had to be provided to everyone in the country at an age that when they reach puberty, they should be aware and ready for the possible consequences of their actions and what kind of protection and care they must perform so as to preserve health and hygiene. This type of preventive approach, in fact, ensured that the society would be facing with no immediate dangers of sexually transmitted diseases, since both the men and women would be aware of the protective methods and tools. At the same time, this would prevent any unwanted pregnancies that might occur within and outside of marriage, thus not endangering the life of the mother or the soon-to-born child.²⁴⁰

Undoubtedly, Margaret Sanger was the lead figure during the first half of the twentieth century, when these issues were on the rise and were being disputed. Sanger along with her husband actively advocated the civil liberties through their own work. As Rabban states: “The Free Speech League similarly assisted Margaret Sanger, who during a brief period beginning in 1912 became a radical activist on behalf of birth control.”²⁴¹

Margaret Sanger opened up birth control clinics to help the women and men prevent unwanted pregnancies as well as to promote sexual hygiene. The Sangers considered the right to access such health services or information in regard to sexual health to be important. Sanger constantly received support from Schroeder in regard to her cause of

²⁴⁰ Edward B. Foote, *The Radical Remedy in Social Science or Borning Better Babies through Regulating Reproduction by Controlling Conception*, (New York: Murray Hill Publishing Company, 1887), 15.

²⁴¹ David M. Rabban, “The Free Speech League, the ACLU, and Changing Conceptions of Free Speech in American History,” *Stanford Law Review*, Vol. 45, No. 1 (Nov., 1992), 91.

ensuring women's reproductive rights. It is important for us to know her background so as to understand her motives when she fiercely fought for the reproductive rights of women. When she was born in 1879, she was one of the eleven children in her family. Her family was immigrants from Ireland and when they came to New York, she saw and experienced the difficulties of surviving as a working-class family. Katzive shares the following: "Regarding this, she wrote: Very early in my childhood I associated poverty, toil, unemployment, drunkenness, cruelty, quarreling, fighting, debts, [and] jails with large families."²⁴²

The same limitation brought upon the spread of any information that was considered impure and obscene concerned the information about abortion and contraceptives as well. As Foote comments, the foundation of the Society for the Suppression of Vice was the incorporated result of the Comstockery that had begun its fight against the contraceptives that started around 1870s and reached its height fin de siècle.²⁴³ The aim was, rather than the disguise of helping the preservation of the morals of the country, to appoint people for hunting poor desperate women and men trying to come up with ways so as to battle poverty or public shame.

Originally, the idea about the limitation of information was in regard to the pornographic literature, but Schroeder had connected this attack on such literature to the ignorance of the attackers. The purists, he claimed, disregarded what was necessary to be published and shared, what was necessary to be learned by the men and women alike and how

²⁴² Caroline E. Katzive, "Margaret Sanger: Demonstrating Leadership and Legacy Through Her Crusade For Women's Reproductive Rights," *The History Teacher*, Vol. 49, No. 1 (November 2015), 127.

²⁴³ Foote, *The Radical Remedy in Social Science or Borning Better Babies through Regulating Reproduction by Controlling Conception*, 84-85.

even the most explicit literature could provide a healthy mindset for the readers.²⁴⁴ Thus, he contended that the purists aim was never to benefit the society but rather themselves and their political agendas as he stated: “Ostentatious and pretentious moral snobs unceasingly assure us that the continuance of our present censorship of literature is based solely upon considerations of public welfare.”²⁴⁵

Similar limitations, when brought upon the ideas of contraception, met with resistance from the civil liberties advocates and the Free Speech League. Margaret Sanger took up an action and created her first publication of a newspaper under the title of *The Woman Rebel*, whose first issue was on March 1914. In this first issue, she openly stated her aim as follows: “It will also be the aim of the Woman Rebel to advocate the prevention of conception and to impart such knowledge in the column of this paper.”²⁴⁶ She wanted to provide a safe and reliable source in this newspaper, in which the doctors, as well as the feminists and free speech advocates could all contribute through their articles. This safe and reliable information carried a great importance for Sanger since misinformation and limited access to doctors and to the means of contraceptives and abortions caused the creation of many types of disinformation to be spread by word of mouth. Even worse, poor people, due to their economic problems, had no access to real and safe treatments and thus the quack doctors increased in numbers offering very dangerous services that had risky and even fatal outcomes for both women and men.

²⁴⁴ Schroeder, “Why Do Purists Object to Sex Discussion?,” 120.

²⁴⁵ Ibid., 118.

²⁴⁶ Margaret Sanger, *The Woman Rebel*, 1.

Unsurprisingly, although there were clear laws against the application of abortion and other contraceptive methods, it was clear that everyone who wanted it still had access to them. The rich had access to the best doctors possible and to hygienic environments. This created a hypocritical and unfair dichotomy between the rich and the poor. A “woman of the upper middle class have all available knowledge and implements to prevent conception. The woman of the lower class is struggling for this knowledge...The woman of the people is the only one left in ignorance of this information.”²⁴⁷ The poor therefore either risked their lives and consulted the quack doctors who offered cheap service, or they just accepted their fate and gave birth to their children in homes that were already impoverished. As Dorothy Kelly stated in *The Woman Rebel*: “Thousands of women who wish to spare children-to-be the torture of a miserable existence have no alternative except to submit to the torture and ignorance of quacks who are fattening upon these enlightened laws of a Christian country.”²⁴⁸ Therefore, she wanted to offer a safe haven for her patients in her clinics she opened one after another as each of them met with forced evictions and her arrest as long as she resided in America. Her patients, for her, were separate individuals and she let them know that she respected their anonymity and health by receiving their verification that they knew how these contraceptives were for their personal use only.²⁴⁹

Such emphasis and demonization of the abortion had another reason besides the church and religious expectations according to Katzive. In her observation, she states that with

²⁴⁷ Ibid., 8.

²⁴⁸ Sanger, *The Woman Rebel*, 10.

²⁴⁹ Caroline E. Katzive, “Margaret Sanger: Demonstrating Leadership and Legacy Through Her Crusade For Women’s Reproductive Rights,” 130.

the beginning of World War I, the nation was in dire need of more bodies and thus the lack of men in the military meant a weakness of the military. When this need for the increase in population was contrasted with the growing populations of Germany and Russia, it put the issue at an urgent level. But, according to Sanger, the rise in the population, although it meant the increase in men for the armies, also meant that during wartime these countries were going to meet with difficulties as they did not have enough resources to provide for them.²⁵⁰ Thus, the discussion took an unexpected turn as the contraceptive methods did not weaken the country, on the contrary, they helped the nation maintain its wealth and allowed it to be distributed more equally. This meant the survival of the nation was almost guaranteed.

This argument was followed closely by Foote as well. He discussed this issue through Malthusianism, as it was the study of how the increase in the rate of population was only possible due to having sufficient sources, yet when left unchecked through deliberate methods such as contraceptives and abortions or through indeliberate causes such as widespread diseases or war, it continued to outgrow what that country was originally able to provide for.²⁵¹ He further supported his view by stating that “[a] Nation’s strength is not only in the *number* of its people, but also in their *quality*, and a Nation’s prosperity will be in proportion to the health, activity, and industry of the industrious classes.”²⁵²

²⁵⁰ Ibid., 131.

²⁵¹ Edward B. Foote, *The Radical Remedy in Social Science or Boring Better Babies through Regulating Reproduction by Controlling Conception*, 20.

²⁵² Ibid., 29-30.

The difficult position women and their unborn children were put in when an unwanted birth took place was another concern for Sanger and the Free Speech League. While, the anti-abortionists pretended to care for the life of the child, they were actually doing the baby and the mother harm. These purists were using motherhood and its concomitant sentimentality so as to prevent contraceptive methods and abortion, yet the working women had no means to look after the children and thus when she gave birth to them more than half of her children were destined to die. Thus, Sanger saw these as two options presented for the women and wanted the purists, or pseudo-moralists as she called them, to understand this position from the point of view of the mothers and the prospective mothers alike. When they looked at their lives, it was either to give birth for the sake of the glorification of motherhood and being afraid of the quack doctors that guaranteed no safety, or to get rid of the pregnancy so that her children would not die before her eyes, helpless.²⁵³

An advocate of the birth control movement, Dorothy Kelly also highlighted this hypocrisy when she stated that these moralists stress how sinful it is and how against Christianity it is to end a life while it is of equal sinfulness pushing people into criminal abortion and infanticide, allowing the quack doctors to manipulate and abuse these poor women. Thus, it creates nothing but profitable business for these fake doctors who pretend to offer the only help to them. This kind of approach was worse than in countries like Turkey, which was looked down upon by Americans while even in that country, abortion was allowed legally.²⁵⁴ Regardless of her good intentions, one after another, her

²⁵³ Sanger, *The Woman Rebel*, 3.

²⁵⁴ *Ibid.*, 10.

clinics were shut down regardless of how secretively they worked. The government officials used spies, and through their sting operations Sanger, and her colleagues were arrested with their supplies being confiscated.²⁵⁵ In the end, her self-inflicted exile ended and when she returned to America her endeavors for the reproductive rights of women continued and eventually, she won the fight.

5.6 Conclusion

As with the topic of obscenity, gender also brought upon itself the wrath of the moralists. Comstockery was powerfully at work against the spreading of information that was related to the relationship between men and women, sexuality, marriage, and sexual hygiene along with abortion and contraceptive methods. Schroeder blamed this attitude on the ignorant who “readily mistake question-begging epithets for reasoning and cowardly political adventurers enact its sentiments into law, thus bargaining away the liberties they are sworn to protect, for a brief official opportunity to ‘graft’ through the voting support of stupid ‘moral’ bigots.”²⁵⁶

It was claimed by Pivar that the Comstock laws on these topics somehow had an impact on the open discussions and thus with the limited use of the mail, the intellectuals had to discuss less controversial topics.²⁵⁷ Although it is easy to see that these limitations had an impact and caused some of the intellectuals to be more cautious and less controversial

²⁵⁵ Katzive, “Margaret Sanger: Demonstrating Leadership and Legacy Through Her Crusade For Women’s Reproductive Rights,” 130

²⁵⁶ Schroeder, “Why Do Purists Object to Sex Discussion?,” 119.

²⁵⁷ Pivar, *Purity Crusade*, 4.

on their opinions, this was no way near the case for Sanger and the Free Speech League as a whole. Sanger openly fought against these regulations and even was able to publish a newspaper called *The Woman Rebel*. Even the name itself was quite provocative and controversial. It was true that Comstock attacked her, but she openly challenged him by saying that she was proud that her newspaper was not liked and appreciated by this man.

Marriage and divorce were counterparts of the ultimate institution of family. Through marriage, the state aimed to present its strength, unity and utmost moral perfection.

While the marriage was between a man and a woman, the focus was on the woman and the whole responsibility fell on her shoulders. With strict amendments proposed by especially the Protestant church leaders, the divorce was stigmatized as evil. Thus, divorce was perceived to be a topic of national crisis because people were trained to see it that way through the fear.²⁵⁸

Marriage also represented the production of the healthy offspring necessary for the survival of the country. Thus, women put under further pressure to the point that they did not want mixed-blood marriages between immigrants and non-immigrants. The women more than men were stigmatized regarding this subject. In order to discourage such marriages, they did not hesitate to openly criticize and create suspicion of the sexual morality of the immigrant women, blaming them for the increase in prostitution while they ignored the poverty and the limited job opportunities for women as the true catalyst for such tendencies.

²⁵⁸ O'Neill, "Divorce in the Progressive Era," 206.

Reproductive rights were the biggest arena that Sanger and the Free Speech League members had to fight for. It was impossible to give birth to children for the working-class since their economic conditions were deteriorating and thus half of their children were dying before they even reached adolescence. Causing such misery with the awareness of such poverty and impossibility of taking care of this many children, Sanger pointed out how sinful it was to actually make people suffer like that. Prevention of the conception was the most humane solution for the mental and physical wellbeing of the society. As Foote quotes Mrs. Besant who was one of the reproductive rights advocates, he states that “[t]o limit the family is no more a violation of nature’s laws than to preserve the sick by medical skill; the restriction of the birth-rate does not violate nature’s laws more than does the restriction of the death rate.”²⁵⁹

O’Neill observes that overall attacks on women through marriage, divorce, womanhood, motherhood, and women’s responsibilities to and duties for the country stems from the idea that the state wanted to control the rise of individualism.²⁶⁰ The public officials saw that more information and more freedom in accessing healthy and reliable services meant the loss of control over the power. Yet, George E. Howard in his work *A History in Matrimonial Institutions* state that the industrialization along with urbanization and increase in the population with the help of the mass immigration inevitably were breaking the patriarchal norms and it was impossible for the purity crusaders to do anything to stop it.²⁶¹ For Schroeder, the wellbeing of the society did not need constant

²⁵⁹ Foote, *The Radical Remedy in Social Science or Borning Better Babies through Regulating Reproduction by Controlling Conception*, 80-81.

²⁶⁰ O’Neill, “Divorce in the Progressive Era,” 209.

²⁶¹ *Ibid.*, 212.

checks on the levels of morality of the society as a whole. If there was something that was deemed to be dangerous and harmful society, it should be openly examined for its symptoms so as to find the best cure possible instead of concealing it all the time as was the intention of purists of the time.²⁶²



²⁶² Schroeder, "Why Do Purists Object to Sex Discussion?," 120.

CHAPTER VI

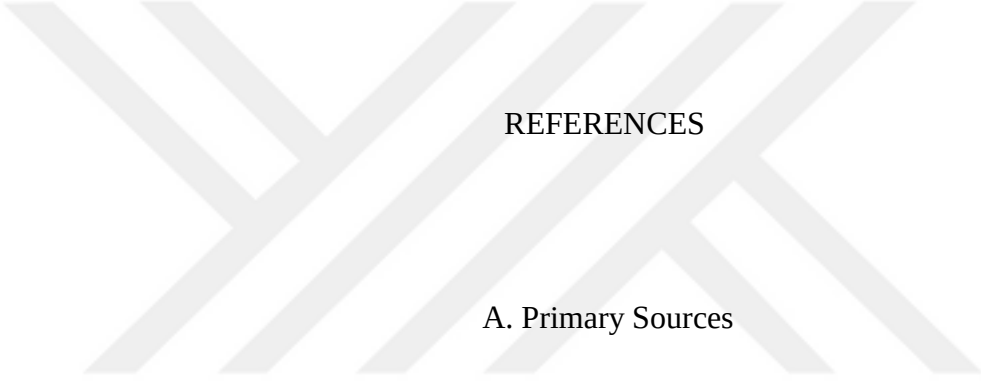
CONCLUSION

The Free Speech League took part in controversies that involved free speech throughout out its existence from 1902 up to 1917. Through the works of its members, with Theodore Schroeder being the central one with the highest number of publications, the League furthered the cause of the defense of free speech during the Progressive Era. Their discussions on the much frowned upon topics of sexuality, gender, obscenity, religion and marriage shed light upon one of the most important intellectual approaches of the first decade of the twentieth century.

The work of the League shows us that the free speech was not solely understood as the speech itself but also as the means of transferring, sharing and distributing the knowledge and ideas. The League saw this as the most fundamental application of the First Amendment rights and thus focused on the major series of acts that directly

targeted this freedom. The Comstock laws encounter a serious opposition through the collective works of the League members. It shows how these federal acts invaded the privacy of the citizens through the baseless accusations that raised important questions as to their constitutionality. Schroeder, as the central figure of the League, presented the goals of the organization through his various works that approach the free speech in its legal aspects. He defended the persons who needed immediate assistance due to being arrested on the basis of the Comstock laws. He provided them, through League, legal counseling and support.

Overall, the unique organization of the members provide a valuable insight into the accomplishments of the League. Unlike the typical organizations where the members get together and work together, the League members were from all walks of life that had their own professions and businesses, as well as their personal goals to achieve, as in the example of Sanger and her husband. It is safe to assume that the network the League established ran deeper than the findings of this study. There were many more unnamed figures that helped the spread of the ideas presented by the League, which transcended the limited definition of the free speech. It was the freedom to exchange ideas, to search for truth and to exercise the autonomous will of the American citizens.



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