5. Awful Letters: Part I

Published by

Sears, Hal D.
The Sex Radicals: Free Love in High Victorian America.

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https://muse.jhu.edu/book/94116
INCE his antislavery days, Moses Harman had been involved in reform politics. Like many other abolitionists, he had joined the Republican party, believing it to be "the party of Liberty and Justice." In the postwar era he grew disillusioned with the party, feeling that it had become the bastion of privilege rather than of equal rights. The Democrats attracted Harman even less—he could never forget that they had been the party of slavery. In 1880 Harman had supported the Prohibition Amendment to the Kansas Constitution, and in 1882 he had worked for the eminent Anti-Monopolist candidate for governor, Charles Robinson. Harman had also lent support to the Greenback party.1

Although the transformation of the Kansas Liberal to Lucifer, the Light Bearer marked Harman's own passage from reformism to anarchism, he did not become a doctrinaire revolutionary. He had little faith in the American people's receptivity to revolutionary political change. Great accumulations of wealth, which marked the age, represented prima facie evidence of moral wrongs committed against each worker, he believed, yet the workers did not fault the system: "Ask any man you meet whether he would like to stand in the shoes of Jay Gould, of Senator Stanford, or of Col. King... Nine cases in ten he will eagerly answer, Yes! So then most poor men are simply undeveloped stock gamblers, railroad kings, or land monopolists."

The widespread hunger, joblessness, and industrial unrest of the mid eighties compounded the irony of this unrevolutionary consciousness. Closer to home, Harman noted, skyrocketing trans-
portation costs forced farmers to feed their wheat to livestock and to burn their corn for fuel. The government appeared to be "a gigantic machine by which the many are robbed by the few." Financiers, railroad companies, cattle kings, land speculators, large manufacturers, and mining monopolists ran the country for their personal benefit.

It appeared difficult enough for anarchists to exist in such an environment, much less to try to alter it. No simple answers came to Harman in his attempts to apply anarchistic solutions to society's problems. At best, anarchism could offer only partial answers, and even then, to be effective, its individualist purity would most likely have to be diluted. He suggested that people must ignore, insofar as possible, the external government; they must peacefully organize a system of "self-protection" whereby natural rights would be secured and maintained against the encroachments of the state.

Methods for achieving this system eluded Harman, however, as he wrestled with the "Question of the Hour" throughout 1885. He theorized on several solutions, including the possibility of autonomous communities with strong, graduated income-tax schemes. Although the principles of anarchism strongly appealed to him, he found in anarchism no thoroughgoing solutions nor even any practical suggestions of methods. He would permanently retain a philosophy of anarchism as he retained his belief in free thought, but though he tried, he could not make anarchism his Great Cause.²

During these months of search, however, he did uncover the questions that were to engage him and his paper for the rest of their years. From free thought and anarchism, the quest of Lucifer turned toward freedom of expression, especially the freedom to discuss sexual questions openly. Much of the public discussion of sex in the nineteenth century dealt with sex in the gender sense, rather than the erotic—a lecture or editorial entitled "The Sex Question" was likely to deal with political discrimination against woman.³ Harman and the sex radicals, however, were to base their discussion of the "sex question" on the coital relationship; their terms of discussion flouted the Victorian code of sexual respectability which, in its extremity, justified coitus only as a propaga-
tive duty, forbade erotic pleasure, and condemned discussions even of hygienic aspects of coital matters.

For enforcement, this code depended upon a powerful social consensus rather than upon legislation, although laws regulating the sexual sphere did appear with increasing frequency toward the end of the century. Legislators raised the age of consent, tried to regulate prostitution, regulated breeding in marriage, and struggled with the problem of divorce. America, of course, had no such national law as the English Criminal Law Amendment Act of 1885, which forbade certain sexual conduct such as homosexuality; but most states had statutes outlawing lewdness, sodomy, obscenity, and abortion. Moreover, such sexual “deviations” or “misconduct” were offenses under common law.⁴

The United States did acquire a counterpart to England’s Obscene Publications Act—the “Comstock” Postal Act of 1873. This statute, enforced in arch-puritan spirit by Anthony Comstock himself, effectively banned sexual discussion and the exchange of information on matters ranging from abortion to criticism of Christianity. Sex radicals knew that Victorian respectability—what Lester Ward had termed the “conventional code”—was their real oppressor, but “St. Anthony” played the prude so wonderfully that he became the natural focus of attention. The vice-suppression societies that employed Comstock and lesser censors apotheosized an earlier, unambiguous morality that was associated with preindustrial America. These purity reformers sought to enforce a measure of social control on the increasingly disjointed and confused urban landscape.

Impressed by Comstock’s free-lance efforts, the president of the New York YMCA, Morris K. Jesup, and a group of his eminent peers formed a YMCA Committee for the Suppression of Vice, which paid Comstock a salary to stamp out vice and underwrote efforts to bring about state and federal antiobscenity legislation. The organization eventually included such men as financier J. P. Morgan, copper baron William E. Dodge, and soap magnate Samuel Colgate. Because some YMCA leaders felt that Comstock’s muck-stirring efforts were abhorrent to finer sensibilities, the committee divorced itself from the YMCA and became an independent Society for the Suppression of Vice in 1873. The state charter of the society enjoined the police to “aid this corporation . . . in the
enforcement of all laws,” and granted it the right to claim one-half of all fines levied against evildoers whom it brought to justice. The well-to-do members of the society provided Comstock with an expense account and an annual salary of $3,000; before taking action on any case, Comstock submitted details to the society for its approval. The young old man of vice-hunting—he was 29 in 1873—forsook his earlier career as a dry-goods clerk for full-time censorship and vice-suppression duties. Comstock believed himself divinely appointed to his task; his commissions from the Vice Society and the federal government were only ancillary.\(^5\)

Although in 1836 President Andrew Jackson had tried but failed to obtain from Congress a law prohibiting “incendiary” abolitionist literature from the mails, Congress did step into the obscenity quagmire in 1842, apparently with little forethought. One section of the Tariff Act of that year empowered the Customs Office to confiscate and bring suit to destroy “obscene or immoral” prints and pictures within its purview. In 1857, the same year that the British government put the Obscene Publications Act into law, Congress added obscene “images,” including photographs and daguerreotypes, and “obscene articles” to the prohibited list of the Tariff Act. In 1865, in response to reports that obscene materials were being mailed to soldiers, the Senate perfunctorily enacted the first law dealing with obscenity in the mails and in the printed word. This act prohibited obscene publications from the mails, giving the postmaster general the power to seize and destroy objectionable matter (leaving open whether by administrative prerogative or by due process); but it was so undetailed, complained Anthony Comstock, that only materials that were “obscene on their face” could be stopped. An amendment in 1872 strengthened the statute only a little.\(^6\)

Supported by his influential backers in the YMCA committee, Comstock went to Washington in the early months of 1873 to lobby for a new, stronger bill to combat the “hydra-headed monster” of vice in the mails. Presented to a corrupt Congress, which was in the throes of the Credit Mobilier scandal, the vice society’s bill finally passed at 2 A.M. in a rowdy early-morning session on Sunday, March 2. Perhaps, Comstock’s traveling exhibit of pornography had suitably impressed the lawmakers. Senator William A. Buckingham of Connecticut and Congressman Clinton L. Merriam,
New York, served as sponsors of the bill. The Comstock Act, as it came to be called, policed a broader area than had the 1872 statute, and it provided stiffer penalties—up to ten years’ imprisonment—for anyone who knowingly mailed or received “obscene, lewd, or lascivious” printed and graphic material. Significantly, one section of the act forbade the mailing of contraceptive and abortifacient materials and information, along with any “thing intended . . . for immoral use.”

On two crucial points the law was portentously silent: first, it offered no definition of obscenity, and second, it did not specify whether it intended to be solely a criminal statute (that is, concerned with seizing objectionable matter only as a contingency of the arrest of a violator) or whether it aimed to establish a civil post-office censorship separate from any criminal provisions of the law.

As it turned out, the “Hicklin Standard” for defining obscenity became federal law in 1879 with the case against D. M. Bennett for his sales of *Cupid’s Yokes*, a small book written by Ezra Heywood. The Hicklin Standard, which was enunciated by Lord Chief Justice Cockburn in *Queen v. Hicklin* (1868), declared that the obscenity test “is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to immoral influences, and into whose hands a publication of this sort may fall.” As the terms of this decision became the standard in American courts, First Amendment arguments were regularly discounted, leaving “obscenists” with little but technical arguments for defense. Using methods that bordered on entrapment and with government authority and respectable public opinion behind them, Comstock and the vice societies won an impressive majority of their cases.

It also turned out that the Post Office Department assumed independent powers of censorship and confiscation based upon the Comstock Act. With no due process, postal officials prohibited, confiscated, and in some cases destroyed without remuneration any mails that they found to be objectionable. A mailer could either submit to expurgation or appeal to reluctant courts to enjoin the Post Office Department from interfering. But, as James Paul and Murray Schwartz have recently pointed out, the courts assumed that “the Postmaster General and his subordinates . . . were well
equipped to decide what was 'obscene'; that was their job, and their judgment was only to be set aside in case of clear 'abuse.' Thus the plain fact was that by the simple act of seizing a publication, postal officials were able to throw a heavy burden of exculpation entirely upon the citizen who wanted to distribute it." An 1890 opinion of the United States attorney general validated this administrative censorship. Citing the Comstock laws, Attorney General Miller backed up a decision by Postmaster General Wanamaker to ban Tolstoy's *Kreutzer Sonata* from the mails "on the grounds of indecency." Sex radicals, some reform journals, and a few large dailies protested the ominous decision; some thought that Wanamaker was as great a threat as Comstock. 

The constitutionality of the Comstock Act itself rested on an obiter decision by the Supreme Court in *Ex Parte Jackson* (1877), in which the court affirmed a postal statute outlawing lottery materials from the mail. By invoking the Comstock Act to illustrate Congress's authority to police the mails, the Court implicitly confirmed the soundness of the act. When the first Comstock Act case, *Rosen v. United States*, came before the high court in 1896, it sustained the act and, with citations from the Bennett case, upheld the famous *Hicklin* Standard.

The effect of the Comstock Act intensified as state governments, influenced by efforts of vice societies, enacted laws prohibiting commerce in "obscene" items such as suggestive books and birth-control devices. The act had also created the position of post-office special agent, to inspect mail and to track down violators. Although it appears that Comstock did not lobby for his personal appointment, he was an obvious choice, and he expressed pleasure at being duly appointed. He declined to accept his government salary, however, until the year 1906.

The subtleties of art and of the First Amendment mostly eluded Comstock; therefore he not only created havoc for some publishers, booksellers, and museums, but he also wrecked the lives and reputations of a number of persons. In one famous case, Comstock hounded Ann Lohman, an abortionist and dispenser of birth-control methods and advice, until she committed suicide; hers was the fifteenth suicide that he personally credited to his account, and there were to be more. He cut a wide swath, mounting campaigns against quacks, lotteries, medical hoaxes, fraudulent advertising,
and a number of swindles. He relied heavily on trickery in order to gain indictments, and his personal uncorroborated testimony dispatched many "evildoers" to confinement.

In a society that had few provisions for consumer protection, some good no doubt came from his scattershot assaults, but these effects must be weighed against the subjective and often contemptuous manner in which he wielded tremendous power. He was a sex reformer working for sexual purity, just as surely as Ezra Heywood or Moses Harman, despite a quite different approach. W. D. P. Bliss included him in his definitive Encyclopedia of Social Reform (1897), and even one of Comstock's prize catches, the contraceptives champion Edward Bliss Foote, M.D., considered Comstock to be engaged in a humanitarian reform. In tempered criticism of his "brother reformer," the doctor wrote in a letter to the New York Times: "He is trying to make people better by reformatory measures, and I by formatory processes." Foote became less temperate when a court fined him $3,500 for a violation of the Comstock Act.9

Comstock became confused in his attempts to define "suggestive" art works. He conceded that some works portraying the nude body were not obscene, provided that they fulfilled his notion of painterly art: the artist's technique must effectively divert attention from the nudity, which of itself is objectionable. Such a definition ruled out reproductions. In short, he felt that a direct link existed between the sight of a naked human body and the degradation of the viewer. The degradation, whether from a vision of nudity or an evil word, became all the more total if experienced by a child.10

He never quite explained how he himself escaped such degradation, even though he probably viewed more expositions of "evil" than most professional lechers were able to see. He allowed himself to sit through whole performances before making arrests, such as "Busy Fleas," which was enacted for him in 1878 by unwary prostitutes. On an 1881 occasion, a Philadelphia paper reported, he paid $14.50 for a specially ordered undressing act by three prostitutes; they performed for Comstock for one hour and twenty minutes before he arrested them.11

Comstock attacked weak and radical or nonconventional journals rather than the mighty dailies, although these large publica-
The sex radicals who took the libertarian approach to censorship focused on the Comstock laws as the major substantive obstacle to sexual reform and education. They saw freedom of speech and of the press as absolute. Taste and propriety did not enter into their considerations of free speech; speech was free only so long as no subject nor any word, however gross, was banned. Sex radicals pursued "social science" in the nineteenth-century understanding of the term, which meant social reform. Such a journal as *Lucifer* served as a forum where personal experience and acquired knowledge could be traded, argued, winnowed, and, it was hoped, be made to yield up maxims that would reform sexual relations. Censorial laws only restricted the march of science.

In the spring of 1886 Harman promised his readers that none of their correspondence submitted for publication would be altered because of their choice of words. On June 18 the first scandalous letter appeared in *Lucifer*, the "Markland letter," and after it came a half-dozen more. Printing this Markland correspondence—a letter from a Tennessee anarchist quoting a letter that he had received—engaged Harman in a simultaneous fight for women's liberation, sex education, and free speech:

Another "Awful Letter"

[Dudes, prudes and statute moralists had better not read this letter.—ED.]
EDS. LUCIFER: To-day's mail brought me a letter from a dear lady friend, from which I quote and query:

"About a year ago F—— gave birth to a babe, and was severely torn by the use of instruments in incompetent hands. She has gone through three operations and all failed. I brought her home and had Drs. ——— and ——— operate on her, and she was getting along nicely until last night, when her husband came down, forced himself into her bed and the stitches were torn from her healing flesh, leaving her in a worse condition than ever. I don't know what to do."

Now, Searlites; "Laws are made for the protection of life, person and property."

Will you point to a law that will punish this brute?

Was his conduct illegal? The marriage license was a permit of the people at large given by their agent for this man and woman—a mere child—to marry.

Marry for what? Business? That he may have a housekeeper? He could legally have hired her for that. Save one thing, is there anything a man and woman can do for each other which they may not legally do without marrying?

Is not that one thing copulation? Does the law interfere in any other relations of service between the sexes?

What is rape? Is it not coition with a woman by force, not having a legal right?

Can there be legal rape? Did this man rape his wife? Would it have been rape had he not been married to her?

Does the law protect the person of woman in marriage? Does it protect her person out of marriage?

Does not the question of rape turn on the pivot of legal right regardless of consequences!

If a man stabs his wife to death with a knife, does not the law hold him for murder?

If he murders her with his penis, what does the law do?

If the wife, to protect her life, stabs her husband with a knife, does the law hold her guiltless?

Can a Czar have more absolute power over a subject than a man has over the genitals of his wife?

Is it not a fearful power? Would a kind, considerate husband feel robbed, feel his manhood emasculated, if deprived of this legal power?

Does the safety of society depend upon a legal right which none but the coarse, selfish, ignorant, brutal, will assert and exercise?

If "marriage is a civil contract," has the female partner a legal right to "twenty-five dollars" of the firm's money to purchase the civil con-
sent of CIVILIZED law, to a civilized dissolution of said contract? Why charge one dollar to get into the show and "twenty-five" to get out? Why not reverse it? . . . 

Has freedom gender? 

Will some archist, or semi-archist, please tell the mother quoted above, "what to do?"

Sherwood, Tenn. W. G. Markland

Eight months after this letter appeared, a deputy United States marshal arrived in Valley Falls to arrest Moses Harman, George Harman, and E. C. Walker, the editors and publishers of *Lucifer*. They faced obscenity charges for the Markland letter and for three additional letters published in *Lucifer* during the intervening months. The second offending letter, "Mrs. [Celia B.] Whitehead to Elmina [Slenker]," had been a protest against contraceptives. With the availability of "contracepts," Mrs. Whitehead argued, women would lose "all excuse for not yielding to the sexual demands of their masters" and would increasingly become the playthings of men. The third indicted letter, "Family Secrets," retold an old anecdote about a Millerite couple who thought that the world was ending and therefore confessed their sexual improprieties to one another. Harman apparently printed the letter in order to demonstrate his belief that the right of free press should be unqualified by considerations of taste or propriety. The inclusion of this article in *Lucifer* suggested that Harman was intentionally building a comprehensive test case of obscenity laws. The final letter for which the editors faced prosecution, "Comments on Albert Chavanne's Article," appeared in January 1887, only weeks before the arrests. This contribution to *Lucifer*'s ongoing debate on sexual asceticism discussed the comparative virtues of two methods of sexual abstinence, "Alphaism" and "Dianaism." Alphaism prohibited coitus or erotic relations except for propagation; Dianaism similarly restricted coitus but, from a theory of sublimation, allowed some erotic expression.13

Before the publication of the Markland letter the issue of free speech received increasing attention in the columns of *Lucifer*. In a series of articles on the suppression of free speech in the Chicago Haymarket case, Harman set the stage for his own legal battle. In the weeks before the Markland letter appeared, he wrote that his...
own ideas of free expression stemmed not from the First Amendment—he was no governmentalist—but from natural law. He criticized a government that treated words as deeds and attempted to restrict their utterance because of possible consequences; words, however incendiary, should not be subject to government control.

In a variation on John Stuart Mill’s philosophy, Harman saw a socially therapeutic use for unrestricted speech: it would serve as a vent to those who had evil in their hearts. Free utterance of such thoughts, he had observed, “has the effect of bringing about a reaction or revulsion of feeling in the thinker himself; besides putting others on their guard against him.” In short he felt that freedom of expression never constituted a peril to society, but repression always did.14

Harman’s declaration of a “free language” policy for Lucifer’s correspondents took the issue of free speech beyond the realm of theory. Harman, with Ezra and Angela Heywood of The Word, put into practice the plain-language ideas of Stephen Pearl Andrews. This pioneer sex radical had argued against the notion that words, in themselves, could be obscene. He urged that “dirty” words be reclaimed from disgrace and be put to unblushing use in society: “since there is no obscenity in Nature, no obscenity in Science, and no obscenity in Art,” said Andrews, “there seems no place left for obscenity, but in the defilement of our own imaginations; and that, therefore when our thoughts and imaginations are freshened to the naturalness of nature, used to the clean-cut precision of science, and to the gracious sweetness of Artistic beauty, obscenity will cease to exist among us.”15

In announcing that no contribution to Lucifer would be excluded simply because of words that it contained, Harman explained that he recognized no limits whatever in the realm of words—honest and natural expression must not be abridged in any way. Furthermore, he blasted obscenity laws as counterproductive, and he criticized as absurd the designation of some words as “coarse” and “scurrilous.” He emphasized that this policy was his alone, and not that of E. C. Walker, his junior editor. The hundreds of radicals and scores of sex reformers who read Lucifer required no more obvious invitation than this.16

On the editorial page of the issue in which the Markland letter appeared, Harman devoted more than two full columns to an
explanation of his decision to print the letter. First, the content of the letter illustrated the connection in Harman's mind between his hereditarian beliefs and the sexual liberation of women: an outrage on the mother affects the maternal mind, which transmits every thought and emotion to the "plastic form" of the unborn baby's mind and to its body. The baby born of such circumstances could be mentally and physically warped beyond repair.

In an age when the consequences of coitus were heavily exacted of the female, most acts of coitus, not to mention rape, represented a limited outrage against the woman. The Markland letter served as the extreme illustration of all women's situation. If Proudhon's philosophy could be aphorized to "Property is theft," then Harman's could be to "Marriage is rape." He wrote: "Maternity is more often forced upon her than desired. In other words, children are born under protest of the mother. She simply submits . . . because she thinks her duty to her husband requires obedience in the sex-relation." Children most often represented the fruit of exploitation and injustice rather than of love, and they, in turn, transmitted their defective inheritance.

Harman's own Victorianism should not be overlooked in this connection. Lucifer's most respectable supporter, former governor Charles Robinson, pointed out that "every physician in his practice finds cases corroborative of the cases published by M. Harman, but he is dumb from necessity. . . . How often is a refined young lady wedded to an uncultured, uncouth brute, who conceals his real character until married, but as soon as revealed the wife loses all respect, to say nothing of love, for her husband. From that moment she is doomed to a life of terror and torture, which Madam Grundy compels her to bear in silence. It is for such as these that M. Harman has been speaking." The "War Governor" of Kansas expressed well the common feeling in the woman movement, that sex itself was mostly an insult to the more delicate sensibilities of Victorian womanhood, and the more uncouth the act, the greater the evil. 17

Claiming a higher purity than puritanism, however, the martyr-on-the-make challenged the Victorian code of secrecy; exposure of evils, regardless of how "awful," constituted the first step in healing them. From the abolitionist crusade, Harman recalled that case examples of abuse brought more results than abstract moralizing.
The system itself must be changed or abolished if it be the cause of abuses, wrote Harman, in a favorite inference from slavery to marriage.

Finally, in printing the plain words of Lucifer's correspondents, Harman tested his notion of absolute free speech. He had written earlier that "words are not deeds, and it is not the province of civil law to take preventive measures against remote or possible consequences of words, no matter how violent or 'incendiary.' " People needed no government to protect them from words, he believed. The justification of the Markland letter concluded with a note to the squeamish: "All words have their legitimate use . . . we wish to offend no one . . . but he or she who cannot bear the plain, scientific use of words and phrases is already lost to usefulness in the grand army of progress." 18

The next week in Lucifer, Harman discussed the relationship of obscenity to Christian morality, pointing out that in a situation of equal rights, no man could rightfully by law compel another to conform to his own personal code of morals or, for that matter, to his own definition of obscenity. Developing his argument into an appeal for forthright sex education for children, Harman looked forward to a new generation which, presumably at least, would not be overwhelmed by the word "penis" in print.

Behind the explicit reasons for printing the awful letters lay a strategy of publicity, a force that Harman knew could not only unmask the subversion of the censors but could also turn Lucifer into a paying enterprise and assure Harman a hero's niche in history. Would not Ezra Heywood compare Harman to William Lloyd Garrison and John Brown, as well as to D. M. Bennett, whose trial and imprisonment "boomed his books, made his paper a paying, world-wide power, and himself immortal in history!" 19

The federal grand jury in Topeka first indicted the Lucifer staff on 270 counts of obscenity. This indictment, drawn up with the aid of the western agent of the Society for Suppression of Vice, R. W. McAfee, apparently took refuge in numbers because the jurymen could not bring themselves to specify exact instances of obscenity; the paper was "so obscene, lewd and lascivious as to dispense with the incorporation of the words and figures in this indictment." The jury simply picked nine subscribers, multiplied this number by five offensive issues of Lucifer, then separately and
jointly charged the three journalists with an accumulated 270 counts. This awkward bill caved in before the arguments of *Lucifer*'s attorneys, David Overmeyer and Gaspar C. Clemens of Topeka. These reform lawyers opposed the entrenched Republican government of Kansas and welcomed the chance to debate radical questions with Republican prosecutors and judges. Both became stalwarts in *Lucifer*'s legal battles, a struggle that became very lengthy indeed. The grand jury filed a new specific indictment against the journalists, citing the four "awful letters" previously published in *Lucifer*. The court eventually dropped charges against George Harman and Edwin Walker, and Moses Harman faced the courts alone. Almost four years of delays and entanglement would elapse before his final trial for the Markland letter, however.