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“I Know It When I See It”:

The Supreme Court and the Changing Definition of Obscenity

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The Supreme Court’s definition of obscenity, even with many of the landmark decisions, remains somewhat ambiguous. The 1800s unfolded the first obscenity cases in the nation brought before the judiciary; the cases concerned materials believed to violate society’s values on propriety and morality. The Supreme Court’s pursuit in defining obscenity uncovered a series of legal tests to serve as guidelines for the community and lower courts. Still, the establishment of legal tests did not guarantee a strict definition; the last of these tests established by the Supreme Court, the Miller Test (1973), is still subjective and ambiguous. Since settling with the Miller Test, the Supreme Court has not established any other national standards. Justice Stewart reflected the Court’s attitude in his dissent for *Jacobellis v. Ohio*, stating his famous line, “I know it when I see it,” suggesting the existing struggle in the Court to define legal parameters, as one definition of obscenity cannot effectively be applied to every case nor can it stand the test of time. The evolution of societal values throughout the years, from the 1800s to the 1900s, created this difficulty that challenged the Supreme Court’s consistency. The 1960s introduced a sexual revolution, which triggered a reaction from the Courts in an attempt to meet the demands of

society's evolving values on morality. The cases brought before the Supreme Court consistently reflected the change in societal values: prior to the sexual revolution, the Court—always in concurrence with society—deemed the challenged materials brought to them as obscene.

Following the sexual revolution, as society became more accepting, the Court deemed many of the challenged materials not obscene. The concern within the spread of obscenity cases between the 1800s and 1900s evolved accordingly to society's values on morality, thus due to the change in attitude and behavior, especially the growing acceptance of sensuality among Americans, the Supreme Court had to adapt their definition of obscenity in parallel to the demands of society.

The emergence of the first obscenity cases, *Rosen v. United States* (1896) prompted the integration of an English case into the Supreme Court. Without having established a legal test nor definition, the Court adopted the Hicklin Test from an English case, *Regina v. Hicklin* (1868), ruling obscenity as “whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall.”¹ Moreover, the Hicklin Test rejected the idea that the subject matter must be taken as a whole, but rather argued the opposite: “It is not necessary to show that a publication is obscene on every page. A publication may be obscene because part of it is obscene.”² Rosen, as the defendant, pleaded not guilty after facing charges for depositing obscene materials in the mail, in defense that the Rosen himself had no prior knowledge of the subject matter to be obscene. The Supreme Court's prosecution of *Rosen v. United States* (1896), taking the Hicklin Test as its basis, set the precedent in justifying future prosecutions that reflected the societal values of the 19th century. Without having mentioned the First Amendment

¹ J. E. Hall Williams, “Obscenity in Modern English Law,” *Law and Contemporary Problems* 20, no. 4 (Fall 1955): 630-647.

² Ibid.

in the opinion of the Court, the Judicial Branch eschewed obscenity, establishing that the First Amendment does not constitutionally protect obscenity as freedom of expression nor of speech and press—clarified later in *Roth v. United States* (1957). Justice Harlan delivered the opinion of the Court, acknowledging “every obscene, lewd, or lascivious book, pamphlet, picture, paper, writing, print, or other publication of an indecent character...are hereby declared to be nonmailable matter, and shall not be conveyed in the mails, nor delivered from any post office nor by any letter carrier; and any person who shall knowingly deposit, or cause to be deposited, for mailing or delivery, anything declared by this section to be non-mailable matter...shall be deemed guilty of a misdemeanor.”³ The 19th century cases saw prosecutions in favor of societal values on morality with the Court mainly engaging with finding the challenged materials obscene and prohibiting the dissemination of these materials. Though there was no basis except for the Hicklin Test itself adopted from the United Kingdom, the 19th century values dictated the decisions of the judiciary.

In 1957, the Supreme Court landed its first landmark decision in *Roth v. United States* (1957). Combining both *Roth v. United States* (1957) and *Alberts v. California* (1957), the Court established what qualifies a First Amendment protection. Roth and Alberts were both guilty of mailing obscene materials in violation of the federal obscenity statute; both defendants argued that government prohibition of dissemination of obscene materials impinged the First Amendment provision of freedom of expression and press. Though *Rosen v. United States* (1896) steered clear of mentioning the First Amendment altogether, *Roth v. United States* (1957) formally established obscenity is not an area protected by the First Amendment, paving the way for the Court to explicitly determine which category of expression warranted First Amendment

³ *Rosen v. United States*, 161 U.S. 29 (1896).

protection, and specifically what constituted obscene materials. Behind the argument to place obscenity apart from First Amendment protection is a government that “has a significant interest in protecting minors and unwilling passerby from being exposed to obscene materials, that the government has a legitimate interest in protecting and preserving societal mores and values, and lastly that obscenity ‘utterly lacks any redeeming social importance.’ The fundamental notion is that these interests outweigh any benefit (and indeed the argument that there is no benefit) that obscenity may have on society, and as such it is subject matter upon which regulation is important and proper.”⁴

A few years short of the start of the sexual revolution, societal values have evolved since *Rosen v. United States* (1896). The Court found that the Hicklin Test no longer fit the model standard of morality, as the test judges “obscenity by the effect of isolated passages upon the most susceptible persons, might well encompass material legitimately treating with sex, and so it must be rejected as unconstitutionally restrictive of the freedoms of speech and press.”⁵ *Roth v. United States* (1957) is illustrative of the Court’s attempt to create a uniform national standard; the new parameters of obscenity then forms that: “For material to count as obscene ‘it must be established that (a) the dominant theme of the material taken as a whole appeal to a prurient interest in sex; (b) the material is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters; and (c) the material is utterly without redeeming social value.’”⁶ The underlying significance in Roth’s ruling is the government guaranteeing First Amendment protection to materials with social value. A society

⁴ Kamilah Mitchell, “Let’s Talk About Sex: How Societal Value Evolution Has Redefined Obscenity,” *Pace Intellectual Property, Sports & Entertainment Law Forum* 4, no.2 (Spring 2014): 517.

⁵ *Roth v. United States*, 354 U.S. 476 (1957).

⁶ Kent Greenawalt, “Obscenity,” in *Fighting Words: Individuals, Communities, and Liberties of Speech* (Princeton: Princeton University Press, 1995), 99-123.

that was beginning to embrace the idea of the sexual revolution put the Supreme Court to its realization that “sex and obscenity are not synonymous. Obscene material is material which deals with sex in a manner of prurient interest. The portrayal of sex, e.g., in art, literature and scientific works, is not itself sufficient reason to deny material the constitutional protection of freedom of speech and press...It is therefore vital that the standards for judging obscenity safeguard the protection of freedom of speech and press for material which does not treat sex in a manner appealing to prurient interest.”⁷ In differing these two the Judicial Branch is symbolic to the progressive changes occurring in society. For decades, *Roth*’s parameters provided sufficiency to be the basis of future prosecutions for the judiciary. The sixty-year gap since *Rosen v. United States* (1896) allowed the justices a fresh rumination of society’s demands, thus by far eclipsing the standards found in the Hicklin Test.

Following the parameters constructed in *Roth v. United States* (1957), the Supreme Court reaffirmed them in *Jacobellis v. Ohio* (1964). The states convicted Jacobellis for showing a movie the state allegedly deemed obscene. As the case was brought before the Court, the dispositive question “is whether the state courts properly found that the motion picture involved a French film called ‘Les Amants,’ was obscene and hence not entitled to the protection for free expression that is guaranteed by the First and Fourteenth Amendments.”⁸ The tripartite parameters in *Roth* recognized the social value in materials excluding it from being deemed obscene. Justice Brennan delivered the majority opinion of the Court: “We have viewed the film, in the light of the record made in the trial court, and we conclude that it is not obscene within the standards enunciated in *Roth v. United States* and *Alberts v. California*, which we reaffirm

⁷ *Roth v. United States*, 354 U.S. 476 (1957).

⁸ *Jacobellis v. Ohio*, 378 U.S. 184 (1964).

here.”⁹ However, the legacy of *Jacobellis v. Ohio* lies in Justice Stewart’s concurring opinion, acknowledging the struggle to have a precise definition for the First and Fourteenth Amendment. “I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description; and perhaps I could never succeed in intelligibly doing so. But I know it when I see it, and the motion picture involved in this case is not that.”¹⁰ What *Jacobellis v. Ohio* (1964) presented is the significant reduction of government prohibition in monitoring obscenity. While the Hicklin Test would find the movie, “Les Amants” obscene, *Roth*’s jurisprudence deemed it otherwise. Just as society’s values dictated the course of action of the Court’s in *Rosen v. United States* (1896), the undeviating embrace of beliefs of the sexual revolution equally impacted the Courts in *Jacobellis v. Ohio* (1964).

To the extent that the First Amendment protects materials with social values, it also protects a citizen’s private pursuit of obscene materials—books or films. Possessing obscene film reels, which violated Georgia’s statute, brought Stanley’s litigation in *Stanley v. Georgia* (1969). Such litigation then aroused the dispositive question of whether or not Georgia law impinges on the First Amendment freedom of expression; put another way, “If the State can protect the body of a citizen, may it not, argues Georgia, protect his mind?”¹¹ *Stanley v. Georgia* (1969) in specific will account for the rising leniency from the government, as the Court lessened obscenity prohibitions within every case heard. The mindset of the Court here exemplifies a society undergoing substantial change in norms and values. In the progress of resolving the case, the Court did not believe “that this case can be decided simply by citing *Roth*. *Roth* and its

⁹ Ibid.

¹⁰ Ibid.

¹¹ *Stanley v. Georgia*, 394 U.S. 557 (1969).

progeny certainly do mean that the First and Fourteenth Amendments recognize a valid governmental interest in dealing with the problem of obscenity. But the assertion of that interest cannot, in every context, be insulated from all constitutional protections. Neither *Roth* nor any other decision of this Court reaches that far.”¹² This statement conveys a subtle hint that *Roth*’s precedent is no longer adequate for a society that continues to evolve. For the first time did the Court explicate the importance of the First Amendment protection towards obscenity. “The Court now has distinguished that personal privacy is fundamental to a free society, and ruled that the First Amendment and Fourteenth Amendment prohibited anyone to be charged of privately possessing materials.”¹³ Justice Marshall’s interpretation of the First Amendment brought to light that “If the First Amendment means anything, it means that a State has no business telling a man, sitting alone in his own house, what books he may read or what films he may watch. Our whole constitutional heritage rebels at the thought of giving government the power to control men’s minds.”¹⁴ Such a liberal decision tells us the impact of societal values on the Court—that jurisprudence on the topic of obscenity reflects the standards of society.

The Supreme Court’s pursuit in defining obscenity apexed in 1973, when *Miller v. California* (1973) emerged before the Court. *Miller v. California* (1973) is significant because it serves as fundamental guidelines for obscenity cases up to the present day. Since *Roth v. United States* (1957), the Court did not change any of the established parameters, thus the creation of the Miller Test embraces the necessity of this change as society’s demands increase. Compared to the *Rosen v. United States* (1896) or *Roth v. United States* (1957), *Miller v. California* (1973)

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

promotes and accepts sexual freedom. The Miller Test is now the most prominent, also establishing guidelines with three elements: “a) whether the average person applying contemporary community standards would find the work, taken as a whole, appeals to the prurient interest; b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and c) whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value.”¹⁵ Permanently abolishing the requirement that the First Amendment protects those with redeeming social value, the Supreme Court redefined the scope of First Amendment privilege. No longer would any work be deemed obscene for not having social value, as the First Amendment guarantees a bigger area of protection than before. Materials that would once be deemed obscene, “if they were preceded by a poetry reading or followed by the recitation of some moral, it is under the Miller test, the value of the entire work that is to be judged.”¹⁶ The Miller Test continues to be effective because of its subjectivity and ambiguity that forces it to be continually relevant and applicable. Central to *Miller v. California* (1973)’s ruling is the fact that “Neither *Miller v. California* nor its progeny settle the fundamental questions of whether government should, as a matter of policy, suppress the distribution of obscenity, and of whether such suppression is consistent with first amendment values. Nor have these cases resolved the question of what obscenity is. In fact, it shall be a primary thesis of this that the Miller rules are best understood as the basis of a system of obscenity definition in which the question of what is obscene (if not the question of what is not obscene) need never be definitively answered.”¹⁷ Subjectivity becomes strategic to follow along

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

¹⁶ *Ibid.*

¹⁷ “Community Standards, Class Actions, and Obscenity Under *Miller v. California*,” *Harvard Law Review* 88, no. 8 (June 1975): 1839.

society's evolving values. Had the sexual revolution not occur, the Supreme Court would tackle this case differently; however, because Americans demanded a change, the Supreme Court needed to adapt to that change.

These changes included setting the Miller Test apart to cease activities concerning what became a serious national problem across the nation: child pornography. The Supreme Court drew a separation between obscenity and child pornography, and *New York v. Ferber* (1982) is the Supreme Court's attempt to solve this widespread issue. Whether or not this was the Supreme Court's reaction to the demands of society, the protection of minors is still as important since *Roth v. United States* (1957). Justice White delivered the majority opinion of the Court, asserting that, "The Miller standard, like all general definitions of what may be banned as obscene, does not reflect the State's particular and more compelling interest in prosecuting those who promote the sexual exploitation of children. Thus, the question under the Miller test of whether a work, taken as a whole, appeals to the prurient interest of the average person bears no connection to the issue of whether a child has been physically or psychologically harmed in the production of the work."¹⁸ The Miller Test does not qualify for child pornography as it belongs to an entirely different class, and thus the First Amendment does not protect any form of child pornography. *New York. Ferber* (1982) is set apart but may still rely on the Miller test: "the test for child pornography is separate from the obscenity standard enunciated in *Miller*, but may be compared to it for the purpose of clarity."¹⁹

These judicial rulings on obscenity answers the question that the Supreme Court's pursuit in defining obscenity does, in fact, occur concurrently with the evolution of society. Societal

¹⁸ *New York v. Ferber*, 458 U.S. 747 (1982).

¹⁹ *Ibid.*

values as well as the sexual revolution manifested their heavy influence when *Roth v. United States* (1957) and *Miller v. California* (1973) are put into comparison. Using *Roth v. United States* (1957) to validate the claim that the Court and society work concurrently, “Here is a prime example of societal norms reflected in the cases brought before the judiciary. The 1940s and 1950s, if nothing more reflected an era of conservatism with a high emphasis placed upon the sanctity of marriage and family life. Not surprisingly, in reflecting society’s attitudes and value system, the one case which addressed the issue of whether or not the material was in fact obscene, dealt with an assault on the aforementioned value system.”²⁰ At the bottom line of this whole pursuit is society dictating the Supreme Court. Society constructs the changes around the definition of obscenity, and the Court merely reacts to it. The norm and culture within the American community was different at the time of *Roth v. United States* (1957) and *Miller v. California* (1973). For instance, “During the 1940s and 1950s, when societal views on sexuality were very conservative, the seminal obscenity case found the challenged material to be obscene. However in present day, where society’s views on sex and sexuality are arguably more liberal, one of the seminal obscenity cases found the challenged material not to be obscene.”²¹ Had *Rosen v. United States* (1896) reappeared in 1973, the Supreme Court would most likely not enact the same ruling as 1896, as the standards of the Court depended on the standards of the people. In the same way, had *Miller v. California* (1973) appeared in 1896, the Supreme Court would most likely not establish the same legal parameters. What this means for the American society as a whole then, is “that as society’s values have evolved, so too has the subject matter of obscenity cases put before the judiciary, as is seen with the cases in the present day. As with the

²⁰ Mitchell., 506.

²¹ Ibid., 509.

cases brought before the judiciary in the 1940s and 1950s, the subject matter of the cases in the 2000s evidenced the dramatic changes of society's views on sex and sexuality."²² Societal values is the single largest contributing factor to the definition changes regarding obscenity. As long as society keeps evolving, so will the Court's standards. Behind this pursuit is the Supreme Court and the American people working hand-in-hand to define obscenity together.

The leading push towards the evolving values and morality stemmed from the introduction of the sexual revolution in the 1960s, which dramatically changed both society and its values as well as the Supreme Court. The beliefs behind the sexual revolution that gave rise to a new mindset provide explanation to why Supreme Court rulings after *Roth v. United States* (1957) leaned more liberal. Historians John D'Emilio and Estelle Freedman named the revolution in specific sexual liberalism—a change that “encompassed a great variety of ideas and behaviors, but at its heart it involved the modernizing of Victorian norms, generally within such existing structures as marriage and heterosexuality. Thus, marital sexual pleasure, and even some premarital sexual experimentation, became increasingly acceptable, aided by the sexualized consumer culture and its accompanying advertising industry sprouting at the time.”²³ Concurrent with this new mentality is a twentieth-century sex scandal involving Evelyn Nesbit, who subsequent to the scandal pushed for a new portrayal and acceptance of female sexuality. Taking advantage of her fame, Nesbit delved into the entertainment industry as an actress who symbolized the current societal culture. Nesbit's career highlights the fact that “while endless press coverage of sensationalized scandal was nothing new, the frank discussion of pre and extramarital sex showed a society publicly acknowledging and negotiating the tenuous

²² Ibid., 507-508.

²³ Whitney Strub, *Obscenity Rules: Roth v. United States and the Long Struggle over Sexual Expression* (Lawrence: University Press of Kansas, 2013), 41.

boundaries of acceptable sexual behavior, adjusting to the rising awareness that Victorian norms failed to dictate urban modes of living.”²⁴ To summarize how heavy the sexual revolution influenced Supreme Court cases, the Court established in *Roth v. United States* (1957) that the First Amendment does not protect areas of obscenity; in *Stanley v. Georgia* (1969) that the First Amendment prohibits government’s interference in a citizen’s private pursuit of obscene materials; in *Miller v. California* (1973), that the First Amendment protects obscene materials if the work is taken as a whole. Each new case that surfaced to the Supreme Court demonstrated a First Amendment progression.

Women’s rights for a zone of privacy—especially the access to contraceptives—became the focal point of the sexual revolution. The social pushback against the Comstock Act of 1873 which prohibited the spread of information about birth control and abortion spawned this new era of modern sexuality and activists. Margaret Sanger saw the frequency of women “trapped in cycles of unwanted pregnancies and unsafe, illegal abortions” commenting in her book that [Comstock’s] neurotic nature and savage methods of attack had ruined thousands of women’s lives.”²⁵ The drive for women’s right to birth control culminated in a judicial manifestation of a modern sexuality mindset. Behind *Stanley v. Georgia* (1969) and *Miller v. California* (1973) is a collective group of Americans demanding a zone of privacy, or in other means, a right to personal autonomy. Fulfilling this demand is also the Supreme Court citing among many of the constitutional rights, the Due Process Clause of the 14th Amendment and the penumbra of the Bill of Rights, specifically in *Griswold v. Connecticut* (1965) and later reaffirmed in *Roe v. Wade* (1972). This zone of privacy justified Justice Marshall’s consent in *Stanley v. Georgia* (1969) to

²⁴ Ibid., 39.

²⁵ Ibid., 41.

let a man possess or view obscene materials in his own home. The desire for a zone of privacy derived from seeing birth control as fundamental to women's lives, as "the Pill was a great 'enabler.' With The Pill, large numbers of college women could embark on careers that involved long term, up-front time commitments in education and training as physicians, lawyers, veterinarians, managers, and academics, among others."²⁶ Without access to contraception, women had no power to regulate pregnancies and the dream of pursuing a career became limited. Sanger believed that a "woman's power can only be expressed and make itself felt when she refuses the task of bringing unwanted children into the world to be exploited in industry and slaughtered in wars."²⁷ Women's right meant refusing to bear children, in part for the avoidance of child labor and child pornography as well as to pursue their careers. The sexual revolution rested around women "further assert[ing] her power by refusing to remain the passive instrument of sensual self-gratification on the part of men."²⁸ In essence, the sexual revolution is women's collective action, voicing their rights to a career instead of simply motherhood. According to Margaret Sanger herself, birth control pills are the lesser evil to abortion; as "birth control has always been practiced, beginning with infanticide, which is abhorred, and then by abortion, nearly as bad. Contraception, on the other hand, is harmless."²⁹ The liberal attitudes of the Supreme Court that developed out of the sexual revolution did in a way support women's rights.

²⁶ Robert H. Frank, "The Sexual Revolution Revisited," in *Under the Influence: Putting Peer Pressure to Work* (Princeton: Princeton University Press, 2020), 82-83.

²⁷ Margaret Sanger, "The Need for Birth Control (1922)," in *For the Record: A Documentary History of America, Volume 2*, ed. David E. Shi and Holly A. Mayer (New York: W.W. Norton & Company, 2018), 166-168.

²⁸ Ibid.

²⁹ Ingrid Mundt, "Margaret Sanger, Taking a Stand for Birth Control," *The History Teacher* 51, no.1 (Nov 2017): 125.

Government's reduction of prohibition increased in concurrence with the society's growing acceptance of sexuality.

Notwithstanding the fact that the sexual revolution emphasized the need for birth control among women, many historians also argue that what marked the sexual revolution significant was not the pills, but rather, society's new way of thinking about sex. In reality, "Many of the behaviors predisposed by the pill were already common, albeit covert, features of American life once the pill became available. The pill added fuel to a smoldering fire; it didn't start the blaze, but it certainly accelerated it and ensured its spread."³⁰ The buildup to the sexual revolution in the 1950s included the use of birth control pills, though it might not have been as widespread. Meaning that at the time the Supreme Court heard *Roth v. United States* (1957), the acknowledgment of birth control pills as a necessity and the liberal attitudes on sexuality had already existed. Thus if the pinnacle of the sexual revolution did not escalate on birth control pills, it escalated on society's progress towards a liberal mindset and attitudes; and, "a far more important predictor of the frequency with which people engaged in premarital sex in any era was the degree to which people believed that it was socially acceptable to do so. And in circular fashion, the degree to which people held that belief was itself strongly dependent on the proportion of people who were engaging in premarital sex. That proportion, in turn, was the result of many forces besides the pill."³¹ Women found birth control pills necessary to their lives as it allowed them to either escape or put off motherhood, and for this reason, birth control pills will always bear significance. Historian Elaine Tyler May emphasized that it was not pharmaceutical agents that brought changes to societal values. "Pharmaceutical products have a

³⁰ Frank., 81.

³¹ Ibid., 83.

huge impact, but they're not causal agents,' May wrote. 'Sexual behaviors change more as a result of social changes than any kind of technological changes.'"³² Just as societal values impacted the Supreme Court's rulings on obscenity cases, these same values also spawned the sexual revolution with birth control a part of it. The advancement in technology undoubtedly impacted societal values on sex, but these technology innovations did not cause the social pushback against the Comstock Act or the social acceptance of premarital and extramarital sex. Sociologist David John Frank reiterated this, stating that "How we think about sex matters a great deal, of course, and technological innovations also played an important, if indirect, role in how we think about sex."³³ The combination of technological advancement as well as society's modern mindset together brought upon the sexual revolution and the liberal attitudes of the Court. Nevertheless, only after the revolution, did "the days of women being creatures of the home had all but dissipated with more than thirty million women in the workforce in 1990, and nearly 20% women having obtained a bachelor's degree or higher."³⁴

Beyond the walls of the Supreme Court's jurisdiction on obscenity cases lies a transformation of American values and norms. The ambiguity in defining the parameters of obscenity takes root in a society that is constantly evolving. *Rosen v. United States* (1896) presented a society where public discussion of sex was nonexistent; the only reasonable decision then for the Supreme Court was to rule the challenged materials brought before them as obscene, while also prohibiting the shipment of obscene materials. However, by the time *Miller v. California* (1973) emerged before the Supreme Court, the spark of the sexual revolution had

³² Ibid., 84.

³³ Ibid.

³⁴ Mitchell., 503.

gone by for a decade. The focus of the sexual revolution itself ought not to be on birth control pills, though they carried the potential and thus the significance to change the course of a woman's life; but on the fact that society warmed up to the same beliefs that past communities would have deemed obscene, such as during the time *Rosen v. United States* (1896) emerged in Court. Certainly, technological advancements impacted how society approached beliefs and ideas, but the judicial manifestation of liberal rulings solely came from societal values itself. As society evolved its way of thinking, so did the subject matter within obscenity cases brought before the judiciary; no longer did the Supreme Court take on cases to decide whether the challenged material was obscene. The challenge of the Supreme Court consisted of finding the arguments to which obscene materials had First Amendment protection and why. Since the sexual revolution, the Supreme Court mainly focused on constitutional rights, whether it was First Amendment freedom of expression or zone of privacy for women's abortion. Regardless, societal values dictated the Supreme Court's rulings, creating a subjective definition of obscenity to meet the demands of society.

About the author

Madelaine Setiawan is an undergraduate student at Lee University double majoring in History and Political Science. She is the author of "An Unguaranteed Victory: Military Challenges in the Union Army and Lincoln's Call for a Militia." She is set to graduate in Spring 2022 and plans to attend graduate school for American History.

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