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Community Standards and the Regulation of Obscenity

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COMMUNITY STANDARDS AND THE REGULATION OF OBSCENITY

Society regulates expression deemed obscene in various ways. Legal action is only one method by which the community controls the morality of its individual members. A more informal but highly developed system of sanctions and rewards determines to a great extent what we see, hear, and believe. A recent decision by the Supreme Court[1] has strengthened the possibility of community control over the legal regulation of obscenity. Whether this form of control is necessary or desirable will be the focus of this Comment. The problem presented is whether the community's standards of morality and decency can be encouraged or enforced without abridging first amendment rights. And if so, should that enforcement be by informal or formal means?

In recent years the Supreme Court has uniformly held that obscene material does not fall within the protection of the first amendment.[2]

> [S]uch utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.[3]

The Court has not, however, been able to enunciate with any preciseness what material is termed obscene and therefore, will not receive the first amendment's protection. This inability to provide clear standards is due at least in part to the changing values of our society. The term obscenity does not have legal meaning in and of itself. Its meaning changes with the values of the community in which it exists.[4] Since the Court has

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

2. *Id.* at 23; Kois v. Wisconsin, 408 U.S. 229, 230 (1972); Roth v. United States, 354 U.S. 476, 485 (1957). *See also* Beauharnais v. Illinois, 343 U.S. 250, 266 (1952); Winters v. New York, 333 U.S. 507, 510 (1948); Hannegan v. Esquire, Inc., 327 U.S. 146, 158 (1946); Near v. Minnesota, 283 U.S. 697, 716 (1931); Hoke v. United States, 227 U.S. 308, 322 (1913); Robertson v. Baldwin, 165 U.S. 275, 281 (1897); *Ex parte* Jackson, 96 U.S. 727, 736-37 (1878).

3. Chaplinsky v. New Hampshire, 315 U.S. 568, 572 (1942).

4. It cannot be defined so that it will mean the same to all people all the time, everywhere . . . . [It] is not the same in the minds of the people of every clime and country, nor the same today that it was yesterday or will be tomorrow.

State v. Lerner, 81 N.E.2d 282, 286 (C.P., Hamilton County, Ohio 1948).

clearly indicated that the first amendment embraces the dissemination of ideas,[5] it follows that erotic material may be entitled to constitutional protection.

> All ideas having even the slightest redeeming social importance—unorthodox ideas, controversial ideas, even ideas hateful to the prevailing climate of opinion—have the full protection of the guaranties, unless excludable because they encroach upon the limited area of more important interests.[6]

Why then must obscenity be regulated at all? The first amendment clearly states that freedom of speech and of the press shall not be abridged and this guarantee has been applied to the states through the fourteenth amendment.[7] May the interest of the community in preserving its own standards of morality and decency override such an important fundamental right? While many reasons have been advanced to justify the legal repression of obscenity, some of the more common, as expressed by Professor Emerson, are:

> (1) that the expression has an adverse moral impact, apart from any effect upon overt behavior; (2) that the expression may stimulate or induce subsequent conduct in violation of the law; (3) that the expression may produce adverse effects on personality and attitudes which in the long run lead to illegal behavior; (4) that the expression has a shock effect, of an emotionally disturbing nature; and (5) that the expression has especially adverse effects . . . upon children, who are intellectually and emotionally immature.[8]

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5. *See, e.g.*, Thornhill v. Alabama, 310 U.S. 88 (1940). In overturning a conviction for illegal picketing, the Court said:

> Freedom of discussion, if it would fulfill its historic function in this nation, must embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period.

Id. at 102.

6. Roth v. United States, 354 U.S. 476, 484 (1957). The Court went on to point out that "implicit in the history of the First Amendment is the rejection of obscenity as utterly without redeeming social importance." *Id.* In keeping with this theory of the first amendment, the Court in Kingsley Int'l Pictures Corp. v. Regents of Univ. of N.Y., 360 U.S. 684 (1959), reversed a refusal of the Regents to license the showing of a movie which portrayed adultery as moral behavior. The guarantee of the first amendment is not confined to the expression of ideas shared by the majority of the community. *Id.* at 689.

The Court struck down as vague a statute which permitted prior restraint on the basis of the "sacrilegious" nature of the material sought to be exhibited.

> If there be capacity for evil it may be relevant in determining the permissible scope of community control, but it does not authorize substantially unbridled censorship such as we have here.

Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495, 502 (1952).

7. *See* Near v. Minnesota, 283 U.S. 697 (1931); Fiske v. Kansas, 274 U.S. 380 (1927).

8. Emerson, *Toward a General Theory of the First Amendment*, 72 YALE L.J. 877, 937 (1963). Professor Emerson rather summarily dismisses the first three ar-

None of these allegations have been conclusively proven. Closely monitored tests of the effects of exposure to pornography on children have not been done due to the obvious reluctance of parents to allow their children to participate.[9] In 1970 the President's Commission on Obscenity and Pornography recommended the repeal of statutory prohibitions on the dissemination of sexual materials to consenting adults.[10] Under the auspices of the Commission, scientific studies of the effects of early exposure to pornography on adult behavior were performed which revealed that rapists, for example, were actually seldom exposed to pornographic materials during their adolescence.[11] In other words, an immature attitude toward and lack of knowledge about sex may be more harmful to the individual than at least *some* exposure to erotic materials. Perhaps, then, our goal should be the promotion of healthy attitudes about sexual matters, rather than fear and inhibition.[12]

Citizens involved in actual anti-pornography organizations or campaigns tend to see their opposition as predominately radicals, hippies, college students, and professors. They believe the increase in the availability of

guments and concludes that the last two, while of greater validity, could be accommodated without a general restriction on the freedom of expression. *Id.* at 938-39. Pornography has also been attacked because of its profit-engendering quality and its exploitation of women. While these contentions have merit, these same qualities are shared by a great number of other, presumably legitimate, artistic endeavors protected by the first amendment. *But see* Ginzburg v. United States, 383 U.S. 463 (1966) (publication viewed in light of commercial exploitation of erotica).

9. Studies have been made to determine the adverse effects of television violence on young children with rather shocking results. While it may be conceded that authoritative tests of exposure to pornography should not be performed on children, it might be asked why violence is treated so differently by the public.

10. THE REPORT OF THE COMMISSION OF OBSCENITY AND PORNOGRAPHY 51 (1970). While the Commission made the anticipated "liberal" conclusions, a strong dissent was filed by some Commission members who felt their opinions had been disregarded. The results of scientific studies done for the Commission were published separately in a series of technical reports. Summaries of some of these studies may also be found in 29 J. SOC. ISSUES 1 (No. 3, 1973).

11. Goldstein, *Exposure to Erotic Stimuli and Sexual Deviance*, 29 J. SOC. ISSUES 197, 200 (No. 3, 1973). The rapists studied reported that sex was not a topic of conversation in their homes and they held extremely conservative attitudes about premarital sex. *Id.* at 212. The author concludes that:

> a reasonable amount of exposure to erotica, particularly during adolescence, reflecting a high degree of sexual interest and curiosity, may be correlated with an adult pattern of acceptable heterosexual interest in practice.

Id. at 218.

12. This approach would unfortunately have to include extensive sex education in the schools because many parents would be unable or unwilling to provide this kind of information in the home. Sex education is currently under fire from many parents who believe it is their right to inform or not inform their own children about sex.

pornographic materials threatens "the dominance and prestige of the life-style to which they are committed"[13] and that pornography is somehow causally related to sex crimes, homosexuality, drug addiction, venereal diseases, and rejection of religion. They perceive pornography as a "threat to the very root of life style, the family."[14] While some community groups serve a useful purpose in informing the public about the content of certain movies and books, others merely urge that statutes already on the books be enforced. This tendency to leave social problems to the government, whether local, state, or national, is increasing in many areas. Unfortunately, the government cannot perform all the duties left to it. The cost of enforcement of obscenity statutes is already high,[15] not to mention the time spent by the courts in considering endless appeals from convictions.

Despite the Court's extensive reexamination of the obscenity question in *Miller* and its companion cases,[16] it is still not altogether clear how the community will be able to exert pressure through the legal system. The *Miller* opinion sets forth guidelines, differing only slightly from those applied in the past. The trier of fact is to determine:

> (a) whether "the average person, applying contemporary community standards" would find that 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.[17]

In *Miller* the Court upheld the use of statewide community standards in

13. Zurcher, Kirkpatrick, Cushing, & Bowman, *The Anti-Pornography Campaign: A Symbolic Crusade*, 19 SOC. PROBLEMS 217, 219 (1971).

14. *Id.* at 224. The authors go on to point out that organizations such as those studied, formed particularly for the purpose of fighting the obscenity problem, had little lasting effect, but were instead symbolically successful in bringing the community into the problem. *Id.* at 231. The anti-pornography forces point to the sexual decadence of late Roman Empire civilization and the social practices in Germany in the 30's to support their thesis. *See* M. LEIGH, THE VELVET UNDERGROUND 11 (1963). Others point out that the many other influences on sexual desire are

> so much more frequent . . . and so more potent . . . that the influence of reading is likely, at most, to be relatively insignificant in the composite of forces that lead an individual into conduct deviating from the community sex standards.

United States v. Roth, 237 F.2d 796, 813 (2d Cir. 1956) (Frank, J., concurring).

15. *See* THE REPORT OF THE COMMISSION OF OBSCENITY AND PORNOGRAPHY 38 (1970).

16. Paris Adult Theatre I v. Slaton, 413 U.S. 49 (1973); Kaplan v. California, 413 U.S. 115 (1973); United States v. 12 200-Ft. Reels of Super 8 MM. Film, 413 U.S. 123 (1973); United States v. Orito, 413 U.S. 139 (1973).

17. Miller v. California, 413 U.S. 15, 24 (1973).

determining what is obscene.[18] Chief Justice Burger, writing for the majority, quoted from an earlier Chief Justice who felt that "no provable 'national standard' " existed.[19] This decision represents the first time a majority of the Court has been able to agree on what standard should be applied.

The history of legal repression of pornography in America is surprisingly recent.[20] The concept of a community standard was first suggested by Judge Learned Hand in 1913. In applying a rule of which he disapproved, Hand said:

> [T]he rule as laid down, however consonant it may be with mid-Victorian morals, does not seem to me to answer to the understanding and morality of the present time. . . .
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> . . . .
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> If there be no abstract definition. . . should not the word "obscene" be allowed to indicate the present critical point in the compromise between candor and shame at which *the community* may have arrived here and now?[21]

Judge Hand felt that although the meaning given to the statutory language would differ from time to time, the words themselves "do not embalm the precise morals of an age or place. . . ."[22] In other words, the moral standards of society change, and, therefore, the meaning given to statutes regulating morality should change with them. In the ensuing years the Supreme Court did not speak to the issue of community standards. Finally in *Roth v. United States*[23] the Court announced a new test: that the "average person, applying contemporary community standards," would

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18. *Id.* at 33-34.

> Nothing in the First Amendment requires that a jury must consider hypothetical and unascertainable "national standards" when attempting to determine whether certain materials are obscene as a matter of fact.

Id. at 31-32.

19. Jacobellis v. Ohio, 378 U.S. 184, 200 (1964) (Warren, C.J., dissenting).

20. *See* R. LISTON, THE RIGHT TO KNOW: CENSORSHIP IN AMERICA 19-28 (1973); Lockhart & McClure, *Literature, the Law of Obscenity, and the Constitution,* 38 MINN. L. REV. 295, 324-29 (1954). It is, of course, possible that obscenity was not regulated earlier by statute in the United States because such regulation was unnecessary. The community retained a great deal of control by more subtle means; also, many people were unable to read, thus preventing the lower, and presumably more impressionable, classes from exposure to pornographic materials. As education increased and the Industrial Revolution brought the Victorian age to a close, those who resisted the morality, or lack thereof, displayed in contemporary literature sought to keep pornographic material from the masses through legal means.

21. United States v. Kennerley, 209 F. 119, 120-21 (S.D. N.Y. 1913) (emphasis added). Judge Hand went on to suggest that the jury establish that standard in each case. *Id.* at 121.

22. *Id.* at 121.

23. 354 U.S. 476 (1957).

find that the material as a whole appealed to the prurient interest.[24] Unfortunately the *Roth* decision did not define the scope of the "community" it envisioned. By the time *Jacobellis v. Ohio*[25] was decided, the members of the Court were hopelessly split on many issues, including the problem of the type of standard to apply. Justice Brennan, joined by Justice Goldberg, thought the standard should be national because "to sustain the suppression of a particular book or film in one locality would deter its dissemination in other localities where it might be held not obscene . . . ."[26] While Justice Brennan recognized that communities are diverse, he thought they also differed in "respects other than their toleration of alleged obscenity, and such variances have never been considered to require or justify a varying standard for application of the Federal Constitution."[27] Chief Justice Warren, on the other hand, felt that the *Roth* opinion required a community, not a national, standard.[28] Many courts in the years to follow did not feel constrained to apply Brennan's formulation of a national standard because his opinion had not been joined in by a majority of the Court.[29]

The possible chilling effect on expression and the possibility of "the vagaries of local censorship and political opportunism"[30] seem to be the

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24. *Id.* at 489.

25. 378 U.S. 184 (1964).

26. *Id.* at 194.

> It would be a hardy person who would sell a book or exhibit a film anywhere in the land after this Court had sustained the judgment of one "community" holding it to be outside the constitutional protection.

Id.

27. *Id. See, e.g.*, Pennekamp v. Florida, 328 U.S. 331 (1946), in which the Court in applying the clear and present danger test refused to uphold a contempt citation for publishing cartoons critical of the courts, because to do so would allow the "constitutional limits of free expression in the Nation [to] vary with state lines." *Id.* at 335.

28. 378 U.S. 184, 200 (Warren, C.J., dissenting). Another interesting analysis to be found in this dissent is Warren's comparison of the nebulous terms "negligence" and "obscenity." Although indefinable, the courts have always managed to cope with negligence rather efficiently. *Id.* at 199.

29. *See* Comment, *The Geography of Obscenity's "Contemporary Community Standard,"* 8 WAKE FOREST L. REV. 81 (1971), for a comprehensive listing of cases dealing with this question. Several conclusions might be drawn from the cases: (1) Federal courts tend to favor a national standard since they construe mail and customs laws of nationwide applicability; (2) state courts are split among national, state and municipal standards; (3) some courts, both state and federal, have tried to apply the standard of the area from which the jury venire was drawn. *Id.* at 81-82. Federal courts often rely on the opinion of Justice Harlan in Manual Enterprises, Inc. v. Day, 370 U.S. 478 (1962), in cases involving federal statutes.

30. Meyer v. Austin, 319 F. Supp. 457, 466 (M.D. Fla. 1970). *See* State v. Hudson County News Co., 41 N.J. 247, 196 A.2d 225 (1963) (local standard would alter

most common fears expressed concerning local standards.[31] While the effects of a local standard on writers, publishers, and moviemakers would be difficult to ascertain, it has long been thought that

> the lack of definiteness in any standard of obscenity, the absence of even a uniform indefinite standard applicable throughout the nation, and the constant threat of prosecution instigated by some local smut-hound cannot help but have a repressive effect upon authors and publishers.[32]

A Michigan court, on the other hand, dismissed the "chilling effect" argument and said that, on the contrary, distributors could act with more certainty because a local standard could be more easily ascertained.[33] The statewide test upheld in *Miller* at least obviates the problem of ascertaining the actual boundaries of the affected community, but it does little to alleviate the other problems. Certainly a state such as Illinois or California is as diverse as a whole nation. Even within individual cities, varying standards of morality may be advocated by large groups.[34] But, it might be argued that at least state criminal laws should be applied uniformly within the state.

Despite the considerable attention given to the community standard

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first amendment coverage). The federal government might be induced to forum-shop in an effort to find the most conservative local community whose standards might then be applied. United States v. Groner, 479 F.2d 577, 591 (5th Cir. 1973) (Thornberry, J., dissenting).

31. Jenkins v. Georgia, 94 S. Ct. 2750 (1974) demonstrates the dangers involved when a local jury has the discretion of setting obscenity standards. In this case, a small Southern community convicted a local movie theater manager for "distributing obscene material" after he had exhibited the film "Carnal Knowledge." Far from depicting "hard core sexual acts" "Carnal Knowledge" presented a documentary on the lives of two young men growing up in a changing society. The Supreme Court recognized the need for judicial guidance in the community standard area by reversing the conviction which only could have served to "chill" free expression as well as stifle works with literary and artistic merit.

32. Lockhart & McClure, *Literature, the Law of Obscenity, and the Constitution,* 38 MINN. L. REV. 295, 372 (1954). The authors also fear that the censor "is compulsively interested only in finding what he seeks and in its merciless and indiscriminate suppression once he finds it." *Id.* at 392. *See* I. CARMEN, MOVIES, CENSORSHIP, AND THE LAW 125-224 (1966), for a discussion of how state and local censorship is accomplished.

33. People v. Bloss, 27 Mich. App. 687, 709-10, 184 N.W.2d 299, 310-11 (1970). It might also be argued that although obscenity laws are not presently enforced in a uniform manner, there is no apparent chilling effect.

34. Chicago has many older, ethnic, residential neighborhoods whose populace hold more conservative views than, for example, the affluent socialites of the Near North Side. And there is certainly more diversity between rural and metropolitan communities within a single state than exists between the cities of New York and Los Angeles. *See also* Comment, *Obscenity: The Lingering Uncertainty*, 2 N.Y.U. REV. L. & SOC. CHANGE 1, 9 (1972), which asks the question who in the community will be responsible for enunciating its standards.

question by both courts and commentators, the foregoing discussion indicates that little agreement actually exists. Another area of disagreement is whether the question of the obscenity of a movie or book is a question of fact to be determined by a judge or jury. Or is it, as some have suggested, "a question of constitutional *judgment* of the most sensitive and delicate kind"[35] to be decided on a case by case basis by the Supreme Court?[36] It is also a matter of some speculation whether any standard other than the judge's or juror's own can or will be applied.[37] Justice Stewart reflected the difficulty of determining the *community* standard when he admitted that although he was unable to define "obscenity," he was certain that he knew it when he saw it.[38] Thus verdicts may be the product of "both the individual judge's interpretation of vague guidelines and statutes and his personal opinion about the wisdom of censoring pornography."[39] Can we expect jurors to be more perceptive than a Supreme Court Justice?[40] And will the jurors have the benefit of expert wit-

35. Roth v. United States, 354 U.S. 476, 498 (1957) (Harlan, J., concurring in the result in Alberts v. California, dissenting in *Roth*).

36. The Court's preoccupation with obscenity cases has not gone unchallenged. *See, e.g.*, O'Meara & Shaffer, *Obscenity in the Supreme Court: A Note on* Jacobellis v. Ohio, 40 NOTRE DAME LAW. 1 (1964). The authors suggest that the jury is the proper vehicle for such factual determinations in as much as it reflects the community's "morals and mores more truly than even the wisest of judges." *Id.* at 12.

To the argument that the Court should review obscenity convictions only to determine whether substantial evidence was presented to sustain them, Justice Brennan replied that "[t]he suggestion is appealing, since it would lift from our shoulders a difficult, recurring, and unpleasant task. But we cannot accept it." Jacobellis v. Ohio, 378 U.S. 184, 187 (1964). Evidently so long as obscenity laws exist, the Court will be forced to review convictions under them to ensure that first amendment rights have not been infringed.

37. The late Justice Frankfurter expressed his doubts on this subject:

> [T]he determination of obscenity is for juror or judge, not on the basis of his upbringing or restricted reflection or the particular experience of life, but on the basis of "contemporary community standards."

Smith v. California, 361 U.S. 147, 165 (1959) (Frankfurter, J., concurring).

38. Jacobellis v. Ohio, 378 U.S. 184, 197 (1964) (Stewart, J., concurring). It might also be argued that using the standard of the person with average sexual instincts to determine the appeal to prurient interest might be somewhat misleading since that person is more likely to view pornography with disgust than with interest. Lockhart & McClure, *Censorship of Obscenity: The Developing Constitutional Standards*, 45 MINN. L. REV. 5, 72-73 (1960).

39. Comment, *New Prosecutorial Techniques and Continued Judicial Vagueness: An Argument for Abandoning Obscenity as a Legal Concept*, 21 U.C.L.A. L. REV. 181, 187 (1973).

40. Some would say yes. Justice Black once condemned the Court as a possible board of censors. "[T]he Justices of this Court seem especially unsuited to make the kind of value judgments—as to what movies are good or bad for local communities . . . ." Kingsley Int'l Pictures Corp. v. Regents of Univ. of N.Y., 360 U.S. 684, 690 (1959) (Black, J., concurring). *See also* Smith v. California, 361 U.S. 147, 159 (1959) (Black, J., concurring); R. KUH, FOOLISH FIGLEAVES? 37 (1967).

nesses on the question of the community's standards?[41]

The practical importance of the community standard reformulation of *Miller v. California* is as yet unknown. If the appellate courts should strictly construe and positively enforce the other criteria the Supreme Court has enunciated, particularly by requiring a lack of serious literary or artistic value, without applying community standards to those two criteria, the degree of local community control realized could be fairly insignificant. If, on the other hand, the courts should apply local standards to the concept of literary or artistic value, the effects of this portion of *Miller* could be serious and far-reaching. The *Miller* opinion does not yet offer the potential defendant in an obscenity case the degree of certainty necessary to allow him to conform his conduct to that standard.[42] And certainly prosecutors, who responded to *Miller* with a flurry of activity, need some clarification in order to more fairly apply the decision to their own cases.[43]

We know that censorship of "obscene" materials will continue, whether by legal or more informal societal means. The medium of television is censored by a variety of means, none strictly legal in nature. Advertisers and the networks themselves regulate what is shown. The television code subscribed to by individual stations prohibits nudity, sex and profanity. And the FCC looms as a potential super-censor with the power of license renewal.[44] The movie rating system used by the Motion Picture Association of America provides information to moviegoers about what they are likely to see in a given movie, but does not actually control the production of the obscene. Movies rated "X" by the MPAA are, in fact, often highly successful.[45]

Unfortunately, the more informal methods of censorship carry an even

41. A California court in a case decided after *Miller* said expert testimony could be ignored if the jury found that the conduct in question was so patently offensive as to violate any conceivable community standard and so long as the material in question was actually in evidence. People v. Enskat, 33 Cal. App. 3d 900, 914, 109 Cal. Rptr. 433, 443 (1973). *See also* United States v. Groner, 479 F.2d 577 (5th Cir.), *vacated*, 414 U.S. 969 (1973). The lower court had held that the government need not offer expert testimony as to community standards. *Accord*, Little Art Corp. v. Nebraska, 189 Neb. 681, 204 N.W.2d 574, *vacated*, 414 U.S. 992 (1973).

42. *See* United States v. Petrillo, 332 U.S. 1, 8 (1947).

43. The case of Billy Jenkins, convicted of a violation of a Georgia obscenity statute for showing "Carnal Knowledge," is an example of gross misinterpretation of the Supreme Court's meaning. The Court will be forced to continue to hear obscenity cases until prosecutors become aware of all the criteria. Jenkins v. State, 230 Ga. 726, 199 S.E.2d 183 (1973), *rev'd*, 94 S. Ct. 2750 (1974). *See* note 31 *supra*.

44. R. LISTON, THE RIGHT TO KNOW: CENSORSHIP IN AMERICA 55-62 (1973).

45. *Id.* at 53-54.

greater threat of repression than do legal means. Where legal methods are ineffective or not enforced, individuals and groups can apply psychological and economic pressures to accomplish the same result.[46] There was a proliferation of anti-obscenity groups in the 1950's and 60's which were not, for the most part, constructive or even particularly well-meaning. They were primarily interested in the suppression of ideas and expression with which they did not agree.

Legal control over the dissemination of obscenity is at best difficult, but it may well be the least dangerous alternative. Justice Brennan, author of the Court's opinions in *Roth*, *Jacobellis*, and other important obscenity cases,[47] has finally abandoned the idea of censorship of obscenity for consenting adults because the problem of censorship has "demanded so substantial a commitment of our time, generated such disharmony of views, and remained so resistant to the formulation of stable and manageable standards."[48] While the reformulation contained in the *Miller* opinion answers but a few of the questions posed by the obscenity problem, the Court has made a legitimate attempt to reassert community control over what will be read, seen and heard in the local community. The legal regulation of obscenity may be unnecessary and undesirable, but it appears that it will continue. To expect local judges and juries to apply their own community's standards without abridging first amendment rights may be asking too much,[49] but leaving censorship to the informal means employed by the anti-obscenity forces is even more dangerous. And while the Court may be forced to continue to hear hundreds of obscenity appeals each year, as a board of censors they are certainly better equipped than the legions of decency to protect the first amendment from fatal erosion.

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46. *Id.* at 78. The author uses the case of Lenny Bruce as an illustration. Although Bruce's obscenity conviction was eventually overturned, he was blacklisted from the night club business, prosecuted in many cities and turned to alcohol and drugs.

47. Memoirs v. Massachusetts, 383 U.S. 413 (1966); Ginzburg v. United States, 383 U.S. 463 (1966).

48. Paris Adult Theatre I v. Slaton, 413 U.S. 49, 73 (1973) (Brennan, J., dissenting).

49. *See, e.g.*, Jenkins v. Georgia, 94 S. Ct. 2750 (1974).

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