

# **Obscenity and Pornography: Are U.S. laws infringing on our constitutional rights and impacting our views on sex?**

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## **Abstract:**

Since ancient times, sex and sexuality have been viewed in a negative light causing obscenity and pornography to become a prevalent and highly controversial debate in history. Over time, however, the U.S. government has created several laws and restrictions on what they consider to be obscene acts and materials, despite not being able to clearly define the word itself. While some of the regulations are justifiable, a significant amount of obscenity contains artistic, academic, or social value in some way and goes unprotected by the First Amendment. These specific confinements have directly resulted in the repression of sexual expression, furthering the growth of the stigma around sex; that being a sexual being is deviant, shameful, and something to keep quiet about. To understand why attitudes towards sex and sexuality have become hostile and silenced, it is important to look take a neutral look at the history and evolution of obscenity and pornography laws through major court cases and rulings that bring us to our current governmental stance. Even though a large reason these laws have been put in place is to protect the innocence of children, it may be harming them in the end. In growing up thinking that sex and sexuality is something to hide and be detached from, it may lead them to never be comfortable with who they are. Regardless of how these laws might be amended in the future, controversy will remain high and stigmas will continue to grow if more tangible guidelines to a definition of obscenity or specific limitations are not created.

Sigmund Freud, an Austrian Neurologist and creator of psychoanalysis once said, “Sexuality is the key to the problems of the psychoneuroses and of the neuroses in general. No one who disdains the key will ever be able to unlock the door” (Freud, 1905). While sex and sexuality have grown to become a topic linked with shame and silence, it is also a key part of what makes us human. In reality, those who choose to deny or ignore sexual human nature prohibit their ability to understand who we are on a deeper level. For centuries, Americans have battled socially, politically, and legally over the regulation of laws on sex and obscenity frequently related to pornography. As a result of the inevitable role religion plays in governing American views on sex, key questions have been brought to surface regarding freedom and constitutionality. In ancient times, the lesser separation of church and state resulted in harsh opinions on sex and sexuality in American civilization. Although Ancient Roman and Greek culture saw sex as a natural and positive part of the human experience, it wasn’t long until new ideals took precedence. Upon the birth of Christianity and the collapse of the Roman Empire, the “typical” views on sex began to take effect. These religious values told their followers that sex was a moral sin (Stone, 2018). Even though the American government has since divided religion from law, the Christian morals that framed our society have made a lasting impression in the minds of the American population causing powerful stigmas and negative connotations to be placed on the talk, acceptance, and regulation of obscenity laws.

While obscenity has been a difficult topic for governmental regulation because of its relation to the First Amendment and right to freedom of expression, lawmakers have been quick to place countless limitations in the area. Even though topics like pornography are highly regulated, there still lacks a true and clear definition of obscenity. This has left many people

victims of the law in part because no one has been able to clarify what is and is not allowed. As a whole, the evolution of American obscenity laws, specifically pornography, have contributed to the negative stigma around sexual expression across the nation.

While the U.S. constitution does not cover topics of obscenity, certain issues have been brought to the Supreme Court regarding obscene materials and pornography that have created our country's foundation for obscenity regulations. Additionally, these cases gave birth to major controversies across the U.S. about our First Amendment rights and freedom of expression. In 1957, a man named Roth was convicted of circulating (by mail) obscene materials through his book-selling business in violation of an obscenity statute. Roth challenged his conviction, raising the question of whether the consensual mailing of obscene materials was a violation of his First Amendment right and freedom of expression. In a 6 to 3 decision, the court held that obscenity was not "within the area of constitutionality" and that not all forms of expression were intended to be protected by the First Amendment, especially if they lack social value (*Oyez, Roth V. United States*). In *Miller v. California*, held in 1973, the appellant Marvin Miller, was also convicted of mailing obscene materials, but the Supreme Court's decision resulted in new qualifications for what these 'materials' entail. While the court strongly stated that obscene material is not guaranteed protection by the First Amendment, the judges realized that there needed to be a better way to determine what is obscene and what is not; this led to the creation of the three pronged Miller Test. The Miller Test includes the following:

"(1) whether the average person applying contemporary community standards would find the work, taken as a whole, appeals to the prurient interest;

- (2) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and
- (3) whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value.” (Lind & Rankin, 2013, p. 2)

Since this test was put in place, federal law now prohibits “the possession with intent to sell or distribute obscenity, to send, ship, or receive obscenity, to import obscenity, and to transport obscenity across state borders for purposes of distribution” (*Citizen's guide To U.S. federal law on obscenity*, 2018). If convicted of these crimes there is a wide range of punishments, such as high fines or a long sentence.

Additionally, anything involving obscenity and minors results in even more severe consequences. While legal areas such as child pornography or unsolicited distribution of porn by mail seem are attempted to be made clear, the Miller Test has brought confusion upon citizens as to what their rights allow. While lawmakers attempted to give guidelines to define obscenity, “value” was never defined. When it comes to determining whether something has scientific, literary, artistic, or political value, it can be a grey area because “value” is largely based on personal opinion. These vague descriptions leave the U.S. population wondering whether certain materials might land them in jail. American laws have made clear what is not okay, but have yet to tackle where we draw the line with “obscene” material.

This issue holds importance in past, present, and future society because humans will always be sexual beings by nature- built to have desires, curiosities, and passions. Since the Miller Test was created, the government has put the obscenity battle to rest by ignoring anything not deemed as extreme cases which is why porn is so attainable now. The government realized

that it is nearly impossible to prevent every person from getting pornographic material in their hands, and maybe they realized that citizens really do have the right to enjoy what materials they deem to be of value to them, within reason.

In recent years, the morality and legality of porn has become one of the most debatable topics across the nation; many believe that porn is immoral, leads to violence, and creates anti-feminist views. In a 2017 article posted on FightTheNewDrug.Org called “How Consuming Porn Can Lead to Violence” people argue that the access and intake of porn can create sexual offenders and morally corrupt people. It is described how the harmful behavior towards women in porn makes viewers believe that it is a normal way to treat a woman (*How consuming porn can lead to violence*, 2018). In other words, the people watching videos that depict harsh or graphic sexual or physical actions towards women will begin to mirror what they see. The article also elaborates on how watching violent porn can actually create violent people (*How consuming porn can lead to violence*, 2018). In Michael Schmitz’s 2016 Washington Post article entitled, “The Case for Banning Pornography”, he touches upon the U.S. government’s ability to “ban” rape, murder, and theft, and questions why porn doesn’t fall under that same category. In his mind, porn is linked to hatred against women, saying that we don’t care “as much about misogyny as we say we do” (Schmitz, 2016, p. 1). These articles both fail to reveal the truth behind porn statistics and whether all porn should be shed in the light they have cast. According to a study conducted by the Journal of Sex, the authors found that of the 300 most currently popular porn videos, a vast majority did not include signs of violence against women and that violent porn is decreasing in consumption (Smith, 2017). In addition, yearly Pornhub Statistics revealed that of the 12 most watched porn categories, none were of a violent or “rape” like

nature. In fact, the top 3 most searched videos were Stormy Daniels, Fortnite, and Romantic porn (PornHub Review, 2019). While thinking about people consuming and enjoying harmful and violent acts against women is frightening, we have to understand that it is a small minority of people.

Another common belief is that porn is inherently immoral. According to Helen Longino, an expert in pornography, porn is immoral because it is harmful to male beliefs/actions and therefore should be banned. She believes that by allowing the consumption and distribution of porn, we are telling society that sexual violence is okay and encouraging people to act on their misogynistic urges (Mueller, 2016). However, if that is true, then shows such as Criminal Minds and Law and Order: Special Victims Unit of the criminal variety would also have to be banned. In showing such realistic depictions of murder, rape, assault, and violence, that could be argued as encouraging people with violent or criminal tendencies as well. The fact of the matter is that these T.V. shows are considered to be art and media, commonly having social and educational value. If this claim can be made regarding television, the same can be made with pornography.

While much of the criminalization of obscenity and pornography is justified (such as cases of the exploitation of children in child pornography), deeming certain materials and videos as criminal or harmful has had a profound impact on the stigma around sex and pornography. By labeling a majority of sexual content as obscene, people have become increasingly nervous to voice their curiosities or interest in their sexualities, impacting the LGBTQ community. While many think leading porn videos include hard-core porn and violence, the most viewed porn category of 2019 was lesbian porn (PornHub Review, 2019). Additionally, in criminalizing so much of what the government sees as “obscene” it sends an implicit message to the population

that sex is dirty, immoral, and shameful. In the 2017 research report, *The Effects of Pornography and Children and Young People*, authors Quadara, Murr, and Latham describe how pornography can alter and impact a child's perception. Young boys and girls hear people say how watching porn makes you "gross" or "wrong", when all they want to do is explore a natural and inevitable part of growing up. As further discussed in the report, when the time comes for them to talk to a partner about their sexual interests or "wants", they might feel underprepared because they have been taught that liking certain things makes you a "slut" or "nasty" (Quadara, Murr, & Latham, 2017). The social climate around sex and obscenity has ultimately caused U.S. citizens to fear and resent a natural part of who they are.

Overall, the evolution of obscenity and pornography laws have resulted in unclear limitations and has negatively impacted our views of sex and sexuality. By the U.S. government providing vague guidelines to what should be considered obscene, citizens have learned to tiptoe around such topics, even when they may hold unique value to an individual person. Citizens should not be afraid to speak up about sex and obscenity; tension only rises and people are left to grapple a complex and deep topic on their own.

If the government makes an effort to help neutralize the negative stigma around porn and obscene materials, it may even benefit future generations. Parents could be more open in discussions about sexual education, and children will not feel alone in their search to explore their sexual nature and desires. While porn will always be controversial, talking about it never should be. Even though the Supreme Court has made exceptions to our freedom of speech and

expression, citizens have the power to take back their right to decide what they deem valuable in their lives.



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