

Criminal law 5.3

Law



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Introduction

A certain culture is characterized by its values, norms, beliefs, and principles which the people belonging in that particular culture adhere to. These cultural values and beliefs include all the things which are considered acceptable by the majority of the people by which everyone else is expected to abide by and anyone not following the culture is considered deviant and could in turn be subjected to penalties and sanctions for not following the will of the majority. Culture is a big influence on which things are going to be acceptable, normal, and proper; the determination includes the twin issues of obscenity and pornography which are two different matters altogether although there is a very fine line distinguishing these two concepts.

Moreover, it is also natural for a culture to change over time and this includes ideas on what are obscene and pornographic. In particular, the concept of what is obscene can change over time, depending on the values that prevail at a particular period in time; certain books were thought to be obscene but today are now classics. This paper briefly examines and discusses the many issues surrounding the two ideas.

Discussion

The concept of obscenity has evolved over time and literary works of famous authors like Henry Miller, James Joyce, and D. H. Lawrence were once banned for being obscene and yet today are considered as literary classics (Wallace
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& Roberson, 2012, p. 247). However, there is a difference of material that is considered obscene as it is not protected by First Amendment while pornography is allowed and protected within certain limits under the First Amendment. It is of little comfort that some materials can be allowed while some are not allowed and illegal. In earlier times, pornography was not bad as it was part of erotica or the highly artistic and refined reproduction or depiction of human sexuality in acceptable works of art (Lynn, 1996. p. 13).

a. The statute against obscenity applies to computer-generated materials like some of the new manga (Japanese comics) series which depict obscene acts and likewise applies to computer transmissions of the same materials in the same way that the MPC (Model Penal Code) applies to undeveloped photographs, molds, printing plates, etc. (Wallace & Roberson, 2012, p. 249). But these computer-related materials must still be subject to and pass the so-called Miller Test.

b. Ordinary jury members are usually aware of “community standards” based on what are the prevailing views on morality and public decency so they would be able to decide on their own what is obscene or not (based on the first two questions of the Miller Test). However, in the third question, the government is better off by calling in expert witnesses to give testimonies on what they (the experts) consider as of literary, political, social, artistic, scientific, or social value.

c. Based on the example given in the case, the defendants are accountable for standards in Memphis, Tennessee because that was where the obscene materials were first manufactured before these were transmitted to Milpitas, California. The obscenity laws in Memphis will apply to the defendants because that was where the obscene materials came from. The statutes

against obscenity go back to 1873 that prohibit sale, possession, and distribution (Monroe, 2011, p. 120).

d. On the whole, the Miller Test will work just fine in the absence of any objective or a specific set of standards based on morality and public decency. Put differently, the Miller Test is the defining test of the culture of a particular society which as was stated earlier elsewhere in the paper, can change markedly over time depending on the values of the majority population. But in one aspect, the subjectivity of the Miller Test must be limited and its objectivity increased.

Conclusion

The concept of pornography is fairly recent dating to the Victorian era of England in the eighteenth and nineteenth centuries when any depiction or representation of things sexual in their nature were deemed offensive, immoral, illicit, and unacceptable. Obscenity can be said to date back to the beginning of history as the Bible mentioned against it and it is based also on religion or morality which has a far longer basis in terms of human existence. However, a key difficulty for people dealing with these twin issues revolve around changing social values and laws passed that defined what is obscene or pornographic (Ziolkowski, 1998, p. 155). Highly variable social contexts together with evolving communications technology has made it a complex issue.

References

- Lynn, H. (1996). *The invention of pornography: Obscenity and the origins of modernity, 1500-1800*. Brooklyn, NY, USA: Zone Books.
- Monroe, D. (2011). *Porn philosophy for everyone: How to think with kink*.
<https://assignbuster.com/criminal-law-53/>

Hoboken, NJ, USA: John Wiley & Sons.

Wallace, H. & Roberson, C. (2012). Principles of criminal law (5th ed.). Upper Saddle River, NJ, USA: Prentice Hall.

Ziolkowski, J. M. (1998). Obscenity: Social control and artistic creation in European Middle Ages. Leiden, The Netherlands: Brill Publishing.