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## THE INVENTION OF OBSCENITY

Humanity has been creating sexually explicit art for a very long time; for just as long people have been arguing about what that art signifies.

In 2008, scientists digging in a cave in southwestern Germany uncovered a figurine carved from mammoth-ivory that depicts a woman with significantly exaggerated sexual features. This 60 millimeter long figurine—the Hohle Fels Female Figurine, named after the cave where it was discovered—is one of the oldest examples of figurative art in human history, having been produced at least 35,000 years ago, some 5,000 years older than the oldest previously-discovered comparable figurine. These so-called Venus figurines—small carved figurines of naked women made during the Upper Paleolithic period that have been found throughout Europe, from France to Siberia, are a staple of introductory anthropology textbooks: “They are used to titillate freshman classes, and photographs or drawings, especially of the figurines from Willendorf and Dolni Vestonice, routinely enliven introductory textbooks.”<sup>1</sup>

What these figurines represent—whether they were erotic in nature, spiritual, or had some other purpose—is a matter of heated controversy. In announcing the discovery of the Hohle Fels Female Figurine, Nicholas Conrad wrote that

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<sup>1</sup> Sarah M. Nelson, “Diversity of the Upper Paleolithic ‘Venus’ Figurines and Archeological Mythology,” *Archeological Papers of the American Anthropological Association* 2, issue 1 (Jan. 1990), 11.

...[t]here can be no doubt that the depiction of oversized breasts, accentuated buttocks and genitalia results from the deliberate exaggeration of the sexual features of the figurine.”<sup>2</sup>

Commenting on the Hohle Fels figurine at the time of its discovery was announced, Paul Mellars wrote that

...the figure is explicitly—and blatantly—that of a woman, with an exaggeration of sexual characteristics (large, projecting breasts, a greatly enlarged and explicit vulva, and bloated belly and thighs) that by twenty-first-century standards could be seen as bordering on the pornographic.<sup>3</sup>

But the interpretation of these Paleolithic figurines of naked women as “bordering on the pornographic,” or even that the primary significance of the figurines was sexual, elicited sharp criticism. James B. Harrod, for example, has argued that Conrad and Mellars misinterpreted the figurine and that the Hohle Fels Female Figurine actually is a “representation of the Upper Paleolithic Double Goddess.”<sup>4</sup> He further suggests that characterizing the figurine as pornography is misogynistic.<sup>5</sup> More recently, archeologist April Nowell has cautioned against claims made in both the popular press and academic journals that the Venus figurines and various other Paleolithic rock art and carvings are prehistoric pornography:

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<sup>2</sup> Nicholas J. Conrad, “A female figurine from the basal Aurignacian of Hohle Fels Cave in southwestern Germany,” *Nature* 459 (May 14, 2009), 250.

<sup>3</sup> Paul Mellars, “Origins of the female image,” *Nature* 459 (May 14, 2009), 176.

<sup>4</sup> James B. Harrod, “The Figurine: Not Pornography but a Representation of the Upper Paleolithic Double Goddess,” *Journal of Archaeomythology*, 7 (2011), 205, 216

<sup>5</sup> *Ibid.*, 216.

People are fascinated by prehistory, and the media want to write stories that attract readers—to use a cliché, sex sells. But when a *New York Times* headline reads “A Precursor to Playboy: Graphic Images in Rock”, and *Discover* magazine asserts that man’s obsession with pornography dates back to “Cro-Magnon days” based on “the famous 26,000-year-old Venus of Willendorf statuette...[with] GG-cup breasts and a hippopotamal butt,” I think a line is crossed. To be fair, archaeologists are partially responsible—we need to choose our words carefully.<sup>6</sup>

Nowell goes on to argue that the failure of journalists and archaeologists to choose their words carefully may result in legitimization of contemporary values and behaviors “by tracing them back to the ‘mist of prehistory.’”<sup>7</sup>

To someone who is interested in contemporary legal regulation of obscene material, this debate among archeologists and anthropologists over the meaning of 35,000 year old figurines has a familiar ring. How to interpret the meaning of sexually explicit art—is its principal appeal to a prurient interest, primarily for some sort of sexual gratification, or does it possess serious spiritual, cultural, or scientific value—is an issue that bedevils contemporary prosecutors, courts, and juries evaluating pornography, just as it bedevils scholars studying Paleolithic art.

Whether humans of the Upper Paleolithic period carved figurines and engaged in other artistic pursuits for purposes of sexual gratification is unclear. These Venus figurines, after all, depict naked individuals with exaggerated genitalia, but do not depict explicit sexual behavior. However, even if the Venus figurines are set aside, the history of humans creating art that

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<sup>6</sup> Jude Isabella, “‘Palaeo-porn’: We’ve got it all wrong,” *New Scientist*, 216, issue 2890 (Nov. 10, 2012), 29.

<sup>7</sup> Ibid.

unambiguously depicts explicit sexual activities is very long indeed. The most famous example of ancient Egyptian erotica depicting explicit sexual behavior may be the Turin Erotic Papyrus, a fragmentary papyrus dating from approximately 1150 B.C.E. that is in the collection of the Fondazione Museo delle Antichità Egizie di Torino. The papyrus contains drawings of men with enlarged genitalia engaging in sexual activities with young women.<sup>8</sup> It has been suggested that this art was intended to be humorous and satirical, as well as erotic, “intended to ridicule the priestly state through an amusing depiction of the coupling of a priestess with a slovenly looking man.”<sup>9</sup> For probably not the first time, and certainly not the last, sexually explicit art was used to ridicule religious authority and contemporary (im)morality.

Elsewhere and elsewhere in the ancient world, Greek and Roman ceramics, mosaics, paintings, and sculptures all were often used to display nude figures as well as to depict explicit sexual activities. Indian temple carvings depicted “coitus and its perversions...without hesitation or prudery.”<sup>10</sup> In Japan, a tradition of creating sexually explicit art in which the figures exhibit exaggerated genitalia (*shunga*) dates back to before 1000 C.E. The introduction of *shunga* wood block prints to other Asian and European audiences in the seventeenth century evoked a shocked and indignant reaction:

The encounter of foreign countries with Japanese erotica began a surprisingly long time ago. In 1615, shock was registered in London when the first import of ‘certaine lasiuious bookes and pictures’ were briefly seen before being summarily burned. At about the same time, moralists of the Ming dynasty in China were

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<sup>8</sup> Robert A. Schmidt and Barbara L. Voss, *Archaeologies of Sexuality* (London: Routledge, 2000), 254.

<sup>9</sup> Karol Myśliwiec, *Eros on the Nile* (Ithaca, N.Y.: Cornell University Press, 2004), 120.

<sup>10</sup> Y. Krishan, “The Erotic Sculptures of India,” *Artibus Asiae*, 34, no. 4 (1972), 332.

counseling against the ‘extremely detestable custom’ of importing Japanese ‘spring pictures’, which led to lewdness. Korean ambassadors were regular visitors to Japan, and thought the deplorable condition of sexual ethics, which they believed they saw, must surely have been the result of unfettered circulation of the wrong sort of picture.<sup>11</sup>

Often, sexually explicit works have served a subversive purpose, holding temporal and religious authorities up to ridicule and satire. A colleague of mine, Dr. Ernest A. Zitser, has written about eighteenth century Russian “political pornography,” paintings depicting Russian monarchs engaged in sex.<sup>12</sup> In addition to the explicit images, the obverse of these art works also contained profane verse such as the following, which appeared on a painting depicting Emperor Peter the Great having sex with the future Empress Catherine I:

This Great Fornicator  
 screwed Finnish and German women,  
 haughty court ladies  
 as well as [Russian] serf girls.  
 Great in deeds,  
 he traveled all over Europe,  
 fucking in all manner of ways,  
 but was especially fond of doing it in the ass.<sup>13</sup>

<sup>11</sup> Timon Screech, *Sex and the Floating World: Erotic Images in Japan 1700-1820* (London: Reaktion Books, 1999), 13.

<sup>12</sup> Ernest A. Zitser, “A Full-Frontal History of the Romanov Dynasty: Pictorial ‘Political Pornography’ in Pre-Reform Russia,” *Russian Review*, 70 (Oct. 2011), 557-583.

<sup>13</sup> *Ibid.*, 560.



UNTIL MODERN TIMES SUCH sexually explicit works were not considered to constitute a distinct category of written or visual art. As Lynn Hunt has written:

If we take pornography to be the explicit depiction of sexual organs and sexual practices with the aim of arousing sexual feelings, then pornography was almost always an adjunct to something else until the middle or end of the eighteenth century. In early modern Europe, that is, between 1500 and 1800, pornography was most often a vehicle for using the shock of sex to criticize religious and political authorities. Pornography nevertheless slowly emerged as a distinct category in the centuries between the Renaissance and the French Revolution...<sup>14</sup>

Technological developments—e.g., the invention of the printing press, making it possible to disseminate sexually explicit works more widely—as well as other social, political, cultural, and religious changes contributed to a change of attitude that consigned sexually explicit works to a new, distinct category of art. And the emergence of a new category of art necessitated new vocabulary to label those works. So, the word “pornography” was invented (or, perhaps, “repurposed”). Though the Oxford English Dictionary states that the word “pornography” is derived from a Hellenistic Greek word, *πορνογράφος* (*pornographos*), meaning “writes about prostitutes,” it cites no examples of the word being used prior to 1800, and that citation relates to a French treatise on prostitution. Examples cited by the OED of a broader use of the word referring to sexually explicit works all date from the mid-nineteenth century. Summing up the

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<sup>14</sup> Lynn Hunt, “Introduction: Obscenity and the Origins of Modernity, 1500-1800,” in *Invention of Pornography: Obscenity and the Origins of Modernity, 1500-1800* ed. Lynn Hunt (New York: Zone Books, 1993), 10.

emergence of the concept and label of “pornography,” Walter Kendrick has written, “The inescapable conclusion is that, sometime in the century between 1755 and 1857, ‘pornography’ was born.”<sup>15</sup>

The emergence of a new category of art—a lesser, more opprobrious category, consisting of sexually explicit material—and the invention of a new word to label that art were soon followed by the first significant attempts to subject the most extreme examples of this genre to legal regulation. And this new legal regulation required new vocabulary as well.

While state censorship to protect political or religious orthodoxy has a long history, at least in the common law world the first attempts to use the law to suppress sexually explicit works date from no earlier than the eighteenth century. Initially, these efforts were infrequent and relied on English common law doctrines. By the middle of the nineteenth century, legislation banning sexually explicit works was enacted and the pace of prosecutions took off. In America prosecutions of such works also began slowly, reaching its peak in the late nineteenth and first half of the twentieth centuries. The only U.S. colony or state to adopt legislation to regulate such material prior to the Civil War was Massachusetts in 1711; the first federal legislation on the subject was adopted by the U.S. Congress in 1842 when it enacted a relatively obscure amendment to the customs law. More significant statutory enactments, the judicial opinions interpreting and applying them, and prosecutions under them began to appear at both the federal and state levels only after the Civil War.

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<sup>15</sup> Walter Kendrick, *The Secret Museum: Pornography in Modern Culture* (Berkeley, CA: University of California Press, 1987), 2.



THE WORD THAT ENGLISH judges and legislators chose to designate these most objectionable, sexually explicit forms of expression is *obscene*. In a legal sense, pornography and obscenity are not coterminous; in modern American legal parlance obscenity represents that subset of pornography that is deemed so objectionable that it is not protected by the First Amendment. *Obscenity* is an older word than *pornography*—though both lay claim to classical etymologies—but its use to label forms of expression that are beyond constitutional protection and are subject to legal regulation and limitation dates only to the eighteenth century.

Though the courts have spent more than a century trying to formulate a definition of *obscene* and meeting with, at best, mixed success, the colloquial, non-technical, non-legal definition of *obscene* has remained remarkably stable since the word first entered the English language. The current edition of the *Oxford English Dictionary* gives three definitions for obscene:

1. Offensive to the senses, or to taste or refinement; disgusting, repulsive, filthy, foul, abominable, loathsome.
2. Offensive to modesty or decency; expressing or suggesting unchaste or lustful ideas; impure, indecent, lewd.
3. Ill-omened, inauspicious.<sup>16</sup>

The first monolingual English dictionary, Robert Cawdrey's *Table Alphabeticall*, published in 1604, includes the word *obscæne*, which was defined as “bawdie, filthy,

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<sup>16</sup> J. A. Simpson and E. S. C. Weiner, *The Oxford English Dictionary*, vol. X (Oxford: Clarendon Press, 2d ed., 1989), 656.

ribauldrie.”<sup>17</sup> In subsequent editions of Cawdrey’s dictionary the definition remained the same, but the spelling changed. In the second (1609) and third (1613) editions the word is spelled *obscæne*;<sup>18</sup> the fourth edition, published in 1617, listed the word in its modern spelling of *obscene*.<sup>19</sup> In Henry Cockeram’s *The English Dictionarie: or, An interpreter of hard English words*, published in 1623 and considered the third oldest monolingual dictionary of English, the word *obscene* (modern spelling) is defined as “Filthy” and *obscenitie* is defined as “Filthy talke.”<sup>20</sup> But in the twelfth edition, published in 1670, *obscene* is not included and *obscenitie* has become *obscænity*, defined as “unclean speech, or action.”<sup>21</sup> Edward Phillips’ dictionary, *The new world of English words*, published in 1658 defined *obscenity* as “ribaldry, baudinesse, unclean speech, or action.”<sup>22</sup> In all of these dictionaries, the words in question were spelled using the then-prevalent conventions of the Early Modern English writing system, viz. using the long s form then commonly in use: *ob]cæne*, *ob]cæne*, *ob]cene*, *ob]cenitie*, *ob]cenity*.

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- <sup>17</sup> Robert Cawdry, *A table alphabeticall, or the English expositor containing and teaching the true writing and vnderstanding of hard usuall English words* (London : Printed by W. I[aggard] for Edmund Weauer, and are to be sold at his shop at the geeat North doore of Paules Church, 1604), n.p.
- <sup>18</sup> Robert Cawdry, *A table alphabeticall, or the English expositor containing and teaching the true writing and vnderstanding of hard usuall English words* (London : Printed by W. I[aggard] for Edmund Weauer, and are to be sold at his shop at the geeat North doore of Paules Church, 2d ed., 1609), n.p.; Robert Cawdry, *A table alphabeticall, or the English expositor containing and teaching the true writing and vnderstanding of hard usuall English words* (London : Printed by W. I[aggard] for Edmund Weauer, and are to be sold at his shop at the geeat North doore of Paules Church, 3<sup>rd</sup> ed., 1613), n.p.
- <sup>19</sup> Robert Cawdry, *A table alphabeticall, or the English expositor containing and teaching the true writing and vnderstanding of hard usuall English words* (London : Printed by W. I[aggard] for Edmund Weauer, and are to be sold at his shop at the geeat North doore of Paules Church, 4th ed., 1617), n.p.
- <sup>20</sup> Henry Cockeram, *The English Dictionary, or, an Interpreter of hard English Words* (London: Printed for Nathaniel Butter, and to be sold at his shop, at St. Austins gate, at the signe of the Pide-Bull, 1623), n.p.
- <sup>21</sup> Henry Cockeram, *The English Dictionary, or, an Expositor of Hard English Words* (London: Printed for W. Miller, at the Gilded Acorn in S, Paul’s Church-yard, near the little North-door, 12<sup>th</sup> ed., 1670), n.p.
- <sup>22</sup> Edward Phillips, *The new world of English words, or, A general dictionary containing the interpretations of such hard words as are derived from other languages* (London: Printed by E. Tyler for Nath. Brooke, 1658), n.p.

The ultimate origins of the word *obscurity* are rather obscure. According to the *Oxford English Dictionary*, the word may have entered the English language from the French word *obscène*, meaning indecent or offensive, in the late sixteenth century. The earliest published example of the use of *obscene* in English cited by the OED dates from a pamphlet by Gabriel Harvey published in London in 1593, the relevant passage from which is as follows:

I will not heere decipher thy unprinted packet of bawdye, and filthy Rymes, in the nastiest kind: there is a fitter place for that discovery of thy foulest shame, & the whole ruffianisme of thy brothell Muse, if she still prostitute her obscene ballattss, and will needes be a younge Curtisan of ould knavery.<sup>23</sup>

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Shall I say, Phy upon arrant knavery, that hath never sucked his fill of most odious Malice: or, Out upon scurrilous, & obscene Villainy, nusled in the boosome of filthiest filth, and hugged in the armes of the abominablest haggess of Hell?<sup>24</sup>

A more well-known early example of the word appears in Shakespeare's *Richard II*, which is thought to have been written in the mid-1590s (most probably 1595). In the play, the Bishop of Carlisle says

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<sup>23</sup> Gabriel Harvey, *Pierces supererogation or A new prayse of the old asse* (London: John Wolfe, 1593), 45.

<sup>24</sup> *Ibid.*, p. 173.

O, forfend it, God,  
 That in a Christian climate soules refined  
 Should shew so heinous black obscene a deed.<sup>25</sup>

That *obscene* entered the English language in the 1590s is strongly implied by a review of successive editions of Thomas Cooper’s *Thesaurus linguae Romanæ & Britannicæ*, a Latin-English dictionary first published in 1565, with subsequent editions in 1573, 1578, and 1587, and which served as one of the sources of Cawdrey’s *Table Alphabeticall*. Cooper’s *Thesaurus* defines the Latin word *obscenus* as “That signifieth or declareth some ill lucke or misfortune to follow: that bringeth ill lucke.” *Obscænus* is defined as “All thinge that is to be eschewed: filthie: fowle: dishonest: uncleane: wanton: baudie: unchaste: abhominable;” *obsœnitas* is defined as “Vilanie in actes or woordes: ribauldrie; filthinesse; uncleanenesse.” And *obsæne* is listed as an adverb meaning “Like a ribaude: with out shame: filthily: unchastly: baudily: dishonestly.”<sup>26</sup> The fact that in all editions of Cooper’s *Thesaurus*—1565, 1573, 1578, and 1587—the definitions of these words remained unchanged and did not use an English word *obscene* suggests that for this lexicographer there was no English word *obscene* to be used in defining the Latin source words. To assume that Cooper would have used an English word derived from the Latin word being defined if one existed is strongly suggested by his definition of the Latin word *obscurus*, which immediately follows *obsæne* in his *Thesaurus*. The first English definition of *obscurus* is

<sup>25</sup> William Shakespeare, *The Tragedie of King Richard the second* (London: printed by Valentine Simmes for Andrew Wise, and are to be sold at his shop in Paules church yard at the signe of the Angel, 1597), Act. IV, Scene 1, lines 131-133.

<sup>26</sup> Thomas Cooper’s *Thesaurus linguae Romanæ & Britannicæ* (London: In aedibus quondam Bertheleti, cum priuilegio Regiæ Maiestatis, per Henricum Wykes, 1565), n.p.

“obscure.”<sup>27</sup> The inference to be drawn is that *obscene* entered English between 1565 and 1593 and, perhaps more precisely, between 1587 and 1593.

If Edward Coke’s *Reports* are to be believed, the word *obscene* entered English legal literature soon after it entered the English language, but only on a very limited basis. In volume 12 of Coke’s *Reports*, published posthumously in 1656, the case of *Edwards v. Wooton* is reported.<sup>28</sup> According to the report, the dispute came before the Star Chamber during Trinity term (May-June) 1607. The case was a libel lawsuit between two physicians. It was alleged that the defendant, Doctor Wooton, had written a letter to the plaintiff that was “infamous, scandalous, obscaene” and had then sent copies to others. The question for the court was whether the recipient of a private letter, copies of which had been disseminated to others by the writer, could sue the letter writer for libel. The Star Chamber held that while a private letter that has not otherwise been published does not create a cause of action, sending copies of that letter to others does create the basis for a libel suit against the author: “it is an offence to the King, and is a great motive to revenge, and tends to the breaking of the Peace and great mischief.”<sup>29</sup> The case report does not describe the nature of the libel other than very generally—an “infamous, scandalous, obscaene” letter—so it is not possible to know the sense in which the court used the word *obscaene*, whether it has any sexual connotation, for example. Moreover, there is reason to doubt the accuracy of the report itself. The report of *Edwards v. Wooton* was published in the twelfth volume of Coke’s *Reports*, which did not appear until 1656, over two decades after his death. As

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<sup>27</sup> Ibid.

<sup>28</sup> Edward Coke, *The twelfth part of the Reports of Sir Edward Coke, Kt. of divers resolutions and judgments given upon solumn arguments, and with great deliberation and conference with the learned judges in cases of law* (London: Printed by T.R. for Henry Twyford and Thomas Dring, are to be sold in Vince-Court Middle Temple and at the George in Fleetstreet near Cliffors-Inne, 1656), 35-36.

<sup>29</sup> Ibid.

Roland G. Usher has written, events that occurred shortly before and after Coke’s death in 1634 “cast doubt upon their [volumes 12 and 13 of Coke’s *Reports*] correctness.”<sup>30</sup> The problems in the reliability of these volumes arise from how and when they were created. Several months before he died in 1634, Coke’s papers were seized by the Crown and were not returned to his family until 1641. Then, fifteen years later, some of these papers were gathered together, translated from the original Law French (the first 11 volumes of Coke’s *Reports*, published during his lifetime, were originally written and published in Law French), and published in two volumes in 1656 and 1659. There are doubts that these last two volumes were based on a manuscript actually written by Coke, and many—both at the time they were published and later—have commented on the mistakes and omissions found in these volumes.<sup>31</sup> One such mistake appears in the report of *Edwards v. Wooton* itself: The beginning of the report reads as follows:

In the case in the Star-chamber, between *Edwards* a physician Plaintiff, and Wooton Doctor in Physick Defendant.

The Case was, That Doctor Wooton writ to *Edmunds* an infamous, malicious, scandalous, obscæne Letter...[*emphasis added*]<sup>32</sup>

The context of the case makes it clear that Wooton sent his letter to the plaintiff (along with “a great number of Copies” to others). But in the first sentence the plaintiff is identified as *Edwards*, and in the second sentence the addressee of the letter is named *Edmunds*. The fact that this report

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<sup>30</sup> Roland G. Usher, “James I and Sir Edward Coke,” *The English Historical Review* 18 (October 1903), 664.

<sup>31</sup> *Ibid.*

<sup>32</sup> *The twelfth part of the Reports of Sir Edward Coke*, 35.

was translated from Law French into English raises further questions about whether *obscæne* or a French cognate term was actually used in the Star Chamber's opinion. But, if the report published in volume 12 of Coke's *Reports* is accurate, the case of *Edwards v. Wooton* may be the first known instance of the use of the word *obscene* in English legal literature.



IF *OBSCENE* ENTERED THE English language from the French word *obscène*, it did so not long after *obscène* itself entered French. *Obscène* appears to have entered the French language in the sixteenth century, though decades before it first appeared in English. French etymological dictionaries identify the first published use of the word as dating from 1534 and cite an example of the use of the related word *obscénité* to 1512.<sup>33</sup> Other dictionaries cite an example of *obscénité* from 1511.<sup>34</sup>

Before *obscène* and *obscénité* entered French in the first half of the sixteenth century and *obscene* entered English in the 1590s, the ultimate Latin source words for these terms were used extensively by writers of medieval and classical Latin. As to medieval Latin, one dictionary lists *obscenitas* (meaning indecency, lewdness, carnal pleasure; foulness, shamefulness; impropriety, barbarism, solecism) and *obscensus* (meaning indecent, lewd, obscene; shameful; repulsive, disgusting; dirty, filthy), both of which are attributed to classical Latin.<sup>35</sup> The *Oxford Latin Dictionary* lists five cognate words:

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<sup>33</sup> Albert Dauzat, Jean Dubois, and Henri Mitterand, *Dictionnaire étymologique et historique du français* (Paris: Larousse, 1993), 516.

<sup>34</sup> Alain Rey, *Dictionnaire historique de la langue française: contenant les mots français en usage et quelques autres délaissés*, vol. 2 (Paris: Dictionnaires Le Robert, 1992), 1346. Walther v. Wartburg, *Französisches Etymologisches Wörterbuch*, vol. 7 (Basel: R. G. Zbinden & Co., 1955), 279.

<sup>35</sup> R. E. Lathan and D. R. Howlett, *Dictionary of Medieval Latin from British Sources*, Fascicule VIII (London: Published for the British Academy by Oxford University Press, 1975), 1975. See also,

- *obscēna* (also *obscaenē*) [noun]—the external sexual and excretory organs, private parts;
- *obscēnē* (also *obscaenē*) [adverb]—So as to involve obscenity, obscenely;
- *obscēnitās* (also *obscaen-*) [noun]—indecent, obscenity (of language); indecent or obscene behavior;
- *obscēnus*<sup>1</sup> (also *ops-*, *obscaen-*) [adjective]—(1) boding ill, unpropitious, ill-omened; (2) exciting disgust by its unwholesomeness, filthy, polluted, loathsome; (3) (applied to the sexual and excretory parts and functions); (4) indecent, obscene, lewd; indecent or obscene language, utterances, etc.; also, indecent behavior;
- *obscēnus*<sup>2</sup>—a sexual pervert; also, a foul-mouthed person.<sup>36</sup>

But it is here that the mystery deepens, because there is controversy over the origins of these Latin words. There are many theories concerning the origins of the Latin word *obscēnus*.

They include theories that *obscēnus* is based on:

- a combination of *ob-* (meaning “on account of”) + *cēnum/caenum/coenum*, which means filth, dirt, uncleanness;<sup>37</sup>
- *canendo*, meaning singing, making sound, utterance, thus making an impure or vile utterance or sound *obscēnus*;<sup>38</sup> and
- the word *obscurus*, meaning “concealed.”<sup>39</sup>

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Francesco Araldi and Franz Blatt, *Novum glossarium mediae Latinitatis: ab anno DCCC usque ad annum MCC*, vol. “O” (Hafniae [i.e. Copenhagen]: Munksgaard, 1959), 117-119.

<sup>36</sup> P. G. W. Glare, *Oxford Latin Dictionary*, (Oxford: Clarendon Press, 1982), 1219.

<sup>37</sup> Robert K. Barnhart and Sol Steinmetz, *The Barnhart dictionary of etymology* (Bronx, N.Y.: H.W. Wilson Co, 1988), 718.

<sup>38</sup> Alastair Minnis, “From *Coilles* to *Bel Chose*: Discourses of Obscenity in Jean de Meun and Chaucer,” in *Medieval Obscenities* (Woodbridge: York Medieval, 2006), 156.

Another theory is that the oldest and therefore original meaning of *obscenus* is “ill-omened” and comes from the “vocabulary of ancient divination.”<sup>40</sup> According to Jacques Merceron, “Roman authors mention a special category of birds called *obscenae aves* whose singing was interpreted by priests to predict the future.”<sup>41</sup> Merceron goes on to connect this linking of *obscene* and divination with another theory of the origins of *obscenus*—that the ultimate source words are *ob + scaevus*.<sup>42</sup> *Scaevus* means “left, that is on the left, towards the left side,” but also bears the meaning of “awkward, perverse, stupid, silly”; and “of fortune, unfavorable, untoward, unlucky.”<sup>43</sup> Thus, according to Merceron, “obscenity partakes of the realm of divination, particularly as a characterization of sinister [*author’s note: sinister* is also derived from a Latin word for “left.”] omens sent by supernatural powers.”<sup>44</sup>

One of the most widely-held theories is that the word *obscēnus* has its roots in ancient Roman and Greek dramaturgy. In *De lingua Latina* (“On the Latin Language”), written in the first century BCE, Marcus Terentius Varro claimed that *obscaenum* (“foul”) is derived from *scaena*, sometimes written *scena*, which is the Latin word for stage. As Varro explained, “anything shameful is called *obscaenum*, because it ought not to be said openly except on the

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<sup>39</sup> Abraham Kaplan, “Obscenity as an Esthetic Category,” *Law and Contemporary Problems*, 20 (1955), 544, 550 (1955).

<sup>40</sup> Jacques E. Merceron, “Obscenity and Hagiography in Three Anonymous *Sermons Joyeux* and in Jean Molinet’s *Saint Billouart*,” *Obscenity: Social Control and Artistic Creation in the European Middle Ages* (Leiden: Brill, 1998), 334, n.9. See also, A. Ernout and A. Meillet, *Dictionnaire étymologique de la langue latine: Histoire des mots* (Paris: Librairie C. Klincksieck, 1932), 664.

<sup>41</sup> Ibid.

<sup>42</sup> Michiel de Vaan, *Etymological Dictionary of Latin and the other Italic Languages* (Leiden: Brill, 2008), 422.

<sup>43</sup> Charlton T. Lewis, *An Elementary Latin Dictionary*, n.d., <http://www.perseus.tufts.edu/hopper/text?doc=Perseus%3Atext%3A1999.04.0059%3Aentry%3Dsc aevus>.

<sup>44</sup> “Obscenity and Hagiography in Three Anonymous *Sermons Joyeux* and in Jean Molinet’s *Saint Billouart*,” 334.

*scaena* ‘stage.’”<sup>45</sup> *Scaena*, in turn, is derived from the Greek word *skênê* (σκηνή), a word meaning “tent” or “hut,” but which also was the name for a building that stood directly behind the stage in ancient Greek theaters. Actors would make entrances and exits through doors in the *skênê* and often action that was considered too violent or otherwise too disturbing or offensive would take place off-stage in the *skênê*. The audience would hear the voices of the actors, but would not actually see these actions. In classical Greek plays the voices of gods and ghosts were spoken from offstage in the *skênê*.<sup>46</sup> Violent death in Greek tragedies also occurred offstage; the conventions of ancient Greek drama (and perhaps religion) required that killings not be shown on stage.<sup>47</sup> In Sophocles’ *Oedipus the King*, when Oedipus learns the truth of his identity, Jocasta hangs herself and Oedipus blinds himself, both offstage, and in *Oedipus at Colonus* Oedipus’ death occurs offstage. In Aeschylus’ *Agamemnon*, Agamemnon’s murder “happens like nearly all horrors in the Greek theatre off stage...,” though the audience does hear Agamemnon’s death screams.<sup>48</sup> Similarly, in Euripides’ *Medea*, the death by poison of Jason’s bride and Medea’s murder of her sons occur offstage. The audience becomes aware of the bride’s death by a messenger who recounts what has occurred out of sight, a common device in classical plays, though the audience hears the screams of Medea’s sons as she kills them. The dramaturgical conventions were different for comedies, however, where violence was depicted onstage.<sup>49</sup>

<sup>45</sup> Marcus Terentius Varro and Roland G. Kent, *On the Latin Language*, vol. 1 (Cambridge, Mass: Harvard University Press, 1938), Book VII, para. 96, p. 351. See also, Jan M. Ziolkowski, “Obscenity in the Latin Grammatical and Rhetorical Tradition,” *Obscenity: Social Control and Artistic Creation in the European Middle Ages* (Leiden: Brill, 1998), 44.

<sup>46</sup> Roy C. Flickinger, “Off-Stage Speech in Greek Tragedy,” *The Classical Journal*, 34:355 (No. 6, March 1939).

<sup>47</sup> Irene J. F. DeJong, “Three Off-Stage Characters in Euripides,” *Mnemosyne*, XLIII, Fasc. 1-2 (1990), 3; Werner Riess, *Performing Interpersonal Violence: Court, Curse, and Comedy in Fourth-Century BCE Athens* (Berlin: Walter de Gruyter GmbH & Co., 2012), 251.

<sup>48</sup> Peter Levi, “Greek Drama,” *The Oxford History of Greece and the Hellenistic World* (Oxford, Oxfordshire: Oxford University Press, 1991), 183.

<sup>49</sup> *Performing Interpersonal Violence*, 251.

Moreover, it has also been suggested by some scholars that not all violence occurs offstage in Greek tragedies and that the occurrence of violence offstage may have more to do with dramaturgical and staging considerations than that to show violence is “taboo.”<sup>50</sup>

It must be noted that what was *ob-skênê* (too offensive to be shown onstage) to the ancient Greeks was violent murder, suicide, ghostly or divine pronouncements, not explicit sexual activities or sexual vocabulary. Greek plays, especially comedies, were replete with crude sexual language, jokes, and plots.<sup>51</sup> Aristophanes’ *Lysistrata*, a comedy first performed in 411 BCE that tells the story of a group of Greek women who ban together to withhold sex from men until war among the city states is ended, is an excellent example of the openness with which sexual themes were addressed in ancient Greek theater. The play included nudity and frank sexual jokes. For example, when the gathered women from the Greek city states take an oath to abstain from having sex with their husbands, they specifically pledge “I will not stand a lioness upon the cheese-grater,” which refers to a sexual position that may have involved the woman crouching on all four limbs.<sup>52</sup> Scholars more than two thousand years after the play was first performed continue to analyze and debate the meaning of the lioness upon the cheese-grater and other aspects of Aristophanes’ sexual humor. But while such earthy humor elicited little opprobrium at the time, political themes were a different matter. Aristophanes was brought to court on a charge of insulting the people of Athens before foreigners after his play *The*

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<sup>50</sup> J. Michael Walton, *Greek Theatre Practice*, (Westport, CT: Greenwood Press, 1980), 136.

<sup>51</sup> Jeffrey Henderson, *The Maculate Muse: Obscene Language in Attic Comedy*, (New Haven: Yale University Press, 1975).

<sup>52</sup> Cashman Kerr Prince, “The Lioness & The Cheese-Grater (Ar. *Lys.* 231-232),” *Studi Italiani di Filologia Classica* (4<sup>th</sup> series) 7:2 (2009), 149-175.

*Babylonians* was performed in 426 BCE,<sup>53</sup> and again charged with “political impropriety” after *Lysistrata* was performed,<sup>54</sup> but in both cases he was not convicted.

Ironically, *Lysistrata* has been the object of legal censorship during the twentieth century more frequently than it was during the fifth century BCE. Under the Comstock Act of 1873, it was illegal in the United States until 1930 to import copies of *Lysistrata* into the United States. In 1954, postal authorities seized an illustrated edition of *Lysistrata* that was sent from England to a bookseller in California on the grounds that it violated the Comstock Act’s prohibition on use of the mails to send “lewd, indecent, filthy or obscene materials.” The bookseller who had ordered the book enlisted the help of the American Civil Liberties Union, which threatened court action. The U.S. Post Office relented and released the book.<sup>55</sup> More recently—in 1986—a Florida school board voted to remove *Lysistrata* and “The Miller’s Tale” from Geoffrey Chaucer’s *The Canterbury Tales* as required reading for a high school humanities course. Objections to the works centered on their sexual themes and vulgar language. Parents of some of the students filed suit against the school board, but the federal courts concluded that the removal of these works from the curriculum did not violate the U.S. constitution since the removal of the books related to a legitimate concern.<sup>56</sup>

In considering the origins of the word *obscene* and the evolution of its meaning over the centuries, it is interesting to note that one of the earliest uses of the word *obscene* in English retained the original ancient Greek meaning. When Shakespeare, in *Richard II*, refers to “so

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<sup>53</sup> J. E. Atkinson, “Curbing the Comedians: Cleon Versus Aristophanes and Syracosius’ Decree,” *Classical Quarterly* 42:56-64 (1992).

<sup>54</sup> Dawn B. Sova, *Banned Plays: Censorship Histories of 125 Stage Dramas* (New York: Facts on File, 2004), 150.

<sup>55</sup> *Ibid.*, 151.

<sup>56</sup> *Virgil v. School Board of Columbia County, Florida*, 862 F.2d 1517 (1989).

heinous black obscene a deed” he was certainly not referring to sex; he was referring to violent or treacherous deeds—in this particular case a subject judging a king.

One final observation about the theory that *obscēnus* is derived from the language of the stage: While Varro suggested that the word derives from the belief that some things are too offensive “to be said openly *except* on the...stage” (emphasis added), the Greek theatrical conventions suggest that the ultimate meaning was derived from a different belief, that some things were considered to be too offensive to say openly on the stage and must, therefore, be said offstage.

As the foregoing should make clear, there are abundant theories on the origins of *obscēnus* and, therefore, both the English word *obscene* and the French word *obscène* that are derived from it, but there is no generally accepted theory: “Starkly divergent etymologies of *obscenus* were already advanced in antiquity; and nothing approaching unanimity has yet been achieved.”<sup>57</sup> This extended discussion of the etymology of *obscene*, however, does permit speculation as to how the word’s meaning (and that of its various source words) may have evolved over time. In ancient Greece, the violent acts that occurred offstage frequently were depicted as having been foreordained or were linked to the character’s fate (e.g., Oedipus’ blinding, Jocasta’s suicide, Agamemnon’s murder, the murders of Jason’s bride and children). Action or speech that occurred offstage too often may have seemed to be ill-omened, so the two may have become linguistically linked, then equated. Because the original Greek meaning refers to words that cannot or, at least, should not be uttered in public, the word could also have taken on a secondary meaning of “indecent,” which, over time, transforms into the modern meaning of the word as “indecent, filthy, etc.”

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<sup>57</sup> “Obscenity in the Latin Grammatical and Rhetorical Tradition,” 44, n.9.