Supplementary Material

Chapter 8: The New Deal/Great Society Era—Individual Rights/Personal Freedom and Public Morality

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

Robert Stanley kept a collection of obscene films in his house. These films were discovered during a police raid, whose purpose was to find evidence of gambling. The films were seized and Stanley was indicted under a Georgia law that forbade "knowingly hav[ing] possession of" obscene materials. He was tried, convicted, and sentenced to one year in prison. Stanley appealed to the Supreme Court of Georgia. He claimed that the films were seized in violation of the Fourth and Fourteenth Amendments, and that he had a right under the First and Fourteenth Amendment to possess obscene films. The Supreme Court of Georgia affirmed the conviction. Stanley appealed to the Supreme Court of the United States.

The Supreme Court unanimously overturned Stanley's conviction. Justice Marshall's majority opinion maintained that people had a privacy right to read and see whatever books and movies they thought valuable or entertaining. Stanley *was another example of the tendency of New Deal/Great Society liberals to find privacy rights only when the privacy right was intermingled with another constitutional claim, in this case the First Amendment. As you read Justice Marshall's opinion, to what extent can you disentangle the First Amendment and privacy claims? Are both independently valid? How far do you believe the privacy claim goes? Suppose the police had caught Stanley with friends making an obscene film for their private use? Suppose Stanley brought the film over to a friend's house?*

JUSTICE MARSHALL delivered the opinion of the Court.

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It is true that *Roth v. United States* (1957) does declare, seemingly without qualification, that obscenity is not protected by the First Amendment. . . . However, neither *Roth* nor any subsequent decision of this Court dealt with the precise problem involved in the present case. Roth was convicted of mailing obscene circulars and advertising, and an obscene book, in violation of a federal obscenity statute. . . . None of the statements cited by the Court in *Roth* for the proposition that "this Court has always assumed that obscenity is not protected by the freedoms of speech and press" were made in the context of a statute punishing mere private possession of obscene material. . . .

. . .

It is now well established that the Constitution protects the right to receive information and ideas. . . . This right to receive information and ideas, regardless of their social worth . . . is fundamental to our free society. Moreover, in the context of this case—a prosecution for mere possession of printed or filmed matter in the privacy of a person's own home—that right takes on an added dimension. For also fundamental is the right to be free, except in very limited circumstances, from unwanted governmental intrusions into one's privacy. . . .

These are the rights that the appellant is asserting in the case before us. He is asserting the right to read or observe what he pleases—the right to satisfy his intellectual and emotional needs in the privacy of his own home. He is asserting the right to be free from state inquiry into the contents of his library. Georgia contends that appellant does not have these rights, that there are certain types of materials that the individual may not read or even possess. Georgia justifies this assertion by arguing that the films in the present case are obscene. But we think that mere categorization of these films as "obscene" is insufficient justification for such a drastic invasion of personal liberties guaranteed by the First and Fourteenth Amendments. Whatever may be the justifications for other statutes regulating obscenity, we

do not think they reach into the privacy of one's own home. 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.

. . . Georgia asserts that exposure to obscene materials may lead to deviant sexual behavior or crimes of sexual violence. There appears to be little empirical basis for that assertion. But more important, if the State is only concerned about printed or filmed materials inducing antisocial conduct, we believe that in the context of private consumption of ideas and information we should adhere to the view that "[a]mong free men, the deterrents ordinarily to be applied to prevent crime are education and punishment for violations of the law . . . ." *Whitney v. California* (1927). . . . Given the present state of knowledge, the State may no more prohibit mere possession of obscene matter on the ground that it may lead to antisocial conduct than it may prohibit possession of chemistry books on the ground that they may lead to the manufacture of homemade spirits.

. . .

We hold that the First and Fourteenth Amendments prohibit making mere private possession of obscene material a crime. Roth and the cases following that decision are not impaired by today's holding. As we have said, the States retain broad power to regulate obscenity; that power simply does not extend to mere possession by the individual in the privacy of his own home.

JUSTICE BLACK, concurring.

I agree with the Court that the mere possession of reading matter or movie films, whether labeled obscene or not, cannot be made a crime by a State without violating the First Amendment, made applicable to the States by the Fourteenth. . . .

JUSTICE STEWART, with whom JUSTICE BRENNAN and JUSTICE WHITE join, concurring in the result.

[Justice Stewart's concurring opinion claimed that the obscene films were seized in violation of the Fourth and Fourteenth Amendments.]