Introduction

In late October 1961, the police chief of Mount Prospect, a Chicago suburb, took action against what he perceived to be a disturbing threat to his community: a paperback edition of Henry Miller’s notorious 1934 novel *Tropic of Cancer*. Visiting six drugstores that sold paperbacks, he succeeded in having all copies of the book pulled from the shelves. He could do this, the First Amendment notwithstanding, because Miller’s novel included what the law regarded as obscenity: obscenity defined, that is, in words with which U.S. Postmaster General Arthur Summerfield characterized Miller’s novel, as “descriptions in minute detail of sexual acts” and the use of “filthy, offensive and degrading words and terms.” By then, a long series of legal precedents had established that obscenity, like libel and “fighting words,” did not merit First Amendment protection.

A few weeks later, a Northwestern University professor named Franklyn Haiman, acting with the support of the American Civil Liberties Union, sued the local police for infringing on what he considered his right to read Miller’s novel. The book’s American publisher, Barney Rosset of Grove Press, described the resulting trial as “the most dramatic” of sixty such legal cases nationwide that contested the suppression of Miller’s *Tropic of Cancer*. Edward de Grazia, a lawyer and legal historian, singles out that Chicago trial as “one of the best examples” of how lawyers and judges together transformed a few statements from a 1957 Supreme Court obscenity decision, *Roth v. United States*, into a
widely applicable First Amendment defense of so-called dirty books, a
defense that had profound consequences for the representation of sex
in American literature and culture.3

What goes unmentioned in accounts of this crucial trial is the prom-
inence of Jews among the advocates for Miller’s novel. Haiman, the
plaintiff who initiated the suit, was Jewish, and so was his lawyer, the
veteran First Amendment advocate Elmer Gertz. The book’s publisher,
Rosset, considered himself half Jewish. The paperback of Miller’s book
contained an introduction by the poet Karl Shapiro, whose most recent
collection of verse was titled Poems of a Jew. Gertz called as the first
expert witness to testify on behalf of the novel Northwestern University
literary scholar and James Joyce biographer Richard Ellmann, son of
Jewish immigrants from Romania and Ukraine. The presiding judge,
Samuel B. Epstein—who referred to Miller’s novel as “filth” but ulti-
mately decided the case in favor of Haiman’s “freedom to read”—was,
like Ellmann, a first-generation American, whose father had trained at
the famed Slobodka yeshiva in Lithuania and had come to Chicago in
1911 to lead one of the nation’s largest Orthodox Jewish communities.4

Should the Jewishness of Haiman, Gertz, Rosset, Shapiro, Ellmann,
and Epstein matter to literary historians interested in the legal defense
of Tropic of Cancer? Miller, a German American whose forebears were
Catholics, did consider Jewishness relevant to his literary project and
to the issue of American treatments of obscenity. In Tropic of Cancer,
Miller’s autobiographical narrator almost prophesizes the events of the
Chicago trial when he notes that “the first people to turn to when you’re
down and out are the Jews.” Even more pointedly, the narrator, aware that
his monologues constitute criminal obscenity under the American laws
of his time, remarks that he might as well “become a Jew” himself: “Why
not?” he wonders, on the book’s third page. “I already speak like a Jew.”5

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We cannot, of course, blithely accept the implication of Miller’s nar-
rator’s remark. It would be a mistake to explain the participation of
Haiman, Gertz, Rosset, Shapiro, Ellmann, and Epstein in the defense of
Tropic of Cancer by saying that as Jews they were predisposed to favor
obscene language. That would mean endorsing a venerable, deplorable,
and ignorant anti-Semitic tradition that has understood Jewish speech and writing as obscene. Indeed, the concept of obscenity evolved in American legal discourse in the late 19th century as a response to fears about the speech and behavior of Jews and others suspected of being insufficiently American and Christian. The idea of Jews as differing sexually from Christians had a long history by then: in the ancient Mediterranean, Jews had been called an “obscene people,” who were “prone to lust,” and “indisputably carnal” by Romans and early Christians who repudiated the Jewish practices of circumcision and polygamy. Such fantasies about Jews’ abnormal sexuality persisted in the centuries that followed, though not always as explicitly. They resurfaced forcefully, however, in the panics arising from the democratization of the mass media in the decades after the Civil War, when the new European anti-Semitism, which frequently linked Jewish greed with lust, found its way to the United States. A leading French anti-Semite, Édouard Drumont, fumed in 1886 about a “pornographic war” being waged by avaricious Jews against Christian France, and his American counterpart, Telemachus Timayenis, repeated and enlarged such claims in English-language publications. In The Original Mr. Jacobs (1888)—which was not very “original” but largely a plagiarism-in-translation of Drumont’s La France juive—Timayenis claimed,

Nearly all obscene publications are the work of the Jews. . . . The historian of the future who shall attempt to describe the catalogue of the filthy publications issued by the Jews during the last ten years will scarcely believe the evidence of his own eyes. Scenes of gross debauchery, representing drunken monks in the society of girls, priests lashing nude women, filthy groups, and other outrageous pictures, are displayed on all sides, with Jewish effrontery, in the windows and stores.

Adding a detail peculiar to the American scene, Timayenis ventured to hope that “Anthony Comstock . . . would try to bring to justice the Jew editors that disgrace public morals by their filthy articles.” Comstock was, of course, the architect of American obscenity law—the 1873 federal statutes regulating obscenity in the mail have always been referred to as the Comstock laws. In fact, by the time Timayenis published his condemnation of the “filthy publications issued by Jews,” Comstock had
already been devoting considerable energy to regulating the activities of American Jews.

Comstock first gained institutional support from the New York City YMCA in the wake of an 1871 scandal in which a Polish Jewish immigrant, Jacob Rosensweig, was convicted for the accidental death of a young woman during an attempted abortion in New York City. In the years that followed, as Comstock arrested scores of people—frequently, the sociologist Nicola Beisel has shown, women and immigrants—for distributing contraceptive devices and obscene texts, he explicitly identified a number of his targets, including Moses Jacoby and Morris Bass, as Jews. Comstock did not regard these Jews as acting as individuals but as conspiring with other Jews: in the case of Bass, a news report quoted a director of the New York Society for the Suppression of Vice (NYSSV), Comstock’s organization, to the effect that Comstock believed that a district attorney and judge had corruptly colluded to place onto the jury six “Dutch Jews . . . who were opposed to [the] society,” thus winning the case for Bass, who “was a Dutch Jew, too.” Comstock’s speeches regularly emphasized a commitment to Christian virtue, at times in contrast, at least symbolically, to Jewish sinfulness. In an address to a gathering of evangelical Christians at the 1893 Chicago World Exposition, Comstock declared, “as we contemplate the foes of moral purity and the harvest of their seed-sowing, we cry out in the words of the prophet of old in his lamentation over the sins of the Jews,” and then he cited a verse from Jeremiah.

As it turned out, Comstock’s greatest legal triumph in the regulation of printed obscenity would be the Supreme Court’s upholding of the conviction of one “Jew editor” in 1896, in a judicial decision that defined obscenity in American constitutional law for half a century. Comstock deliberately and cunningly pursued this editor, whose name was Lew Rosen. Under a false name, Comstock dispatched a letter in April 1893 to the magazine Rosen edited, Broadway, a “witty New York society journal,” complaining that he had received the recent issue but that “some boy or printer’s devil has been playing a joke on you, as the paper on three pages is marred with a black substance marked over them.” “There has been no practical joke played on you at all,” one of Rosen’s employees quickly replied, following instructions from the editor. “It is only lamp black . . . and is easily removed with a piece
of bread.”16 When Comstock scrubbed away the grease, he discovered beneath it what the court later referred to as “pictures of females, in different attitudes of indecency.” Comstock testified against Rosen, and the latter was convicted and sentenced to thirteen months at hard labor for sending obscenity through the mail. Rosen appealed his conviction all the way up the judicial ladder, but the Supreme Court finally upheld his sentence, condemning Rosen to jail because his aim had been, as Justice John Marshall Harlan wrote, “of course, to excite a curiosity to know what was thus concealed.”17

Unlike many of the other targets of Comstock’s attention, Jewish or not, Rosen was neither an immigrant nor a pauper. Born Lewis Rosenthal in Baltimore, Maryland, on September 10, 1856, he had graduated from Dartmouth College in 1877 and then relocated to Paris, where he tutored an American diplomat’s son and contributed to English-language newspapers. He published his first book, America and France: The Influence of the United States in France in the Eighteenth Century, with Henry Holt & Company in 1882.18 Back in the United States, he published a novella titled Grisette: A Tale of Paris and New York in 1889 and that same year began to contribute regular, chatty columns of theatrical gossip to the popular National Police Gazette.19 While these later publications were somewhat frivolous, Rosen was more or less respected: a Boston magazine described him in 1889 as “a short, stoutly-built man, with a Boulanger beard,” who was “very unassuming and a pleasant conversationalist” and who kept, “in his apartments on Broadway, a magnificent collection of sketches by the artists of to-day.”20 Like a few other American-born, college-educated Jews of his generation, Rosen seems to have eagerly embraced cosmopolitan culture while still unselfconsciously identifying as Jewish. He allowed himself to be listed in a social directory of American Jews in 1888, at least, and in one of his National Police Gazette columns he mocked “actors and actresses [who are] ashamed of their beginnings,” noting the absurdity of an actress who claimed Scotch descent “while . . . her maiden name, Roth, plainly indicated her German origins” and the silliness of another actor “who was of Jewish descent and denied it.”21 This suggests that Rosen changed his own name not to hide his “Jewish descent” but for the sake of show-biz snappiness—indeed, if the former had been his goal, “Lew Rosen” was a rather clumsy choice.
As comfortable and cultured an American Jew as Rosen may have been, his background made him vulnerable to Comstock. At one point in Rosen's first trial, a prosecutor asked one of the Broadway employees, “Didn't Mr. Rosen and yourself get the idea of blacking [the magazine's pages] from the system of press censorship in Russia?” Though the judge sustained Rosen's lawyer's objection to this question—and though nothing in Rosen's background indicates that he had any special interest in Russian periodicals—the implication is clear: despite being a native-born, college-educated American, Rosen, as a Jew, was perceived by his accusers as suspiciously foreign and thus vulnerable to prosecution. In the following half century, other prosecutors would regularly employ the same tactic, raising doubts in court about the American citizenship or legal residence in the United States of Jews accused of obscenity. Rosen seems to have known the courts would not side with him, even if his journalistic colleagues would support him: he avoided jail by relocating to Europe before the Supreme Court considered his case; he resettled in London and earned his keep writing a weekly gossip column for the Washington Post. In his absence, a publishing-industry magazine implicitly acknowledged the arbitrariness of Comstock's pursuit of editors who could be smeared as non-Christian and un-American, explaining in 1897 that “several gentlemen are walking the streets of New York who are more guilty of the charge of publishing filthy reading matter than Rosen.”

Rosen's case has had an especially high profile as a precedent, but it was hardly atypical for Comstock. According to figures tabulated by the literary historian Jay Gertzman, Comstock's New York Society for the Suppression of Vice throughout its history brought charges against Jews more frequently than against Catholics and Protestants combined. In 1887, nine out of nineteen (47%) of the people arrested for obscenity whose religion was noted in the society's records were Jewish. The proportion hovered between 50% and 60% in the following decades, and in the 1930s it often topped 90%. It is in this context, with Jewish publishers and entrepreneurs being regularly arrested on obscenity charges in New York City, that Miller's narrator's remark about “speak[ing] like a Jew” can be understood. The first publisher of Tropic of Cancer, Jack Kahane, was a Manchester-born dandy and one of a few Anglophone Jews who had immigrated to France in the 1920s and begun to publish
English-language books there that were unpublishable in the United States and England because of Comstock and his British counterparts. Miller, then, understood himself as uneasily allied with Jews committed to the publication of what U.S. law deemed obscenity, though he could not have predicted that it would be American Jewish lawyers, editors, and judges who would free his novel from censorship in the 1960s.

In the decade leading up to Rosset’s republication of *Tropic of Cancer*, and in the decade that followed it, many of the defendants in crucial, precedent-setting Supreme Court obscenity cases were Jewish men, specifically in *Burstyn v. Wilson* (1952), *Roth v. United States* (1957), *Freedman v. Maryland* (1965), *Mishkin v. New York* (1966), *Ginzburg v. United States* (1966), *Ginsberg v. New York* (1968), *Cohen v. California* (1971), and *Miller v. California* (1973). As conventional and mail-order publishers, editors, film distributors, newsdealers, and social protesters, the men named in these cases tested the limits of the American law of obscenity and of the First Amendment. As in Rosen’s case, decisions in several of these cases—particularly *Roth*, *Ginzburg*, *Ginsberg*, and *Miller*—affirmed the defendants’ sentences and prison terms while redefining the concept of obscenity in American legal discourse and dramatically transforming the horizon of possibility for American cultural production.

As the Chicago trial of Miller’s novel illustrates, American Jews played crucial roles in obscenity controversies not just as defendants but also as lawyers, judges, and witnesses. Jewish lawyers were often willing to defend people accused of obscenity even when their liberal non-Jewish colleagues were not. The American Civil Liberties Union furnishes an example. It was founded after World War I by liberal Protestants who were eager to distance themselves from the anarchists, atheists, and radicals in the Free Speech League who had been the first organized opponents of Comstock’s deployment of obscenity law in the late 19th century. As such, the ACLU refused to take up obscenity cases in its first decade. The acting director of the organization pointedly wrote to a Boston librarian in 1927, “We cannot go into the ‘anti-obscenity’ campaign. . . . That is a phase of free speech we have kept clear of. . . to avoid complicating our main issues.” Yet the three prominent Jewish lawyers associated with the group at the time—Harry Weinberger, Arthur Garfield Hays, and Morris Ernst—defended the work of
Sholem Asch, H. L. Mencken, Theodore Dreiser, and James Joyce in a series of crucial obscenity cases in the 1920s and early 1930s.30 As late as the early 1950s, an ACLU official could remark that the organization did not “believe that the obscenity laws are interfering with freedom of the press in any way.”31 It was another Jewish lawyer, Ernst’s protégé Harriet Pilpel, who eventually convinced the ACLU to defend other civil rights threatened by obscenity law, including the sexual rights of gays and lesbians and women’s rights to contraception.32 In the postwar decades, many of the most influential lawyers who took on obscenity cases were also Jewish: Charles Rembar advised his cousin Norman Mailer to bowdlerize “fuck” to “fug” in The Naked and the Dead (1948) and served as lead counsel for Rosset’s Grove Press; Jake Ehrlich famously defended Allen Ginsberg’s Howl in San Francisco; Stanley Fleishman was the most prominent First Amendment lawyer in Los Angeles for several decades; and Ephraim London argued key film-censorship cases in front of the Supreme Court. In addition to their legal work, these lawyers also wrote or edited books and essays for popular audiences in which they agitated against the suppression of literature and art, presenting the relevant arguments to authors, publishers, and general audiences who were unlikely to consult articles in legal journals.33

Some Jewish judges also exerted substantial influence on the development of the law of obscenity. For example, in 1933, Benjamin Greenspan, a founder of the Wall Street Synagogue, ruled against the suppression of Erskine Caldwell’s novel God’s Little Acre.34 In the 1940s, the single written opinion to emerge from all four trials of Edmund Wilson’s Memoirs of Hecate County, the suppression of which was upheld by the Supreme Court, was a dissent by a Polish Jewish immigrant and former congressman, Nathan D. Perlman, who presided along with two other judges over the book’s first trial in New York.35 In the 1950s, it was a thoughtful dissent by a Jewish judge, Jerome Frank, in a case involving a Zionist-poet-turned-literary-pirate-and-pornographer, Samuel Roth, that inspired the Supreme Court to reexamine the law of obscenity.36 In Chicago in 1960, Judge Julius Hoffman, who was to infamously preside over the trial of Abbie Hoffman and the Chicago Seven later in the decade, acknowledged the consequences of the Roth decision in a case about Big Table, the literary journal that had been founded by Irving Rosenthal and Paul Carroll, with the help of Allen Ginsberg, after the
University of Chicago refused to let them print pieces by Jack Kerouac and William S. Burroughs in the *Chicago Review*.37

These Jewish lower-court judges were hardly alone in countering the suppression of literature under the charge of obscenity and in laying the groundwork in precedent and legal theory for a First Amendment defense of the representation of sexuality in literature and art. Non-Jewish judges including Learned Hand, Augustus Hand, and John Woolsey also contributed influentially to this tradition, as did non-Jewish legal scholars including Theodore Schroeder, Zechariah Chafee, Jr., and Harry Kalven, Jr. Moreover, Jewish judges were hardly of one mind on the question of obscenity. The role of Jewish Supreme Court justices, and particularly of Abe Fortas, in decriminalizing pornography in the 1960s has been strategically overstated by these judges’ political opponents, with unfortunate political consequences. The justice with the most influence over the Supreme Court’s treatment of obscenity in the postwar decades was not Felix Frankfurter, Arthur Goldberg, or Fortas but a Catholic, William J. Brennan, Jr., and the justices most consistently and most fervently committed to the protection of freedom of expression during the 1950s and 1960s, Hugo Black and William O. Douglas, were also not Jewish.38 Still, the Jewish lower-court judges mentioned earlier, and a handful of others, contributed progressive decisions that helped lead to the freeing of virtually all literature and most film from obscenity prosecutions by the mid-1960s.

This brief survey of American Jews’ interventions in debates about obscenity law hardly exhausts its subject. Many of the American Jews who produced or distributed materials legally classified as obscene, or who worked in the pornography industry, have not left their names on legal landmarks, and the preceding survey also neglects Jewish literary critics and sexologists who either testified at trials or whose insights influenced lawyers, judges, and pornographers themselves.39 The question remains, too, whether and how the Jewishness of participants in these debates matters.

Certainly one cannot assume that an individual American Jew, simply because he or she is Jewish, will favor laxity in obscenity laws. On the contrary, any number of American Jews have staunchly and influentially opposed the relaxation of obscenity prohibitions, from many Reform rabbis before World War I to Harry Kahan, an operative of the
NYSSV; to Henry Loeb, a Memphis mayor (and convert to Episcopalianism and outspoken segregationist) who mounted a campaign to suppress Philip Roth’s novel *Portnoy’s Complaint* in the late 1960s; to Irving Kristol, who articulated the neoconservative case for the censorship of pornography in 1971; to Andrea Dworkin, a leader of the anti-pornography feminist movement in the 1980s; to Judith Reisman, who has more recently attacked Alfred Kinsey as a pervert and advocated for censorship. It seems likely that at least one of the witnesses who testified against *Tropic of Cancer* in that celebrated Chicago trial, a Skokie neuropsychiatrist named Samuel Irving Stein, was also Jewish. There is little evidence, moreover, that any of the half dozen Jewish men who met in that 1960s Chicago courtroom to defend *Tropic of Cancer* considered it important that any of the others were Jews or that any single one of them acted as he did on the basis of a shared Jewish idea or value. Without endorsing and repeating the pernicious anti-Semitic claims of Timayenis and his ilk—for whom Jews will always be an “obscene people,” “indisputably carnal,” and disturbingly “prone to lust”—how, then, can Jewishness be productively understood as relevant to the interventions of individual Americans in 20th-century debates about obscenity?

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Cultural and legal historians and literary scholars who have studied literary obscenity in the United States and England have tended to avoid the question of the relationship of Jewishness to their subject. Not wanting to reproduce the nativist anti-Semitism of Comstock and other antivice crusaders or to provide support for the racist claims about Jewish sexuality trumpeted by avowed anti-Semites, serious scholars of American law and culture tend not to dwell on the Jewishness of so many of the figures who played key roles in the history of obscenity and pornography in the United States, even while these same scholars do attend scrupulously to the religious and ethnic affiliations of Protestants and Catholics. Jewishness is typically mentioned in the finest books on this subject only when it is raised unavoidably by the participants themselves, and scholars then typically eschew any commentary. Edward de Grazia’s massive history of obscenity and American law, for one example, quotes Edmund Wilson’s remark that the only judge to
write “a highly intelligent opinion” in the original trial of his suppressed collection of short stories, *Memoirs of Hecate County* (1946), was “the Jewish one, Perlman”—but de Grazia does not address the question of why Wilson considered Perlman’s Jewishness to be relevant or whether there was any merit in that observation.44

The role of Jews in the history of obscenity in 20th-century American culture offers an extraordinary case, then, of what the intellectual historian David Hollinger has identified as the “booster-bigot trap,” which “tempts the scholar” interested in the contributions of a minority group to an industry or area of cultural endeavor—the role of Jews in the institutional developments of physics or of free-market capitalism or of the Hollywood studio system, or the role of Italians in the construction industry or in organized crime, or of African Americans in the development of American basketball or jazz—“to choose between the uncritical celebration of ‘[that group’s] contributions’ and the malevolent complaint about ‘[that group’s] influence.’”45 As Hollinger would predict, boosters and bigots on the subject of Jews and obscenity abound. A handful of observers, journalists, and popular writers have proffered generalized, “uncritical celebration[s]” of Jews’ support of sexual expression: Hugh Hefner, a lifelong non-Jewish philo-Semite, asserted admiringly in the 1960s, for example, that “American Jews—while not nearly as sexually permissive as the Hebrews of the Old Testament—are more liberal than either American Catholics or the mainstream of American Protestantism,”46 while the Jewish celebrity sexologist Dr. Ruth Westheimer has more recently claimed that “Judaism is intensely sexual” and that “sex, in and of itself, has never been a sin for Jews, or something not to discuss.”47 Their good intentions notwithstanding, such approaches rely on essentialist visions of Jewishness that mirror those of anti-Semites. Thus, these statements can easily be exploited by people with unsavory aims: when, in 2004, Nathan Abrams, a scholar of American Jewish culture, published an article arguing that “secular Jews have played (and still continue to play) a disproportionate role throughout the adult film industry in America,” almost immediately anti-Semitic websites seized on the story and folded it into hoary accusations about an “international Jewish child porn/murder operation” that grimly evokes false accusations that, as we will see, circulated in Europe and the United States in the late 19th and early 20th centuries.48
This helps to explain why the most sophisticated studies of obscenity in American law and culture to date have remained silent on the subject of participants’ Jewishness. As Hollinger notes, most often the way that Americanist scholars “avoid both boosterism and bigotry” around the question of Jews’ influence in a particular industry or area of cultural endeavor is simply “to avoid talking about Jews.” The unintended consequence of such understandable reticence has been the neglect by scholars of American culture of some of the key dynamics through which concerns about ethnicity, religion, and sexuality intertwined in the literary and cultural history of the United States.

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The alternative to the booster-bigot trap should not come as a methodological surprise to scholars working in ethnic and cultural studies. As Hollinger phrases it, the solution is to insist on a resolute antiessentialism that recognizes “the internal diversity of ethnoracial groups and the contingent, historically specific character of the culture these communities present to the larger society at any given moment.” One cannot responsibly make general, transhistorical claims about Asian American musical culture or homosexuals’ attitudes toward religion—or, for that matter, about “the Jews” (as both anti-Semites and philo-Semites regularly do)—because ethnic, racial, and sexual identities and affiliations are almost never tidy or stable enough to pin such generalizations on. This point would seem to be so widely agreed on by contemporary scholars, at least, that it hardly needs restating. Yet for the sake of the coherence of their analyses, and in service to identitarianism, scholars do continue to slip back into essentialism—which, when pressed, they can defend as “strategic”—all too regularly.

A wave of recent studies of Jews and sexuality have emphasized both the internal diversity and historically specific nature of Jews’ sexual behavior and attitudes. One excellent entry in this literature, David Biale’s synoptic *Eros and the Jews,* emphasizes the “tensions, contradictions, and conflicts” that characterize Jewish attitudes toward sex across thousands of years of history—a project he framed in the early 1990s as part of the scholarly effort of “deconstructing Judaism.” This makes it all the more noticeable when Biale slips into reductive essentialism in
his chapter on Jews and sexuality in the United States, generalizing that the variety of American Jews’ treatments of sexuality are “all dedicated to a common struggle: to harmonize the Jewish experience with American culture and thus to negotiate the integration of Jews in American society.” This claim is, at best, partially true. To posit a desire for Jewish American harmony at the center of all American Jewish representations of sexuality—another instance of what Jonathan Sarna has perceptively diagnosed as a “cult of synthesis” in the writing of American Jewish history—does not adequately account for the usefulness of obscenity to those American Jews who wished to reject their own Jewish heritage or for the vehemence with which some Jews battled against the U.S. government’s regulation of expression. As inconvenient as it may be for the cultural historian, there simply is no unifying dynamic that can explain the variety of Jews’ engagements with obscenity: American Jews who have engaged with obscenity from the late 19th century to the present are simply too diverse, too subject to historical contingency, too unpredictable to fit any single generalization. It should be self-evident that even meaningful analytical concepts, such as those of the “pariah capitalist” and “middleman minority,” which Jay Gertzman valuably brings to bear on the American Jewish erotica dealers of the 1920s and 1930s, cannot sensibly be applied to all American Jews throughout history. However well these categories apply to poor, relatively marginalized mail-order book dealers such as Esar Levine and Benjamin Rebhuhn, they do not shed much light on the six Jewish men—a prize-winning poet, two university professors, an eminent lawyer, a wealthy banker’s-son-turned-publisher, and an appointed judge—whose combined efforts resulted in the freeing of Miller’s *Tropic of Cancer* from censorship in Illinois in early 1962.

This book builds on the studies that have analyzed Jews’ sexual representations and activities in the United States, such as Biale’s and Gertzman’s, while insisting that no single explanatory paradigm adequately accounts for the range of phenomena it addresses. It takes its title from a traditional rabbinic text that adduces such antiessentialism in a discussion about Jews and sinful speech. In Isaiah 6:5, the prophet refers to himself as “a man of unclean lips” who dwells among “a people of unclean lips”—a moment Henry Roth relates to “dirty words” in his novel *Call It Sleep*. It is the Babylonian Talmud’s trenchant critique of
the prophet’s remark that resonates most with the method of the current study: Isaiah’s calling himself unclean is tolerable enough, the rabbis of the Talmud suggest, but it was egregious on his part that he went on to generalize about all Jews on the evidence of a single individual.59 Like the authors of that statement, if in a radically different context and for entirely different reasons, this book refuses to accept broad generalizations about Jews and obscenity.

It must be acknowledged, moreover, that American Jews often engaged with obscenity—produced it, defended it, wrote about it—for precisely the same reasons that many of their Protestant, Catholic, and nonreligious peers did so: to make money, to seek sexual gratification, to express antisocial rage. None of these motivations is any more Jewish than it is non-Jewish. Take the first, as an example. Since antiquity, it has been obvious to just about everyone (except perhaps self-appointed moralists) that suppressed literature has tremendous sales potential: as the linguists Keith Allan and Kate Burridge point out, Tacitus remarked as early as the 2nd century CE that “banned writings are eagerly sought and read.”60 It is a non-Jewish publicist to whom the quintessential, if apocryphal, anecdote about this dynamic, as it applies to the modern United States, is attributed: the legendary public-relations pioneer Harry Reichenbach claimed that when he was hired to promote the sale of lithographs of Paul Chabas’s painting September Morn by a New York store owner who had purchased thousands of copies of the print, Reichenbach cannily posted the print in a shop window, hired a group of young children to ogle it, and then anonymously informed Anthony Comstock of the situation. According to the mythical anecdote, Comstock arrested the store owner, newspapers reported the event, and the print sold like hotcakes forever after.61 Jewish erotica dealers certainly used similar tactics: in 1930, Esar Levine suggested to the wife of a cash-strapped author, “Have a French printer set up the . . . volume of short stories. Have it ‘privately printed’ by the author. . . . If you do this, the public will buy hundreds of copies. . . . You have no idea . . . what a magic effect ‘privately printed’ on the title page of a book of snappy stories would have!”62 Yet in sources of information about Jews who produced and defended obscenity in the modern United States, I have not been able to discover anything that makes their interest in the financial rewards of these endeavors distinct from the financial interests of
American non-Jews. On the contrary, when Jews talk about making a fortune by selling pornography, they sound the same notes as do Americans of other ethnic and religious backgrounds, such as Larry Flynt and Gerard Damiano, for whom obscenity held the same promise.63

Similarly, some American Jews have embraced obscenity as a means for obtaining sexual gratification, or for expressing anger about their individual lives, in ways that do not seem to have any particular stakes or resonances for them as members of a religious, social, or other group. Such embraces of obscenity as transgression for its own sake, for the pleasure of catharsis, tend to implicitly, if not explicitly, acknowledge their own lack of instrumentality. The shouting of a taboo word in a moment of sudden pain does not mean anything more or different for an American Jew than it does for anyone else.64 Al Goldstein, publisher of Screw and host of Midnight Blue, furnishes a colorful example of such motivation for engagements with obscenity. While Goldstein invokes his own Jewishness regularly, his signature concern has been his implacable rage. “What motivates me is not love, but hatred,” Goldstein remarks in his autobiography. “Screw was always fueled by anger. Unlike others who reach success, I was not warmed or tempered by it. I remained angry and only got crazier.”65 Decades earlier, Philip Roth captured this aspect of Goldstein’s motivation when he ventriloquized him in The Anatomy Lesson (1983): “With me money is not the paramount issue,” Roth’s Goldstein-stand-in insists. “The defiance is. The hatred is. The outrage is.”66

Of course, even in Goldstein’s case, one can hardly distinguish the use of obscenity as personal, apolitical rage from its use for political, social, or aesthetic ends.67 Dickering over whether “redeeming value” inheres in a particular allegedly obscene text or act has often made American judges look ridiculous. An apposite case occurred in March 1965 in Berkeley, where the insistence of a few students that “free speech” included obscenity troubled the leaders of the Berkeley Free Speech Movement (FSM). When an aspiring poet from New York wrote the word “fuck” on a piece of paper and sat on the corner of Bancroft Way and Telegraph Avenue, at the edge of campus, a police officer arrested him. A graduate student in education named Art Goldberg organized a rally in which students asserted their right to use the word fuck as much as they liked. Nine of the participants were arrested; Goldberg
was arrested, impressively, twice on a single day. Goldberg’s cause was not sympathetic to the majority of the Free Speech Movement’s leaders, because the defense of obscene speech did not seem a sufficiently worthy issue. As a historian of the movement explains, “most FSM veterans, prudish as dedicated politicos often are, were dismayed” by what came to be dubbed as the Filthy Speech Movement. Mario Savio, a leader of the FSM, recalled that “somehow the issue seemed too abstract to people. People didn’t want to associate themselves with the problem of obscenity.” Goldberg received a sentence of ninety days in jail and was expelled from the university, and the FSM did not protest. A few years later, the U.S. Supreme Court declared in its ruling in Cohen v. California (1971) that “the State may not . . . make the simple public display here involved of this single four-letter expletive a criminal offense,” speaking to the facts of Goldberg’s case almost directly and effacing the distinction that the FSM leaders made between what might be called abstract obscenity—the use of taboo words outside a meaningful context—and obscenity for patently political or aesthetic ends. Cohen had worn a jacket reading “Fuck the Draft” into a courthouse, but the court went beyond the defense of his right to political protest, legitimizing the “simple public display” of a taboo word, whether or not that display is obviously political. Was Goldberg’s rally on behalf of the word fuck apolitical and Cohen’s jacket political? On some level, the distinction is moot, as David Goines argues from an absolutist perspective in his memoir of participation in the Free Speech Movement, as “all forms of speech become political when they are restricted or forbidden.” In this sense, government efforts to suppress obscene speech mean that all obscenity, however abstract or apolitical it may seem, constitutes a putatively political act.

Still, this book considers obscenity such as Goldberg’s and Goldstein’s—obscenity that appears to be produced for thrills or catharsis, or simply as a rejection of the law for the sake of rejecting the law, irrespective of its contents—as obeying such universal human urges that, like obscenity motivated exclusively by profit, they are not of central concern to a consideration of the relations between Jewishness and obscenity in American culture. Jewishness is simply not relevant to every engagement with obscenity by a Jew, so this book focuses on cases, and on cultural dynamics, through which obscenity has been
specifically meaningful to American Jews as Jews. No motivations for engagement with obscenity have applied uniquely to American Jews, of course, nor can any such motivations be said to have applied to all Jews in the United States. Nor did factors operate in isolation. They regularly intertwined, in unexpected ways, in the cases of individual artists, legal professionals, and cultural agents, with many other social factors and with these people’s broader interests.

This book argues, nonetheless, that Jewishness served as a crucial factor in the decisions made by many of the participants in the long, strange history of American obscenity, especially because of the complexity of the roles Jews played in American publishing and literary culture. Each chapter that follows concentrates on one aspect of obscenity that made debates about sexual representation specifically meaningful for American Jews and selects a set of sample cases that most strikingly demonstrate that particular link. Though these are not cases in which a single motivating factor operates in isolation, they have been selected because they seem somewhat less bewilderingly overdetermined by a dozen competing factors than other cases one might examine. This volume intentionally does not offer a comprehensive accounting of cases in which American Jews intervened in obscenity debates or a chronological historical survey of such interventions. The dynamics around Jewishness in the American film and theater industries’ engagements with obscenity law, mentioned mostly in passing here, deserve complete studies of their own. The most famous cases are not always emphasized here, either: the comedian Lenny Bruce, for example, is discussed but not nearly in as much depth as some readers might expect. For reasons both disciplinary and practical, this book focuses most often on literary texts and devotes its attention to surprising and critically neglected examples that most clearly substantiate the argument that Jewishness could and did matter to many Americans, Jewish or not, in their engagements with the question of obscenity.

Broadly, the first two chapters emphasize the effects of widely held anti-Jewish sentiments and resulting policies on the relationship between obscenity and Jewishness in the United States. The first chapter surveys the embrace of obscenity as a means of refuting accusations made by anti-Semites about Jewish sexual abnormality, which, as noted earlier, circulated widely in the late 19th and early 20th centuries and
spurred Comstock’s moral activism and the development of the American law of obscenity itself. Accusations of Jewish lechery appeared in anti-Semitic tracts and medical textbooks and also surfaced in popular and prestigious realist and naturalist literature by the likes of H. Rider Haggard, Émile Zola, and Edith Wharton. As a response to such texts, and inspired by the sexological theories of Sigmund Freud, literary modernists including James Joyce and Theodore Dreiser rejected the idea of Jewish sexual deviance by positioning nonnormatively sexual Jews at the center of their narratives. In so doing, they simultaneously acknowledged the range of sexual behaviors engaged in by all humans and asserted that Jews were no more “prone to lust” than were non-Jews. American Jewish authors, beginning with Ludwig Lewisohn, intensified this approach, representing Jewish perspectives on sex as uniquely healthy alternatives to American puritanism. By the 1940s, Americans began to figure the rise of Nazism as a symptom of sexual repression and rapacity that could be countered through frank and open discussions of sexual desires; in texts from Ka-Tzetnik’s *House of Dolls* (1955) to Edward Lewis Wallant’s *The Pawnbroker* (1961) and beyond, writers insisted on explicit sexual representation as necessary for a complete accounting of the Nazis’ crimes. At the same time, American lawyers began to frame obscenity as a crucial test of the government’s support of the minority rights that had been infamously abrogated by the Nazi regime. The dynamic traced throughout the chapter—the explicit representation of sexuality as countering the spread of sexual anti-Semitism—reaches its apotheosis in Robert Rimmer’s *The Harrad Experiment* (1966), a best-selling novel that distilled anti-anti-Semitic sexological theory into a mass-market fiction of sexual utopia. While it is by no means clear, in retrospect, that the explicit discussion of sex actually mitigates sexual anti-Semitism, this chapter argues that the perception that it might do so shaped key developments in literary modernism and, especially, in the liberalization of obscenity law in the postwar United States.

While the first chapter takes up a specific and rather consistently articulated set of anti-Semitic images, the second chapter examines how changes in the social and cultural positioning of Jews in the United States could transform the meaning of obscenity for them. In the heyday of literary modernism after World War I, obscenity served as an
effective medium of exchange through which Americans could transform financial resources or even social marginality into literary prestige (or, as the sociologist and theorist Pierre Bourdieu calls it, cultural capital)—and, in the 1920s, this was something wealthy Jews needed, because other avenues to respectability had been barred to them. The career of Horace Liveright exemplifies how this dynamic operated for many American Jewish publishers. Liveright transformed himself from a ridiculed parvenu to the most respected of American publishers, with a list that included Dreiser, Sherwood Anderson, T. S. Eliot, Ezra Pound, Djuna Barnes, Jean Toomer, Ernest Hemingway, and William Faulkner. He achieved this by fighting censorship in courts and in the press. His struggle against the New York Clean Books League bill in 1923, in particular, earned him the gratitude of modernist tastemakers. The case of Henry Roth demonstrates that obscenity could function similarly for an author: while acknowledged as a classic of American fiction, Roth’s *Call It Sleep* (1935) includes all the taboo words that resulted in the novels of James Joyce and D. H. Lawrence being suppressed. Attention to the precise contexts of that novel’s publication helps to explain why Roth, a poor immigrant with none of the cultural stature of Joyce or Lawrence and none of the financial resources of Liveright, would have had the temerity to thrust himself into the debate about literary obscenity. The chapter insists that the power of an engagement with obscenity to earn a Jew cultural prestige was the contingent product of the positioning of Jews and obscenity in American culture at a particular historical moment, and so it concludes with a contrasting discussion of the use of obscenity by American Jews in the late 1970s and early 1980s in their efforts to imbue a discredited cultural form, the so-called graphic novel, with literary prestige. This demonstrates just how much had changed, for obscenity and for Jewishness, in American literary culture in half a century.

These first two chapters demonstrate that anti-Semitism, both sexual and genteel, has made obscenity seem meaningful and useful, even necessary, to some American Jews. The third and fourth chapters turn to ways in which tropes from the Jewish literary tradition and debates in contemporary Jewish thought have produced similar results for other Jews, at other moments. American obscenity law developed out of linked anxieties about textual and sexual reproduction: the Comstock
laws in one breath prohibited textual representations of sexuality and the circulation of information about contraception. Jewish textual traditions have a rich, complex discourse about reproduction, and over the course of the 20th century, as Jewish demographics in the United States changed—from the beginning of the century, when immigrant Jews lived in one of the poorest and most overpopulated neighborhoods in the world, to the postwar decades, when journalists and social scientists worried that American Jews were “vanishing”—reproduction recurred as a tense and fascinating subject. Obscenity mattered, then, in a different way, whenever American Jews wrote and thought about reproduction, whether they were Yiddish anarchists and prominent doctors advocating for birth control in the 1910s or novelists taking up the question of intermarriage as a threat to cultural reproduction in the 1960s. The chapter examines the stakes of early birth control debates for Jewish entrepreneurs, lawyers, doctors, and writers and then turns to a discussion of how the language of obscenity, once it became available in the mid-1960s, could be used, by such writers as Philip Roth and Adele Wiseman, to engage and renew traditional allegories of reproduction from the Jewish textual tradition. This chapter demonstrates, then, that graphic representations of sexuality, among their many other uses, enable innovative literary examinations and exhibitions of American and Jewish communal politics.

The other key area of traditional Jewish discourse that impinges on the questions raised by obscenity in the 20th-century United States is that of modesty and appropriate speech. How different is nivul peh, the rabbinic category of foul-mouthed language, from American obscenity? The fourth chapter answers this question by focusing on differences between standards for sexual representation as established with or without state authority—and by presenting Yiddish literature in America as an example of the latter. Unlike Yiddish literature in Russia or Hebrew literature in Israel, Yiddish literature in America was almost never subject to legal regulation but only to what Yiddish critics called tsnies (modesty): limits imposed by publishers, authors, and reading communities, rather than by state and legal authorities. Since Memoirs v. Massachusetts (1966), the situation of American novelists writing in English has come to resemble the situation of Yiddish American writers in the first half of the century, in the sense that the representation of
sexuality in their works is no longer regulated by the state but instead by the metaphorical censorships described by Freud and Bourdieu. Fittingly, the 1980s and 1990s saw the rise of a new discourse of modesty in American culture that is by no means exclusively Jewish but that has often been promulgated by Orthodox Jewish writers and critics such as Wendy Shalit and Shmuely Boteach. The chapter demonstrates how this emergent model of literary modesty reflects the transformation of American literature, for better and worse, into a symbolically diasporic one: a literature, in other words, unthreatened by and nonthreatening to legal and political authorities. The example of Yiddish American literature, then, in addition to its own aesthetic and historical importance, provides a sense of the stakes of the American turn from obscenity regulated by law to modesty regulated by participants in the literary system.

These chapters treat a wide swath of texts, from canonical modern and postmodern literature to mass-market fiction and hard-core pornography, and they do so with attention to a variety of historical circumstances. Together they provide four complementary lenses through which we can view obscenity debates as mattering to American Jews, as Jews: because of their opposition to sexual anti-Semitism, their pursuit of cultural capital, their anxieties about reproduction, and their concerns about modesty. One could point to dozens of other texts and cases, not discussed in detail here, in which ideas about obscenity and about Jewishness became meaningfully intertwined in the United States during the 20th century. This book cannot possibly offer an exhaustive accounting of all of those, but my hope is that the approaches demonstrated here may illuminate many of those other cases, too, and also serve as a model for the kind of study that can be produced on the way religious, ethnic, and racial affiliations influence authors, publishers, lawyers, and pornographers as they engage with obscenity. The focus on Jews and Jewishness in this book should not be understood as implying that there are not equally important studies still to be done on other American groups and their engagements with legal and literary obscenity—the question of obscenity is crucial in African American literary history, for one clear example—but what this volume hopes to accomplish through its concentration on one particular minority group is, first, to fill an unnecessary, gaping, literary-historiographical gap and,
second, to model an approach to American Jewish literary studies that attends to the full and complex range of Jews’ contributions to American literary history, not just as celebrated authors but also throughout the publishing industry and in a variety of contiguous fields.

* * *

Which of the four issues treated in the chapters that follow, one might ask, explains the role of Jews in the Chicago trial of *Tropic of Cancer* with which we began? It should now be clear that there can be no single or simple answer to any question of this sort. One can, at best, consider the players as individuals. In the Chicago trial, the plaintiff and his lawyers at the ACLU framed the trial as concerning individual rights, while Judge Epstein’s remark that “recent history has proven the evil of an attempt at controlling the utterances and thoughts of our population” suggests that he understood the case in relation to anti-Semitic fascism as well as McCarthyism. The lawyer Elmer Gertz suggested how present the Holocaust might have been in his mind when he approvingly quoted a bookseller who, questioned about the suppression of Miller’s novel, asked, “Why did we fight the Nazis if we are now imitating them?” It is telling, along the same lines, that among the critical letters Epstein received in the wake of his decision, “some were anti-Semitic,” including one screed that invoked hoary anti-Semitic rhetoric worthy of Timayenis: “I am certain . . . the Elders of Zion smiled in whole-hearted approval at your ingrained method of dispensing Pharisaic justice, as it met all the specifications regarding the letter of their perverted laws and rulings.” Rosset, the publisher of Grove Press who started it all, seems to have been motivated to publish Miller’s novel, in part, by his hope of establishing himself as a celebrated publisher and cultural icon, while Karl Shapiro’s introduction to *Tropic of Cancer* references Wilhelm Reich but also calls Miller “a holy man” and “a prophet of doom,” suggesting Shapiro’s appreciation of Miller’s rewriting of Biblical tropes; Gertz, too, compared Miller’s work to the Song of Songs. A more detailed study of these individuals and their participation in this trial might yield insight into how, or if, their contributions were inflected by their sense of being Jewish. Given enough evidence, the influence of any individual’s Jewishness on his or her participation in
an obscenity controversy is likely to be richly overdetermined, conditioned by a welter of factors difficult to tease out from one another.

Rather than positing a single explanatory paradigm that explains the many fascinating and unpredictable engagements of American Jews in obscenity controversies, then, this book offers a heuristic framework for exploring such controversies, along with a series of case studies that demonstrate how to make sense of such engagements without relying on perniciously reductive essentialisms or bolstering boosters’ and bigots’ simplistic claims about “Jewish sexuality”—and yet also without effacing or understating the roles played by Jews in the institutional and ideological development of American literature from the late 19th century to the present. American Jews did not produce or defend literary obscenity for any consistent or simple reasons, but they did so in ways that transformed American literature and culture; and in the cases examined in this book, they did so in dynamic interplay with their understandings of themselves as connected to Jewish culture or tradition. Their interventions, which this book is committed to recovering, remain crucial not only to the history of American literature but also for understanding how law, sexuality, religion, and ethnicity intersect.