

# Does Pornography Silence Women?

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In Indianapolis in 1984, an unusual political alliance was formed. On one side was the staunchly conservative city council and on the other were two of America's foremost radical feminists, Catharine MacKinnon and Andrea Dworkin. The issue at stake was pornography—the council saw it as an obscene offence against Christian morality, whilst MacKinnon and Dworkin argued that pornography was responsible for violence against women and their subordination to men. At the invitation of the council, MacKinnon and Dworkin drafted an ordinance banning 'the production, sale, exhibition, or distribution of pornographic materials'. Critics assailed the ordinance as an attack on freedom of speech and a little more than a year after the ordinance was passed in Indianapolis, it was struck down in federal court on First Amendment grounds. But that was not the end of the argument. MacKinnon<sup>1</sup> did not just argue that pornography subordinated women, but that it silenced them too, a claim developed by Rae Langton<sup>2</sup> and Jennifer Hornsby.<sup>3</sup> Langton, on whose work this essay focuses, suggests that pornography itself might plausibly violate the free speech of women. Therefore, invoking free speech does not provide a straightforward defence of pornography—rather, pornography presents a clash between the free speech rights of pornographers and those of women.

At first glance, the claim that pornography silences women might seem confused. Pornography does not seem to stop women speaking, so how can it silence them? Langton disagrees. Drawing on JL Austin's<sup>4</sup> notion of speech acts, she argues that pornography literally silences women. I elaborate Langton's argument below and then offer some objections.

## Langton's account

Langton draws heavily from Austin's notion of speech acts. A speech act is an utterance which performs an action. This action can be further split into three components: a locutionary act, a perlocutionary act, and an illocutionary act. The locutionary act refers to the very uttering of a meaningful utterance. The perlocutionary act refers to the production of certain effects in the

listener by the utterance. The illocutionary act refers to the action performed in making some utterance, the action the utterance constitutes. Take the utterance 'I do', said by the bride to the groom during a marriage ceremony. The locutionary act comprises saying 'I do', meaning she takes this man to be her husband. *By* saying that, the bride may delight the groom—this is the perlocutionary act. *In* saying it she marries the groom—this is the illocutionary act. Speech acts are ubiquitous and varied, reflecting the diverse uses of language. Illocutionary acts, for example, range from warning, to predicting, to questioning, to boasting, and so on. It is this category Langton primarily focusses on. She argues pornography silences women by preventing their illocutions.

What illocution some utterance performs, if any, is determined by certain conditions set by convention. Some illocutions, eg sexual consent, require that the speaker intend to perform that illocution. Others require that certain authority perform—only a judge can sentence a criminal. Langton<sup>5</sup> (as well as Hornsby<sup>6</sup> and Austin<sup>7</sup>) notably holds that, excepting illocutions bound up with formal institutions (eg sentencing), 'uptake' is a necessary condition for the performance of an illocution. That is, the listener must recognise the intention of the speaker to make some illocution, for the speaker to successfully do so.<sup>8</sup> Donald Davidson<sup>9</sup> gives a famous example of where uptake is not secured. An actor in a play might intend to warn the audience of a fire by shouting, 'Get out! Fire!', but the audience might not recognise this intention, rather believing the utterance to be part of the actor's performance. Davidson suggests that here the actor *tries* to warn the audience, but fails, because uptake is not secured.

Langton argues that speech acts can silence other speech acts, and notably silence persons' illocutions. One is illocutionarily silenced or 'disabled' when one can make some utterance, but it not only fails to have its intended effect, but also fails to perform the very action it was intended to. The foreperson of the jury might intend to sentence the defendant (having got confused about court procedure), but their

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1 Catharine A MacKinnon, *Only Words* (Harvard University Press 1993).

2 Rae Langton, 'Speech Acts and Unspeakable Acts' (1993) 22(4) *Philosophy and Public Affairs* 293.

3 Jennifer Hornsby and Rae Langton, 'Free Speech and Illocution' (1998) 4(1) *Legal Theory* 21.

4 JL Austin, *How to Do Things with Words*. (Oxford University Press 1975).

5 Langton (n 2)

6 Hornsby and Langton (n 3).

7 Austin (n 4).

8 The defendant need not recognise the judge's intention to sentence them with some utterance, for the judge to do so.

9 Donald Davidson, 'Communication and Convention' (1984) 59(1) *Synthese* 3.

utterance, 'I sentence you to three months imprisonment', does not perform the illocution of sentencing as they lack the authority to sentence in the first place. Only the presiding judge has the requisite authority to perform the illocution of sentencing a defendant. Plausibly, a party's speech acts can silence another's illocutions, if they set the conditions for an illocution, such that the other party's utterances fail those conditions. This is the case in the foreperson example. The speech act constituting the law governing courtroom proceedings, sets the conditions for an utterance to perform the illocution of sentencing someone, such that a foreperson cannot perform that illocution.

Accordingly, pornography will illocutionarily silence women if it sets the conditions on certain illocutions, such that women cannot perform them. Legal speech sets very clear conditions on certain illocutions, such as sentencing. But speakers can set conditions by their utterances more informally, by gradually building up precedents and conventions. This is what Langton suggests happens in the case of pornography. In the sexual context, pornographic speech sets the conditions of refusal. Pornography portrays women as always sexually available, or as incapable of agency. It thereby teaches some men simply not to recognise that women's utterances such as 'no' are intended to perform illocutions of refusal. It is not that they recognise women's refusals but ignore them. Instead, they quite literally do not take women to intend to refuse sex by saying 'no', thinking they are instead being 'coquettish', for example. Given successful illocution typically requires uptake, the influence of pornography thus prevents women's utterances in the sexual context from counting as refusals.

Importantly, Langton also argues that pornography perlocutionarily silences women. Pornography frequently presents sexual violence as titillating and woman as sex objects. It thereby inculcates in certain men desires to rape women, and induces them to see women as mere things, undeserving of respect. These attitudes influence how men treat the women they encounter in sexual contexts. In these cases, although men recognise that women's utterances such as 'no' are intended to refuse sex, and so women successfully perform illocutions of refusal, men ignore these refusals. The intended effect of women's utterances, to prevent men having sex with them, is not realised, and so they are perlocutionarily disabled, ie raped.

### Objections to Langton

An initial worry for Langton's argument is that if, by failing to recognise their intentions, men prevent women's utterances during sex from counting as refusals, then women do not refuse sex with men who rape them and so are not 'genuinely' raped. I believe this worry is misplaced. Firstly, simply not refusing sex may be insufficient for sex to be consensual—that may require an active act of consent by each partner. But more importantly, in these situations, women do not refuse sex with men only insofar as their utterances cannot constitute refusals. They still obviously *intend* to refuse sex by such utterances, intend not to consent, and I suggest that is clearly enough to establish that they have been raped.

A second worry is that there is tension between the claims that pornography both perlocutionarily and illocutionarily silences women. In the first instance, pornography teaches men to override the refusals of women, (ie to ignore what they recognise as women's refusals), whilst in the second case pornography teaches men not to recognise women as refusing at all. It might be unclear how pornography can do both, albeit one may argue that pornography can teach men different attitudes, depending on

the sort of pornography they consume or on the sexual context in which they find themselves.

But the contention that pornography illocutionarily disables women relies on a further empirical claim we may doubt—that rapists do, at least sometimes, sincerely and consciously believe that women's utterances during rape are not intended to refuse sex. Perhaps the closest documented example of this is the UK court case *DPP v Morgan*,<sup>10</sup> where the defendants claimed that they believed their victim wanted to have sex with them, as they had been assured by her husband that she was 'kinky' and would merely feign refusal. Even here, however, the judge notably ruled that the men could not have genuinely believed her protestations were insincere. So, one may think that women *do* secure uptake on their intentions to refuse sex, and so do genuinely refuse – it is just that men disregard such refusals. The rape of women is then an instance of perlocutionary not illocutionary disablement. This might seem irrelevant; after all, whether women are perlocutionarily or illocutionarily silenced by pornography, they are still silenced. But as noted, anti-pornography feminists often want to argue that the pornographic silencing of women violates their rights to free speech. Literally being rendered incapable of refusing, ordering, advising, etc, as in cases of illocutionary silencing, plausibly violates free speech. But as Alexander Bird<sup>11</sup> argues, it might appear perlocutionary frustration is not a free speech infringement. A right to free speech would imply one's arguments, intended to persuade, can never permissibly be found unconvincing, for example. Therefore, if pornographic speech perlocutionarily silences women, but not illocutionarily, then it plausibly does not violate their free speech.

But one might argue that given massive underreporting of sex crimes, it is unsurprising that there is little documented evidence of men failing to recognise the refusals of women. Indeed, victims may be especially unlikely to report their rape when the rapist did not apparently realise their crime, for fear that such ignorance would be deemed to exonerate their attacker, or from rationalising their rapist's actions as 'not really meant' or less serious for being unintended. Langton<sup>12</sup> draws on surveys of British adolescents to argue that rape may well occur where the rapist does not realise the woman intends to refuse. These surveys suggest that pornography is, to some extent, taken as epistemically authoritative in the sexual domain, ie taken to accurately depict sexual desires and dynamics. Multiple respondents said that porn 'gives you the idea that girls are easy', or that 'all girls want sex'. This may suggest pornography does propagate the notion that women never refuse sex.

Leaving this empirical question aside, there is a further objection to Langton's claim that pornography silences women. Following Bird<sup>13</sup> and Peter Strawson,<sup>14</sup> one can deny uptake is necessary to produce illocutions. Accordingly, even if pornography teaches men not to recognise women's intentions to refuse sex, this does not illocutionarily silence women. We have already seen uptake is not necessary for institutional illocutions such as sentencing, which Langton and Hornsby argue are an exception. But consider whining and rejoicing, both of which are non-institutional

10 *DPP v Morgan* [1975] UKHL 3.

11 Alexander Bird, 'Illocutionary Silencing' (2002) 83(1) *Pacific Philosophical Quarterly* 1.

12 Rae Langton, 'Is Pornography like the Law?' in Mari Mikkola (ed), *Beyond Speech: Pornography and Analytic Feminist Philosophy* (Oxford University Press 2017).

13 Bird (n 11)

14 Peter F Strawson, 'Intention and Convention in Speech Acts' (1964) 73(4) *The Philosophical Review* 439.

illocutions and neither of which require uptake. One can whine without intending to, and one can rejoice without any audience present. In neither case does any listener recognise one's intentions to perform these illocutions.

Even considering the classic example of warning, it is unclear that uptake is necessary. Recall Davidson's actor—Davidson maintains that the actor is illocutionarily disabled, and so fails to warn the crowd of the fire. As Bird<sup>15</sup> argues, however, this plausibly runs contrary to our intuitive assignments of moral responsibility. If the audience eventually sees the smoke and flees, they could not afterwards reasonably complain that they were not warned of the fire, precisely because they *were* warned. But perhaps this point is not decisive. One could maintain that the audience was *not* warned, and that they cannot complain about this, simply because no third party was responsible for their not being warned. Rather it was the audience itself, by obtusely failing to take up the actor's intention to warn, that caused themselves not to be warned. I think the point is brought out by a comparison between two cases: the original case where the actor exclaims 'Get out! Fire!', intending to warn the audience but uptake is not secured, and a case where the actor intends to warn with their utterance, but uptake is not secured as they only utter terrified gibberish. Langton deems both cases equivalent; neither actor warns because neither secures uptake. But I suggest that, intuitively, the cases are different. The former actor succeeds in doing something, whereas the latter does not—namely, they manage to utter a genuine warning. That warning is not heeded, and so they are perlocutionarily disabled, but they are not illocutionarily silenced.

As there are not obvious examples of illocution requiring uptake, we should perhaps doubt uptake is necessary for refusal. An arrogant chef who cannot even *conceive* of someone disliking their food, might never recognise a person's intentions to refuse more food from them. But if one says 'No, thank you' in response to such an offer, as Bird argues, it is intuitive that one has still refused, even if this refusal is not registered. Analogously, even if a man does not recognise that a woman intends to refuse sex by her utterance, and so rapes her, she still performs the illocution of refusing sex. Again, she is perlocutionarily disabled, not illocutionarily. As established, perlocutionary disablement cannot constitute the sort of silencing Langton attributes to pornography.

## Conclusions

Given free speech defences of pornography, it might seem politically advantageous for feminists to claim that pornography silences women in some near-literal sense, and so unambiguously violates their free speech. But given the above problems, perhaps the claim should be taken less literally. As Finlayson<sup>16</sup> suggests, we can understand the claim simply to emphasise the intimate and powerful way in which pornography prevents women from making themselves understood and determining how they are perceived. I suggest it is in this sense, not a strict illocutionary sense, that pornography silences women in inducing men not to recognise their refusals of sex. This recasting need not close off politically powerful arguments for regulating pornography. By silencing women in Finlayson's sense, pornography plausibly leads to sexual violence. And opponents of pornography can still invoke free speech—perhaps the most influential justification of free speech is that it is conducive to the spread of truth. That is surely not true of pornography, which

perpetuates myths about female sexuality, and so plausibly merits less protection under a right to free speech. I suggest that although the claim that pornography silences women cannot be understood in illocutionary terms, there are other philosophically and politically powerful ways of construing it, which offer more promising results.

<sup>15</sup>Bird (n 11)

<sup>16</sup>Lorna Finlayson, 'How to Screw Things with Words' (2014) 29(4) *Hypatia* 774.