

Debate: On Silencing and Sexual Refusal*

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FOLLOWING Catharine MacKinnon, Rae Langton and Jennifer Hornsby argue that pornography silences women.¹ Appealing to Austin's theory of speech acts, they offer a speech act account of the phenomenon of silencing and they also argue that pornography causes this phenomenon.² In addition, they argue that silencing, in their sense, is a violation of the right to free speech. If this is correct, then the free speech rights of pornographers directly conflicts with the free speech rights of women. Thus, even if the free speech right is primary, appealing to pornographers' right to free speech cannot afford a straightforward justification for protecting pornography. For this reason, this work on silencing has rightly gained considerable attention.

Here I identify an alternative type of silencing and argue that pornography is just as likely to cause it. Although, as I shall argue, this alternative form of silencing does not appear to be a free speech issue, there are independent grounds for taking it seriously.

I. TWO ACCOUNTS OF SEXUAL REFUSAL

Langton and Hornsby argue that pornography interferes with women's ability to successfully perform the speech act of sexual refusal. Since the focus is on this particular type of speech act, I start with a discussion of how such speech acts work. In what follows, I offer two different speech act accounts of sexual refusal. I argue against the first and for the second.

A. TELLING

Consider first the hypothesis that sexual refusal is an instance of telling. On this account, when Cindy says 'No' in response to Carl's sexual advances, Cindy

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¹MacKinnon 1987, 1993. Langton 1993, 1998. Hornsby 1993, 1995. Hornsby and Langton 1998.

²Austin 1975. Although MacKinnon (1987, 1993) and Langton (1993) both claim that pornography constitutes (rather than merely causes) silencing, the silencing literature focuses on Hornsby's (1993) claim that pornography causes silencing. Consequently, I too here focus on this causal claim.

successfully refuses in virtue of successfully communicating to Carl that she is not willing to have sex with him. If this is correct, then sexual refusal is constituted by the successful communication of a certain proposition (i.e. that [the speaker] is not willing to have sex with [the addressee]). As such, it is a purely communicative speech act.³

Uptake (i.e. hearer recognition of speaker intention) is essential with such speech acts. If the addressee fails to recognize the speaker's intention to tell him that *p*, then the speaker fails to tell the addressee that *p*. Although the speaker may have uttered words that express *p* and although the speaker may have done everything that a speaker can reasonably be expected to do in attempting to communicate that *p*, if uptake fails then *the act of communicating p to the addressee* fails as well. In this way, we see that uptake is necessary for successful communication. With *purely* communicative speech acts, uptake is also sufficient. As soon as the addressee recognizes my intention to tell him that *p*, I have succeeded.⁴

Other speech acts do not work like this. Let's call them communication-plus. To see this, suppose that I try to order my boss to give me a raise. Although the boss recognizes my (misguided) intention to order her to give me a raise, I nevertheless fail to do so exactly because I lack the requisite authority. As one can see, speech acts can fail even when communication succeeds. This is because some speech acts do more than just communicate propositions and there are further conditions required for doing that something more.

Although it may seem that sexual refusal is a mere matter of communicating a certain proposition, this cannot be correct. To see this, suppose that Sally successfully communicates to Carl that Cindy is not willing to have sex with him. Even supposing that the circumstances are such that Sally's utterance rightly convinces Carl that Cindy is not willing to have sex with him,⁵ Sally's utterance is not a sexual refusal. Although Sally's utterance may constitute sufficient evidence that Cindy *would* refuse, nothing that *Sally* communicates to Carl can constitute *Cindy's* refusal.⁶ Furthermore, even if Cindy successfully communicates to Carl that she is unwilling to have sex with him, this

³Following Hornsby (1994), Maitra (2009) makes a similar distinction.

⁴I am here assuming that this is an instance of *linguistic* communication (so that the addressee's recognition of my intention to tell him that *p* is guided, in the appropriate sort of way, by the conventional meaning of what I said). Had the addressee recognized my intention to tell him that *p* some other way (by, for example, reading my mind) then, although it would be an instance of communication, it would not be an instance of linguistic communication.

⁵Suppose, for example, that Carl knows that Sally knows what Cindy is willing to do and Carl knows that Sally is telling the truth. In such a case, Sally's utterance would be sufficient evidence for believing that Cindy is not willing to have sex with Carl.

⁶I do think that it is possible for one person to refuse on behalf of another. Kate may, for example, refuse a party invitation on behalf of her husband Jim. She is able to do so, though, only because she has somehow been authorized to do so. If this is correct (and this speaker authority condition will be motivated in the following section) then Kate's refusal on Jim's behalf also requires her exercise of that transferred authority and so her refusal is not a purely communicative speech act. I thank Ishani Maitra for raising this worry.

communicative act alone is, strictly speaking, insufficient for sexual refusal. As we shall see, in the following section, a further (speaker authority) condition is required.

B. EXERCITIVE

Let us now explore the possibility that sexual refusals are communication-plus speech acts. Since it seems intuitively clear (and perhaps even obvious) that refusals concern permission, and since either granting or denying permission requires authority, refusals appear to be authoritative speech acts. Austin had a name for authoritative speech acts that set the boundaries of permissibility through “the exercising of powers.”⁷ He called them exercitives. When a legislator enacts a new law, for example, she thereby shifts the bounds of legal permissibility and she does so by exercising her authority in the legislative realm. Similarly, when a parent sets a new rule for his child, he thereby changes what is permissible for that child and he does so by exercising his parental authority over that child.⁸

Consider now the hypothesis that sexual refusals are exercitive speech acts. When Cindy says ‘No’ in response to Carl’s sexual advances, Cindy sexually refuses exactly because she thereby denies Carl permission to proceed. Having authority over who has sexual access to her body, Cindy is here exercising that authority when she sexually refuses. On my view, Sally cannot refuse on Cindy’s behalf exactly because Sally lacks the requisite authority (over who has sexual access to *Cindy’s* body).⁹

As one can see, on this alternative view, the speech act of sexual refusal requires that the speaker have the requisite authority to refuse. Although this speaker authority condition is somewhat peculiar (since, arguably, everyone has such authority over his or her own body), the satisfaction of this speaker authority condition is nevertheless required. For this reason, Cindy’s communicating to Carl that she is unwilling to have sex with him is, strictly

⁷Austin 1975, p. 151. I believe that there are really two quite different types of exercitive speech acts. First, there are what I call standard exercitives. These are the sort that Austin introduced and that shall concern us here. They are utterances that enact permissibility facts *via an exercise of speaker authority*. Second, there are the exercitives that enact permissibility facts by triggering the rules of the rule-governed activity to which they are a contribution. Elsewhere, I have called them conversational exercitives (2003, 2004) or covert exercitives (2009). Since this second sort of exercitive is not an authoritative speech act, this opens up the possibility that refusals are exercitive without being authoritative. Maitra (2009, p. 12), for example, believes that refusals are non-authoritative exercitives. She also believes that they are purely communicative speech acts. She says “All that is needed for a successful performance of refusal is that the audience recognize the speaker’s intention to refuse”. Clearly, I here disagree with her on this point.

⁸Clearly, there are different types of permissibility (e.g. legal, moral and otherwise) and there are different types of authority (e.g. institutional and informal).

⁹The mere fact that Sally fails to refuse on Cindy’s behalf does not, of course, establish either that refusals are communication-plus speech acts or that they are authoritative. I here offer this (standard exercitive) account of refusal as one (highly plausible) explanation of Sally’s failure to refuse. I thank Ishani Maitra for pressing this point.

speaking, not sufficient for Cindy to sexually refuse Carl. On this view, sexual refusal is not a mere matter of telling. In order for Cindy to sexually refuse Carl, an additional condition is required: she must have, and be exercising, authority over who has sexual access to her body. In what follows, I treat sexual refusals as authoritative exercitive speech acts.

II. LANGTON AND HORNSBY ON SILENCING

According to Langton and Hornsby,¹⁰ silencing is speech act failure constituted by the addressee's failure to recognize the speaker's illocutionary intentions. On this view, if a woman says 'No,' intending to sexually refuse and the man fails to recognize her intention to refuse, then the woman fails to refuse and she is thereby silenced.

Clearly, Langton and Hornsby treat uptake as necessary for refusal. They claim that the woman fails to refuse exactly because the man fails to recognize her intention to refuse.¹¹ This assumption has been widely criticized¹² and it may seem to commit them to the problematic view that sexual refusals are purely communicative speech acts; that sexual refusal is a mere matter of telling.

As we have seen, communication requires uptake but, since sexual refusals are exercitive and thus communication-plus speech acts, there is room for the possibility that communication-plus speech acts succeed even when communication fails. To see this, suppose that a police officer signals for a motorist to pull over. Arguably, the officer's signal makes it the case that the motorist is required to pull over even in cases where the motorist fails to recognize the officer's intentions. In this way, we see that exercitives (may) succeed even when communication fails. If this is right, then, since sexual refusals are exercitives, they (may) succeed even when the addressee fails to recognize the speaker's intention to refuse. Thus, it seems that Langton and Hornsby are wrong. Either they are wrong to treat sexual refusal as a purely communicative speech act or they are wrong to treat uptake as necessary for communication-plus speech acts.

A more careful consideration of their view, however, shows this reasoning to be faulty. Although Langton and Hornsby say that the woman fails to refuse whenever the man fails to recognize the woman's intention to refuse, it is clear that they are really interested in the *communication of refusal*.¹³ As we have seen, communication does require uptake. If the addressee fails to recognize the speaker's intention to refuse, then the speaker fails *to communicate her refusal to the addressee* and this is true even if there is some other sense in which the speaker refuses. Moreover, the mere fact that uptake is necessary for *the*

¹⁰Langton 1993, 1998. Hornsby 1993, 1995. Hornsby and Langton 1998.

¹¹Langton 1993, p. 321. Hornsby 1995, p. 137.

¹²Jacobson 1995, pp. 73–74, 77–78. Bird 2002, pp. 7–12.

¹³Hornsby and Langton 1998, pp. 26–27.

successful communication of a speech act is insufficient to show that that speech act is purely communicative. After all, I fail to *communicate* my order to my employee whenever that employee fails to recognize my intention to order her and this is so even though orders are not purely communicative speech acts. Thus, rather than assuming that sexual refusals are purely communicative speech acts, Langton and Hornsby are merely focusing their attention on *the communication* of sexual refusals.¹⁴

This focus on communication simultaneously solves three alleged problems for Langton and Hornsby.¹⁵ First, it shows that certain of their critics¹⁶ are wrong. Since they are focused on communication, Langton and Hornsby are right to treat uptake as necessary. Second, as argued above, there is no longer any reason to saddle them with an account of sexual refusal as purely communicative. Third, and perhaps most importantly, this focus on communication helps to bridge the gap between silencing and violations of the free speech right. Since silencing, for Langton and Hornsby, is (systematic) *communicative* failure, it is a free speech issue so long as the right to free speech involves freedom from systematic communicative interference.¹⁷

Finally, in addition to offering this speech act account of silencing, Langton and Hornsby also claim that pornography causes silencing.¹⁸ By depicting women who say ‘No’ to sexual advances but who do not thereby intend to refuse, pornography is alleged to cause (some of) its consumers to believe that real women who say ‘No,’ in response to sexual advances, do not intend to refuse. As a result, these men (sometimes) fail to recognize a woman’s intention to refuse and, when they do, the women are prevented from communicating their refusals and so they are thereby silenced. In this way, according to Langton and Hornsby, pornography causes silencing.

III. AN ALTERNATIVE CONCEPTION OF SILENCING

Since sexual refusals are communication-plus speech acts, there are ways for them to go wrong that are distinct from communicative failure. Recall that, as

¹⁴Although Langton and Hornsby sometimes write as if sexual refusals are purely communicative speech acts, as one can now see, their silencing claims do not depend on this. Furthermore, in her original paper (1993, p. 325), Langton explicitly discusses the authoritative and exercitive nature of refusals.

¹⁵By working within a broadly Austinian framework, Langton and Hornsby emphasize illocutionary disablement but this focus on illocution may actually distract from their real concern with communication. For this reason, Maitra’s (2009) Gricean (and thus communicative) account of silencing is actually better for their purposes. Maitra (2009) also argues that there are further reasons to prefer her account. Another potential source of confusion is that many of Langton’s (1993, p. 317) original examples do not involve communicative failure resulting from failure of uptake. In the gay marriage, voting and verbal divorce examples, failure is due to the absence of the appropriate convention and not to a failure of uptake. The Langton and Hornsby account of silencing is subsequently clarified in Hornsby and Langton (1998).

¹⁶Jacobson 1995, pp. 73–74, 77–78. Bird 2002, pp. 7–12.

¹⁷West 2003. Maitra 2009.

¹⁸See fn. 2.

authoritative speech acts, sexual refusals require that the speaker have, and be exercising, authority over who has sexual access to her body. Although, arguably, everyone has such authority (simply in virtue of being a person), it is nevertheless important to realize that the *addressee's recognition* of that authority matters too.¹⁹

To see this, consider orders. An order will be defective (whether that defect is fatal or not) if the addressee fails to recognize that the speaker has, and is exercising, the requisite authority. Similarly, a sexual refusal will be defective (whether that defect is fatal or not) if the addressee fails to recognize that the speaker has, and is exercising, the requisite authority. As one can see, authoritative speech acts are defective unless the addressee *recognizes* that the speaker has, and is exercising, the requisite authority.

Suppose then that a woman says 'No' in response to sexual advances intending to refuse; the man recognizes her intention to refuse, but he falsely believes that she does not have the authority to do so. When this happens, she is silenced in my alternative sense.²⁰ Her refusal is rendered defective by the man's false belief that she does not have authority over who has sexual access to her body.

Contrast that with the following case. A woman says 'No' intending to refuse sexual advances; the man realizes both that she intends to refuse and that she has and is exercising the requisite authority to do so but, despite this, he ignores her refusal and rapes her anyway. Note that this second case does not involve either form of silencing. Since the man recognizes the woman's communicative intention to refuse, she is not silenced in the Langton and Hornsby sense. Moreover, since the man recognizes that she is exercising the requisite authority to refuse, she is not silenced in my alternative sense either. Thus, as troubling as this case is from a feminist perspective, it does not involve either type of silencing.

Notice that this alternative sort of silencing can occur when the distribution of social power is extremely unjust. Suppose, for example, that a female slave tries to sexually refuse her male master. Although the master may recognize her intention to refuse him, she will be silenced in this alternative sense if he nevertheless fails to realize that she has the authority to refuse him.²¹ If the master believes, for example, that she is his property, then he will also believe that it is he (and not she) who has authority over who has sexual access to her body. Similar silencing can occur when a husband, for example, believes that his wife cannot refuse him or when a paying customer believes that prostitutes cannot refuse.

¹⁹There are interesting issues here concerning the metaphysics of authority. One might think, for example, that all authority is socially constructed. On this view, being recognized (in certain complex ways) as having authority is actually constitutive of having it. As we shall see, the *recognition* of speaker authority is an important felicity condition of authoritative speech acts.

²⁰One might insist on the further condition that the failure (of hearer recognition of speaker authority) be brought about in a *systematic* manner. For a discussion of this systematicity condition, see Maitra (2004).

²¹If one believes that all authority is socially constructed, then one might deny that the slave has the requisite authority to refuse. See fn. 19.

Since this form of silencing does not involve communicative failure, it does not appear to be a free speech issue. Even so, it ought to be a source of concern. We ought to be worried if, for example, even some men believe that even some women are not in a position to sexually refuse. If this is true, then it is likely that those men will rape and sexually abuse those women. There is also the psychological harm to one's self esteem and agency that likely results from being silenced in this way, especially if the silencing is systematic.²² Thus, although this form of silencing does not seem to violate the free speech right, it may nevertheless cause considerable harm and, if it does, it warrants our concern.

This alternative form of silencing is also of broader interest. Although I here focus on silencing on the basis of gender, it is certainly possible to be silenced in this alternative sense because of one's membership in other socially important categories (e.g. race, weight or age). Second, there is every reason to believe that such silencing undermines refusals generally and not just sexual refusals in particular. An employer might silence her employee, for example, if that employer wrongly assumes that the employee cannot refuse to work over-time. Finally, this form of silencing also affects consent. If Charlie believes that Sarah is not in a position to refuse, for instance, then he will certainly not seek her consent. In this way, we see that silencing in this alternative sense is relevant to the securing of consent and thus to a number of legal issues (e.g. medical consent, research on humans, consensual searches, sexual assault).²³

Finally, there is reason to believe that consuming (certain types of) pornography causes this alternative form of silencing. If habitual consumers of such pornography come to believe that women are mere objects for sexual use then those consumers may also come to believe that women do not have the authority to sexually refuse. If habitual consumers of rape-myth pornography, for example, come to believe that it is appropriate to ignore women's refusals, then they may also come to believe that this is because women do not have the requisite authority to refuse. As one can see, the claim that pornography causes this alternative form of silencing is at least as plausible as Langton and Hornsby's claim that it causes men to fail to recognize women's intention to refuse.

IV. CONCLUSION

Although I have not taken issue with either the Langton and Hornsby account of silencing or with their claim that pornography causes their sort of silencing, I have here identified a different type of silencing. Although this alternative form of

²²I thank an anonymous reviewer for this journal for suggesting that I also mention such psychological harms.

²³For an interesting discussion of the speech act of consent, see Cowart (2004). For troubling issues surrounding consensual searches, see Tiersma and Solan (2005, pp. 35–52). I thank the same anonymous reviewer for suggesting that I discuss other contexts in which this alternative form of silencing might arise.

silencing is not a free speech issue, it is nevertheless worthy of our attention and it is plausible to suppose that consuming (certain sorts of) pornography causes it.

REFERENCES

- Austin, J. L. 1975. *How To Do Things With Words*, 2nd edn. Cambridge, MA: Harvard University Press.
- Bird, A. 2002. Illocutionary silencing. *Pacific Philosophical Quarterly*, 83, 1–15.
- Cowart, Monica. 2004. Understanding acts of consent: using speech act theory to help resolve moral dilemmas and legal disputes. *Law and Philosophy*, 23, 495–525.
- Hornsby, J. 1993. Speech acts and pornography. *Women's Philosophy Review*, 10, 38–45.
- Hornsby, J. 1994. Illocution and its significance. Pp. 187–207 in S. L. Tsohatzidis (ed.), *Foundations of Speech Act Theory: Philosophical and Linguistic Perspectives*. New York: Routledge.
- Hornsby, J. 1995. Disempowered speech. *Philosophical Topics*, 23, 127–47.
- Hornsby, J. and R. Langton. 1998. Free speech and illocution. *Legal Theory*, 4, 21–37.
- Jacobson, D. 1995. Freedom of speech acts? A response to Langton. *Philosophy and Public Affairs*, 24, 64–79.
- Langton, R. 1993. Speech acts and unspeakable acts. *Philosophy and Public Affairs*, 22, 293–330.
- Langton, R. 1998. Subordination, Silence, and Pornography's Authority. Pp. 261–283 in R. Post (ed.), *Censorship and Silencing: Practices of Cultural Regulation*. Los Angeles, CA: Getty Research Institute.
- MacKinnon, C. 1987. *Feminism Unmodified*. Cambridge: Cambridge University Press.
- MacKinnon, C. 1993. *Only Words*. Cambridge, MA: Harvard University Press.
- Maitra, I. 2004. Silence and responsibility. *Philosophical Perspectives*, 18, 189–208.
- Maitra, I. 2009. Silencing speech. *Canadian Journal of Philosophy* (forthcoming).
- McGowan, M. K. 2003. Conversational exercitives and the force of pornography. *Philosophy and Public Affairs*, 31, 155–89.
- McGowan, M. K. 2004. Conversational exercitives: something else we do with our words. *Linguistics and Philosophy*, 27, 93–111.
- McGowan, M. K. 2009. Oppressive speech. *Australasian Journal of Philosophy* (forthcoming).
- Tiersma, P. and L. Solan. 2005. *Speaking of Crime: The Language of Criminal Justice*. Chicago: University of Chicago Press.
- West, C. 2003. The free speech argument against pornography. *Canadian Journal of Philosophy*, 33, 391–422.