

Session 22 Langton's "Speech Acts and Unspeakable Acts"

Two feminist claims about pornography (Katherine MacKinnon):

(1) Pornography *subordinates* women. From an Indianapolis anti-pornography ordinance that MacKinnon helped draft, but that was later defeated in court: "We define pornography as the graphic sexually explicit subordination of women in pictures or words."

- The key claim here is that pornography is itself an act of subordination (it doesn't merely *cause* subordination).
- This is (as it clearly states) a *definition*. It's stipulative. Not everything we might commonly think of as pornography falls under it. MacKinnon's and Langton's arguments address only those cases of pornography that do.
- It has often been accused of involving conceptual confusion.

(2) Pornography *silences* women. Again, MacKinnon, arguing that feminist antipornography legislation is motivated by the very values enshrined in the First Amendment: "The free speech of men silences the free speech of women. It's the same social goal, just other *people*."¹

- This is not intended as a *metaphorical* claim. It is supposed to be literally true.
- But again, it has been accused of involving conceptual confusion, and of being at best metaphorically true.

Langton's goal is to defend both claims against the charge of conceptual confusion, and to make plausible the claim that they are true.

Two things that lie beyond the scope of her argument:

- She doesn't take herself to have established conclusively that the claims are true, because she thinks they depend at crucial stages on empirical claims she finds plausible but cannot adequately defend.
- Even if we are persuaded that the claims are *true*, not merely coherent, she doesn't take her argument to have established that pornography should therefore be restricted by law. Langton acknowledges that this may require further argument.

So, in what sense does pornography constitute the subordination of women?

- Not just in virtue of its *content alone* – not in virtue of the *locutionary act* it is.
 - That is, not just in virtue of *depicting* the subordination of women (the way a painting might be *pretty* in virtue of depicting something pretty).
- Also not just in virtue of its *effects* – not in virtue the *perlocutionary act* it is.

¹ MacKinnon, "Not a Moral Issue," *Feminism Unmodified*, p. 156.

- That is, the claim that pornography *is* subordination is not the claim that it *causes* the subordination of women, say, by increasing the number of rapes.
- Langton is interested in whether the *illocutionary act* that pornographic expression is constitutes subordination.

Let's think about those three categories more carefully:

(i) Locutionary force/locutionary acts:

- To perform a locutionary act is to utter a sentence that has a particular semantic *content*.
- E.g. in "Shoot her.", the locutionary force is given by the meaning of "shoot" – point the gun and pull the trigger – and "her" – the woman standing next to the speaker.

(ii) Perlocutionary force/perlocutionary acts:

- To perform a perlocutionary act is to *affect* the world through speaking.
- E.g. in "Shoot her.", the speaker performs the perlocutionary act of shocking his listener, of persuading him to shoot.

(iii) Illocutionary force/illocutionary acts:

- To perform an illocutionary act is to *do something in speaking* – illocutionary acts can be (generally?) performed by saying that your doing so – they can be cases of "saying makes it so".
- E.g., in "Shoot her.", the speaker perhaps performs the illocutionary act of *advising*. Or perhaps he performs the illocutionary act of *ordering*. We'd need to know more about the situation to know exactly what act he performs.
- Other examples of illocutionary acts:
 - Saying "I do" in the right context constitutes *marrying*.
 - Also: promising, ordering, legislating, warning, ruling, calling "fault", prohibiting, naming, empowering; perhaps also ranking, legitimating...
- Illocutionary acts have *felicity conditions*: they must conform to certain rules (which may be explicit, formally adopted rules, but often aren't) to *succeed* as those acts.
 - Usually, but not always, *intent* is an important ingredient in the felicitous performance of an illocutionary act.
 - If I don't intend to get married, saying "I do" won't count as marrying.
 - But crucially, intent is not always necessary: in the shooting example, the speaker may intend to *advise*, but succeed in *ordering*, because of his position and the context: "Coming from him, I took it as an order."
 - Also, intent is not sufficient for successfully performing an illocutionary act. Saying "I do" is not sufficient for getting married.

- Successful performance of an illocutionary act requires having the *authority* required (by the rules governing the performance of that act) to perform it.
 - Not anyone can call a fault by shouting “fault!”.
 - Not anyone can get married by saying “I do.”
 - I can’t promise it won’t rain tomorrow.
 - *What exactly counts as having the requisite authority?*
- Successful performance of an illocutionary act requires *uptake*: the hearer must recognize that an illocution of a certain kind has been performed.
 - The speaker in the shooting case doesn’t successfully advise if his speech is taken as a command, not as advice.
 - *Is this always required? Can’t I claim to have invited you if I issue you an invitation, in the normal way, even if you’re paranoid, and think I’m just teasing you, not really inviting you?*
 - *Does the uptake requirement make the effects of the illocutionary act part of the felicity conditions of the act? If so, does it threaten to blur the distinction between illocutionary and perlocutionary acts?*
 - *Question:* Why aren’t shocking and persuading also illocutionary acts? (Langton classifies these as perlocutionary.)
 - *Possible Answer:* Maybe something counts as perlocutionary, rather than illocutionary, if it requires a contribution from the listener that goes *beyond mere uptake* – mere recognition of what the speaker is trying to do with his words.

Speech Acts and Subordination:

Is subordination an *illocutionary* act, not just a *perlocutionary* act?

Can we subordinate *in speaking* (as opposed to *by speaking*)? Some

examples:

- “Blacks are not permitted to vote.”
 - This utterance represents a perlocutionary act of subordination – it has the effect of keeping blacks away from the polling booths, of preventing black from being elected to office...
 - But it is also an illocutionary act: it makes it the case that blacks can’t vote.
- “Whites only.”
 - Again – perlocutionary act: perpetuates racism, keeps blacks away.
 - But also an illocutionary act: it *forbids* entry by blacks; *orders* them away; *welcomes* whites.

Are these illocutionary acts acts of subordination? Langton argues yes:

- They *unjustly rank* blacks as inferior.
- They *legitimate discriminatory* behavior on the part of whites.
 - These first two kinds of illocutionary acts Austin labels as *verdictive* acts: verdictive acts rank or classify.
 - Eg. Calling “fault.”

- To perform a verdictive act requires the proper *authority*:
 - Compare the umpire's calling "fault" to a passerby's doing so.
- They *unjustly deprive* blacks of important powers, like voting.
 - This last kind of illocutionary act Austin labels as *exercitive*: exercitive acts confer or deprive people of powers and rights
 - E.g. firing, passing laws, permitting or prohibiting, ordering.
 - Again, whether some expression carries the illocutionary force of an exercitive depends on the *authority* of the speaker. Not everyone can pass laws, fire, permit or prohibit, etc...
 - But the authority required for the power to perform such acts of subordination needn't be officially recognized. *Again, what does it take for a speaker to possess the relevant authority?*

This list represents the *illocutionary force* of these acts, not just their *perlocutionary force*. Simply by saying "Whites only" the sign legitimates the turning away of blacks from that bar, before any further effect has taken place. (Compare the master saying to the slave "you are now permitted to cross that line." – that's an illocutionary effect, not to be confused with the perlocutionary effect of making the slave believe his crossing the line is now legitimate.)

Pornography and Subordination

Why think pornography constitutes subordination?

- Not because of the *locutionary act that it is* – that is, not in virtue of its *content*:
 - Documentaries about the subordination of women/police reports might have the same content, but they wouldn't count as subordination.
 - *Could they count as subordination? After all, as Langton later says, some forms of expression not intended to be pornographic can be co-opted for pornographic purposes.*
 - Here the (weak) *intent* felicity condition may be relevant; but Langton's argument at times relies on the claim that it is not a necessary condition...
 - Should we perhaps restrict such documentaries?
 - Remember that Langton doesn't take her argument to establish that subordinating speech should always be restricted...
- Pornography arguably is a perlocutionary act of subordination, if it harms women in a way the perpetuates their subordinate status
 - Not all harms count as acts of subordination – only those where the perpetrators are nearly always members of one class of citizens, the victims of another.
 - *What else might count as perlocutionary subordination? What about cigarette advertising, or advertisements for the lottery, say, if they are designed to (or in effect) overwhelmingly target poor buyers?*

- But Langton wants to argue that pornography may be an act of *illocutionary subordination*, like the illocutionary acts that partly constituted the subordination of apartheid South Africa.
 - Pornography *ranks* women as subordinate.
 - It *endorses* and thereby legitimates degrading and abusive sexual behavior.
 - Does it also *deprive women of powers and rights*? Langton will argue later that it does this, too.
- But Langton acknowledges that whether pornography counts as a successful subordinative speech act is open to question. It's not a paradigm case, and the question is whether it's *close enough* to the paradigm to count as having been successfully performed. Three ways of arguing:
 - Arguing that *enough of the felicity conditions have been met*.
 - Arguing that *uptake was secured* (compare, "coming from him, I took it as an order.")
 - Arguing that some of the subordinating *effects* of pornographic speech are best explained by assuming the subordinating illocutionary act took place.
- The case of subordinating blacks in apartheid South Africa is supposed to be the paradigm case:
 - The intent to subordinate is there.
 - The speakers have the necessary authority.
 - Uptake is secured – their acts are taken to be verdictive and exercitive acts of ranking, legitimating, and disempowering.
 - The illocutionary acts have a pattern of perlocutionary effects that can be best explained by reference to the illocution.
- The case of pornography is less clear.
 - The intent may not always be to subordinate (instead, it may be to entertain...).
 - We might find other explanations for pornography's perlocutionary effects of subordination.
 - Some but not all "hearers" of the speech acts of pornography have *uptake* appropriate to acts of subordination – see it as playing the required ranking, legitimating, and disempowering roles.
 - *The crucial question: do the speakers have the requisite authority?*
 - "Just as the speech of the umpire is authoritative within a certain domain – the game of tennis – so pornographic speech is authoritative within a certain domain – the game of sex. The authors of pornographic speech are not mere bystanders to the game." (p. 311)
 - Is the analogy a good one? Whether it is, says Langton, is an empirical question. *What do you think?* What exactly distinguishes the bystander from the umpire?
 - Consider a similar case of unofficial authority: maybe the statements of the fashion industry (e.g. "teal is the new black," "skinny jeans are 'in'") play a significant verdictive role in *making it so*. Certainly key figures in

fashion (or the dominant voices in fashion) may be unofficial authorities in Langton's sense – they establish what counts as trendy or cool, legitimate certain choices of clothing and delegitimate others.

- Maybe pornographers' speech is authoritative in this loose sense: their depiction of subordinating treatment ranks women, especially certain women, and makes certain moves legitimate, in the same way that the fashion industry ranks people as uncool, or makes certain dress-moves legitimate.

None of this, even if we accept the necessary empirical premises, tells us definitively whether pornographic speech should be restricted by law. This may depend on whether the authority that the authors of pornographic speech must have to be able to subordinate just by speaking can be undermined by means other than restrictive legislation. One possibility is that *rival speech* can play that undermining role. Langton's next argument raises worries for that possibility.

Speech acts and unspeakable acts

The ability to speak can be an important kind of power.

- E.g., voting, marrying, judging, endorsing, etc.

That power can itself be conferred or removed by means of speech acts; in other words, speech acts can *silence* speech.

Three ways of silencing speech with speech:

- (i) preventing *locution*:
 - e.g., a gag. A threat that keeps people from trying to speak up.
- (ii) preventing *perlocution*:
 - e.g., when what I say does not have the desired effect, as when you tell everyone to turn down my invitation.
- (iii) preventing *illocution*:
 - e.g., when you keep my speech for registering as the speech act I intend it to be, as when the law prevents "I do" from counting as marrying when spoken by two men.

The ability to perform certain sorts of illocutionary acts is an important measure of authority, and a measure of *power*. The fact that the master can order the slave, or advise him, or grant permission, or deny it, whereas the slave can merely advise (using the same words) indicates that asymmetry in their power relation. Certain acts, *ordering, permitting, forbidding*, are *unspeakable* for the slave, no matter what words he uses, or what he is permitted to say. In this way, the slave's *speech* is importantly restricted, even if he can use whatever words he likes.

Other examples: the actor trying to warn; saying "I do" to marry; voting; divorcing; the boy who cried "wolf".

As at least the last three cases show, *speech* and *illocutionary acts* can play an important role in making some acts *unspeakable* for some people. Some speech determines the kind of speech there can be.

The most obvious ways in which speech acts can make some other acts *unspeakable* is through explicit legal enactments. But Langton argues that not all unspeakable acts are made unspeakable in this way. (E.g., the actor's attempt to warn is made unspeakable, but not by any explicit rule or legal enactment.)

Speech Acts and Pornography

This is how pornography silences:

- (i) *through illocutionary silencing*: e.g., when the makers of child pornography use the threat of revealing the pornography as a way to keep the children from reporting it.
- (ii) *Through perlocutionary silencing*: e.g., if pornography encourages rape, and sexualizes the overriding of a woman's will, then it may result in a woman's saying "no" not having the desired effect (even if it is recognized as a refusal).
- (iii) *Through illocutionary silencing*: e.g., when, as in the case of the actor who tries to warn, the woman's "no" simply fails to secure uptake, because the rules of the language game she is playing don't allow for refusal. Langton sees this case as closely analogous to that of the actor – women are seen as just acting when they say "no", so they can no more refuse than the actor can warn. (Also, *protest/Marchiano*.)

As the Marchiano case shows, if pornography can silence speech, this somewhat limits the effectiveness of combating the subordination that is pornography by means of rival speech.

Questions:

- (i) Again, do the authors of pornography have the authority to determine the rules of the sex game?
 - They certainly don't do this alone – parents, TV, movies, religious organizations all contribute, especially to the rule that "nice girls don't say 'yes,' real mean don't accept 'no'".
 - This also affects the question of whether censoring pornography is likely to help solve the problem.
- (ii) Does this mean that a man who doesn't recognize an attempted refusal as a refusal is not guilty of rape, because the woman did not succeed in refusing?
 - This depends – many rape laws don't just require refusal for rape – they require explicit consent (or at least, the clear opportunity to meaningfully refuse or consent).
 - Successful uptake doesn't seem *necessary* for success... (although intent is not sufficient).
 - But Langton at times suggests that "no" can mean "yes" in the game of sex, even in the absence of speaker intent.

- (iii) Langton argues that among the silencing affects of pornography is illocutionary silencing. Is this important?
 - It may be. Most people recognize locutionary silencing as a potential infringement of free speech. But perlocutionary silencing doesn't seem to be – I don't have a right that my words have their desired effect. But *illocutionary* silencing may more plausibly violate my rights to free speech, since, as Langton says, speech is valuable to us because of the things we can do with it.
- (iv) Does this mean there's a first amendment argument to be made in favor of gay marriage/voting rights?
- (v) What does Langton's view entail for what should happen to Marchiano's book, or Andrea Dworkin's, if these actually count as pornographic on her account?

How the argument fits into the free speech debate:

Three kinds of arguments for censorship:

- (1) Consequentialist arguments – allowing unrestricted speech in some areas would be too costly.
 - But liberals have responded that a “right” to free expression that could be trumped by consideration of the consequences (a la Mill) is no *right* at all. Taking rights seriously requires not balancing them against consequences (this is Dworkin's view).
- (2) Competing rights arguments – the right to free speech should be restricted when it conflicts with the right to equality under the law.
 - This is the kind of argument Langton thinks the claim that pornography *subordinates* women gives support to.
 - But some liberals give considerations of liberty *lexical priority* above other kinds of considerations, like egalitarian ones (e.g. Rawls).
- (3) The liberty-based argument for censorship – sometimes censorship is necessary in order to protect/promote free expression.
 - This is the kind of argument Langton thinks the claim that pornography *silences* women give support to.
 - It challenges the liberal defense of freedom of speech on its own terms, and avoids the liberal worries about the previous two kinds of argument.

Langton makes clear that she doesn't think her arguments by themselves establish any conclusions about how the law should regulate pornography (although they provide *some support* for restrictive policies). If we allow that pornography prevents illocutionary acts by women, what should we conclude about the law?

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24.235J / 17.021J Philosophy of Law
Spring 2012

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