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# LINGUISTIC AUTHORITY AND CONVENTION IN A SPEECH ACT ANALYSIS OF PORNOGRAPHY

Nellie Wieland

Recently, several philosophers have recast feminist arguments against pornography in terms of Speech Act Theory. In particular, they have considered the ways in which the illocutionary force of pornographic speech serves to set the conventions of sexual discourse while simultaneously silencing the speech of women, especially during unwanted sexual encounters. Yet, this raises serious questions as to how pornographers could (i) be *authorities* in the language game of sex, and (ii) *set the conventions* for sexual discourse—questions which these speech act-theoretic arguments against pornography have thus far failed to adequately answer. I fill in this gap of the argumentation by demonstrating that there are fairly weak standards for who counts as an authority or convention-setter in sexual discourse. With this analysis of the underpinnings of a speech act analysis of pornography in mind, I discuss a range of possible objections. I conclude that (i) the endorsement of censorship by a speech act analysis of pornography competes with its commitment to the conventionality of speech acts, and, more damningly, that (ii), recasting anti-pornography arguments in terms of linguistic conventions risks an unwitting defence of a rapist's lack of *mens rea*—an intolerable result; and yet resisting this conclusion requires that one back away from the original claim to women's voices being 'silenced'.

## I. Pornography as a Speech Act

Opinions lose their immunity when the circumstances in which they are expressed are such as to constitute their expression a positive instigation to some mischievous act. An opinion that corn dealers are starvers of the poor . . . may justly incur punishment when delivered orally to an excited mob assembled before the house of a corn dealer.

[Mill 1975: 69]

In this passage, Mill limits his defence of freedom of expression to exclude certain cases—for example, those where one's speech wittingly incites a mob riot against a corn dealer. Such limitations may seem reasonable because the speaker who uses his speech to *incite* is doing much more than

merely *expressing* a view. Of course, such a speaker might instead take a different tack in order to produce the intended effect (e.g., supply the mob with instruments of destruction, raise the fists of each mob member, or help them fire their guns, and lean their torches into corn silos). But as it were, a speaker need only speak in order to incite; in such a case, his words themselves *do* the provoking, and are sufficient to trigger the mob to unleash its anger on the corn dealer. How could they have this power? A good answer will likely appeal, in part, to the local context (e.g., proximity to the corn dealer's house, the mob's economic interest in the trade of corn). And the corn dealer, we can conclude, has grounds to complain that it was the actions of the speaker first and foremost that left his house in ruins.

While realizing that speech has the power to perform actions does not require any special philosophical insight, it was not until Austin's [1962] deservedly-influential *How To Do Things With Words* that philosophers began to appreciate how speech acts could be a type of action. Accordingly, understanding what expressions mean requires—among other things—understanding what they can *do*. Mill's reason for limiting his defence of freedom of expression anticipates this to some extent: understanding what speech can do helps us to understand whether or not it should be protected, and whether the value of a particular speech act trumps the value of other societal concerns. It is in this context that anti-pornography feminists—particularly, Rae Langton and Jennifer Hornsby—have recently argued that pornographic speech performs the action of subordinating women just as Mill's speaker performs the action of inciting a mob riot.<sup>1</sup> Call this the 'Langton-Hornsby view'.

The ramifications of the Langton-Hornsby view are potentially monumental; for previously, feminist anti-pornography arguments typically focused on causal processes—in particular, the ways in which pornography *caused* men to subordinate women and *caused* women to accept their own subordination. In both cases, these causal processes supposedly result from the normalization of subordination by pornographic imagery. And yet, principles of free speech (e.g., the First Amendment of the U.S. Constitution or Article 19 of the U.N. Universal Declaration of Human Rights) protect the pornographer's freedom of expression even in light of the ways in which men and women may *use* pornography, regardless of whether there is sufficient evidence to show that it has deleterious effects (e.g., being a 'script' for sexual assault). In the case of the protection of pornography as a form of expression, the Langton-Hornsby view proposes that pornography does

<sup>1</sup>For instance, see Langton [1993, 1998], Hornsby [1993], Hornsby and Langton [1998], Langton and West [1999], and McGowan [2003]. I will refer to all of these under the name 'the Langton-Hornsby view' unless I indicate a specific text. The Langton-Hornsby view is a defence of MacKinnon's essentially identical argument, which has been said to contain a 'sleight of hand', to be 'incoherent', and to mask a 'conceptual confusion'. As Langton clarifies, 'When MacKinnon says that speech can subordinate, she means something more: that pornography can have the illocutionary force of subordination, and not simply have subordination as its locutionary content, or as its perlocutionary effect: *in* depicting subordination, pornographers subordinate. This is the alleged "sleight of hand"' [1993: 302]. For critical discussions of the Langton-Hornsby view, see Bauer [2006; unpublished], Jacobson [1995], Bird [2002], and Green [1998].

much more than *express*; it acts to ‘silence’ the expressions of women, thereby restricting their freedom of speech. This important shift in focus came about when Langton, Hornsby, and others articulated an anti-pornography argument that defended free speech; in this case, it was the freedom of speech of women being defended.

Defending the Langton-Hornsby view requires doing three things: first, determining the illocutionary force of pornographic speech; second, showing that the illocutionary force of pornographic speech serves to silence the illocutionary force of speech by women in sexual discourse (thereby denying them freedom of speech); this in turn requires showing that pornographers have the authority necessary for their speech acts to have the illocutionary force of silencing; and third, explaining how, in the case of two competing claims to freedom of illocution, the right to refuse takes priority over the right to subordinate (cf. Hornsby and Langton [1998: 29–30]).

As Langton notes [1993: 298], Ronald Dworkin claims that only through an argument defending the free speech of women could an anti-pornography argument plausibly be defended. Dworkin has been unimpressed with anti-pornography arguments that focus on the perlocutionary effects of pornographic expression because of what he takes to be pornographers’ powerful entitlement to freedom of locution. So, it is a virtue of the Langton-Hornsby view that it addresses Dworkin’s concerns by presenting a *prima facie* plausible argument for a speech act analysis of pornography. After detailing the Langton-Hornsby view in Section II, I amend it by narrowing the scope of pornography in Section III. I then discuss the ways in which pornographers are convention-setters in Section IV. Together, these three sections provide—on behalf of the Langton-Hornsby view—an explication of the linguistic authority of the pornographer. The thrust of this discussion is an analysis of the underpinnings of the Langton-Hornsby view through an explanation of why there are fairly weak standards for who counts as an authority or convention-setter in sexual discourse if pornography is indeed a kind of speech act. This explanation runs contrary to the idea that pornographers need a special status in that discourse akin to the status of a judge in legal discourse.<sup>2</sup> Section V considers four objections to the view; in each case, I confine my discussion to the resources presented here—namely, interpreting the expressions of pornographers as convention-setting in sexual discourse. I conclude that the Langton-Hornsby view has intolerable consequences and so must be rejected.

<sup>2</sup>The argument provided in this paper is much simpler and more direct than the arguments in much of the literature on this topic. See, for example, Green [1998] and, in response, Langton [1998]. There Langton claims that the question of the authority of the pornographer cannot be settled from the ‘philosopher’s armchair’. This is only partially correct. The analysis of convention does turn on empirical facts, but takes the form of a conditional claim: If the convention of  $S_1$  meaning  $p$  by uttering ‘ $x$ ’ in  $c_1$  is robust enough, then it is no longer the case that  $S_2$  radically misinterprets ‘ $x$ ’ as meaning  $p$  in  $c_1$ , but rather  $S_2$  has a claim to correctly interpreting ‘ $x$ ’ as meaning  $p$  in  $c_1$  because that is what ‘ $x$ ’ has come to mean in that context. The antecedent of this relies on empirical facts, but only empirical *linguistic facts*, as opposed to non-linguistic social facts. Note that if further non-linguistic facts obtain that establish the pornographers’ authority, that is compatible with the arguments of this paper. My claims simply require a weaker standard.

## II. The Langton-Hornsby View

As mentioned, the Langton-Hornsby view recasts anti-pornography arguments in Austin's language by shifting the focus to the *illocutionary content* of pornographic speech acts (i.e., what it is that these speech acts themselves *do*) and de-emphasizing the import of those acts' perlocutionary effects (i.e., what people do because of them). It should be noted that this shift in focus from the perlocutionary to the illocutionary makes an anti-pornography argument much more powerful. This is because the argument applies to *all* of the relevant speech acts (as opposed to just applying to those agents who act out their pornographic fantasies), and because it challenges a pro-pornography appeal to principles of free speech on its own terms. It is in this way importantly different from all other anti-pornography positions.

For Langton-Hornsby's illocutionary analysis, a relevantly analogous subclass of speech acts is what Austin calls 'verdictive' speech. Verdictive speakers always require a narrowly defined context in order to give their speech its illocutionary force. For example, a presiding judge in a courtroom uses verdictive speech when she gives a guilty verdict for a crime by saying 'I find the defendant guilty'. But she must be the presiding judge on the case, the courtroom must have the relevant parties present, she must be in the courtroom at the time, and so forth; it will not count as verdictive speech if she gives a guilty verdict to her waiter on her lunch break because the conventional context is not in place. Yet, within the appropriate context, her locution, 'I find the defendant guilty', has the illocutionary force of conferring guilt, and a range of possible perlocutionary effects (e.g., bringing the bailiffs to the defendant's seat with handcuffs ready, lighting up the prosecutor's face with a smile).

For the Langton-Hornsby view, the way in which the illocutionary force of pornographic speech subordinates women is by preventing them from expressing themselves in sexual discourse. In order for that to obtain, pornographers themselves must have a certain sort of authority in sexual discourse. Many of Austin's original examples are of speakers in institutionalized settings whose authority in the speech situation is clear (e.g., a captain christening a ship). In such settings, the primary way in which a speech act is 'infelicitous', 'misfires', or otherwise fails to execute its illocutionary potential is when a speaker without the requisite authority performs an otherwise relevant speech act (e.g., 'I christen this ship Queen Elizabeth!'). Correspondingly, the Langton-Hornsby view claims that whether pornographers' speech has the illocutionary force of subordinating women turns on whether pornographers have the requisite authority in sexual discourse.

But what determines whether one has such authority? For the proponents of the Langton-Hornsby view, providing an adequate answer to this question involves satisfying two salient argumentative goals—goals that ostensibly structure their discussion. First, pornography's illocutionary force must be reconstructed analogously to Austin's examples. This places the burden on anti-pornography feminists of explaining the conventional context that would make pornographers' speech verdictive (or, at least parallel to verdictive speech) [Langton 1993: 305; 1998]; the burden is a

difficult one since reconstructing how pornographers' speech acts are anything like a judge's verdict is liable to be contrived and artificial. Second, claims about the subordinating force of pornographers' speech must fit into a more general theory about patriarchy. Here, the Langton-Hornsby view leans on the idea that the locutions of pornography are generally emblematic of the views of patriarchy. Given that feminists have criticized pornography within a largely patriarchal context, it is non-negligible that pornographers' speech mimics the speech of the powerful, and that the powerful can, *ceteris paribus*, do more with their speech than the weak.<sup>3</sup>

This final point also motivates Langton's [1993: 302–5] example of speech that has the illocutionary force of racist discrimination (e.g., 'Whites only') when spoken by government officials. She writes that the illocutionary force of the locution 'Whites only' comes from, '[t]he authoritative role of the speaker [which] imbues the utterance with a force that would be absent were it made by someone who did not occupy that role' [1993: 304–5; cf. Bauer unpublished]. Langton gets this half right: a speaker who did not occupy an identical role to this speaker would not speak with an identical illocutionary force. However, this locution would still have a similar (and still powerful) illocutionary force if spoken by other speakers. In such a case, a government official says 'Whites only' with one illocutionary force, while a restaurant owner posts a notice 'Whites only' with a different force and a homeowner writes on her front door 'Whites only' with still another. Each of the three illocutionary forces are similar but non-identical, and may result in similar but non-identical perlocutionary effects despite the gulfs in authority between these three speakers. Besides being language users, what the above three speakers have in common is that they each have a clear status within their local domains (state, restaurant, home, respectively). These are fairly minimal requirements to establish the authority necessary for one's speech acts to discriminate on the basis of race.

Many of Austin's examples require even less authority in order to secure illocutionary force; for instance, promising by using the locution, 'I promise *x*', requires only that one is a competent speaker of the language. Similarly, defining by saying 'in what follows, "*x*" means *p*' requires only that one speak the language; for instance, the authority of the term 'pornography<sub>sub</sub>', as defined in Section III, derives from my being the author of this paper.

Proponents of the view have acknowledged the varieties of authority (e.g., Hornsby [1993]; Hornsby and Langton [1998]; Langton [1998]), though no explanation for how it is that pornographers can use their authority to limit the illocutionary potential of women's speech has been forthcoming. As I will argue, pornographers' linguistic authority in sexual discourse is *relatively easy to come by*: making it the case that '*x*' means *p* in a particular context *only* requires that speakers use '*x*' to mean *p* in that context, and that the likelihood that '*x*' means *p* is increased with each use of '*x*' as meaning *p*. To make this point more poignant, I will consider a focal example: in depicting women as inviting or enjoying sexual assault, pornography perpetuates one of many

<sup>3</sup>See Langton [1993: 299]; see MacKinnon [1987] and Andrea Dworkin [1981] for interpretations of pornographic speech as identical to, or at least consistent with, patriarchal speech.

‘rape myths’—namely, that ‘no’ means *yes* when spoken by a woman in an unwanted sexual encounter [Langton 1993: 306, 312, 320–1]. In defending this conclusion, I employ a Lewisian analysis of conventions. In particular, I give an account of the idealized mechanism by which a language user can establish a meaning for a term, and then apply this general account to the case of pornography by attending to the ways in which a pornographer perpetuates a rape myth. My analysis does not rely on pornographers having any *special* authority—quite the contrary—one need only rely on the fact that they talk about sex and talk about it in a certain way. Although, before I turn to that, the scope of ‘pornography’ needs to be clarified.

### III. Narrowing the Scope of Pornography

Arguments against the protection of pornographic speech have often struggled to adequately distinguish the class of pornography as an appropriate object of censorship from erotica, obscenity, and more-and-less objectionable sexual imagery. Although it is easy to get muddled in these distinctions, the Langton-Hornsby view would be best served if it narrowed its scope of criticism to a subset of pornographic material. I will do that here and refer to just this subset unless otherwise indicated. Pornography is sometimes classified by whom it depicts (women, children, transsexuals, transgenders, men, animals, objects, etc.), as well as its target audience (heterosexual, bisexual, gay, trans-, etc.). Of course, these categories are hardly discrete—for instance, pornographic depictions can involve a variety of people, animals, and objects, and pornography intended for straight women is consumed by gay men while pornography intended for straight men is used by bisexual women, etc. Other attempts (e.g., Russell [1996]) have distinguished violent pornography from non-violent but still dehumanizing pornography (both of which are considered objectionable), and again from erotica (i.e., sexual imagery that is both nonviolent and nonsexist and so unobjectionable). There remains a great deal of (possibly irreconcilable) disagreement about what counts as dehumanizing and what counts as erotica. Suffice it to say, discussions of pornography often get hung up on counterexamples because of the heterogeneity of the class of pornographic material.

Averting counterexamples and providing sufficient justification for the conclusion that some pornography silences women in at least some important ways therefore requires narrowing the scope of the class under consideration. Unfortunately, the Langton-Hornsby view has hitherto spent very little time doing this. For instance, Langton writes only that ‘pornography is speech that depicts subordination’, where ‘subordination’ means ‘to put [someone] in a position of inferiority or loss of power, or to demean or denigrate them’ [1993: 293, 303]. This is both imprecise and potentially question-begging. Subsequently, I want to define and be clear about my use of the term ‘pornography’ before discussing the Langton-Hornsby view in further detail. Retrofitting that view with an adequate definition is a necessary and crucial step in constructing a defence where the conclusion is actually warranted.

I borrow and adapt select parts of the description of pornography in the Indianapolis ordinance written by MacKinnon [1987: 176] in order to stay within the parameters set by the Langton-Hornsby view. This yields a limited focus on pornography that depicts the subordination of women in a variety of ways. I refer to this as ‘pornography<sub>sub</sub>’:

(pornography<sub>sub</sub>)

Depictions of women intended for a heterosexual male audience where women are dehumanized as sexual objects, things, or commodities, shown as enjoying pain or humiliation or rape, shown as being tied up, cut up, mutilated, bruised, or physically hurt, shown in postures of sexual submission or servility, penetrated by animals, shown in scenarios of degradation, injury, or torture, shown as filthy or inferior, or shown as bleeding, bruised, or hurt in a context which makes these conditions sexual.<sup>4</sup>

A couple of comments on this adapted definition are in order. First, I leave it open whether any or all of the arguments below apply to other forms of pornography, pornography intended for another audience, or pornography with a different central subject. My inclination, though, is that those arguments probably *do* apply to some other classes of pornography, but not all, due to the varied social contexts surrounding different classes of pornography; to be clear, I am narrowing the scope of the present argument rather than ruling these possibilities out. I also want it to be clear that other forms of pornography may also depict the subordination of women; if that turns out to be the case, then different but related arguments would apply to those forms of pornography. Second, this definition of pornography<sub>sub</sub> narrows the target audience exclusively to heterosexual men. With this definition of pornography<sub>sub</sub> in mind, I can now describe the authority of the pornographer<sub>sub</sub> for the Langton-Hornsby view in further detail.

#### IV. Convention-Setting and Meaning

##### *A. Lewis and Schiffer's Analysis of Conventionality*

The Langton-Hornsby view claims that pornographers<sub>sub</sub>' locutions have the illocutionary force of subordinating women only if pornographers<sub>sub</sub> have the requisite authority in sexual discourse. In order to determine how this might be the case, we can step back from the case of sexual discourse

<sup>4</sup>I leave out key phrases (from [MacKinnon 1987]) in narrowing my scope—for example, ‘reduced to body parts’ and ‘in postures of . . . display’. Mounting an argument to the effect that depictions of women reduced to body parts or on display *even in a context that makes these conditions sexual* constitutes a depiction of the subordination of women would be extremely difficult to pull off within the context of a speech act analysis. Note that I retain the phrase ‘dehumanized as sexual objects’ rather than the weaker ‘presented as sexual objects’, and intend that this be understood as suggesting that some aspect of the presentation deprives women of their humanity. I also retain the clause ‘penetrated by animals’ because such representations more obviously deprive women of their humanity, but omit the phrase ‘penetrated by objects’ because it leaves ambiguous whether the penetration is forced or degrading. I have added the caveat that the intended audience is *both* heterosexual and male. It simplifies matters to (temporarily) ignore sexualized depictions of women in positions of power, homosexual pornography, trans-pornography, pornography that takes sexualized inanimate objects or animals as its central subjects, and so forth.



and ask how a speaker has the authority to set a convention in any class of discourse. According to Lewis [1969], linguistic conventions are fairly easy to come by, insofar as they derive from regularities in intentional constructions between speakers and meanings. These regularities are conventionalized only if there is trust and truthfulness between members of a given population  $G$  such that when 'x' is used by some speaker  $S$ , 'x' means  $p$ .<sup>5</sup> In order to make this more manageable, we can say that a formulation of expression-meaning is derivative on a formulation of speaker-meaning, such that 'x' means  $p$  iff 'x' means  $p$  in some grammar that grounds a language that is used in  $G$ .<sup>6</sup> A language of population  $G$  can be determined by multiple grammars—for instance, what counts as acceptable in a language of  $G$  may be determined by the varied (and possibly competing) grammars of  $S$ 's within  $G$ .

Returning to Lewis's analysis, conventions are solutions to coordination problems: in the case of language, the coordination problem speakers face is how to communicate given that it is possible for each member of  $G$  to have a unique grammar. Lewis's solution to this coordination problem is for each member to trust that 'x' means  $p$  when used by any  $S$  in  $G$ . For the present argument, the most interesting facet of Lewis's analysis of conventions is its simplicity. One of his central examples—of two speakers on the telephone who get disconnected—involves only one prior instance in order to set a convention for how to behave in that context. In this case, the coordination problem is that if both speakers call back, they will both get a busy signal. But if one speaker calls while the other waits, they will be able to resume their conversation. The solution to their coordination problem is for the original caller to call again while the other waits. If they become disconnected a second time, the original caller calls again while the other waits. For Lewis, a convention has been established even after only one instance.

In a similar example, Stephen Schiffer considers using 'grrr' to mean *I am angry*, and concludes that a convention is also set after a single instance where a speaker makes it the case that 'x' means  $p$ .<sup>7</sup> As he describes it, imagine that two prelinguistic but precocious speakers  $S_1$  and  $S_2$  are stranded on a desert island.  $S_1$  hopes to convey to  $S_2$  that he is angry and knows that  $S_2$  both (i) recognizes 'grrr' as a sound that dogs make when they are angry, and (ii) knows that, due to the circumstances,  $S_1$  may in fact be angry. Capitalizing on these conditions of mutual knowledge,  $S_1$  utters 'grrr' and expects  $S_2$  to both uptake the meaning *I am angry* and attribute it to  $S_1$ —rather than, say, the meaning *there are rabid dogs approaching our campsite*. The reason there is a chance for  $S_2$  to successfully uptake  $S_1$ 's intended meaning is the mutual knowledge between  $S_1$  and  $S_2$  of conditions (i) and (ii). Admittedly, this first context  $c_1$  of  $S_1$ 's utterance is tenuous; it was quite likely that  $S_2$  wouldn't have achieved uptake and  $S_1$ 's utterance

<sup>5</sup>Admittedly, it reads oddly to posit conditions of trust and truthfulness when analysing the language used in sexual assault. Doing so derives from assuming that others are using words with their conventional meanings, and that conventions can be formulated along contextual lines.

<sup>6</sup>This formulation is borrowed with some modifications from Schiffer [1987: 255].

<sup>7</sup>This example is from Schiffer [1972] in his Lewisian analysis of convention for Intention-Based Semantics.

would have misfired. However, at a later date in context  $c_2$ , when  $S_1$  is again angry, he can use 'grrr' to mean *I am angry* with much greater confidence than he did in  $c_1$ , and with even greater confidence later again in  $c_3$ .  $S_2$ 's confidence in interpreting 'grrr' as meaning *I am angry* also undergoes a proportionate increase from  $c_1$  to  $c_2$  to  $c_3$ , and both  $S_1$  and  $S_2$  recognize that the other's confidence (in interpreting and intending respectively) is increasing from context to context. Thus, from  $c_1$  to  $c_2$  to  $c_3$  the probability that 'grrr' means *I am angry* increases proportionately [Schiffer 1972: 124].

However, in these initial contexts, Schiffer concedes that the felicity of the utterance 'grrr' depends heavily on the circumstances. It is only after many instances of use that 'x' can come to mean  $p$  regardless of immediate circumstances (e.g., in circumstances where  $S_1$  is still angry about something that happened days ago). Concurrent with the proportionate increase in the probability that 'x' means  $p$  in  $c_i$ , the amount of mutual knowledge between  $S_1$  and  $S_2$  increases; at the very least, their mutual knowledge that 'x' means  $p$  increases. Therefore, due again to mutual knowledge between  $S_1$  and  $S_2$ , 'x' can be taken to mean  $p$  when the only circumstantial cue is that  $S_1$  uttered 'x'. And, for each successful uptake by  $S_2$  that 'x' means  $p$  in  $c_i$  where the only circumstantial cue is that  $S_1$  uttered 'x', the probability increases that 'x' means  $p$ .

### B. From Conventions to Silencing

Correspondingly, to bring the discussion back around to pornographic<sub>sub</sub> speech acts, the probability that 'no' means *yes* when uttered by a woman in the context of an unwanted sexual encounter increases with each instance of use with this intended meaning. Hence, as it becomes conventional for 'x' to mean  $p$ , that 'x' means  $p$  in  $c_3$  is more likely than that 'x' means  $p$  in  $c_2$ . The analogy between the 'grrr' example and pornographic<sub>sub</sub> representations should now be clear: each new use by  $S_1$  of 'no' to mean *yes* in the context of pornography<sub>sub</sub> serves to perpetuate the convention that 'no' means *yes* when uttered in similar contexts. This ascending series of probabilities in the language of sexual discourse shows that the locutions of pornographers<sub>sub</sub>—both in isolation and *in toto*—set the conventions of sexual discourse in such a way that they *delimit the possible meanings of the utterance* 'no' made by speakers who are women in the context of unwanted sexual encounters.

The likely objection to this bold claim is that, in terms of probabilities, the  $G$  of pornography<sub>sub</sub> contains far more successful refusals (where 'no' means *no*) than unsuccessful refusals by women, such that the probability that 'no' means *yes* in the context of an unwanted sexual encounter remains very low.<sup>8</sup> Obviously, women successfully and unproblematically refuse all of the time in non-sexual contexts.<sup>9</sup> As Schiffer argues, as 'x' is used to mean  $p$  in a

<sup>8</sup>The  $G$  of pornography<sub>sub</sub> is populated by those who produce or consume pornography<sub>sub</sub>, as well as those who have sexual encounters with those who consume pornography<sub>sub</sub>.

<sup>9</sup>By this I am only suggesting that the reader entertain mundane examples of refusal, e.g., 'Would you like mustard on your sandwich?' 'No'. There may be more theoretically interesting problems with women's ability to successfully refuse in a wide variety of situations due to a systematic disregard for the desires of women due to a widespread refusal to take women seriously. Further, it may be the case that this phenomenon

greater variety of contexts—what he calls a ‘spreading effect’—the likelihood that ‘x’ means *p simpliciter* increases. If the number of non-sexual contexts  $c_n$  in which ‘no’ means *no* is greater than the pornographic<sub>sub</sub> contexts in which ‘no’ means *yes* (in both number and variety), then it might follow that ‘no’ means *no* in sexual contexts.

Why does this objection fall short? Because ‘no’ indeed means *yes* in pornographic<sub>sub</sub> contexts, so there must be some explanation for how this could be true given that women are able to successfully and unproblematically refuse in non-sexual contexts. Explaining how ‘no’ means *yes* in pornographic<sub>sub</sub> contexts will help us to understand how ‘no’ could come to mean *yes* in contexts of unwanted sexual encounters. The key to seeing this is to understand that pornography<sub>sub</sub> sets up artificial conditions where there is mutual knowledge that ‘no’ means *yes*. As in the case of ‘grrr’ meaning *I am angry* in  $c_1$ ,  $S_1$  relied on the immediate circumstances to facilitate uptake by  $S_2$ . Perhaps these circumstances included  $S_2$ ’s recently stealing  $S_1$ ’s hunk of jerky and  $S_1$  consequently smashing in the door to  $S_2$ ’s palm hut. Similarly, pornography<sub>sub</sub> sets up artificial circumstances that suggest that ‘no’ means *yes* in this local context. Perhaps these include the woman in the represented sexual encounter enjoying the apparently forced sexual advance, admitting to secretly wanting sex despite refusing sex, or appearing ecstatic or orgasmic despite signs of coercion. In such cases, her interlocutor is represented as correctly interpreting her ‘no’ as meaning *yes*. Any theory of meaning has to be able to explain how it is that expressions can be used in new ways, or in ways that violate extant conventions. So, while the probability increases that ‘x’ means *p* with each new instance of use, and increases again with the increase in contexts of use, it is still possible for ‘x’ to mean *q* when the circumstances create new conditions of mutual knowledge for the relevant  $G$ . Establishing these new conditions of mutual knowledge is the function of the indicators of sexual pleasure in the context of coercion in pornography<sub>sub</sub>. This is the reason that ‘no’ in fact means *yes* when uttered by a woman in the context of pornography<sub>sub</sub>.

It is worth providing further clarification on the role of mutual knowledge in the contexts of both the pornographic<sub>sub</sub> representation and the unwanted sexual encounter. In the former—but not the latter—it is mutual knowledge that ‘no’ means *yes* when uttered by a woman during an apparently unwanted sexual encounter. In the latter, it is neither mutual nor is it knowledge that ‘no’ means *yes* for the very straightforward reason that the speaker indeed means *no*. It is nevertheless plausible that there is mutual knowledge in the unwanted sexual encounter; what both speakers know is that there is mutual knowledge that ‘no’ means *yes* in most contexts relevantly similar to the unwanted sexual encounter—namely those in pornographic<sub>sub</sub> representations. This is what pornography<sub>sub</sub> serves to establish: that such mutual knowledge can, with a fair degree of certainty, be applied to this context. And, further, even if a woman were to give many other indicators that ‘no’ should be interpreted as *no* in this now-exceptional

extends to both men and women due to social norms such as courtesy and deference. However, these interesting possibilities are beyond the scope of this paper. I am indebted to an anonymous reviewer for pointing this out to me.

case, these indicators may still fall within the domain of the prior mutual knowledge based on prior speech situations represented in pornography<sub>sub</sub>. For instance, in pornography<sub>sub</sub>, women may be depicted as both saying ‘no’ and actively resisting the sexual encounter, or there may be conventional signs of bondage and coercion, while still meaning *yes*. So, while in the latter there is neither trust nor truthfulness nor mutual knowledge between speakers that ‘no’ means *yes*, the mutual knowledge gathered from the pornographic<sub>sub</sub> representation is both brought to the unwanted sexual encounter, and—devastatingly—relevant to interpretation in that encounter.

Thus, here is where the important semantic and metaphysical shift takes place for the feminists’ anti-pornography argument. *If* the convention of  $S_1$  meaning  $p$  by uttering ‘x’ in  $c_i$  is robust enough, then it is no longer the case that  $S_2$  radically misinterprets ‘x’ as meaning  $p$  in  $c_i$ , but rather,  $S_2$  has a claim to correctly interpreting ‘x’ as meaning  $p$  in  $c_i$  simply because that is what ‘x’ has come to mean in that context. To apply Lewis’s and Schiffer’s work on conventions and put it in the language of sexual discourse, *if* there is a convention of women meaning *yes* by uttering ‘no’ in relevant contexts, then it is no longer the case that men *misinterpret* women as meaning *yes* by uttering ‘no’ in contexts of unwanted sexual encounters; but rather, men correctly interpret ‘no’ as meaning *yes* in these contexts because that is what ‘no’ has come to mean when uttered by women in these contexts given the establishment of the convention. The result is that these speakers have *no words* to express their refusal of an unwanted sexual encounter.

The upshot is that we now have a means of filling in the argument for the Langton-Hornsby view that women’s refusals have been silenced. In a non-negligible way, women’s freedom of speech has been impinged upon by the locutions of pornographers<sub>sub</sub>; if the above antecedents hold, then anti-pornography feminists have a legitimate claim to protection by principles of free speech.

## V. Challenges to the Langton-Hornsby View

To reiterate, the Langton-Hornsby view suggests that pornographic speech performs the action of subordinating women, but crucial bits of the justification have hitherto gone missing. In this paper, I have demonstrated how one might provide just such an argument on behalf of its proponents. That argument shows that (at least some) pornographers have the authority to set the conventions of sexual discourse in such a way that women in actual sexual encounters lack a full range of expressive resources.

Under this description, the Langton-Hornsby view is quite attractive. Its clarity and comprehensibility are due to the simple theoretical machinery of speech acts and linguistic conventions. Accepting the view requires little more than accepting that linguistic conventions are arbitrary relics of intentional constructions in contexts. Commitments to views about patriarchy, male or female sexuality, or the moral status of pornography are all optional. Needless to say, many arguments for similar theses require

much more by way of ideological obligation. The strength of the Langton-Hornsby view will be evident in the ease with which it can handle certain objections. This will be demonstrated in Section V.A.

In sections V.B. and V.C., I consider two more pressing challenges to the kind of anti-pornography arguments analysed thus far. I conclude that, ultimately, despite the appeal and apparent promise of the Langton-Hornsby view, we should reject it on two grounds. First, adopting a conventional argument for sexual discourse entails accepting the fluidity of conventions, shifting contexts, and competing grammars within a population. The practical significance should be a hesitation in endorsing censorship, as is recommended by the Langton-Hornsby view. Second, recasting anti-pornography arguments in terms of linguistic conventions risks defending a rapist's lack of *mens rea*—an intolerable result; and yet, the extent to which one resists this conclusion is the extent to which one must back away from the original claim to women's voices being 'silenced'. In what follows, my analysis is based exclusively on the sort of speech act account of convention-setting and meaning presented here.

#### A. Decoding Pornography?

Despite the clarity of the Langton-Hornsby view, there are still reasonable questions about the plausibility of the claim that pornography<sub>sub</sub> is convention-setting. For instance, it may be the case that the majority of sexual imagery is not pornography<sub>sub</sub>. Based on the analysis of Section IV, this would be a challenge to the view *only if* there were more sexual imagery that depicted women successfully refusing a sexual encounter than sexual imagery that depicted the use of coercion because this would shift the balance of probabilities for intentional constructions in relevant contexts. Presumably, there isn't any sexual imagery that depicts women successfully refusing a sexual encounter (i.e., without a sexual encounter it would not be sexual imagery). Furthermore, depictions of women inviting a sexual encounter (for the sake of simplicity, using 'yes' to mean *yes*) do not bear on the question of whether 'no' means *yes* when uttered by women in  $c_i$  because there are multiple ways of expressing a single proposition in natural language and sexual discourse;  $p$  can be expressed using a variety of locutions 'x<sub>1</sub>', . . . , 'x<sub>n</sub>' such that there could be multiple ways of meaning *yes*. All that needs to be demonstrated is that there exist pornographic<sub>sub</sub> representations that compete with women in unwanted sexual encounters in their authority to set the conventions of sexual discourse in these local contexts.

Similarly, many have argued that multiple interpretations of sexual imagery are available—even when the sexual imagery represents the subordination of women. If this is so, doesn't this threaten the Langton-Hornsby claim that the illocutionary force of pornography<sub>sub</sub> is to subordinate, and that this thereby silences women? How would such an objection go? The idea is that non-sexist men and women can in some sense 're-claim' sexual imagery, 'decoding' even pornographic<sub>sub</sub> images for their

own purposes.<sup>10</sup> We might interpret this as meaning that  $S_2$  interprets ‘x’ with more regard for  $S_2$ ’s goals than for  $S_1$ ’s intentions, acknowledging the (correct) point that what ‘x’ means is not up to  $S_1$  alone, but requires uptake by  $S_2$ . Moreover, perhaps some subset of  $G$  refuses to interpret ‘no’ as meaning *yes* in contexts of unwanted sexual encounters but still interprets ‘no’ as meaning *yes* in pornographic<sub>sub</sub> representations, and finds those representations sexually appealing. In precisely the way I’ve specified in Section III,  $S_1$  cannot mean whatever she intends: meaning is determined by  $S_1$  and  $S_2$  in concert, depends on what they mutually know, and requires consideration of the relevant extant conventions. The initial state of their mutual knowledge will indeed shift to new states resulting in the dynamicity of meaning. However, this is not to say that there will not be competing meanings within some  $G$ —hence Lewis’s attempt to describe conventions in terms of solutions to coordination problems.

At first, it seems hopeful to think that pornography<sub>sub</sub> can be ‘decoded’ in non-sexist terms; yet, even if it were semantically possible, this objection ignores the probability that some (perhaps *most*) members of  $G$  will interpret the utterances of pornography<sub>sub</sub> according to their most prominent conventional meanings, where these conventions have been set by prior mutual knowledge as well as the frequency of using any given ‘x’ to mean some  $p$  in  $c_i$ . For instance, an element of the prior mutual knowledge of pornography<sub>sub</sub> is that bondage and violence are used in order to enforce compliance in their unwilling object; similarly, ecstatic and orgasmic expressions are conventionally uttered during a pleasurable experience. Taken together, the represented conventions have—for the novice or unsophisticated interlocutor in sexual discourse—the highest probability of meaning that enforced compliance of the unwilling results in sexual pleasure for both participants in the sexual context.<sup>11</sup> Even if one could reinterpret pornographic<sub>sub</sub> utterances, the probability remains low that one’s sexual interlocutors (particularly in the case of a potential sexual assault) will interpret those same utterances along the same, non-conventional lines. Therefore, the conclusion that the sexual speech of women is limited by the sexual speech of pornographers<sub>sub</sub> still follows, even if they do not limit themselves in their intended illocutions and interpretations.<sup>12</sup>

The Langton-Hornsby view is able to tidily rebuff these challenges from within and outside of feminist debate. However, it is just this tidiness that trips up the view. If we accept a conventional account of the authority of pornographic<sub>sub</sub> speech acts, we should just as easily accept that this authority as it stands could falter if there is enough pornographic speech that challenges it. Also, if the authority of the pornographer<sub>sub</sub> is powerful enough to silence women, then it’s also strong enough to lend an excuse to

<sup>10</sup>See McNair [1996] for a balanced defence of this view; cf. also Williams [1990].

<sup>11</sup>In tandem with the concern discussed below regarding the *mens rea* of an accused rapist, this makes the overly charitable assumption that all men are always *trying* to correctly interpret women in unwanted sexual encounters and just misfiring, rather than wilfully disregarding the desires of women due to misogyny or sexism.

<sup>12</sup>For a related point, see Chancer [2000: 82]. Here, she argues that images can circulate that subordinate even while they give pleasure or entertain those who are being represented as subordinate in the images. This applies (and is perhaps better understood) in non-pornographic images, such as entertaining yet racist depictions.

rapists. These two problems leave the Langton-Hornsby view in a bit of a mess; they are each explained, respectively, in the next two sections.

*B. The Protection of Unpopular, Unsavoury, or False Expression*

Liberal, Millian anti-censorship arguments conclude that there is value in defending a plurality of opinions and a tyranny in silencing individuals who hold opinions that are unpopular, unsavoury, or false. These arguments have turned on two aspects of Mill's *On Liberty*: first, that thought, speech, and discussion should be free and protected; and second, that the state should not interfere with individuals' actions just as long as those actions do not harm others (the 'Harm Principle'). Opponents of censoring pornography contend that the conjunction of freedom of expression and the Harm Principle jointly entail that pornography be protected from coercive censorship at the hands of feminists. Mill does not think that speech—even when offensive—should be censored, but that actions should be hindered when they prove harmful to others:

[L]et us next examine whether the same reasons [that speech should be protected] do not require that men should be free to act upon their opinions—to carry these out in their lives, without hindrance, either physical or moral, from their fellow men . . . No one pretends that actions should be as free as opinions.

[Mill 1975: 69]

Yet, Mill goes on to give the example that opened this paper—namely, of using one's speech to incite a riot in front of a corn dealer's house. Millian arguments against feminist censorship have further relied on the Harm Principle to argue that representations of the subordination of women do not harm them, at least insofar as those representations stay in the domain of fantasy; it is men who harm women when they act out these fantasies and it is these actions that violate the Harm Principle, but *not* the prior sexually explicit representations.<sup>13</sup> And yet, arguments for the Langton-Hornsby view have turned the tables on this argument through an appeal to protection from coercive censorship *by pornographers*. This is the final (implicit) premise of their argument: any time there are two classes of speech that are in competition, and cannot mutually coexist, it is justifiable to censor the less socially valuable of the two. From this they conclude that it is justifiable to censor or silence pornographic<sub>sub</sub> speech to allow women's speech to be heard.<sup>14</sup>

<sup>13</sup>For a defence of the position that liberals are wrong to think that Mill would have opposed the censorship of pornography given his commitment to the equality of women as argued in *The Subjection of Women*, see Dyzenhaus [1997]. At the very least, Mill would have sympathized with feminists' anti-pornography arguments, and not with liberals such as Ronald Dworkin. Further, Mill would have thought that, for men and women to form the informed opinion that women are unequal to men, women have to have experienced a state of social and political equality, and that a pornographic society is inconsistent with such a state.

<sup>14</sup>I am indebted to an anonymous referee for suggesting this point to me and for helping me to see the Langton-Hornsby argument more clearly.

At this point, I think it would be helpful to consider a contrast with gay pornography in order to see why feminists should not—at least for now—endorse the censorship of pornography<sub>sub</sub>. Gay pornography, it could be argued, is a paradigmatically Millian example of how unpopular expression, when protected, can promote a more moral society.<sup>15</sup> There are several crucial differences between gay pornography and straight pornography in the conditions of mutual knowledge (based on social context and circumstances) and their respective illocutionary forces. In this case, the development of a large-scale pornography industry intended for a gay audience corresponded historically with the growth of the gay rights movement.<sup>16</sup> While the conservative right has socially stigmatized both gay and straight pornography, gay pornography has been integrated into the gay community in a manner that does not reflect this stigma in a way that straight pornography does [Thomas 2000: 62]. This has perhaps been aided by the fact that most of the producers of gay pornography have been men, many of whom are themselves gay. Gay pornography has also evolved over the past three decades to reflect changes in gay communities [Thomas 2000: 57]. These sorts of differences between gay and straight pornography address one of the predominant feminist criticisms of the pornography industry—namely, that women by and large are not ‘authors’ of their sexual identities insofar as straight pornography is overwhelmingly produced *by* straight men *for* straight men. These differences also assume that conditions of mutual knowledge in gay sexual discourse that do not obviously play off power inequalities and as such do not perpetuate ‘rape myths’.

Just as Mill thought that the protection of minority opinion contributed to a reduced state of tyrannical coercion, the legitimating of socially- and politically-unpopular expressions of gay sexual desire may potentially reduce the subjection of gay men in a hetero-hegemonic society. Returning to the objection that this comparison with gay pornography provides, why shouldn’t Millians think that the minority opinion being protected in the case of pornography<sub>sub</sub> according to my analysis is that women in fact desire sex when they purport to refuse sex? Or, more generally, why shouldn’t Millians think that the opinion that women are inherently unequal to men be protected from the coercive censorship of feminists? If the anti-pornography feminists’ arguments are successful—where success is understood as the coercive censorship of pornography<sub>sub</sub>—haven’t these minority voices been silenced?

This brings to the fore the significance of the *value* of the opinions being expressed. Assuming that the censorship of pornography<sub>sub</sub> is another form of silencing, we can see that if pornographers<sub>sub</sub> are silenced, the result is their inability to depict women as inviting and enjoying forced sex. If, on the other hand, women are silenced, the result is that they are disabled in their

<sup>15</sup>In what follows, ‘gay pornography’ should be understood as sexually explicit depictions of men intended for a gay male audience. Unless otherwise indicated, lesbian, bisexual, and trans-pornography are not being discussed. Similarly, where I use the expression ‘straight pornography’ I am referring to sexually explicit depictions of women and men intended for a heterosexual male audience. This is a broader class of pornography than pornography<sub>sub</sub>.

<sup>16</sup>For a helpful overview of the history of gay pornography in the United States, see Thomas [2000].



attempts to refuse an unwanted sexual encounter. When presented in this way, it seems clear that the speech of women has more social value than the speech of pornographers<sub>sub</sub>. We should probably think this even if we appeal to the Millian idea that when an opinion which is taken to be unsavoury or false by the majority is censored, the majority assumes a standard of infallibility—a standard which has itself repeatedly proven fallible, thereby impeding social, moral, and intellectual progress. Mill is powerfully correct that much good comes from protecting and permitting those views that we suspect to be false. Yet, he would also not want such a standard of infallibility to paralyse individuals or societies from acting on their opinions. While we cannot be infallibly sure that representations of the subordination of women in pornography<sub>sub</sub> will not in the long run promote social, moral, and intellectual progress, it seems that there could be a rational tribunal to suggest that we should act on the belief that ‘rape myths’ are in fact myths and that women are equal to men both sexually and socially. Yet, it is still not clear whether it follows from this that censorship of sexual discourse that says otherwise should be endorsed.<sup>17</sup>

The reason the Langton-Hornsby view may not want to endorse censorship is that the implication of a speech act analysis of pornographic speech is the inherent instability of the linguistic conventions governing speech acts in context. The same intentional constructions that serve to silence women by undermining what they mean to say with their speech are in competition with other grammars in *G*.<sup>18</sup> Although I argued above that it is hopeful but misguided to think that pornography<sub>sub</sub> can simply be ‘decoded’ to fit the goals of some *S*, thereby ignoring the conventions that govern the interpretation of pornography<sub>sub</sub> for *S*’s sexual interlocutors, it is similarly misguided to think that the conventions of sexual discourse are fixed and form a discrete class of discourse that should be censored. For instance, there exists the possibility that gay pornography will some day have the illocutionary force of subordination, if it does not have this force already, such that it no longer legitimizes gay sexual desire but instead comes to define and normalize aspects of it in ways that are damaging to some subset of the gay community. Alternatively, women generally may achieve a level of ‘authorship’ over depictions of their own sexuality that they don’t yet have such that at least this aspect of the social context in which pornography<sub>sub</sub> is produced evolves. Although I think it is naive to think that the conditions of patriarchy are socially and conceptually independent of the production of pornography<sub>sub</sub>, it is still plausible that an alternative context—for instance, one akin to that which surrounds the

<sup>17</sup>Cf. Dyzenhaus [1997: 48]; although Dyzenhaus argues in favour of feminists’ anti-pornography arguments, he hesitates in his conclusions about whether Mill would have thought coercive censorship of pornography would be the most effective response.

<sup>18</sup>While I argued above (Section IV.B) that the fact that women successfully refuse in non-sexual contexts is not itself a reason for thinking that pornographic<sub>sub</sub> speech is not convention-setting in just the way the Langton-Hornsby view claims it is, there is still more than usual competition for conventional authority in sexual discourse for pornography<sub>sub</sub>. For instance, there are other grammars in *G* that interpret ‘no’ as *no* in relevantly similar contexts, as well as the intentions of the women uttering ‘no’ and meaning *no* that directly compete with pornography<sub>sub</sub>.

production of gay pornography—could come to surround other forms of pornography.<sup>19</sup>

However, the more concrete concern is whether the convention that ‘no’ means *yes* when uttered by women in sexual encounters is itself unstable. This concern drives at the heart of what is wrong with the Langton-Hornsby view. If the convention is unstable—as I think it probably is—the illocutionary disablement of women is also unstable, and it starts to look less like disablement at all. Due to this instability, the appropriate response on the part of feminists might be to work to change the conventions of sexual discourse rather than to opt for more censorship. In order to un-silence women, it seems at least plausible that the appropriate response is for women to *talk more* (in sexual discourse), not for pornography<sub>sub</sub> itself to be silenced. But if the convention is *too* stable, the Langton-Hornsby view ends up with the problem discussed in the next section—where rapists have become *interpretively* disabled, to coin a phrase.

### C. Excusing Rape<sup>20</sup>

Finally, I would like to consider two versions of another possible objection to the claim that women’s ability to refuse by using the locution ‘no’ has been silenced by the illocutionary force of the locutions of pornographers<sub>sub</sub>.<sup>21</sup> In the first version, Jacobson [1995] argues that the Langton-Hornsby view that pornography leads to illocutionary silencing leads to the absurd conclusion that the hypothetical woman in the unwanted sexual encounter is not thereby raped (because she could not have refused the unwanted sex). It seems as if this absurdity might also be parlayed into an objection to the way in which I have defended the Langton-Hornsby view in section IV.B. That is, if it is true that women in *c<sub>i</sub>* lack the illocutionary resources to refuse, isn’t the original anti-pornography argument turned on its head? After all, it would no longer be a rape *myth* that ‘no’ means *yes* when spoken by women in *c<sub>i</sub>*. This first version of this objection is a bit too blunt, and—on the face of it—Hornsby and Langton [1998] successfully rebut the objection by pointing out that it depends on confusing a sufficient condition of refusal with a necessary one. To argue that if a woman does not or cannot mean *no* with her locutions entails that she then consents to the sexual encounter would certainly be absurd, because there are other *sufficient* means of intending to refuse, and, more simply, because a lack of refusal does not imply consent. This is consistent with a claim that women’s expressive resources are reduced by pornography<sub>sub</sub>: they are denied the ability to use

<sup>19</sup>It may be the case that a speech act theoretic analysis of pornography should not only resist censorship but should advocate the production of even more pornography just as long as this new pornography does not have the illocutionary force of subordination. This is a counterintuitive consequence, but not implausible.

<sup>20</sup>This subtitle is borrowed from the title of Curley’s [1976] ‘Excusing Rape’, which discusses what is required for *mens rea* in rape cases. The paper describes several disturbing cases of rapists who were given reason to believe that their victims consented and later argued in court that this need not be a *reasonable* belief, but merely a belief in consent for them to be excused from a rape charge.

<sup>21</sup>The first version of the objection is discussed by Hornsby and Langton [1998], and is originally made by Jacobson [1995].

'x' to mean  $p$  when the primary indication that  $S$  means  $p$  is that  $S$  uttered 'x'.

However, such an 'absurd' question of whether or not a woman is thereby raped in the case where she is unable to mean *no* by uttering 'no' does suggest a more acute concern in the same neighbourhood regarding the force of these arguments and their potential to legitimate the acting out of harmful fantasies by men who consume pornography<sub>sub</sub>. All too obviously, the anti-pornography feminist should treat the man who interprets 'no' as meaning *yes* outside of pornographic fantasies not as an unwitting victim of linguistic conventions, but as misogynistic, ill, or deranged (i.e., unable to distinguish between reality and fantasy), or unwilling to listen to the desires of real women in sexual encounters.

Another way of putting this point is simply that the Langton-Hornsby view may prove too much; for it seems to have the unintended consequence of treating rapists and their victims as equally subjugated by the conventional power of pornographers<sub>sub</sub>—whereas women are illocutionarily disabled, rapists are *interpretively* disabled. The view has no resources to give us a reason for thinking that a rapist should be able to understand a victim's meaning that  $p$  by uttering 'x' when the victim herself is unable to mean  $p$  by 'x'. The disablement of the speaker should be symmetrical to the disablement of the hearer. On one hand, this dismisses the differences between those who interpret women in pornographic<sub>sub</sub> fantasies differently than the women in their real sexual lives, and those who act out their pornographic<sub>sub</sub> fantasies on unwilling victims. On the other hand, it says of rapists that  $S_2$ 's radical misinterpretation of  $S_1$  could not have been helped. This has the altogether dangerous consequence of diminishing the *mens rea* of a rapist [cf. Curley 1976].<sup>22</sup>

What does it mean to say that the *mens rea* of a rapist would be diminished in light of arguments by proponents of the Langton-Hornsby view? If we assume that rape is coercive sex, and that coercive sex is *something like* sex which has not been consented to (and thus may or may not be enforced through violence), the problem turns on whether or not the victim consented, and whether or not the rapist could have reasonably interpreted the victim as consenting (or, under a weaker reading, as refusing). That is, we may set the standards for consent high enough such that  $S_1$  must not merely fail to refuse, but must also consent, and the Langton-Hornsby model of the conventional authority of pornography<sub>sub</sub> still meets this standard: it is not merely that 'no' fails to mean *no*, but that 'no' means *yes*. The force of the silencing argument is not merely that refusal is silenced, but that it appears to create consent where none exists.

<sup>22</sup>It is possible to read the consequences of the Langton-Hornsby view in another way. Rather than claiming that a rapist is interpretively disabled by the illocutionary disablement of women, and thus that his *mens rea* for his crimes is somehow diminished, we may conclude that the responsibility for rape is expanded to include all consumers of pornography<sub>sub</sub>, all men, or even all speakers. (For a defence of this kind of collective responsibility, see May [1997; 1994].) The idea is that in using a language that silences women, the responsibility for that silencing is distributed out among all who use the language. This seems correct insofar as we should share responsibility for the depiction and consumption of images of women inviting forced sex. However, this is not incompatible with the analysis of Section V. Responsibility for the *interpretive* disablement of a rapist could be expanded, whereas his local culpability remains diminished. I am indebted to an anonymous referee for bringing this point to my attention.

The problem the Langton-Hornsby view faces is that *if* they are correct that women are ‘silenced’, then the rapist’s claim to having obtained his victim’s consent must also be correct. That is, if they are correct that pornography<sub>sub</sub> has set the linguistic conventions such that ‘no’ means *yes* in the context of an unwanted sexual encounter, and as such women lack the words to refuse, then the rapist must have obtained his victim’s consent. This may speak to the power of the Langton-Hornsby arguments. Women have indeed been silenced if the rapist can make a reasonable claim to having obtained consent. But this is crazy and has got to be wrong—I take it that any feminist argument that entails that the actions of rapists should be—even partially—excused has, for that reason, failed. This should count as a *reductio* of the view.<sup>23</sup>

What could proponents of the view say to salvage it? They may want to tread carefully and claim that they are merely claiming that pornography<sub>sub</sub> represents women’s inability to refuse (‘no’ does not mean *no*) rather than the stronger claim that pornography<sub>sub</sub> represents apparent refusal as consent (‘no’ means *yes*). This would entail that the victim in a rape does not consent, but simply fails to refuse. (This is the gist of their exchange with Jacobson [1995].) But this would be disingenuous. There is reason to think that if pornography<sub>sub</sub> is convention-setting at all, it sets the convention that ‘no’ means *yes*. The rape myth being perpetuated is that ‘she wanted it’, not ‘she didn’t not want it’. And, like any other language-user, pornography<sub>sub</sub> has the potential to establish any imaginable convention just as long as the context supports an interpretation of an intentional construction between *S* and *p*. It just so happens that pornographers<sub>sub</sub> are in the business of perpetuating the convention that ‘no’ means *yes* in certain contexts.

It would be helpful to tease apart the convention that ‘no’ means *yes* in even further detail in order to get a handle on the different possibilities for the Langton-Hornsby view. There are at least three relevant speech situations to consider:

- (1)  $S_1$  means *no* by saying ‘no’ and is interpreted by  $S_2$  as meaning *no*.
- (2)  $S_1$  means *no* by saying ‘no’ and is interpreted by  $S_2$  as meaning *yes*.
- (3)  $S_1$  means *yes* by saying ‘no’ and is interpreted by  $S_2$  as meaning *yes*.

Speech situations (2) and (3) appear to be the most interesting for the Langton-Hornsby view. (3) is the situation that is said to be represented in pornographic<sub>sub</sub> speech and so perpetuates a ‘rape myth’. (2) is the situation of illocutionary disablement in which  $S_1$  cannot be interpreted as she

<sup>23</sup>An anonymous referee has suggested that I am confusing conceptual and empirical matters here. I too have been worried that the Langton-Hornsby view may just be correct (since I otherwise find it so compelling) and that we have to think about rape and rapists differently given the possibility of the conventional authority of pornography<sub>sub</sub>. However, my considered view is that, instead, this consequence simply makes salient the implausibility of the view that women are ‘silenced’. As I claim below, I am inclined to interpret the speech situation of the unwanted sexual encounter as situation (1) (in the main text below) where the rapist continues on due to a disregard for the victim’s intentions rather than due to an illocutionary misfire.

intends. (2) also reads like a plausible defence for rapists—i.e., that the rapist interpreted the victim as consenting. The Langton-Hornsby claim as analysed in this paper is that speech situations (2) and (3) interact such that—given that they share a context— $S_1$  in situation (2) is interpreted as meaning *yes* even though she intended to be interpreted as meaning *no*. This is how women are silenced. What is worrisome about this result is that a rapist who was in situation (2) can later justifiably claim he correctly interpreted his victim as meaning *yes* and so obtained her consent, due to the conventional power of speech situations like (3). Note how this second version of this objection is importantly different than the first advanced by Jacobson: it is not as if a rape doesn't occur in  $c_i$ , but that the interpretive capacity of the rapist was diminished. This is what we must conclude if we think that pornographers<sub>sub</sub> are actually convention-setters in sexual discourse. Either pornographers<sub>sub</sub> have the authority to change the meanings or illocutionary force of expressions or they don't; if they do, then these change for all interlocutors, including rapists. If pornography is treated as speech, and women are treated as silenced, it would be a mistake not to treat rapists as interpreters. As interpreters, they face an unexpected problem: the words and actions of their interlocutors in an unwanted sexual encounter are conventionally constrained to mean *yes* or to imply consent. How, then, can a speaker correctly interpret a woman's rejection as rejection?

There must be *something* that makes it possible to interpret a woman's rejection as rejection given how many speakers find themselves in situation (1) and act accordingly.<sup>24</sup> There are circumstances where women are not illocutionarily disabled; there are grammars in  $G$  that compete with pornographers<sub>sub</sub> in setting the conventions for interpreting women in sexual encounters.<sup>25</sup> If there weren't, all women would be disabled all the time. Now, we should be careful how we proceed from here: it shouldn't take a universal disablement of the speech of women in order for us to care that some pornographers impinge on the freedom of speech of some women. But, in order to assess the cogency of the Langton-Hornsby view, we need to know what makes it possible for some grammars in  $G$  to provide correct interpretations of women. Here we should be most interested in those speaker/interpreters who consume pornography<sub>sub</sub> but manage to correctly interpret the women in their real sexual lives. There is something that accounts for their ability and rapists' lack of ability. There is something that enables some speakers in  $G$ , perhaps all.

Finally, the Langton-Hornsby view might want to say that what enables some speakers in  $G$  to correctly interpret women in the context of unwanted sexual encounters is their appeal to a convention that says that expressions do not share meanings between fictional and real contexts. But this move would be linguistically untenable (i.e., for what would explain our success at interpreting fictional contexts if they lacked shared meanings with real contexts) and disastrous for the Langton-Hornsby view. They need to claim

<sup>24</sup>A similar point is made by Jacobson [1995: 78].

<sup>25</sup>This cuts in theoretical and empirical directions. Since the empirical data on intentions and interpretations in sexual encounters is probably intractable, the best we can do is to be theoretically cautious.

that the pornographic<sub>sub</sub> context is interpretively relevant to real sexual contexts otherwise they could not make a claim to women being silenced by the authority of fictional pornography<sub>sub</sub>.

The Langton-Hornsby view has powerful implications. Too powerful, it seems, for them to be plausible. While there must be some way in which pornographic speech bears on all sexual discourse, it cannot be a matter of 'disablement' or 'silencing'. There must be some other explanation for why women's intentions are disregarded in the context of an unwanted sexual encounter. This author suspects that contexts of rape are most like speech situation (1) coupled with a disregard for the desires of women—perhaps a misogynistic disregard. This may come about because of the prevalence of pornography<sub>sub</sub> in our sexual discourse. But this would be a *perlocutionary* effect of pornographic<sub>sub</sub> speech, not an illocutionary one. Such a suspicion will need to be defended in another place.

In this paper, I have articulated an argument for how it is that pornographers have the authority to set the conventions of sexual discourse in such a way that women in actual sexual encounters lack a full range of expressive resources. Such an argument has thus far been lacking in the otherwise provocative and significant Langton-Hornsby view. Yet, I have presented reasons to reject the view even when strengthened to include a comprehensive account of pornographers' authority. Adopting a conventional argument for sexual discourse entails accepting competing grammars and their accompanying conventions within a population. The practical significance of this should be a hesitation in endorsing censorship, and yet the force of the Langton-Hornsby view should result in a parallel hesitation in defending the locutionary entitlement of pornographers<sub>sub</sub>. The second reason for rejecting the Langton-Hornsby view is that recasting anti-pornography arguments in terms of linguistic conventions risks defending a rapist's lack of *mens rea*; if one were to resist this conclusion, one would have to back away from the significance of the original claim to the voices of women being 'silenced'.<sup>26</sup>

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