

## **A Dilemma for the Silencing Argument**

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Abstract.

In the debate surrounding the censorship of pornography, arguments from freedom of speech have been the presumptive resource of pornography's defenders. Yet, a strain of argument in favour of censorship – the Silencing Argument – has emerged on the basis of pornography's supposed silencing of women. I seek, firstly, to outline Hornsby and Langton's (1998) version of the Silencing Argument, before disproving the conditional which takes the argument from its empirical claim to its conclusion that a protected speech act has been rendered unspeakable. I will do so by establishing, by way of a counterexample, that the key linguistic claim on which the argument rests is false. I will proceed to assess the possibility of modifying the linguistic claim as to avoid the counterexample. I will, in turn, establish a dilemma which is generated by attempts to modify the linguistic claim, before concluding that such attempts are consequently fruitless.

### §1. Introduction

In the debate surrounding the censorship of pornography, arguments from freedom of speech have been the presumptive resource of pornography's defenders. Yet, within the literature, a new strain of argument, in favour of censorship, has emerged on the basis of the supposed silencing of women which is caused by pornography (Mackinnon, 1987; Langton, 1993; Hornsby and Langton, 1998; McGowan et al., 2011.) In brief, the argument goes as such: pornography changes its viewers understanding of words associated with refusal in a sexual context such that when these viewers are in sexual situations they are incapable of properly understanding their partner's attempts to refuse to partake in a sex act. Normally understood, this poses a problem for pornography by showing its causal role in the rape and assault of women. Nonetheless, there is another outcome which this highlights – namely, it demonstrates that pornography silences women, by making them incapable of communicating what they wish to (their refusal.) Combined with the assumption that this sort of communication is protected by freedom of speech, such observations would show that pornography is at odds with freedom of speech.

This argument is significant in that it gives proponents and opponents of the pornography the ability to debate in the same terms. The question of this paper, however, will not be to analyse the extent to which this argument overrides opposing free speech considerations, but rather whether it qualifies as a sound argument at all. I will proceed by outlining Hornsby and Langton's (1998) account of the Silencing Argument<sup>100</sup> within §2. I accept the empirical claim given and, rather, will attempt to disprove the conditional which takes us from the empirical claim to the conclusion that a protected speech act has been rendered unspeakable by pornography. I will do this in §3 by demonstrating, by way of a counterexample, that the key linguistic claim on which the argument rests is, in fact, false. I will then outline two results of the counterexample: the first being its implications on the permissibility of certain actions, and the second being its implications on the general success of speech-acts under the given linguistic claim. In §4, I will assess the possibility of modifying the linguistic claim as to avoid the implication of the counterexample. I will, in turn, establish a dilemma which is generated from attempts to modify the linguistic claim of the H & L account, before concluding that such attempts are consequently fruitless. In §5, I will outline the implication of the conjunction of the arguments forwarded in §3 and §4, before going on to defend these arguments in §6.

## §2. The Silencing Argument

The H & L account of the Silencing Argument follows as such:

- (1) *Empirical claim:* Pornography systematically prevents the uptake of women's illocutionary intention to refuse, by undermining the felicity conditions required for it.
- (2) *Linguistic claim:* The illocution of refusal requires uptake to be successful.
- (3) *Freedom of speech claim:* The systematic prevention of the illocution of refusal is at odds with freedom of speech.
- (4) *Conclusion:* The consequences of pornography are at odds with freedom of speech.

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<sup>100</sup> Henceforth, referred to as the 'H & L' account.

This argument rests upon the distinction between locution, illocution and perlocution (Austin, 1962: 94, 98-101) in which a locutionary act is the act of speaking, an illocutionary act is the act which is done in speaking, and a perlocutionary act is that which comes as a consequence of speaking. For example, my saying 'bring me a glass of water' is the locution, whilst the illocution would be that of ordering, and the perlocution would, hopefully, be that of someone bringing me a glass of water. Further, this argument turns on illocutionary intention, and the ability of the audience to *uptake* it, or recognise it. An individual's ability to uptake is based upon a complex set of felicity conditions, which allow the audience to interpret locutions, and the illocution implied by them, correctly. For illustration, take the previous example of the glass of water; the illocution would have been uptaken by the audience if they recognised it as an order, and their ability to do so is reliant on a number of contextual conditions, such as being within a restaurant.

What theorists have in mind when claiming (1) is that pornography systematically prevents its viewers from uptaking woman's illocutionary intention to refuse when in a sexual context. Pornography changes men's perception of locutions such as 'no' such that they can no longer recognise the speaker's illocutionary intention of refusal. It is not the case that the man recognises that the woman is refusing but decides to continue with the sex act anyway, but rather exposure to pornography has made it impossible for him to uptake the woman's attempt to refuse. Consequently, the woman is silenced; she is not capable of making the speech act that she intends. The mechanism by which pornography does this is not often specified; however, I will take it to mean that pornography 'scrambles' the meaning of the words in the hearer's mind<sup>101</sup>, such that 'no' automatically means 'yes' or at least nothing at all (West, 2003.)

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<sup>101</sup> We assume this as weaker empirical claims are easily shown to be insufficient to support the conclusion. In essence, weaker claims such as 'pornography makes men believe that women's rejections are actually insincere, leading them to conclude that they accepted the offer' include uptake, rendering the incident as perlocutionary frustration. Uptake occurs in the realisation, on the man's behalf, that this is a type of rejection, albeit an insincere one. In this case, the error occurs in the audience's judgment of the illocution, not their recognition of it. Whether or not the reliance on such a strong empirical claim is a reason for declaring this argument unsound is an interesting issue, though one that is not addressed in this paper.

§3. The Blinking Case

The premise on which I will first focus is the linguistic claim. The truth of (2) is assumed due to the fact that most Speech-Act theorists have, traditionally, held the all illocutions require uptake to be successful<sup>102</sup>. However, I will seek to show that the particular illocution which the Silencing Argument is interested in, the illocution of refusal, does not require uptake to be successful. Consider the following counterexample:

*Before parting ways, Sally invites her friend Jenny to meet up with her later for coffee. Unfortunately, Jenny is busy later on that day and, consequently, replies 'no' intending to refuse the offer. However, unbeknownst to Jenny, she coincidentally blinks twice whilst saying 'no'. Sally has a linguistic quirk, of which Jenny doesn't know, which is that she stills believes in a playground rule that blinking twice signifies that you are speaking in opposites. Consequently, she interprets Jenny's 'no' as the conventional 'yes', and believes that Jenny is actually agreeing. Accordingly, Sally goes at the pre-suggested time, to the pre-suggested coffee house to meet with Jenny, only to be left waiting.*

If one were to unpack the *Blinking Case*<sup>103</sup> one would note that there was no uptake, on Sally's behalf, of Jenny's refusal. Sally's conclusion was not due to a cognitive error which occurred when weighing up the illocution with background information which would make her doubt its purpose. Rather the blinking seemed to Sally to be a non-verbal element of Jenny's locution, which implied the illocution of acceptance. According to the claim that the illocution of refusal requires uptake, we ought to think that Jenny's refusal was unsuccessful, or in other words that Jenny did not refuse. However – at least to me – this seems bizarre. Certainly, at a minimum, I feel that when asked why she didn't turn up, Jenny would be perfectly justified in responding that she had refused the invitation.

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<sup>102</sup> This claim needs to be qualified somewhat, as typically Speech-Act theorists have held that certain institutional illocutions, such as the illocution of wedding someone in saying your vows, do not require uptake. Nonetheless, as this paper is focusing on a non-institutional illocution, we take this to be unimportant to our argument.

<sup>103</sup> *The Blinking Case* is constructed as a synthesis of Jacobson's crossed fingers example (2001, p.192), and Jacobson (1995, 2001) and Bird's (2002) accusation that the Silencing Argument reduces the culpability of rapists, as a means of dealing with each one's relevant objections.

Of course, you may not share my intuition, but I beg you to consider the following. It is, I think, plausible to say that in situations akin to the Blinking Case, individuals in Jenny's position should refuse. That is, if you are invited to meet a friend and you do not intend on going, then you ought to refuse. To not do so would be wrong, in large part because it might lead to the unfortunate situation in which your friend is left waiting, like Sally was. Such considerations would suggest that by failing to refuse, Jenny did something wrong.<sup>104</sup> Note that Jenny would have wronged regardless of how her failed illocution manifested itself, that being if it manifested itself in the form of an acceptance of the offer or simply a lack of response. To do either would be morally inappropriate, given that both could lead to an unfortunate confusion. Yet, the conclusion that Jenny did wrong seems irreconcilable with our actual intuition, which is that Jenny committed no wrongdoing. Hence, our commitment to the necessity of uptake for all acts of refusal is on pain of admitting that Jenny did something wrong.

Furthermore, Jenny's illocutionary disablement was the result of the linguistic idiosyncrasies of one particular person; if anyone else had been there, or if it were anyone else in Sally's position, Jenny would have secured uptake. This, as a conclusion, strikes us as odd because it suggests that everyone's power to perform speech-acts is 'held hostage' by the particular linguistic novelties of our audience. Indeed, with further examination, we can see that the whole business of performing speech-acts would be far less successful if we were to accept the general claim that all (non-institutional) illocutionary acts required uptake. Take Bird's (2002) example in which a man in the midst of a paranoid grip receives a wedding invitation, but immediately assumes there is no wedding and that the invitation is some cruel joke. According to the claim that illocutionary acts require uptake, the sender of the invitation could be accused of not actually extending an invitation to him. Beyond the world of fantastical philosophical examples, there are also many real instances in which such disablement occurs; think of an attempt to compliment a

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<sup>104</sup> I do not claim that these considerations imply that Jenny is morally responsible or culpable for not refusing (and the consequences thereof.) Jenny didn't think she had failed to refuse, nor did she have any reason to, so she can claim inculpable ignorance. Regardless, I think that the conclusion that Jenny even did something wrong is an odd enough conclusion to count against the claim that refusal requires uptake.

friend on a new shirt, all the while unaware that the friend is quite self-conscious about the item and takes your compliment to be a cruel jibe.

Given this, it seems that the H & L account must respond accordingly to the Blinking Case, as to block its consequences. For the proponents of the Silencing Argument have two options, either to give up uptake as being necessary for refusal, rendering their argument unsound, or restricting the role of uptake in their account of refusal.

#### §4. The Dilemma

The obvious restriction to suggest is to define uptake such that if a neutral judge, who was competent with the conventions of the language in question, could uptake the illocutionary intentions of the speaker, then this suffices to show that the illocution was successful (Jacobson, 2001). Indeed, this seems to be one of the only options available to the Silencing Argument, for the difficulties highlighted by the Blinking Case arise due to problems in allowing uptake to turn around the audience. It is the implications that the idiosyncratic language use of some individuals can have upon the speech acts of others, and their culpability for such speech acts, which drive the intuition behind the *Blinking Case*. Consequently, it seems that the only way to avoid these consequences is to remove the possibility of idiosyncratic language use from affecting the uptake of refusal,<sup>105</sup> and to the author it seems that the only plausible means of doing so is to define it with respect to an objective standard, such as a neutral judge.

When we reapply this to cases of sexual assault, we find that this no longer fits the narrative required by the H & L account, and rather leads them to the following dilemma: firstly, if the neutral judge would uptake the illocutionary intention to refuse, then the woman has successfully performed her illocution, and the failure of the man to take note is, in fact, an unfortunate case of perlocutionary frustration; secondly, if the neutral judge wouldn't uptake the illocutionary intention to refuse, then the scrambled meaning of words in a sexual context is no longer an abnormality in the felicity conditions required for refusal, but actually represent conventional language use. To unpack the implications of this dilemma further, notice that in the first horn, the failure of the man to register the refusal represents the woman's intended consequence of her

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<sup>105</sup> It is, of course, conceivable that other devices or methods could be deployed to avoid these consequences, however, I am unable to conceptualise one that would properly do so, mostly for the reasons discussed above.

illocution not coming to fruition. The ability to secure our desired perlocutionary intentions is, however, not covered by free speech; my free speech is not infringed when I fail to persuade you of the argument I'm making. In the second horn, we see that if the neutral judge would not uptake the woman's intention to refuse, then the consequences of pornography have in fact been subsumed by the language. In this case, the woman is not systematically illocutionary disabled, but rather she is not choosing the correct locution. One cannot be illocutionary disabled, and hence silenced in the H & L sense, when the failure to achieve a successful illocution is due to you choosing the incorrect locution for your desired effect.

#### §5. Overview of Argument

I have thus far forwarded two arguments, the first being an argument in favour of rejecting the linguistic premise of the Silencing Argument and the second being an argument to establish that any viable modification of the linguistic premise generates a dilemma. These will be known as the *Argument for Rejection* and the *Argument against Modification* respectively. A reconstruction of the two arguments is offered below:

##### Argument for Rejection

- (1) The assumption that 'the illocution of refusal requires uptake to be successful' has unacceptable results, namely those explicated in the Blinking Case.
- (2) We ought to reject that which has unacceptable results.
- (3) Conclusion: We ought to reject the assumption that 'the illocution of refusal requires uptake to be successful'.

##### Argument against Modification

- (1) The only way to modify the second premise of the Silencing Argument, as to avoid the implications of the Blinking Case, is to define uptake with respect to a neutral judge.
- (2) Defining uptake with respect to a neutral judge leads to the following dilemma:
  - a. If the neutral judge recognises the illocution of refusal, then the failure of the audience to do so is simply perlocutionary frustration, contra premise (1). Amending premise (1) to reflect this will invalidate the argument.

- b. If the neutral judge does not recognise the illocution of refusal, then the speaker has chosen the wrong locution, contra premise (1). Amending premise (1) to reflect this will invalidate the argument.
- (3) Conclusion: Therefore, the only modification available to avoid the implications of the Blinking Case invalidates the Silencing Argument.

The conjunction of these two arguments lead us to the conclusion that neither premise (2) nor a suitably modified version of premise (2) is acceptable, and that the Silencing Argument is therefore unsound.

#### §6. Defending the Argument

In this section, I will deal with a potential criticism of the argument presented, which primarily attacks the Argument for Rejection, but in doing so renders the Argument against Modification redundant. One may be tempted to tackle the Argument for Rejection by suggesting that the implications of the Blinking Case do not plague the Silencing Argument. One potential reason for this is that the Blinking Case only establishes that we don't seem to think that the illocution of refusal requires uptake to be successful when such uptake is blocked by particular linguistic peculiarities. Whilst this, indeed, counts as a counterexample to the claim that the illocution of refusal requires uptake to be successful, it doesn't avoid a fairly plausible amendment of (2). That is, given the fact that the H&L account is interested in illocutions which fail due to the systematic prevention of uptake, one could alter (2) to something, roughly, like: 'for the illocution of refusal to be successful, uptake of the illocution must not be systematically blocked.' Let's call this amendment (2\*). Adopting (2\*) would seemingly avoid the counterintuitive implications of the Blinking Case, whilst maintaining that pornography has rendered a protected speech-act unspeakable by making it systematically unsuccessful (thus avoiding the Argument against Modification altogether.)

Such a move seems unconvincing; not only does it appear enormously ad hoc, but it seems that the Blinking Case conforms to our understanding of what it means for something to be systematic. To unpack this, one should note that there is an ambiguity in (2\*). It could be the case this is requires that the feature, x, which blocks the uptake to be developed systematically by people, or it could be the case that it



requires that the feature,  $x$ , which blocks the uptake to systematically block the uptake of this illocution. With respect to the latter, it seems that Sally's idiosyncrasy is still systematically applied, such that every time some individual blinks twice, the opposite locutions to those provided are assumed. Is there an account of systematicity which would drive a wedge between the Blinking Case and porn on this understanding of (2\*)? One suggestion might be that systematicity requires that an idiosyncrasy consistently affects multiple people for it to be systematic. Yet, the results of such a move would themselves be counterintuitive:

*Consider a world in which 100 people had watched porn and had become linguistically defunct, with exactly one rape occurring due to this; in such a world, this victim, by the definition in question, had been silenced by pornography and had her freedom of speech infringed. However, under this same definition, in a world in which only one person had ever watched porn causing them to become linguistically defunct, and exactly one rape had also occurred from this, the woman who had been raped would not have been silenced by pornography nor would her freedom of speech been infringed.*

Of course, it is the case that the greatest harm – a harm which both of these women have incurred – is their rape. However, if we take violations of freedom of speech to be a harm or a violation (which the H&L must do in order for it to have any real dialectic force), the total harm which this account of systematicity combined with the H&L account suggests that each women incur is different. They both incur great harms, but the first woman is predicted to have incurred the greater harm, as she has had her freedom of speech violated whilst the latter has not. Unless we are willing to accept that one woman has been harmed to a greater extent than the other by virtue of the fact that there exist 99 other men in the world, whom she had no knowledge of nor connection to, who had the same linguistic quirk as her attacker, then we are obliged to reject such an account of systematicity.

With respect to the former interpretation of (2\*), one could argue that the condition of systematicity that the Silencing Argument has in mind is not regarding the effects of the linguistic quirk but, rather, the cause of it. The Blinking Case, therefore, would be disanalogous to porn as the cause of Sally's quirk – her experience of the playground rule – doesn't systematically create this type of linguistic quirk (as evidenced by all the other individuals who knew of this rule, but don't have this quirk.)

On the other hand, pornography systematically causes a particular linguistic peculiarity within men who view it (by stipulation.)

Yet, this misinterprets the cause of Sally's linguistic peculiarity. Firstly, it is important to define what Sally's peculiarity is, namely it is the application of the playground rule when assessing the illocutionary force of the other interlocutor. This is not caused by her experience of said playground rule, though such experiences are a part of the conditions for its cause. Rather, it is caused by her belief that the linguistic quirk is still used by others, for if she didn't believe others still upheld this rule, then she wouldn't interpret their locutions with reference to it. This cause is systematic insofar as anyone who believes that those who they are communicating with use this rule, would automatically apply it to their assessments of illocutionary force. Therefore, like in the case of pornography, the audience's linguistic quirk is still caused by something which does so systematically. Consequently, proponents of the Silencing Argument cannot avoid the Blinking Case by amending (2) in terms of an account of systematicity regarding either the formation of the linguistic peculiarity nor its application, as the Blinking Case conforms to most plausible understandings of systematicity.

#### §7. Conclusion

The corollary of the above discussion is that the H & L account fails as a free speech argument against pornography due to the implausibility of its linguistic claim that all illocutions of refusal require uptake. If proponents of the Silencing Argument maintain their claim, then they are forced to accept the counterintuitive consequences which this has on the permissibility of our actions and the general success of our speech-acts, as demonstrated by the Blinking Case. Attempts to avoid these consequences by modifying uptake such that it is not vulnerable to individual novelties either requires abandoning uptake which renders their argument unsound or requires them to place uptake into conventional language use, as opposed to idiosyncratic language use. This latter option also has consequences for the Silencing Argument, either redescribing the woman's situation as an unfortunate case of perlocutionary disablement, which is not protected by free speech, or a result of the incorrect choice of locution, contra the H & L account.

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