

# Pornography and Other Recorded Speech Acts

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## Abstract

Rae Langton has argued, using Speech Act Theory, that pornography subordinates women in virtue of its illocutionary force and should therefore not be protected by freedom of speech. Jennifer Saul, however, has objected that pornographic works in themselves do not have illocutionary force – only individual viewings or showings of pornography can be conceptualised as speech acts. In this paper, I consider how Saul’s argument generalises to all recorded content (writing, films, images, etc.) and construct an account of recorded speech acts that saves Langton’s arguments from Saul’s criticism. I show that content such as films, magazines, etc. does have illocutionary force over and above any individual act of consuming this content. Further, I argue that any uptake that is reasonably secured in any intended context of consumption is relevant to determining the illocutionary force of recorded speech acts. Beyond lending credence to Langton’s arguments, this account allows us to hold producers of discriminatory content to account for what they do.

## 1. Introduction

Speech Act Theory, with its principal insight that saying something is to do something, has reinvigorated debates on free speech. After all, if speech is an act, why should it not face the same legal restrictions as other acts? One significant debate has surrounded pornography and whether its production and dissemination should be protected by free speech. If pornographic works, Rae Langton has argued, are a type of speech, they can be analysed as speech acts.<sup>1</sup> By using Speech Act Theory, she has lent support to feminist legal scholar Catharine MacKinnon’s claims that pornographic speech acts not only *depict* or even *cause* subordination of women, but *constitute* subordination.<sup>2</sup>

Jennifer Saul, however, has questioned Langton’s treatment of pornography as speech acts.<sup>3</sup> A pornographic work in itself is not an act – only particular showings or

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<sup>1</sup> Langton 1993.

<sup>2</sup> MacKinnon 1983.

<sup>3</sup> Saul 2006.

viewings of it can be said to be acts, and, accordingly, Speech Act Theory can be applied to the latter, but not the former. This is an argument very similar to those made by the critics of MacKinnon whom Langton is replying to: “pornography can be used to facilitate [...] subordination”, claims William Parent, but “it is not easy to understand how books, magazines, or films can by themselves ‘place a person into the class of intrinsic moral inferiors’”.<sup>4</sup>

Such arguments, of course, generalise to everything we can call ‘recorded speech acts’ – where ‘recorded’ does not imply video recording, but includes anything recorded in writing, audio, or other media.<sup>5</sup> And if only individual acts of consuming recorded content, and not the content itself, can be said to discriminate or subordinate, it becomes harder to hold content producers accountable. This is a highly relevant issue in a time where discriminating rhetoric is on the rise and where online communication – in the form of video, images, and text – plays a growing role in the public sphere.

In this paper, I defend Langton’s application of Speech Act Theory to recorded material, such as pornography, and build an account of recorded speech acts. I argue that films, written works, etc. have *illocutionary force* over and above any particular act of viewing or reading. My point here is not primarily to intervene in the by now extensive literature in feminist philosophy on pornography, much of which has moved away from the use of Speech Act Theory.<sup>6</sup> Rather, I try to show how Speech Act Theory, *contra* Saul, can be applied to recorded content and not only acts of consuming content. My main arguments will be about the nature of recorded speech acts in general and how we can apply Speech Act Theory to analyse mediated communication – whether or not any specific recorded materials, including pornography, *actually* discriminate against anyone is an empirical question which I leave open.

The structure of the article is as follows: first, I briefly outline Langton’s arguments and Saul’s attack on them and then show how Saul’s arguments generalise to *any* recorded speech act. The next section then criticises Saul’s treatment of recorded speech acts. I argue that her model relies on a confusion between *rhetic* and *phatic* acts, and once this distinction is clarified we can see that illocutionary force is properly ascribed to a work itself, and not the act of viewing or reading it. Finally, the penultimate section explores how we can take uptake into account when determining a recorded speech act’s illocutionary force while recognising Saul’s point that this uptake may vary widely. In this regard, I argue, recorded speech acts differ much less from their spoken equivalents than one might think, and any uptake that is reasonably secured in any *intended* context should be counted towards the illocutionary force of an utterance.

## 2. Subordinating Speech Acts

Austin’s Speech Act Theory was a response to what he called the “true/false fetish” in the philosophy of language.<sup>7</sup> That is, he wanted to do away with the idea, dominant

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<sup>4</sup> Parent 1990, p. 208.

<sup>5</sup> Saul 2006, p. 236.

<sup>6</sup> Finlayson 2014.

<sup>7</sup> Austin 1975, p. 150.

in analytic philosophy, that language is to be analysed in terms of truth-conditions and that statements are to be evaluated on whether they are true or false. The strongest or most obvious challenge to the true/false approach to language are those instances when we use speech not to state facts, but to accomplish conventionalised acts: for instance, saying 'I do' in the context of a marriage ceremony.<sup>8</sup> There are three distinct senses in which such a use of language is an 'act': there is the act of saying the specific words 'I' and 'do', which Austin terms the *locutionary* act; then there is the act of assenting to enter into marriage – the *illocutionary* act; and finally there is the act of causing certain consequences – in the context of a wedding ceremony, saying 'I do not' would probably be to shock and anger many people.<sup>9</sup> From this point of view, the question is not whether a given utterance is true or false, but whether it is *felicitous*, i.e., whether it succeeds in doing what it is meant to do. This depends largely on social conventions: saying 'I do' can be an act of marrying, because this has been established by social convention. On this view, speech is clearly not a private, but eminently social act. Whether I succeed in carrying out a certain speech act depends on whether others recognise and accept it as such; that is, whether they give my act *uptake*. If I stage a wedding ceremony and say 'I do' at the appropriate time, but no one (including my would-be partner) acts as if I have married anyone, there is no real sense in which I *have* married.

It is not hard to see how Austin's arguments could change debates around free speech. Those who defend absolute free speech usually employ a dichotomy between speech and action: there are limits to what you can *do* to other people – e.g., you cannot harm them – but there are no limits to what you can *say*. This distinction breaks down if to say something *is* to do something beyond the trivial sense of the locutionary act. Indeed, if speaking is *doing* something, rather than just depicting something, then surely speaking might also be a subordinating or discriminatory act. A history lesson about how Jews and other minorities were treated in Hitler's Germany will depict discrimination and subordination; its *locutionary content* will refer to acts of subordination. But, for example, Adolf Hitler's own orders to carry out genocidal acts were speech acts that did not merely *depict* discrimination, they were in themselves illocutionary acts of discrimination and subordination. Langton gives a further example of the utterance 'Whites only' which "orders blacks away, welcomes whites, permits whites to act in a discriminatory way towards blacks. It subordinates blacks".<sup>10</sup> Two of the primary ways in which speech can subordinate is by *ranking* people as inferior and by *legitimizing* discriminatory and/or violent behaviour towards them. So, the illocution 'Whites only' ranks blacks as inferior and legitimates white racist behaviour, for example.<sup>11</sup> These types of speech acts are among what Austin calls *verdictives*, judgments about facts and values, and *exercitives*, the exercise of power or influence (e.g., ordering, appointing, advising, etc.).<sup>12</sup> Intuitively, it seems obvious that such acts of judging, appraising, ordering, or advising can be made in speech as well as in recorded form, as writing or as video – but as we shall see, this claim is not as straightforward as it appears.

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<sup>8</sup> Ibid., p. 5.

<sup>9</sup> Austin 1975, pp. 94-107.

<sup>10</sup> Langton 1993, p. 303.

<sup>11</sup> Ibid., pp. 303-04.

<sup>12</sup> Austin 1975, pp. 150-51.

It is not obvious that pornography is speech, and Langton never defended this assumption in detail. Her main reason for treating it as such was precisely because she was intervening in a debate where defendants of pornography claimed that it was protected by free speech. She therefore accepted the premise that pornography is speech and went on to undermine the free speech defence using Austin's theories. Now, it is clear that pornography (in the form of videos, recordings, images, or text) is not speech in the literal, everyday sense of the word; but my aim in this article will be to defend the idea that recorded materials, including pornography, can be analysed as illocutionary acts in the same way as spoken speech acts.

It is uncontroversial that pornography sometimes depicts the subordination of women. But MacKinnon and Langton make the claim that pornography too is somewhat like the illocutionary acts of subordination described above<sup>13</sup>: it unjustly ranks women as sex objects, and it legitimates sexual violence against women. Of course, pornography differs in some ways from the paradigm cases of subordinating speech in that it does not *explicitly* state, say, 'Women should be treated as sex objects'. Nevertheless, in depicting degradation and subordination of women as something desirable (to both men and women), we may say that it *implicitly* legitimates sexual violence and ranks women as sex objects.<sup>14</sup> The details – and the plausibility – of Langton's specific critique of pornography are not my main concern here. What matters for my purposes is her claim that speech acts can have a subordinating illocutionary force and that we can, theoretically, ascribe such a force to videos, magazines, and other recorded material.

Needless to say, Langton's claims are not uncontroversial. One powerful critique is due to Saul.<sup>15</sup> Saul does not directly deny that pornography subordinates women, rather, her main point is that applying Speech Act Theory to pornography does not get you this conclusion. She makes the point by exploiting what is perhaps the weakest point in Langton's original argument: her lack of justification for treating pornographic materials as speech acts. Saul points out that pornography, if it is a speech act, belongs to the special category of 'recorded speech acts'.<sup>16</sup> In order to demonstrate how recorded speech acts may work, she constructs an example of a woman, Ethel, who lives in a very strict library where she can only communicate with written signs. Suppose Ethel makes a sign saying 'I do', which she then uses for various purposes throughout her time at the library. One day, she promises to return her books on time; another she may get married in a rare example of a library wedding. The illocutionary force of the sign clearly varies depending on context – we simply cannot attribute any illocutionary force to the sign outside of the particular context where it is put to use.

By analogy, Saul argues, the same goes for pornography: like Ethel's sign, a work of pornography has no illocutionary force in itself. The only candidates for pornographic

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<sup>13</sup> MacKinnon 1983; Langton 1993.

<sup>14</sup> The implicit/explicit distinction is not one Langton makes, but I think it is coherent with her argument. She admits that pornography "falls short of the paradigm case" for subordinating illocutions, citing Austin's point that an ambiguous speech act often needs "to have a 'construction' put on it by judges". Austin makes a distinction between explicit performatives such as 'I order you to leave' or implicit performatives such as 'There's the door', which may, depending on the circumstances, have the same illocutionary force. See Langton 1993, p. 308 and Austin 1975, pp. 32, 61, 115.

<sup>15</sup> Saul 2006.

<sup>16</sup> *Ibid.*, p. 236.

speech acts would be specific pornographic ‘utterances’ in context, occasions where a pornographic work is put to use. What, then, is an ‘utterance’ of pornography? Saul considers two options: makings and viewings of pornography. She dismisses the first option, because for an act to have illocutionary force someone must give it uptake and at the time of production of pornography there is no recipient of the would-be speech act. She concludes, then, that individual viewings (or showings) of pornography must constitute the ‘utterance’ and the context in which it is received.<sup>17</sup>

But this creates grave difficulties for Langton’s argument. If pornographic speech acts are individual viewings, it is much harder to argue that most, or even many, pornographic speech acts are subordinating. This is not necessarily an impossible claim to make, but I agree with Saul that it seems implausible to claim that most individual viewings of pornography constitute subordination given how widespread use of pornography is, including among feminists.<sup>18</sup> What is more – and this is a point which Saul does not stress herself – this account moves the responsibility away from producers of pornography to individual viewers or showers. If the illocutionary force does not lie in the material produced, but merely in how it is used, the producer cannot be said to subordinate women, but at most to cause ‘users’ of their pornography to subordinate women (Saul admits that her approach cannot be used to condemn “any particular film or magazine”, but only “to justify a variety of policies designed to affect the contexts in which pornography is viewed”).<sup>19</sup> The point of Langton’s argument was, on the contrary, that pornographers can and should be held to account for the illocutionary force of what they produce: beyond *causing* or *depicting* subordination, part of what producers of pornography do *is to subordinate women* – though this does not preclude *also* holding individual viewers or showers responsible for their use of pornography. Thus, I agree with Saul that Langton’s argument, to be plausible, needs pornographic works – not individual viewings – to be speech acts. But as I will argue, this is not a difficult claim to make if we consider more closely the nature of recorded speech acts.

Importantly, Saul’s argument, while being directed specifically at Langton’s account of pornography, generalises to all recorded speech acts. If we cannot assign illocutionary force to a film or written work, but only to individual viewings or readings of the work, producers of such content virtually have *carte blanche* to publish anything they like – for the problem is always with the individuals who view, read, or show the content.<sup>20</sup> Take this example: a political party releases a video ad online which is highly critical of immigration from a certain country. We might want to say that the ad is an act of discrimination against people from said country, that not only

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<sup>17</sup> Ibid., pp. 236-38. The disanalogy with the example of Ethel’s note may already be clear to some: if someone simply “views” Ethel’s note without her being present, there is no way it could constitute a speech act. The next section will explore where Saul’s analogy goes wrong.

<sup>18</sup> As two anonymous reviewers pointed out, there are of course debates around the extent to which watching porn is consistent with feminism and the ways in which the oppressed can be complicit in their own subordination. The point, however, is that many feminists engage with pornography in a particularly reflective manner which, in my view, makes it unlikely that these people are ‘complicit’ with patriarchy (for an example, see the discussion of one feminist porn site at the end of section 4).

<sup>19</sup> Saul 2006, p. 246.

<sup>20</sup> I do not think that Saul is committed to giving *carte blanche* to those who wish to publish discriminatory material, but it follows from her approach to Speech Act Theory. Of course, one could still hold people to account for the foreseeable adverse effects of what they have published, but the act of creating the content could not be said to be in itself a discriminating act – see below.

does the ad have negative effects, but indeed to discriminate and subordinate is part of what the video *does*. However, just as with pornography, it is clear that this video will be viewed in many different contexts. Some viewers might simply see it as a blatant attempt at fearmongering and remain unmoved; others might see it as no more than a principled stance against any migration whatsoever without implications of inferiority of people from exactly that country. Someone might show the video to their friend in order to convince them how irresponsible the party that released it is – if, as Saul claims, the speech act is the act of showing the video, this particular showing of the video certainly would not seem to subordinate anyone (the same issues would arise if the ad were image or text-based, of course).

Of course, one could still try to hold producers accountable for any foreseeable adverse effects of their content, but this would raise a number of problems. First, it takes us back to square one in the debate with those espousing a free speech defence of such content. Second, it would be too easy for producers to argue that they cannot be held responsible for everything users do with their content. And third, it might inadvertently open the door for certain kinds of victim blaming: if someone gets abused because they posted a controversial statement online, for instance, they would be said to be responsible for their own abuse if this abuse was foreseeable. If we want to be able to avoid these problems and use Speech Act Theory to make arguments about discriminatory speech in the media and online at all, the questions raised by Saul need to be addressed. This is the task of the rest of this article.

### 3. Recorded Speech Acts

As mentioned, Saul relies on an analogy between pornographic works and Ethel's note for her argument that only specific viewings of a film constitute speech acts. Since, as Saul admits, recorded speech acts "are likely to be especially complicated to analyse",<sup>21</sup> it should not surprise us if this one analogy does not adequately capture their complexity. To assess whether pornography, films, or even news articles can usefully be seen as speech acts, we need a better understanding of recorded speech acts. I will argue that a closer look at the details of Speech Act Theory shows Ethel's note not to be a recorded speech act at all – so Saul's analogy and her entire argument collapses.

Describing spoken speech acts, J. L. Austin distinguishes between *phatic* and *rhetic* acts.<sup>22</sup> The former is the act of simply uttering words, "i.e. noises of certain types, belonging to and as belonging to, a certain vocabulary". The latter is an act of using these words with a "more-or-less definite sense and reference" and an illocutionary force. (1) below is a report of a phatic act, and (2) is a report of a rhetic act:

(1) "He said 'Is it in Oxford or Cambridge?'"

(2) "He asked whether it was in Oxford or Cambridge."<sup>23</sup>

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<sup>21</sup> Saul 2006, p. 236.

<sup>22</sup> Austin 1975, p. 95.

<sup>23</sup> Ibid.

Austin does not discuss the distinction as applied to written or recorded speech acts, but we may assume that an analogous distinction exists.<sup>24</sup> Thus, I can say of the same written invitation, 'She wrote "RSVP"' or 'She asked that we reply to her invitation' – with the former reporting a phatic and the latter a rhetic (and illocutionary) act. What about Ethel's note? We certainly can say 'Ethel wrote "I do"', but we cannot say 'Ethel wrote that she did'. Note that even when describing a specific context where Ethel used the note to communicate something or other, we would not naturally say that she *wrote* that she did so and so. In writing her note, Ethel performed a phatic act, but no rhetic or illocutionary act.

A felicitous (spoken) speech act requires that someone gives my act uptake. If I try to give an order, but no one understands what I am saying or everyone takes me to be advising them what to do, rather than ordering, I have failed to order – my attempt at an order is infelicitous.<sup>25</sup> What differentiates recorded from non-recorded speech acts is, quite simply, that their context(s) of uptake can be temporally and physically removed from their context of production. If I record a video urging politicians to fight climate change, I hope that those who view it in my absence will identify its illocutionary force as that of an exhortation. For this to work, a number of felicity conditions need to obtain: my recipient has to understand the language I use, they cannot think that I am acting out a role, my recipient's computer must be able to play the video recording, etc.<sup>26</sup> Ethel's note, however, cannot gain uptake in her absence – no one coming across it in the library will be able to take it as an admission, an agreement, or anything else.

What, then, is Ethel's written note? It is no more than a tool which Ethel has made to be used in future speech acts. Wittgenstein imagines a language game where people communicate in part by showing each other colour patches.<sup>27</sup> Surely, in such a language game, *showing* someone a colour patch is a speech act, but the colour patch itself is not a recorded speech act (a recording of someone showing a patch *would* be a recorded speech act). Or imagine that instead of written signs Ethel communicates by combining Scrabble letters. We would not say that the individual Scrabble pieces are in any way recorded speech acts – nevertheless, Ethel would be perfectly able to perform speech acts using these letters as tools. The mere fact that Ethel's sign contains fully formed words does not make it any different, nor does the fact that it can be used

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<sup>24</sup> Saul herself actually makes a similar analogy. She distinguishes between "the speech act [...] of uttering the sentence (or series of words)" and "the sentence (or series of words) itself" (2006, p. 235) and then claims (wrongly, I argue) that recorded speech acts are equivalent to the sentence, and a particular viewing/reading/use of it is like the uttering of a sentence. This distinction is analogous to the phatic/rhetic distinction in the sense that two uses of the same sentence will be two identical phatic acts, whereas Saul highlights that those two uses of the same sentence could count as very different speech acts, i.e., rhetic acts. See Saul 2006, p. 235. Similar distinctions are made by Strawson between a sentence and the use or utterance of a sentence, and Russian philosopher Mikhail Bakhtin between sentences as *units of language* and utterances as *units of speech*. Interestingly, Bakhtin explicitly includes everything from short verbal interjections to letters and novels in the category of utterances. See Strawson 1950, pp. 320-44 and Bakhtin 1986, p. 62.

<sup>25</sup> Austin 1975, pp. 115-16.

<sup>26</sup> The felicity conditions for recorded speech acts would be analogous to, but not identical with, the felicity conditions required for any spoken speech act to succeed. For instance, the material conditions that must be met for recorded speech acts – ink being readable, a video playing correctly – are analogous to what Searle for spoken speech acts identifies as "normal input and output conditions" such as the speaker and hearer being able to hear one other. See Searle 2001, pp. 141-42.

<sup>27</sup> Wittgenstein 2001, p. 5.

on its own without any additional signs (even a single Scrabble letter could be used to constitute an utterance on its own: 'Who stole the books?' 'I').

I believe that the confusion arises because the note looks like a recorded speech act; written texts usually *do* constitute recorded speech acts. Indeed, under other circumstances, the exact same note would be a speech act. Imagine that Ethel receives a letter asking her 'Do you agree to such and such terms and conditions?' and writes a letter back containing only the two words 'I do'. This time we would be able to say 'Ethel wrote that she did agree to the terms and conditions'; this time Ethel performed a rhetic and illocutionary act.

How does the rhetic/phatic distinction apply to something like pornographic movies? Movies (including pornographic ones) have a narrative,<sup>28</sup> and I can therefore say 'This movie told the story of a person who...' reporting on a rhetic act. The phatic act would consist simply in the combination of certain sounds and images that make up the movie – and I could (tediously) report on the phatic act by describing it scene for scene. Likewise, a TV ad urging me to vote can be described as a rhetic act, 'It urged me to vote', or as a phatic act: 'It featured the word "Vote" in big letters on a black background, and then faded into a video of...'. The key is that an illocutionary force can be identified in the speaker's absence – this is, of course, exactly what feminists like MacKinnon and Langton are doing with pornography when they say that it subordinates women. Naturally, one can also *misidentify* the illocutionary force of a speech act and it is often contestable ('She ordered us to do it!' 'No, it was merely a request'). However, if pornographic works were merely phatic acts like Ethel's sign, we should not even be able to have a discussion about their illocutionary force – even if Ethel had used her sign to say '*I do* consider women inferior to men', no one could protest this simply on the basis of having read the sign out of context.

One might still worry, as indeed Saul does,<sup>29</sup> whether it is not a category mistake to identify an object (e.g., a magazine or film) as an event (a certain type of act).<sup>30</sup> This requires us to be very clear about what is meant when we say that any recorded material *is* a speech act. Unfortunately, Langton is not entirely clear on this issue. One way of reading her argument is that the physical objects that constitute pornography are speech acts – this would clearly be false in the same way that it would be false to claim that the soundwaves of my speech are actions. My interpretation of Langton is a different one: *strictly speaking*, a recorded speech act is an event that includes the production *and* consumption of recorded material, just like spoken speech acts include the production and reception of physical sound waves. But the main point here is that

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<sup>28</sup> Having a narrative is a sufficient, but not necessary condition for rhetic acts (a straightforward order does not have a narrative, for instance). For simplicity, I restrict my argument here to the type of pornography that is produced in a studio with actors and a script. No matter how much they may lack anything that could be described as a classical storyline, these movies will have a narrative; even a movie that depicts nothing else than a sexual encounter between two people is a mini-narrative – just like I can narrate an experience of a sexual encounter verbally. If we were to consider amateur pornography, movies or images that are sometimes illegally recorded and published without the consent of all parties involved, it becomes much more complicated to argue that there is an illocutionary force. It is sufficient for my purposes to argue that the former type of pornography has illocutionary force, and I leave unanswered the question of whether this is true for *all* pornography.

<sup>29</sup> Saul 2006, p. 230.

<sup>30</sup> I am grateful to an anonymous reviewer for pressing me to further clarify this point.



the physical (or digital) material *carries* an illocutionary force,<sup>31</sup> and in this sense it is not strange to speak of recorded material as if it were an act. One may point to a letter, for instance, and say ‘This is an order’, an order being a kind of speech act. This does not mean that the physical piece of paper is literally an act, but that the physical object embodies, for the moment, said act (it may not embody this act forever: if wine is spilt on the paper so it becomes unreadable, the paper still exists, but it hardly any longer *is* an order).

#### 4. Recorded Speech Acts, Uptake, and Illocutionary Force

I have argued that Saul’s account of recorded speech acts gets things wrong, but one of her main points still stands: pornography and other recorded speech acts are viewed/read in a variety of different contexts where the uptake might differ considerably. Given that uptake plays an important role in determining the illocutionary force of an utterance, how are we to identify this force for recorded speech acts? In this section, I will sketch an answer to this question that retains Saul’s insight about variation in uptake and context but is still compatible with Langton’s arguments. First, I will introduce a distinction between intended and unintended contexts and argue that we only ought to take the former into account. Then, I will argue that the remaining variation is not a problem for Langton’s argument or for my account of recorded speech acts.

One reaction to Saul could of course be to claim that only the intended uptake matters. Indeed, some versions of Speech Act Theory stress in a Gricean way that the illocutionary force of an utterance must standardly be “intended to be recognized as so intended”.<sup>32</sup> On this interpretation of illocutionary acts, we would only be able to say that pornography subordinates women if the producers intend to do so and, moreover, intend this intention to be plain. But speech that legitimates violence and dehumanises people is rarely so overt; it tends to masquerade as something innocuous. Further, Langton precisely does *not* want to argue that pornographers intend to subordinate women, but that their speech acts are subordinating *regardless of their intentions*.<sup>33</sup> So, the version of Speech Act Theory that Langton needs for her argument is one where context and uptake can determine illocutionary force independently of the intended force: sometimes “the context determines the uptake secured, which in turn determines the illocution performed”.<sup>34</sup>

So how do we reconcile this with Saul’s point that uptake is by no means uniform? Which uptake counts? It has been argued that the illocutionary force of a recorded speech act, such as pornography, is determined by the intended *context* of decoding,

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<sup>31</sup> As one anonymous reviewer points out, one could of course infer two different conclusions from my claim that recorded material carries illocutionary force: either they are speech acts, or things other than speech acts can have an illocutionary force. To my mind, this is a question of terminology, not substance. I use the term ‘(recorded) speech act’ because illocutionary force is a term of Speech Act Theory, and my aim is to show the usefulness of applying Speech Act Theory to the analysis of recorded material – if one prefers a different terminology because recorded material is not strictly speaking ‘speech’, it makes no difference to my argument.

<sup>32</sup> Strawson 1964, p. 457.

<sup>33</sup> Langton 1993, p. 313.

<sup>34</sup> *Ibid.*, p. 301.

i.e., the pornographers' intended context of viewing.<sup>35</sup> Yet, even the intended context is by no means uniform for pornography (it is likely almost any context in which anyone is willing to pay for the content).<sup>36</sup> But distinguishing between intended and unintended contexts has immediate advantages. For example, Saul mentions that pornographic clips may be shown as part of a talk by a feminist who opposes pornography and form part of an argument against pornography – this is clearly not among the pornographers' intended contexts.<sup>37</sup> Further, Langton gives the example of Linda Marchiano who wrote an autobiography about her involvement in the pornography industry as a protest against how horribly she was treated. Despite its being meant as a protest *against* pornography, the book was itself treated as pornography by some – in some contexts the uptake was one of a pornographic speech act. Langton uses the example to illustrate how pornography silences women by making them unable to perform speech acts such as protesting, but she does not comment on how we can avoid attributing a subordinating speech act to Marchiano herself.<sup>38</sup> The answer, it seems, is clear: those contexts where the uptake is one of pornography are clearly not among the contexts intended by Marchiano. The rhetic/phatic distinction also helps us here: someone could conceivably have produced essentially the same text *as* pornography, the same phatic act, but the illocutionary and rhetic act would have been one of legitimating such treatment, rather than protesting it as in Marchiano's case.

But what about the remaining variation in the contexts where pornography is consumed? Some (including some feminists) might watch it knowing that it is all staged, that it deliberately explores taboos, and that none of it should be imitated without the explicit informed consent of all parties involved. Others (most problematically younger viewers) may watch it hoping to learn what sex should be like – these are the cases that worry Langton and many others.<sup>39</sup> I would suggest that the variation is not problematic for Langton's argument or for my account of recorded speech acts; some speech acts, such as a personal letter, have a specific intended recipient and context, while others, such as an open letter, are meant to carry their illocutionary force across a wide range of different contexts and recipients. Indeed, recorded speech acts do not differ qualitatively from spoken speech acts on this point.

Insofar as we include in what we call 'context' the recipient and their relationship to the speaker, *any* speech act has as many different contexts of uptake as it has recipients. I may tell a group of people 'Shut the door', and some might take it as an order, others as advice – just like an email could be taken by some recipients as an order, and by others as advice. Or let us take an example of a potentially subordinating speech act: say, a politician, at a rally, describes at length crimes committed by immigrants. Some in the audience might take this speech as legitimating violence against immigrants; others might understand it merely as advice to enact policies that improve immigrants' socioeconomic status.

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<sup>35</sup> Bianchi 2008 makes this argument drawing on work on indexicals by Predelli 1998.

<sup>36</sup> Mikkola 2008.

<sup>37</sup> In fact, this situation should probably not be analysed as the *use* of the pornographic work to make a statement, but rather as a *mention*. This is a point that Saul acknowledges could be made, and on my account of recorded speech acts it becomes even more plausible because, unlike Saul, I do not consider individual viewings of pornography speech acts. See Saul 2006, p. 238.

<sup>38</sup> Langton 1993, pp. 321-22.

<sup>39</sup> *Ibid.*, p. 312; Langton 2017.

So, the ‘problem’ of diverse uptake potentially besets all speech acts, not just recorded ones. Let us reconsider Saul’s argument in this light. She argues that a “context-sensitive speech act approach” cannot be used to condemn “any particular film or magazine” unless, perhaps, we can argue that all or at least most of its viewings/readings are ones where the uptake or effect suggests that it subordinates.<sup>40</sup> Is this still the case now that we have shown that the film or magazine itself has illocutionary force over and above individual viewings/readings? Take, again, the politicians’ speech. If the speech is such that *some* people, even a minority, could *reasonably* (I deliberately leave this term vague) take it to legitimate violence and rank immigrants as inferior, I believe we could and should ascribe such illocutions to her. Having legitimated violence in the eyes of some is still having legitimated violence. It needs emphasising that this uptake needs to be reasonable and obtained in an intended context. For example, if someone takes sober criticism of a politician’s voting record as legitimating violence against them, this is not reasonable – but no doubt many (or most) cases will be arguable and the distinction is a fuzzy one.<sup>41</sup> We also need to carefully distinguish cases where the uptake is such that the speech act may be said to *legitimate* violence (or otherwise subordinate qua its illocutionary force) from cases where the speech ‘merely’ *causes* violence – say a feminist makes a speech defending women’s rights, but this causes a backlash from angry conservatives and encourages them to subordinate women even more. In sum, it is coherent to claim that a speech act, such as a particular pornographic film, has the illocutionary force of subordination without being committed to the claim that all or most viewers take it to be subordinating – whether or not it *actually* subordinates is always a matter of argument, but the claim is coherent.

So, this approach, while rejecting Saul’s central claims, still retains some of the advantages of her focus on contexts. On my account of recorded speech acts, we can recognise that not every instance (perhaps not even the majority of instances) of someone watching pornography is in a context where it subordinates, without concluding that such pornographic speech acts cannot have the illocutionary force of subordination. At the same time, we can use this account to argue that not *all* kinds of pornography are subordinating. One feminist porn site, for instance, displays videos that explore BDSM sex while also displaying information about the importance of consent and behind-the-scenes footage of the actors in the videos negotiating consent and limits.<sup>42</sup> Some of these videos may be indistinguishable from other pornography if reproduced on a different website, but they are clearly intended to be viewed in a context where information about consent is available and foregrounded, and thus they are not illocutionary acts of subordinating women. As a side note, we might mention that prevailing social structures and ideologies clearly play a role in shaping the context in which any speech act is received, and in the case of pornography, existing

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<sup>40</sup> Saul 2006, p. 246.

<sup>41</sup> Sadly, a discussion of what makes a given uptake reasonable or not would be far beyond the scope of this paper, even if it is somewhat unsatisfying to have part of my account rest on such a vague term. I suspect that Gricean pragmatics could be one tool to establish when certain uptakes are justifiable, but ultimately the question of reasonableness of uptake might not be amenable to objective definition, but rather a political question, always open to contestation. This would mean that my account does not lend itself to deciding ‘objectively’ whether or not a speech act subordinates, but it moves the argument away from the question of whether or not speech, in the form of recordings, can in itself be subordinating, to the question of whether a specific speech act actually subordinates people.

<sup>42</sup> O’Donnell 2016.

patriarchy and rape culture can probably be said to impose special duties on pornography producers to ensure that their content is not understood by recipients to endorse sexist norms.<sup>43</sup> A fuller development of the approach to recorded speech acts I am proposing here would include further discussion of the role of ideology and social structures in shaping context and reasonable uptake.

There are still plenty of open questions about the nature of subordinating and recorded speech acts: What makes a certain uptake reasonable? When does uptake 'override' intention? How do we determine the intended context(s) of any recorded speech act? But this account has shown that it is coherent to claim that a recorded speech act – a video, a written text, even an image – can be an illocutionary act of subordination, discrimination, or legitimation of violence. In other words, it is possible, using Speech Act Theory, to hold content producers accountable for the illocutionary force of what they produce.

## 5. Conclusion

Langton mostly took it for granted that Speech Act Theory can be applied to recorded speech acts such as pornography. Saul questioned this approach, but my arguments here lend legitimacy to Langton's claims.

I have argued that Langton's application of Speech Act Theory is defensible. Pornographic works are *recorded* speech acts, and recorded speech acts have an illocutionary force that can gain uptake in the absence of the 'speaker'. Anything that looks like a recorded message, such as Ethel's note, but cannot be described as a rhetic act was either never intended as an illocutionary act or turned out infelicitous. It is important, however, not to jettison Saul's insight that pornography is viewed in a variety of contexts: recorded speech acts have *intended contexts* – a wide range of contexts in some cases. We may, then, ascribe a certain illocutionary force to a recorded speech act if a certain uptake is reasonably secured in some of the intended contexts.

This makes Langton's arguments much more plausible than Saul portrays them: a pornographic work can be a subordinating act without all or even most viewings being acts of subordination. More crucially, however, my account of recorded speech acts gives us the theoretical tools to recognise content producers as responsible for their acts. Saul's arguments threatened to support an absolute *carte blanche* to content producers as she shifted all the focus to the act of consuming content – as she points out, her approach can only be used to justify policies regulating the context in which content is consumed, not its production.<sup>44</sup>

Holding producers of discriminatory content accountable in one way or another is essential. Lynne Tirrell, for instance, in her analysis of the role of hate speech in bringing about the Rwandan genocide, highlights recorded speech acts – from political cartoons to radio shows.<sup>45</sup> Interestingly, she coins the term 'genocidal language games', drawing on Wittgenstein whose term 'language game' was meant

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<sup>43</sup> Phipps et al. 2018; see also further articles in this special issue of the *Journal of Gender Studies*.

<sup>44</sup> Saul 2006, p. 246.

<sup>45</sup> Tirrell 2012, p. 183.

exactly to call into question any sharp distinction between speech, in the strict sense, and our other ways of interacting through gestures, images, text, etc. Whether we produce speech, images, or video, we all need to be held accountable for our contributions to the language games we participate in, and this essay has argued that Speech Act Theory gives us the proper tools to do so.

I have left many questions open, including what makes a certain uptake reasonable, when uptake can 'overrule' intention and, of course, to what degree we ought to censor discriminatory content. Nevertheless, such discussions require as a starting point a solid understanding of recorded speech acts, and that is what I have begun to build here.<sup>46</sup>

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