

Washington University Jurisprudence Review


Volume 5 | Issue 2

2013

Another Solipsism: Rae Langton on Sexual Fantasy

Andrew M. Koppelman

Follow this and additional works at: https://openscholarship.wustl.edu/law_jurisprudence

 Part of the [Jurisprudence Commons](#), [Legal History Commons](#), [Legal Theory Commons](#), and the [Rule of Law Commons](#)

Recommended Citation

Andrew M. Koppelman, *Another Solipsism: Rae Langton on Sexual Fantasy*, 5 WASH. U. JUR. REV. 163 (2013).

Available at: https://openscholarship.wustl.edu/law_jurisprudence/vol5/iss2/1

This Article is brought to you for free and open access by the Law School at Washington University Open Scholarship. It has been accepted for inclusion in Washington University Jurisprudence Review by an authorized administrator of Washington University Open Scholarship. For more information, please contact digital@wumail.wustl.edu.

Washington University Jurisprudence Review

VOLUME 5

NUMBER 2

2013

ANOTHER SOLIPSISM: RAE LANGTON ON SEXUAL FANTASY

ANDREW KOPPELMAN*

ABSTRACT

The feminist critique of pornography focuses on the evils that pornography brings about. That critique is also animated by a positive ideal of sexuality. I examine this positive ideal as developed by Rae Langton, who has recently offered a sustained philosophical account of the feminist critique. Langton's ideal is a fundamentally defective and self-defeating aspiration, likely to thwart rather than to facilitate the interpersonal communion she values. It paradoxically reproduces the solipsism it denounces. The defects of her ideal strengthen the case for other, more pornography-friendly forms of feminism.

* John Paul Stevens Professor of Law and Professor of Political Science, Northwestern University. Thanks to Mary Anne Case, Anne Eaton, Mary Anne Franks, Josh Kleinfeld, Rae Langton, Martha Nussbaum, Valerie Quinn, Dorothy Roberts, Rachel Zuckert, the University of Chicago Regulation of Family, Sex, and Gender Workshop, the Northwestern University Philosophy Colloquium, and the Northwestern Law Faculty Workshop for helpful comments on earlier drafts, and to Marcia Lehr for research assistance.

TABLE OF CONTENTS

INTRODUCTION.....	164
I. THE PATH INTO SOLIPSISM.....	166
A. <i>The Feminism of Fear</i>	166
B. <i>A Fantasy of Rape</i>	168
C. <i>Beings That Are Not Necessarily Persons</i>	171
II. THE PATH OUT OF SOLIPSISM.....	175
A. <i>The Uses of Fantasy</i>	175
B. <i>The Sources of Illocutionary Disablement</i>	183
C. <i>Ought Implies Can</i>	186

INTRODUCTION

The feminist critique of pornography, commonly offered as a justification for its restriction by the law, relies on pornography's sexual objectification of women, eroticization of female submissiveness, and trivialization of women's own needs and desires. That critique is also animated by a positive ideal of sexuality. This Article examines that positive ideal.

Aspirations matter, and they matter for law when the coercive apparatus of the state is placed behind them. Obscenity is one area where the Supreme Court has made its aspirations explicit. When it announced the still-operative test for determining when obscenity is not protected by the First Amendment,¹ the Court explained that a central reason for obscenity's non-protection is that "a sensitive, key relationship of human existence, central to family life, community welfare, and the development of human personality, can be debased and distorted by crass commercial exploitation of sex."²

1. The present test for determining whether a publication is obscene, laid down in *Miller v. California*, 413 U.S. 15, 24 (1973), is

(a) whether the "average person, applying contemporary community standards" would find that the work, taken as a whole, appeals to the prurient interest; (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

Id. (citations omitted).

2. *Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 63 (1973). *Paris* and *Miller* were decided on the same day.

Many scholars wonder what harm could possibly be caused by obscenity.³ Material can be obscene even if it has no likelihood of inciting anyone to unlawful conduct, and even if no unwilling viewer is ever likely to see and thereby be offended by it. Obscenity law aims to prevent the formation of certain thoughts—typically erotic ones—in the minds of willing viewers.⁴ The earliest and most influential definition of obscenity is the English case *Regina v. Hicklin*, which holds that a publication is obscene if it has a “tendency . . . to deprave and corrupt those whose minds are open to such immoral influences.”⁵ The modern Supreme Court follows this approach, with modifications.⁶ Obscenity doctrine aims to prevent moral harm.⁷

Harry Clor notes that “notions of what is harmful to human beings are ultimately linked to ideas of what is good for us,”⁸ and, on this basis, he persuasively argues that the question of pornography’s harmfulness depends on our understanding of what makes humans flourish. To harm someone is in some way to set back his interests. Ideas of harm are thus necessarily linked to aspirations: if I do something to you that obstructs your path to something that is worth having, then I have harmed you. The *Paris* Court ruled that obscenity can harm people by debasing and degrading “a sensitive, key relationship of human existence, central to family life, community welfare, and the development of human personality.”⁹ The Court thinks its ideal of sexual relationships can be thwarted by free dissemination of obscenity. For that reason, it is willing to carve out an exception to normal free speech protection, so that the state can protect us with censorship. That aspiration is evidently more important than free speech. Unless the aspiration is understood, the law is incomprehensible. Perhaps that is why so many critics of the law have failed to comprehend it.

The moral vision of Chief Justice Warren Burger is shared by a diminishing portion of the legal community. The language of *Paris* seems quaint now. But the idea that obscenity can harm us by impeding our path

3. See, e.g., RICHARD A. POSNER, *SEX AND REASON* 351–82 (1992); Louis Henkin, *Morals and the Constitution: The Sin of Obscenity*, 63 COLUM. L. REV. 391 (1963).

4. This was noted long ago by Louis Henkin, who however was entirely baffled by the notion of harm that concerned the Court. See Henkin, *supra* note 3.

5. L.R.-Q.B. 360, 371 (1868).

6. See JOEL FEINBERG, *OFFENSE TO OTHERS* 171–78 (1985).

7. I elaborate this argument in Andrew Koppelman, *Does Obscenity Cause Moral Harm?*, 105 COLUM. L. REV. 1635 (2005).

8. HARRY M. CLOR, *PUBLIC MORALITY AND LIBERAL SOCIETY* 115 (1996).

9. *Paris Adult Theatre I*, 413 U.S. at 63.

toward an ideal of sexual reciprocity has lately been given a spirited new articulation in a feminist mode. Confrontation with the best philosophical case for the suppression of pornography is indispensable in order to decide whether the law today draws the line in an appropriate place. If that case is unsustainable, then so is the argument for the legal status quo. This is a situation in which philosophy has manifest practical entailments.

Rae Langton, professor of philosophy at Massachusetts Institute of Technology, presents the most sophisticated, sustained philosophical account of the feminist critique of pornography.¹⁰ She is justly renowned for her brilliant and devastating critique of Ronald Dworkin's work in this area.

In this Article, I propose to examine her positive aspiration of sexuality. Langton's ideal for obscenity law, I argue, is fundamentally defective and self-defeating, likely to thwart rather than to facilitate the interpersonal communion she values. It paradoxically reproduces the solipsism it denounces. The defects of her ideal strengthen the case for other, more pornography-friendly forms of feminism.

I. THE PATH INTO SOLIPSISM

A. *The Feminism of Fear*

To eliminate the negative, you've got to accentuate the positive. Judith Shklar, in her well-known essay "The Liberalism of Fear," argued that liberalism at its core is a negative rather than a positive ideal. Liberalism's primary concern is tyrannical cruelty, and the fear that cruelty inspires. The rights that it demands are "just those licenses and empowerments that citizens must have in order to preserve their freedom and to protect themselves against abuse."¹¹ But even in Shklar's account, the liberalism of fear is related to the liberalism of hope. "[T]he original and only defensible meaning of liberalism" is that "[e]very adult should be able to make as many effective decisions without fear or favor about as many aspects of her or his life as is compatible with the like freedom of every other adult."¹² Evidently, it is hard to describe the negative without saying something about what we hope for.

10. RAE LANGTON, *SEXUAL SOLIPSISM: PHILOSOPHICAL ESSAYS ON PORNOGRAPHY AND OBJECTIFICATION* (2009).

11. Judith Shklar, *The Liberalism of Fear*, in *LIBERALISM AND THE MORAL LIFE* 37 (Nancy Rosenblum ed., 1989).

12. *Id.* at 21.

Like other feminist critics of pornography, Langton primarily focuses on pornography's alleged harms. She focuses on the way in which it silences women, makes it difficult and sometimes impossible for them to protect themselves from violence and abuse and makes their needs and hurts invisible. She capably demonstrates that prominent defenders of a legal right to pornography have not adequately reckoned with these harms. Her critique of Ronald Dworkin, for example, is subtle, insightful, and devastating.¹³ Her claim that pornography objectifies or subordinates women does not logically depend on any particular account of the sexual ideal. But the feminism of fear is related to the feminism of hope, most clearly in the title essay in her collection *Sexual Solipsism*.

The opposite of solipsism is a certain kind of interpersonal communion. That communion, Langton thinks, cannot coexist with solitary sexual fantasy, like that provided by pornography. Her deepest problem with pornography is that it offers a bad answer to the old Socratic question, how should one live? She cites Pamela Paul's interview with one woman, who felt alone even during sex with her husband, who was evidently a heavy consumer of pornography:

I obviously knew where his body was, but where was his mind? He would sort of be there at first, but then I didn't know where he went. . . . At a certain point I realized I was just a tool. I could have been anything or anybody. I felt so lonely, even when he was in the room.¹⁴

This loneliness has a counterpart in this statement of one male consumer of pornography: "I don't see how any male who likes porn can think actual sex is better, at least if it involves all the crap that comes with having a real live female in your life."¹⁵ Pornography is bad because it destroys human relationships. As Pamela Paul explains, "At first, an encounter with pornography is a way of imagining being with a woman. Later, an encounter with a woman becomes a way of imagining being with pornography."¹⁶ These men's fantasies, nurtured by pornography, become an obstacle to intimacy with actual women.

13. LANGTON, *SEXUAL SOLIPSISM*, *supra* note 10, at 65–74, 117–71.

14. *Id.* at 23 (quoting PAMELA PAUL, *PORNIFIED: HOW PORNOGRAPHY IS DAMAGING OUR LIVES, OUR RELATIONSHIPS, AND OUR FAMILIES* 232 (2005)).

15. *Id.* at 17 (quoting PAUL, *supra* note 14, at 39).

16. *Id.* at 23. Here as elsewhere, Langton is elaborating on an idea earlier developed by Catharine MacKinnon:

Pornography participates in its audience's eroticism because it creates an accessible sexual object, the possession and consumption of which is male sexuality, to be consumed and

Langton notes two pertinent definitions of pornography, and the controversial relationship between them. Catharine MacKinnon and Andrea Dworkin define it as “the graphic sexually explicit subordination of women in pictures or words that also includes women dehumanized as sexual objects, things, or commodities.”¹⁷ Melinda Vadas uses the term to refer to “any object that has been manufactured to satisfy sexual desire through its sexual consumption or other sexual use as a woman’ where ‘as’ means ‘in the role, function, or capacity of’ a woman.”¹⁸ Langton thinks all sexually arousing material treats women as “servile, inferior, less-than-human.”¹⁹ In her view, the pornography as defined by Vadas may also be pornography as defined by MacKinnon.²⁰ The hypothesis is that the use of pornography, any pornography, leads to both contempt for women described by MacKinnon and the solipsism described by Paul.

B. *A Fantasy of Rape*

How does Langton view sexual fantasy? There is not a single instance in her book in which Langton describes fantasy in a positive light, and she sometimes seems to sympathize with a view that condemns all sexual fantasy and aspires to eliminate it from human experience. Her sexual ideal appears to be a direct encounter with another person, unmediated by any thoughts of anything else.

Sexual Solipsism includes sustained engagement with only one fantasy, that entertained by a character named Leonard in Ian McEwan’s novel, *The Innocent*.²¹ Leonard is a young Englishman in Berlin in 1955. He has his first sexual experience with a German woman, Maria, who is drawn to

possessed as which is female sexuality. In this sense, sex in life is no less mediated than it is in art. Men have sex with their image of a woman.

CATHARINE MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE 199 (1989).

17. LANGTON, SEXUAL SOLIPSISM, *supra* note 10, at 4 (quoting CATHARINE MACKINNON, FEMINISM UNMODIFIED 176 (1987)).

18. *Id.* at 315 (quoting Melinda Vadas, *The Manufacture-for-use of Pornography and Women’s Inequality*, 13 J. POL. PHIL. 174, 190 (2005)). Langton herself oscillates between the two definitions, sometimes clearly using “pornography” to refer only to material that endorses the degradation of women, *see* SEXUAL SOLIPSISM, *supra* note 10, at 39, 40, 92, 138, 190, 288, and sometimes referring to any material that is marketed as sexually arousing. *See id.* at 19–21. Sometimes she slides from one to the other, as if the MacKinnon definition could unproblematically be assumed to cover everything marketed as arousing. *See id.* at 25, 79, 105–07. Here she may be assuming what I call the modified Vadas claim, discussed below, that all male sexuality directed at objects, such as pornographic photographs, is morally illicit and tends to devalue women.

19. *Id.* at 307.

20. *Id.* at 346–55.

21. IAN MCEWAN, THE INNOCENT (1990).

him by his ingenuousness and kindness. After they have been together for some weeks, however, strange thoughts start to form in Leonard's mind:

He looked down at Maria, whose eyes were closed, and remembered she was a German. The word had not been entirely prised loose of its associations after all. . . . German. Enemy. Mortal enemy. Defeated enemy. This last brought with it a shocking thrill. He diverted himself momentarily . . . Then: she was the defeated, she was his by right, by conquest, by right of unimaginable violence and heroism and sacrifice.²²

Leonard's fantasy becomes more elaborate, leading to what Langton regards as two distinct catastrophes. Leonard is at first embarrassed, but his embarrassment does not last.

He accepted the obvious truth that what happened in his head could not be sensed by Maria, even though she was only inches away. These thoughts were his alone, nothing to do with her at all.²³

The sexual encounter, Langton observes, has now become "intensely solipsistic."²⁴ By imagining her as dominated, Leonard is treating her as if she were a thing, "the thoughts that are irresistibly exciting are thoughts in which she features as something that is conquered, possessed, owned by right, captured against her will, violated against her will."²⁵ But there is also solipsism in the "deliberate deception."²⁶

Sex has ceased to be something he is *doing with her*, in the sense that one does something with another human being, shares an activity. It has become something he is *doing with her*, in the sense that one does something with a thing, uses an instrument. The scene has a more than epistemological claustrophobia: it is a solipsism of treating a person as a thing.²⁷

The first catastrophe, then, is the coming-into-being of this fantasy, which drives a wedge into the intimacy between Leonard and Maria.

22. *Id.* at 78. Langton quotes this passage twice in *Sexual Solipsism* at 253 and again at 342.

23. LANGTON, SEXUAL SOLIPSISM, *supra* note 10, at 343 (quoting MCEWAN, *supra* note 21, at 79).

24. *Id.*

25. *Id.* at 344.

26. *Id.*

27. *Id.*

Leonard shares Langton's dissatisfaction with this state of affairs. He is not contented with "using Maria as a screen for his private theatre."²⁸ His solution to this problem produces the second catastrophe. Here is the next passage Langton discusses. I have added the numbers.

[1] He found himself tempted to communicate these imaginings to her . . . he wanted her to acknowledge what was on his mind, however stupid it really was. [2] He could not believe she would not be aroused by it. . . . [3] He wanted his power recognized and Maria to suffer from it, just a bit, in the most pleasurable way. . . . [4] Then he was ashamed. What was this power he wanted recognized? It was no more than a disgusting story in his head. [5] Then later, he wondered whether she might not be excited by it too. [6] There was, of course, nothing to discuss. There was nothing he was able, or dared, to put into words. He could hardly be asking her permission. [7] He had to surprise her, show her, let pleasure overcome her rational objections. He thought all this, and knew it was bound to happen.²⁹

Langton observes that readers "wait with dread for the (inevitable?) disaster that ensues when Leonard—already confusing fact with fiction in his demand that his actual power be recognized, and that Maria actually suffer—tries to communicate his imaginings through actions, rather than words."³⁰ What follows "is something both parties view, or come to view, as attempted rape."³¹

What should Leonard have done? Consider his train of thought. Thought [1] is the opposite of solipsism: he wants to close the gap between their minds, to tell Maria what he is imagining. What can he hope will happen if he does that? At a minimum, he will no longer be deceiving her, though he still may be using her as a screen for his fantasies. His best-case scenario is [2] and [5]: perhaps she will be aroused by the same fantasy.

But of course he knows that things might not work out that way. She might find his fantasies repulsive. She might feel that the shame expressed in [4] is entirely appropriate. She has experienced violent soldiers and an abusive husband. Part of what drew her to Leonard was his gentleness and vulnerability, which made her feel that he was not at all like those men.

28. *Id.* at 345.

29. *Id.* at 353.

30. *Id.* at 345–46.

31. *Id.* at 254.

She might find it unbearable to be intimate with a man who she knows is thinking such thoughts. She might even leave him.

Perhaps, because he does not want to contemplate that possibility, he slides into the fantasy of [3]. And it is at the point of [3] that Leonard's imaginings really go off the rails, and take him to the disastrous delusion of [7].

Moves [2], [3], and [7] are examples of what Langton calls "blurring," in which a fiction, specifically a fiction about women's yearning for subordination, purports to be fact and is taken to be such.³² Move [2] is also "pseudo-empathy," which is "an over-hasty disposition to attribute features of one's own mind to other people, animals, or even inanimate objects."³³

The deepest puzzle has to do with [1]. Leonard wants to communicate what is in his mind. But what follows from that? If he were to tell Maria about his fantasy, instead of foolishly trying to perform it without explanation, how *ought* she to react? Langton does not say.

Nor is it clear what Langton thinks about Leonard's hopes in [5], which as articulated acknowledges, as [2] does not, that he really does not know how Maria will react. Suppose that she does happen to find his fantasy arousing. Does that legitimate the sadomasochistic sex play that would follow? Or would that be a pair of complementary solipsisms, in which each of them uses the other as a screen on which to project ultimately private fantasies?

Langton does not believe that Leonard's fantasy could ever deliver the mutuality he hopes for. "Leonard's is a desire to *imagine raping*; the one he projects onto Maria is a desire to *imagine being raped*. 'He could not believe that she would not be aroused by it'; but the 'it' for her is hardly the same as the 'it' for him."³⁴

C. *Beings That Are Not Necessarily Persons*

Langton cites Melinda Vadas's claim that where pornography is manufactured for use, "men's sexual relations with women are conceptually unrelated to their female partner's personhood," and "it follows that men's sexual relations with women will, under these conditions, be conceptually unrelated to any and all person-related

32. *Id.* at 190.

33. *Id.* at 247. It is also an instance of wishful thinking, the meaning of which is familiar. *Id.*

34. *Id.* at 254.

characteristics or abilities their female partners might have.”³⁵ In pornography, Langton observes (here paraphrasing and in important ways reformulating Vadas), things are treated as if they were persons, and this “has implications for the status of real human beings. The harm to flesh-and-blood women is that they are now members of a class of beings that are not necessarily persons.”³⁶ Call this *the modified Vadas claim*. (The formulation is Langton’s, but she is tentative and exploratory, and does not unambiguously endorse it. As I note below, however, some of her other arguments evidently depend on something like this claim being true.) It is troubling if the phenomenon it describes leads to the mistreatment of women, but also “there can be misgivings about pornography’s animation of the inanimate that are not exactly feminist misgivings.”³⁷ The consumer of pornography is shut up in himself, and this is bad in itself.³⁸ Leonard’s first catastrophe happens, in a way, to everyone who uses pornography.

Langton’s own sexual ideal evidently is the interpersonal communion vividly envisioned in the *Song of Solomon*, which, as she admiringly writes, describes “[t]he captive heart, the driving hunger for which ordinary hunger and thirst provide faint metaphors, the delight in the body.”³⁹ It is the opposite of the solipsistic separation described by Pamela Paul, in which the man uses the woman merely as a substitute for pornography. In ideal sex, persons are treated precisely as persons.

Part of what draws Maria to Leonard in the first place is the discovery that he has never been with another woman. As Langton summarizes, Maria finds endearing Leonard’s “ignorance about tactics and conventions,” which signifies that “there is room for discovery” in their relationship: “There is room for ordinary friendship: she has a chance to like him. There is room for desire: a chance for her to have desires which are not simply reactions to his. The two of them are free to be lovers who are partners in invention, which is what they indeed become.”⁴⁰ Maria’s

35. *Id.* at 352 (quoting Vadas, *supra* note 18, at 190).

36. *Id.* (quoting Vadas, *supra* note 18). This paraphrase of Vadas is in part a sympathetic reconstruction of her argument, skillfully fashioned to avoid difficulties of the kind noted in Jennifer M. Saul, *On Treating Things as People: Objectification, Pornography, and the History of the Vibrator*, 21 *HYPATIA* 45 (2006), though it was written before Saul’s article appeared. (SEXUAL SOLIPSISM is largely a collection of previously published work; this passage originally appeared in 1995.) Compare Vadas’s own formulation, quoted *supra* text accompanying note 18, which presupposes that producing male sexual satisfaction is the function of a woman.

37. LANGTON, SEXUAL SOLIPSISM, *supra* note 10, at 355.

38. *See also id.* at 250 (arguing that the selling of “a sexual tool for easy satisfaction of appetite, for ownership” commodifies men’s desire and women’s sexuality).

39. *Id.* at 364.

40. *Id.* at 324.

assessment is mainly accurate; Leonard is nothing at all like her brutal ex-husband. But if she imagines that culture and convention will not contaminate him, then she is in the grip of fantasy herself.

If all sexuality that is not directed entirely at a specific person is illicit, and contaminates even mutual sex that the same actor performs at another time, then we have returned to the old view that all masturbation is illicit.⁴¹ The structure of the modified Vadas claim is oddly similar to that made by “new natural law” theorists Germain Grisez and John Finnis, who argue that only uncontracepted heterosexual sex by married couples is morally permissible.

Choosing non-marital sex, Grisez argues, “damages the body’s capacity for the marital act as an act of self-giving which constitutes a communion of bodily persons.”⁴² This damage, Finnis explains, is “a damage to the person as an integrated, acting being; it consists principally in that disposition of the will which is initiated by the choice to engage in” such sexual activity.⁴³ Consider a married man who has never committed adultery, but who might be willing to do so if, say, his wife were unavailable when he felt strong sexual desire. The exclusivity of the man’s sex with his wife is not an expression of commitment, because conditional willingness to commit adultery precludes commitment. He is thus motivated even in marital intercourse by something other than the good of marriage. This is why Finnis claims that the “complete exclusion of non-marital sex acts from the range of acceptable and valuable human options is existentially, if not logically, a precondition for the truly marital character of one’s intercourse as and with a spouse.”⁴⁴ When one damages that precondition, one damages marriage, because, as Grisez argues, “to

41. Similarly, Alison Assiter argues that pornographic fantasies, precisely because they involve fantasized objects that are not autonomous, reinforce men’s desires for women who are not autonomous. Alison Assiter, *Autonomy and Pornography*, in *FEMINIST PERSPECTIVES IN PHILOSOPHY* 58–71 (Morwenna Griffiths & Margaret Whitford eds., 1988). This is essentially the modified Vadas claim. If an object’s lack of autonomy constitutes bad sexuality, then it is hard to see how any sexual fantasy can escape condemnation. No object of sexual fantasy can be autonomous. One might still distinguish between a fantasy about a person qua person—say, my imagination of my monogamous partner who happens to be out of town for two weeks—and a fantasy about a person qua object. Perhaps only the latter, in which the object is an entirely self-contained illusion, is morally problematic. (Thanks to Anne Eaton for pointing to this distinction.) But this distinction is only a matter of degree. When my partner is not immediately present to confirm or disconfirm my imagination of what arouses her, then the object in my head is, to some extent, fantasy and not reality.

42. GERMAIN GRISEZ, *THE WAY OF THE LORD JESUS*, VOL. 2: *LIVING A CHRISTIAN LIFE* 650 (1993).

43. John M. Finnis, *The Good of Marriage and the Morality of Sexual Relations: Some Philosophical and Historical Observations*, 42 *AM. J. JURISPRUDENCE* 97, 119 (1997).

44. *Id.* at 123.

damage an intrinsic and necessary condition for attaining a good is to damage that good itself.”⁴⁵

On this basis, Grisez and Finnis produce a sexual ethic far more restrictive than any that Langton would endorse, condemning (among many other things) not only masturbation, but also homosexual sex and any marital sex involving male ejaculation outside the vagina. Langton fundamentally disagrees with the new natural law theorists. She ridicules Roger Scruton for declaring homosexuality and masturbation perversions,⁴⁶ and likewise rejects Kant’s idea that there is something wrong with masturbation.⁴⁷ But the modified Vadas claim nonetheless has this isomorphism with the Grisez-Finnis argument: both assert that directing sexuality at anything other than one’s partner compromises the sexual ideal.

Scruton is less severe than this. He does not exactly condemn masturbation, but distinguishes two forms: “one, in which it relieves a period of sexual isolation, and is guided by a fantasy of copulation; the other, in which masturbation replaces the human encounter, and perhaps makes it impossible, by reinforcing the human terror, and simplifying the process, of sexual gratification.”⁴⁸ He directs his ire at the second.⁴⁹ Like Langton, he is concerned about the individual withdrawing into himself, using masturbation as a substitute for the human encounter.

That concern has a long history. The moral panic over masturbation began in the early 1700s. Previously regarded as a minor sin, it was suddenly deemed a great physical and moral danger to youth, leading to lassitude, weakness, crime, insanity, and early death. Some parents permitted their sons to visit prostitutes as a means of preventing it.⁵⁰ Thomas Laqueur’s definitive study of the panic concludes that it coincided with the emergence of a profoundly individualist culture, in which the individual was newly freed to pursue his own conception of good, rather

45. GRISEZ, *supra* note 42, at 650–51.

46. LANGTON, SEXUAL SOLIPSISM, *supra* note 10, at 339.

47. *Id.* at 346–47.

48. ROGER SCRUTON, SEXUAL DESIRE: A MORAL PHILOSOPHY OF THE EROTIC 317 (1st ed. 1986).

49. He does, however, think that any self-stimulation must be private and unobserved or it becomes obscene. Hence his insistence, the weirdness of which does not escape Langton, that a woman must not touch her clitoris during coition. *Id.* at 319. See also Martha Nussbaum, *Sex in the Head*, 33 N. Y. REV. OF BOOKS 49–52 (Dec. 18, 1986) (reviewing SEXUAL DESIRE by Roger Scruton).

50. See THOMAS W. LAQUEUR, SOLITARY SEX: A CULTURAL HISTORY OF MASTURBATION 373 (2003); see also WALTER KENDRICK, THE SECRET MUSEUM: PORNOGRAPHY IN MODERN CULTURE 138–43 (1988); HELEN LEFKOWITZ HOROWITZ, REREADING SEX: BATTLES OVER SEXUAL KNOWLEDGE AND SUPPRESSION IN NINETEENTH CENTURY AMERICA 92–93, 97–107, 394–403 (2003).

than to occupy his place within a providential order that lay beyond himself. This new autonomy generated the fear that the individual would withdraw entirely from society, pursuing pleasures that were asocial and autarkic.⁵¹ The fundamental fear was of the “solipsistic rejection of public life.”⁵² Its traces can still be seen in Langton, Vadas, and Scruton. It is, for the most part, a delusion.⁵³

II. THE PATH OUT OF SOLIPSISM

A. *The Uses of Fantasy*

Is there anything of value in Leonard’s sadomasochistic yearnings?

Sexual fantasies, Michael Bader argues, should be understood as manifestations of the mind attempting creatively to construct a scenario in which pleasure can safely be pursued. Bader, who is a psychotherapist, describes a patient (he calls her Jan) who was unable to have an orgasm with her husband unless she fantasized that a large, strange man was holding her down and forcing sex on her. Jan, who was an outspoken feminist, was bewildered and embarrassed by her fantasy, which involved just the kind of man whom she loathed in real life. The fantasy was eventually explained in this way. Jan unconsciously believed that men were fragile and unable to stand up for themselves. She feared that, if she fully expressed her own sexuality, most men would feel threatened and overwhelmed. And she felt guilty about hurting them. The fantasy

51. LAQUEUR, *supra* note 50, at 210 & 249.

52. *Id.* at 268.

53. Pamela Paul’s book *PORNIFIED*, *supra* note 14, which Langton cites five times and praises as “excellent and accessible,” see *SEXUAL SOLIPSISM*, *supra* note 10, at 20, does provide anecdotal evidence that the feared withdrawal into autarky does sometimes happen. Paul recounts many stories of men who spend way too much time looking at pornography on their computers. PAUL, *supra* note 18. But she never reveals how her interview subjects, 80 men and 20 women, were chosen. At least three of the couples she interviewed were in therapy, see *id.* at 139, 147, 170, and in an interview promoting her book, she reports that of those she spoke with, there were “probably two-dozen people who were addicted to pornography.” Interview, *How Porn Destroys Lives*, Beliefnet, available at <http://www.beliefnet.com/News/2005/10/How-Porn-Destroys-Lives.aspx> (visited Feb. 14, 2012). Massive selection bias is at work.

This phenomenon has been documented by others. See, e.g., M. Douglas Reed, *Pornography Addiction and Compulsive Sexual Behavior*, in *MEDIA, CHILDREN, AND THE FAMILY: SOCIAL SCIENTIFIC, PSYCHODYNAMIC, AND CLINICAL PERSPECTIVES* 249 (Dolf Zillmann et al. eds., 1994). But these anecdotes do not show how common this problem is among users of pornography. This kind of solitary obsessiveness is also not unique to pornography. It occurs with many activities that are usually harmless. People have even been known to spend too many hours reading philosophical essays like this one (although this is a very specialized taste). Difficulties with the concept of “pornography addiction” are elaborated in Martin P. Levine & Richard R. Troiden, *The Myth of Sexual Compulsivity*, 26 J. SEX RES. 347 (1988).

resolved this difficulty by creating a man so strong he could not be hurt, who needed no help from her in taking his pleasure. This created a safe environment in which she could take her own pleasure. Once she understood this, her relationship with her husband improved. Bader thinks that many domination fantasies take this form; they often circumvent guilt and thus enable desire.⁵⁴

One of Freud's key insights is that the overt and latent content of fantasies (sexual or otherwise) are often very different from each other. Sexual fantasies operate at a quasi-infantile level of consciousness, where the superego cannot operate and where moral judgment is misplaced. Jan's fantasy is not really about rape at all: rape is a placeholder for the relief of other needs.⁵⁵ Jan has not the slightest interest in actually being raped.

This separation of overt and latent content is never guaranteed. The sexual fantasies of the serial rapist are the clearest example. The eroticization of male dominance and female submission has manifestly had effects outside the bedroom.⁵⁶ The question of what proportion of fantasists actually manage to accomplish the separation is an empirical one, not easily answered from the philosopher's armchair. (It may not be answerable at all.) But the problem is made to appear far too easy by assuming that overt content tells you everything you need to know.

What, according to Langton, should Jan do? There seems to be something deeply morally suspect about her fantasy. She is using her husband as a screen upon which to project her disgusting story. Her therapist aims to free her of shame about her fantasies, to avert move [4]. But Langton casts doubt on whether her therapist is right to do this.

Perhaps Jan *should* be ashamed of her fantasy. It is not only solipsistic and a falling away from the ideal, but grotesquely solipsistic since it is modeled on an evil scenario. It divides her internally, setting her political commitment to eradicate oppression against her eroticization of humiliation.⁵⁷ We have already seen that Langton does not think a rape fantasy can be mutual, even if both parties enthusiastically participate.

54. MICHAEL J. BADER, AROUSAL: THE SECRET LOGIC OF SEXUAL FANTASIES 51–55 (2002). A similar analysis can explain many other fantasies, including those involving urination and defecation, exhibitionism and voyeurism, cross-dressing, incest, and multiple partners. *Id.* at 115–41.

55. Thomas Nagel pertinently notes the enormous variety of sexual meanings: "I don't want to see films depicting torture and mutilation, but I take it as obvious that they do something completely different for those who are sexually gratified by them; it's not that they are delighted by *the same thing* that revolts me; it's something else that I don't understand, because it does not fit into the particular configuration of my sexual imagination." CONCEALMENT AND EXPOSURE 50 (2002).

56. Sandra Lee Bartky, *Feminine Masochism and the Politics of Personal Transformation*, in FEMININITY AND DOMINATION: STUDIES IN THE PHENOMENOLOGY OF OPPRESSION 45–62 (1990).

57. *Id.* at 51–52.

Vadas observes that the thrill of sadomasochist scenes depends on the existence of the abuses that they simulate; their existence “conceptually and empirically requires the existence or occurrence of actual injustice.”⁵⁸ “To take pleasure in this simulation is to make one’s pleasure contingent on the actual occurrence and meanings of rape, racist enslavement, and so on. Pleasures taken in this way are not feminist, and cannot be.”⁵⁹

So should Jan tell her husband what she is thinking, or would that just make matters worse? If he has sex with her knowing that he is causing these images to arise in her head, then is he not participating in the construction of a kind of violent pornography, and himself accepting the role of a rapist? If he does not want to assume that role, must the couple stop having sex? Is Jan’s sexuality irredeemable? Her fate seems to be solipsism either way. If she has sex, she is in a fantasy world; if she stops having sex, then she is even more cut off from the interpersonal communion that Langton wants to promote. Perhaps the answer is aversion therapy, of a kind that was once routinely administered to homosexuals, designed to repel her from what she once found arousing; but unfortunately such therapy has been shown to be better suited to killing than to reshaping desire.⁶⁰

Langton worries that there may be “pornography that celebrates rape, that makes its readers think and experience sexually as Leonard thought and experienced sexually.”⁶¹ But whether there is or is not, such pornography is not the only source of fantasies such as Leonard’s. For all that we are told in the novel, Leonard, a somewhat repressed young English man born around 1930, has never even seen pornography that shows nude women posing for the camera, much less the violent pornography that concerns Langton. Pornography did not produce Leonard’s peculiar sexuality. World War II did that.

It probably is not possible to purge the world of fantasy. Langton acknowledges that fetishes are remarkably easy to conjure: one researcher managed to “create . . . a mild boot fetish in heterosexual male students by pairing slides of sexually provocative women with a picture of a pair of

58. Melinda Vadas, *Reply to Patrick Hopkins*, 10 *HYPATIA* 159, 160 (1995).

59. *Id.*

60. I acknowledge that many years’ study of debates over gay rights has left me suspicious of anyone’s efforts to reconstruct other people’s harmless sexual proclivities. On the question of whether it is wrong to eroticize activities that are themselves wrong, see John Corvino, *Naughty Fantasies*, 18 *SOUTHWEST PHIL. REV.* 213 (2002). Corvino observes that one may eroticize a behavior while remaining fully cognizant of its wrongfulness. *Id.* It must be conceded, however, that the fact that one finds a given behavior sexually arousing can be an impediment to perceiving its wrongfulness.

61. LANGTON, *SEXUAL SOLIPSISM*, *supra* note 10, at 353.

black knee-length women's boots."⁶² It is a fact about human sexuality that humans can sometimes be aroused by objects. This, Langton says, is a "sorry tale."⁶³ The world is full of such sorry tales.

Fantasy has its uses. Leonard's thoughts of domination are ones "that he was powerless to send away when he was making love,"⁶⁴ but he also discovers that, by thinking during coition about the circuit diagrams for the tape recorders he modifies at work, he is able to avoid premature ejaculation.⁶⁵ Jan's acceptance of her fantasies apparently helped her relationship with her husband. One might imagine an adolescent Jan becoming more reconciled to her own peculiar sexuality by exploring pornographic fantasies of rape, even ones that include the vicious idea that women secretly want to be raped and benefit from it.

Langton's intolerance of fantasy may help explain why she has so little interest in the specific content of fantasies. There are remarkably few descriptions of any actual pornography in *Sexual Solipsism*. She acknowledges the importance of the question, "does pornography even say the things that it is claimed by MacKinnon to say? Does it say that women are inferior, or that sexual violence is normal and legitimate?"⁶⁶

Her response completely misses the point. She claims there are "two reasons for doubting that pornography says these things."⁶⁷ One is that "pornography does not seem to say such things *explicitly*."⁶⁸ The other is "that much pornography purports to be fantasy or *fiction*."⁶⁹ She responds by showing that fictions can implicitly convey purported facts about the world.⁷⁰ However, there is a third reason, no more esoteric than the other two, for doubting that a given piece of pornography says these things: *it may in fact not be saying them*. The only way to tell is to examine the pornography and see what it is saying. Perhaps Langton's lack of interest in actual content rests on the common assumption that all pornography is

62. *Id.* at 174 (quoting Edward C. Nelson, *Pornography and Sexual Aggression*, in *THE INFLUENCE OF PORNOGRAPHY ON BEHAVIOR* (Maurice Yaffé & Edward Nelson eds., 1982) (citing S. Rachman, *Sexual Fetishism: An Experimental Analogue*, 16 *PSYCH. RECORD* 293 (1966)). Such evidence suggests that unusual sexual tastes may be subject to behavioral as well as psychodynamic explanation: here arousal was brought about via a simple process of conditioning. Both explanations evidently have some truth, and their relative strength is likely to vary from one person to the next. See Padmal de Silva, *Paraphilias*, 6 *PSYCHIATRY* 130 (2006).

63. LANGTON, *SEXUAL SOLIPSISM*, *supra* note 10, at 183.

64. McEWAN, *supra* note 21, at 78.

65. *Id.* at 59.

66. LANGTON, *SEXUAL SOLIPSISM*, *supra* note 10, at 177.

67. *Id.*

68. *Id.*

69. *Id.* at 178.

70. I agree. See Koppelman, *Does Obscenity Cause Moral Harm?*, *supra* note 7, at 1643–47.

the same, that low cultural forms are devoid of complexity. That assumption cannot survive contact with real pornography.⁷¹ The variety of forms of pornography is multiplied by the enormous variation in meanings that different readers assign to it.⁷² The specific content would not matter, however, if the problem with pornography is its status as a sexually arousing object that is not a person. Perhaps here, too, she is relying on the modified Vadas claim.

If we condemn any sexual attachment that is not attachment to a specific person, then we must condemn, not only fetishes, but heterosexuality and homosexuality as such. Both of these are tendencies to be aroused by certain body types, irrespective of the persons who inhabit them, and generally are felt prior to meeting any particular partner.⁷³ There would also be something problematic about feeling aroused by any person to whom you have not been introduced. If you see an attractive stranger—a person standing near you on the beach, perhaps, or the prettiest girl at the party—and are aroused, it is the image, not the autonomous person, which is arousing you. The object of your arousal might as well be a photograph. It then is not necessarily a person. The modified Vadas claim is applicable to you.

The only acceptable sexuality would be a general, undifferentiated loneliness that remains vague until a specific love object is found and interviewed so thoroughly as to yield complete transparency, at which point cathexis would have to occur straightway and remain focused with laser-like precision on that specific person. This is not a sexuality that occurs often among human beings. I will bet that it never does. If that is the standard that humans must meet, then everyone's sexuality is defective.

71. See LAURA KIPNIS, *BOUND AND GAGGED: PORNOGRAPHY AND THE POLITICS OF FANTASY IN AMERICA* (1999); LINDA WILLIAMS, *HARD CORE: POWER, PLEASURE, AND THE "FRENZY OF THE VISIBLE"* (rev. ed. 1999). I haven't spent a lot of time reading pornography either, but I can recall one example that shows that even the lowest cultural forms can display a shrewd intelligence. When I was twelve years old and in summer camp, a pornographic novel circulated among the boys in my cabin. It was a cheap product with a tombstone cover, billed as *The Wild Nympho* by Dick Pleasant. It consisted, for the most part, of graphically described sexual episodes. There is, however, a moment of real wit. At the denouement of the thin story, the narrator declares that at last he had come to the appalling realization "that it was not me she truly loved – but it!" Forty years later it still makes me smile. (I rely here on my recollection. The volume has vanished without a trace; there is no reference to it anywhere on the World Wide Web.)

72. See Feona Attwood, *What Do People Do With Porn? Qualitative Research Into the Consumption, Use, and Experience of Pornography and Other Sexually Explicit Media*, 9 *SEXUALITY & CULTURE* 65 (2005).

73. For a similar argument, see JOHN STOLTENBERG, *REFUSING TO BE A MAN: ESSAYS ON SEX AND JUSTICE* 93 (rev. ed. 2000).

The Freudian account of sex has at least this much validity: ordinary successful love, when it is achieved, is a congeries of heterogeneous primitive impulses, including idealization, transference of love for the parent, and infantile yearning for the breast, that somehow manage to coexist with a sober recognition of the real qualities of the other. The result is a delicate balancing of forces in tension:

Symbiotic feelings of merger, oneness, and bliss are experienced but the lovers nevertheless retain their independent self-boundaries, except during sexual intercourse. They do not regress to the point where self-boundaries become blurred. Self-love is held in check by love for the other. Feelings toward earlier love objects have been successfully transferred to the new one, but this transfer does not include the need to repeat early disappointments and to recapitulate past trauma. . . . Idealization, identification, and regression to infancy all partake in the love experience without being allowed to go beyond a certain limit. Seen in this perspective love constitutes an ideal compromise formation of a great variety of wishes and needs. What is surprising, therefore, is not that it often falls short of the ideal, but that in spite of these numerous checks and balances, many lovers succeed in transforming falling in love into an approximation of ideal love.⁷⁴

So perhaps we should be grateful whenever it happens, even if a boot fetish, or still nastier things, are part of the mix. Jan's rape fantasy is helping to hold the whole rickety emotional structure together for her.

There is even value in overtly sadistic fantasies, such as those of Leonard and Jan, so long as they understand that those fantasies are, in fact, unreal.⁷⁵ And that means that something valuable would be lost if those fantasies were deemed too awful to express. One lesson of Leonard's cautionary tale is that you need to talk to your lover about what you want. (Leonard's fundamental mistake would then be [6], which prevented the dispelling of delusions [2], [3], and [7].)

74. MARTIN S. BERGMANN, *THE ANATOMY OF LOVING: THE STORY OF MAN'S QUEST TO KNOW WHAT LOVE IS* 277 (1987).

75. Bartky takes masochism, which she concedes may be unchangeable, as evidence that some people "may have to live with a degree of psychic damage that can never be fully healed." Bartky, *supra* note 56, at 58. But this evaluation is inconsistent with her acknowledgement that "[t]he significance of a particular form of desire as well as its persistence may lie in a developmental history only half-remembered or even repressed altogether." *Id.* at 61. Absent a full understanding of the psychic economy of each and every masochist, it is not possible to know whether, in any particular person, this particular fantasy signifies damage or something else.

Authentic communication is valuable. But guilt about sexual fantasy likely inhibits that goal. Drawing on the work of Christine Korsgaard, Langton argues persuasively that a woman in eighteenth century Germany—she specifically has in mind Maria von Herbert, who corresponded with Kant about the ethics of lying to her fiancé about (as it turned out) whether she was a virgin—had no obligation to disclose her status as “damaged goods.”⁷⁶ This is so for the same reason that, Korsgaard argues, one has no obligation to tell a murderer who comes to the door that his intended victim is present in the house.⁷⁷ Because, in the circumstances of the her society, “her action will not be taken as the honest self-revelation of a person, but the revelation of her thing-hood, her hitherto unrecognized status as used merchandize, as an item with a price that is lower than the usual.”⁷⁸ She may even have a duty to lie, based on her own self-respect.

If Leonard’s strange and unbidden fantasy is taken to mean that he is defective and unlovable, a solipsist with whom no relationship is possible, then perhaps he, too, “is permitted to have friendship as [his] goal, to be sought and preserved, rather than a law to be lived by.”⁷⁹ Perhaps it is not safe to tell Maria what he is thinking. As we have seen, however, that produces pathologies of its own.

Langton does make a small concession to Martha Nussbaum’s claim that objectification, the treating of human beings as if they were things, can sometimes be “a wonderful part of sexual life.”⁸⁰ The valuable aspect of objectification, Langton thinks, is “phenomenological gilding,” in which what is desired appears “as having independent qualities that justify, demand, or legitimate the desire, making it almost literally *appear* to have independent value.”⁸¹ This can happen in sexual love: “every bodily feature appears as precious, every gesture illuminated.”⁸² But all this gilding consists in the assignment of value to a beloved whose genuine characteristics are soberly understood. There is no trace of fantasy here.

Nussbaum has a different view. She shares Langton’s worry about sexual autarky and is unhappy about pornography’s implication that “an

76. LANGTON, SEXUAL SOLIPSISM, *supra* note 10, at 221–22.

77. Christine Korsgaard, *The Right to Lie: Kant on Dealing With Evil*, in CREATING THE KINGDOM OF ENDS 133 (1996).

78. LANGTON, SEXUAL SOLIPSISM, *supra* note 10, at 221–22.

79. *Id.* at 222.

80. Martha C. Nussbaum, *Objectification*, in SEX AND SOCIAL JUSTICE 214 (1999).

81. LANGTON, SEXUAL SOLIPSISM, *supra* note 10, at 249.

82. *Id.* at 250.

easy satisfaction can be had in this uncomplicated way, without the difficulties attendant on recognizing women's subjectivity and autonomy in a more full-blooded way."⁸³ But Nussbaum thinks that "of course, none of these arguments entails moral criticism of masturbation."⁸⁴ She elaborates in her discussion of James Joyce's *Ulysses* in her book *Upheavals of Thought*, reflecting on the "Nausicaa" scene in which Leopold Bloom masturbates as Gerty MacDowell leans back and shows him her legs and underwear. Their interaction is imperfect, mediated by fantasies in both of their minds that barely overlap. But Nussbaum rejects the idea that fantasy is an obstacle to sexual happiness, and insists on "the omnipresence of fantasy in sexual life."⁸⁵ She writes:

[I]n demanding a perfect authentic sexuality, in which two individuals confront the essence of one another's souls, enclosed by no constructed images, the antifantasy reading actually proves an accomplice of the very Romantic (and Christian) images it purports to repudiate. For who has said that it is so bad, so inauthentic, to be aroused by a fantasy that does not fully intersect with the other party's sense of his or her authentic self?⁸⁶

The Romantic tradition "repudiates the way real people are."⁸⁷ In the imperfect communion of Gerty and Bloom, "across the barriers of fantasy that divide and also join them, there passes a kind of love and sympathy, which one may notice as such (while not sentimentalizing it, while still taking note of its unsatisfactory and slightly ridiculous character) if one is not looking too hard for something else."⁸⁸

None of this necessarily entails that the law must tolerate the dissemination of any kind of sexual fantasy. It may be that some pornography must be suppressed in order to prevent sexual violence. I take no position on that here.⁸⁹ The issue is not empirical or predictive but

83. Nussbaum, *supra* note 80, at 235. In this volume, Nussbaum is also suspicious of violent sexual fantasy: "the batterer who imitates a violent porn book or video is not misinterpreting (except in the sense that the maker of the work plainly aimed at masturbation, not real-life enactment)." Martha Nussbaum, *Rage and Reason*, in *SEX AND SOCIAL JUSTICE* 248. That is a pretty important "except."

84. Nussbaum, *supra* note 80, at 428 n.56.

85. MARTHA NUSSBAUM, *UPHEAVALS OF THOUGHT: THE INTELLIGENCE OF EMOTIONS* 696 (2001).

86. *Id.* at 696–97.

87. *Id.* at 697.

88. *Id.*

89. I have discussed it in *Does Obscenity Cause Moral Harm?*, *supra* note 7, at 1663–72. Suppression would also have to address free speech concerns, which Langton barely discusses, except occasionally to suggest that pornography may not be communicative speech at all. See LANGTON, *SEXUAL SOLIPSISM*, *supra* note 10, at 100–02, 174–75, 296–97; Rae Langton, *Beyond Belief:*

ethical: whether it is appropriate to positively value any consumption of pornography by anyone, ever. If it is, if there is value in this kind of fantasy, then suppressing it will harm people, and perhaps quite a lot of people.⁹⁰ Some note should also be taken of the fact that fantasy is ineradicable. The idea that it can be snuffed out is another fantasy, one that impairs our ability to address real pathologies.

B. The Sources of Illocutionary Disablement

Ideals can generate characteristic pathologies. The problem of date rape is one of Langton's central concerns. It is a consequence of misplaced ideals, but she does not explore the mechanisms by which this occurs.

She focuses persistently on illocutionary disablement—the construction of a set of linguistic background conditions in which a woman's saying “no” to sex cannot be heard or understood as a “no,” because conventions are in place that take “no” to mean “yes.” She elaborates at length and with admirable care on the concept of such disablement, clarifies ambiguities, and ably defends it against various charges of incoherence.⁹¹ She shows that it should be an urgent concern of those who care about liberty and equality. In this she has performed a valuable service. But she is strangely incurious about the primary causes of illocutionary disablement.

She considers two possible sources. One is men's coming to feel “that violence is sexy and coercion legitimate.”⁹² Another is the prevalence of “rape myths,” such as the notions that women enjoy rape and that rape victims deserve their treatment.⁹³ The problem is entirely in men's heads. The idea that women sometimes say “no” when they mean “yes” is an unreal, narcissistic male fantasy.

But in fact this social script is commonly accepted by women as well as men. About 40% of college-age women self-report that they have in

Pragmatics in Hate Speech and Pornography, in *SPEECH AND HARM: CONTROVERSIES OVER FREE SPEECH* 72 (Ishani Maitra & Mary Kate McGowan eds., 2012). For responses to this claim, see Andrew Koppelman, *Madisonian Pornography, or, The Importance of Jeffrey Sherman*, 84 *CHICAGO-KENT L. REV.* 597 (2009); Andrew Koppelman, *Is Pornography “Speech”?*, 14 *LEGAL THEORY* 71 (2008); Andrew Koppelman, *Free Speech and Pornography: A Response to James Weinstein*, 31 *N.Y.U. REV. OF LAW & SOCIAL CHANGE* 899 (2007).

90. The benefits of pornography for many readers are examined at length in NADINE STROSSEN, *DEFENDING PORNOGRAPHY: FREE SPEECH, SEX, AND THE FIGHT FOR WOMEN'S RIGHTS* 141–78 (1995), although Strossen overstates her case by refusing to acknowledge any countervailing harms.

91. LANGTON, *SEXUAL SOLIPSISM*, *supra* note 10, at 25–117, 173–95.

92. *Id.* at 45.

93. *Id.* at 38.

fact sometimes said no when they meant yes or maybe.⁹⁴ Even more men than women engage in token resistance to sex, and more men than women sometimes consent to unwanted sex.⁹⁵

“Token resistance” is a social script that makes sense within a hierarchical conception of gender. That conception lays down ideals of behavior for both sexes, and it is the ideals that lead to the illocutionary disablement. Women who overtly pursue sex (and men who are not sexually aggressive) are objects of contempt. Token resistance makes it possible for a woman to obtain the benefit of sex while communicating that she does not have an appetite for promiscuous sex. Her partner’s virility is affirmed, because, as Dan Kahan puts it, “a woman who has demonstrated (appropriate) reluctance to engage in sex generally is nonetheless unable to repress her desire to engage in sex with *him*.”⁹⁶

Token resistance may be rational for the women who engage in it. They do not want to be stigmatized for taking sexual initiative.⁹⁷ But this

94. See Susan Sprecher, Elaine Hatfield, Anthony Cortese, Elena Potapova & Anna Levitskaya, *Token Resistance to Sexual Intercourse and Consent to Unwanted Sexual Intercourse: College Students’ Dating Experiences in Three Countries*, 31 J. SEX RES. 125 (1994), and sources cited therein.

95. *Id.*

96. Dan M. Kahan, *Culture, Cognition, and Consent: Who Perceives What, and Why, in “Acquaintance Rape” Cases*, 158 U. PENN. L. REV. 729, 757 (2010). Kahan’s experimental study of perceptions in a controversial acquaintance-rape case finds that the persons most disposed to form pro-defendant perceptions were hierarchical women, especially older ones. Kahan explains the result thus:

Within the hierarchical worldview, token resistance to sex is understood as a strategy by women who desire casual sex to disguise their lack of virtue relative to women who faithfully adhere to hierarchical norms against forming and acting on such desires. Women who are strongly committed to a hierarchical worldview, then, are disposed more readily to perceive that women are saying “no” while meaning “yes”—and to condemn them for that—because women who have succeeded in fulfilling gender-role expectations that attend the role of women within a hierarchical way of life are the ones with the greatest identity-protective stake in law’s affirmation of hierarchical norms. Thus, far from reflecting a dispute among women and men, contestation about the significance of the word “no” . . . features a conflict primarily *among* women on how the indulgence of the desire for sex outside of relationships sanctioned by hierarchical norms should affect women’s social status.

Id. at 794. These older hierarchical women are unlikely to have learned their attitudes from pornography.

97. This rationality occurs in the context of perceived social norms. One study found that token resistance was uncorrelated with traditional gender role attitudes. What mattered was the woman’s perception of the attitudes held by the culture and, especially, the perceived attitude of the man she was with. Charlene L. Muehlenhard & Lisa C. Hollabaugh, *Do Women Sometimes Say No When They Mean Yes? The Prevalence and Correlates of Women’s Token Resistance to Sex*, 54 J. PERSONALITY & SOCIAL PSYCHOL. 872, 878 (1988). This suggests that the pattern of norms may have a prisoner’s dilemma aspect, much like the old custom of dueling: its pernicious effects perpetuate themselves because of the costs to individuals who attempt to exit the pattern, even though many, perhaps most, would prefer that the norm not exist. For a similar analysis of Chinese foot-binding and contemporary female genital mutilation, see Gerry Mackie, *Ending Footbinding and Infibulation: A Convention Account*, 61 AM. SOCIOLOGICAL REV. 999 (1996).

rational behavior obviously has destructive effects on other women, who may suffer illocutionary disablement of just the kind that Langton focuses on.

Social scripts of this kind can account for some pretty bad male behavior. “If a man encounters a woman who says no and he ignores her protests and finds that she is indeed willing to engage in sex, his belief that women’s refusals are not to be taken seriously will be strengthened.”⁹⁸ The same script may impose severe penalties if he backs off when the refusal is not real: he will be stigmatized as unmanly.⁹⁹ (This may help to explain why men sometimes consent to unwanted sex.) The path is thus laid down, first to illocutionary disablement, and then to rape.¹⁰⁰ An indispensable component of this particular causal pathway is a particular set of ideals—sexist ideals of appropriate sexual comportment for men and women.

None of this shows that pornography does not do the harm that Langton alleges. It is possible that pornography exacerbates these tendencies, and it is even possible that legal suppression of pornography will help to ameliorate the problem. But to blame pornography, without paying any attention to the social conventions just described, is magical thinking.

If sexual practice is to be reformed, then perhaps something can be learned even from the sadomasochistic practices that Langton so disdains. Sadomasochist subcultures have developed elaborate rituals of consent, tightly constructed defenses against blurring and pseudo-empathy—most notably, the use of a “code word” to indicate that things have gone too far and should now stop.¹⁰¹ Meanwhile, in the mainstream culture of heterosexual sex, as many as one female in three is raped or sexually assaulted. The most salient difference between SM and the ritual of male dominance and female submission that characterizes so much heterosexual sex is that in the SM scene, the “submissive” partner is always firmly in control of what goes on. Perhaps it would be a good thing if the SM subculture became *less* closeted, and the majority began to internalize that group’s norms.

98. Muehlenhard & Hollabaugh, *supra* note 97, at 878.

99. *Id.*

100. See Antonia Abbey, *Misperception as an Antecedent of Acquaintance Rape: A Consequence of Ambiguity in Communication Between Women and Men*, in ACQUAINTANCE RAPE: THE HIDDEN CRIME 96 (Andrea Parrot & Laurie Bechhofer eds., 1991).

101. These are briefly described in WILLIAM N. ESKRIDGE, Jr., GAYLAW: CHALLENGING THE APARTHEID OF THE CLOSET 260–61 (1999).

C. *Ought Implies Can*

Sex frequently occasions mistreatment of human beings: physical and emotional abuse, manipulation and deception, the reckless spread of disease, and the irresponsible begetting of children. Since one should not mistreat people, one should not mistreat them sexually.

Speech, pornographic or otherwise, that encourages its audience to engage in such mistreatment is reprehensible. But one must examine each instance of speech to determine whether this is so. Broad categories such as “pornography” (or, in constitutional law, “obscenity”) are unhelpful for this purpose.¹⁰²

The goodness of sex at its best has to do with its character as a certain kind of interpersonal communion. Sex at its best is essentially interaction with another person, an interaction in which you love and value me in my wholeness, as body and mind and infantile neediness, and I love and value you in the same way. When I am the object of lust, this sometimes means that I am appreciated in the full embodied particularity of my self, as I am not if you only love me for my mind.¹⁰³ Objectification is also a common human aspiration. It can take pathological forms, of course. Most people, however, want to be the object of someone’s desire.¹⁰⁴

Many people are unable to achieve the full goodness associated with sex at its best, often because of the simple bad luck of never meeting a suitable partner. What may they hope? When a given sexual act, one that involves no mistreatment of another person, is the best that is available for this person at this time, it is uncharitable to condemn it. Sex at its best demands generosity toward human neediness and imperfection. It is self-defeating and ungenerous to condemn sex for being imperfect.¹⁰⁵ The stigmatization of masturbation, for example, is stupid and destructive precisely because of its brutal attitude toward sexual neediness.

If the feminism of hope hopes for the wrong things, then the feminism of fear will fear the wrong things. Fantasy as such is not the enemy. Even in sex at its best, all sorts of thoughts run through our heads that have

102. Pornography is a formulaic genre, of course, but as with all formulaic fiction individual examples vary considerably in the ways they conform to the norms of the genre. Compare Mickey Spillane’s novel *KISS ME DEADLY* (1953), which uncritically adores its brutal and sadistic hero, with Robert Aldrich’s film adaptation, which views the same activities from a severe critical distance. *KISS ME DEADLY* (Parklane Pictures Inc. 1955).

103. This point is developed well in SCRUTON, *supra* note 48, at 68–83.

104. Leslie Green, *Pornographies*, 8 J. POL. PHIL. 27, 45–46 (2000).

105. See Andrew Koppelman, *Reading Lolita at Guantanamo*, 53 DISSENT 64 (Spring, 2006); Andrew Koppelman, *Eros, Civilization, and Harry Clor*, 31 N.Y.U. REV. OF LAW & SOCIAL CHANGE 855 (2007).

nothing to do with the particularity of the person we are with here and now. What goes on is nonetheless properly called making love. The love that is made is human love, love of the kind that is suited to the kind of beings that we are. A sexual ideal that does not acknowledge that we are that kind of being is itself a projective fantasy, a kind of solipsism.