

MASSACHUSETTS INSTITUTE OF TECHNOLOGY
DEPARTMENT OF LINGUISTICS AND PHILOSOPHY

Submission from Prof. Rae Langton to the Leveson Inquiry

Thank you for your invitation to make a submission to the Inquiry. I am Professor of Philosophy in the Department of Linguistics and Philosophy at MIT, where I have been since 2004. Prior to that, I was Professor of Moral Philosophy at the University of Edinburgh 1999-2004. I am currently visiting Cambridge University, with a College affiliation as Senior Research Associate at Peterhouse. I work in a variety of areas, including political philosophy and philosophy of law, with a particular focus on speech acts, free speech, and how these bear on social hierarchy. This statement represents my own view (not necessarily the view of any of the above institutions).

1. Overview

Everyone agrees that norms governing the media should be guided by a respect for free speech and freedom of the press. Less obviously, this needs to be informed by an adequate understanding first, of what *speech* is; second, of the point of *free speech*, as an aspect of the public interest; third, with these in mind, of the contribution of a *free press* to free speech, and to other aspects of the public interest, including *equality*.

When we speak, we *act*: to say something is to *do* something, as philosopher J.L. Austin put it (1962). Free speech is freedom to perform certain speech acts, among which *communicative* speech acts are particularly important. From a liberal perspective, the central point of free speech is to achieve and communicate knowledge, and to enable participation in the democratic political process. That is the point of a free press as well.

The interest in free speech and in a free press are one and the same, since institutional freedom of the press is grounded in a more fundamental individual freedom of speech, which supplies conditions for knowledge, and for democracy (Module 4, Key Questions 1 and 2). Sometimes freedom of speech or of the press may need to be balanced against other aspects of the public interest, including equality, individual free speech and self-determination (Key Questions 3 and 4). Notwithstanding many courageous investigative achievements in the media, some of its activities are hostile to equality, and indeed to the goals of communication, knowledge and political participation that supply its own rationale (Key Question 4). The considerations raised here may give additional support to arguments already made to the Leveson Inquiry by *Equality Now*, *End Violence Against Women*, the rape charity *EAVES*, and *Object*, about the stereotyping and objectification of women, and the reporting of sexual violence. They may also give support to submissions made by other groups, about speech that promotes racism and xenophobia, but I shall leave these aside for present purposes. Finally, they reveal some shortcomings in the 'Editors' Code of Practice' (Key Question 8).

Independently of the goals discussed here, it is worth noting that there has traditionally been wide agreement that *pornography* should be subject at least to *zoning* constraints, despite diversity of opinion about its harms. The Williams Committee on Obscenity and Film Censorship defined pornography as material that ‘has a certain function or intention, to arouse its audience sexually, and also a certain content, explicit representations of sexual material (organs, postures, activity, etc.)’ (1979). The material evaluated by *Object* is in this broad sense pornography, and therefore a likely candidate for zoning constraints, such as those described in *Object’s* submission, which limit its accessibility, consistent with restrictions on broadcast media. (There is also a narrower sense of ‘pornography’ to be raised later, which brings in egalitarian concerns.) I understand that as part of its evidence, *Object* supplied material that is visible and available to children at newsagents, but was considered unsuitable for viewing by members of the Leveson Inquiry itself. There could hardly be a more eloquent sign that this zoning anomaly deserves attention.

2. Speech Acts, Free Speech, and a Free Press

2.1. *Speech Acts*. If we start with Austin’s idea that ‘to say something is to do something’, then speech is more than ‘only words’, and more than ‘expression’ narrowly construed. Not all speech is on the same footing, since speakers do so many different things with words: tell stories, make promises, make bets, incite violence, and more. Free speech is freedom to ‘do things with words’, but it includes some kinds of speech act and not others. What speech acts are included under ‘free speech’ depends on its point.

2.2. *The point of free speech*. Two linked proposals have been enormously influential: free speech has been thought to provide the conditions for *knowledge*, and for *democracy*. These are linked, because democracy works only if citizens know what is going on, when they deliberate and vote on political matters.

J.S. Mill famously defended ‘freedom of opinion’ and ‘freedom of expression of opinion’ in the name of truth, arguing that ‘the collision of adverse opinions’ provides our best hope for the emergence of knowledge. Although he used the phrase ‘expression of opinion’, his conception of this was expansive: it included a *diversity* of speakers, and attentive *hearers* as well as speakers, as he wrote in *On Liberty* (1859):

[T]ruth has no chance but in proportion as every side of it, every opinion which embodies even a fraction of the truth, not only finds advocates, but is so advocated as to be listened to.

Since Mill, free speech has become central to our vision of democracy itself (Meiklejohn, 1948). Free speech is a condition of a working democracy, empowering citizens as both speakers and hearers to engage in the political process: to question authority and ‘speak truth to power’, to acquire the knowledge needed for intelligent political deliberation and action.

If the point of free speech is about knowledge and democracy, there are implications for the speech acts included under ‘free speech’: most centrally, communicative speech acts of individual citizens, and speech acts that constitute or enable political participation.

2.3. *Speech and Harm*

For Mill, some speech acts were restricted on the grounds of a *harm principle*, and here he balanced free speech against another important public interest. As he wrote, again in *On Liberty*,

An opinion that corn dealers are starvers of the poor...ought to be unmolested when circulated through the press, but may incur just punishment when delivered...to an excited mob assembled before the house of a corn dealer.

The very same ‘opinion’ may provide content for different speech acts: in one context an *argument* to be debated, in another context an *incitement* to violence. Mill was optimistic about the power of the press to provide a context for debate, rather than dangerous incitement. And his optimism deserves respect, even if that respect is chastened by a subsequent history in which an ‘opinion’ about ‘Jew’ or ‘Tutsi’ circulated in the press, or broadcast on airwaves, could become a tool of genocide. For Mill, free speech does not include freedom to perform speech acts seriously harmful to others, such as incitement to violence. Nor, perhaps, does it include speech acts harmful to social *equality*, or so some have argued, integrating Mill’s *On Liberty* with his work on *The Subjection of Women* (1869) (Dyzenhaus, 1992). It is possible to harmonize a broadly liberal, Millian perspective on free speech with restrictions on hate speech and discriminatory speech. As Prof. Jeremy Waldron has argued, in his 2009 Oliver Wendell Holmes Lectures,

hate speech regulation can be understood as the protection of a certain sort of precious public good: a visible assurance offered by society to all of its members that they will not be subject to abuse, defamation, humiliation, discrimination, and violence on grounds of race, ethnicity, religion, gender, and...sexual orientation.

Recognizing speech as a *speech act*, rather than merely ‘expression of ideas’, provides for two ways in which speech may be harmful: speech may *cause* harm, and it may *constitute* or *enact* harm. Inciting violence against corn-dealers is a speech act that is bad chiefly because of the harm it is likely to cause; hanging a ‘Whites Only’ sign on a restaurant is bad chiefly because of the harm it constitutes and enacts. It would trivialize the harm of such speech acts to describe them as merely ‘expression of ideas’.

From this perspective, there is both *more* and *less* to the ‘speech’ in ‘free speech’ than some might think. What needs protecting is a power to *communicate*, which is more than mere ‘expression of ideas’, achievable in isolation (Hornsby 1995; Hornsby and Langton, 1998; Langton 1993, 2009; O’Neill 2009, 2012.); but less than doing just anything with words.

2.4. *A free press*

Freedom of the press is an *institutional* freedom, which matters because of its power to enable and promote the speech of *individuals*, ordinary members of the public, as Baroness O'Neill has recently emphasized (2009, 2012). A free press matters because of its potential to fulfil the epistemic and political goals of individual free speech: it helps individuals to communicate freely, listen freely, debate freely, and acquire the knowledge they need to live with each other, to live well according to their own lights, and participate intelligently in the democratic process. The goals of knowledge and political participation at the core of individual free speech are for that reason also at the core of a free press.

A free and active press may fulfil many other goals as well: it may amuse and entertain its readers and viewers, make money, and promote commerce more widely through its advertising and content. These other goals may be important, but they are peripheral to the epistemic and political goods distinctive of speech as such.

The press often defends its activities in the name of a so-called 'public right to know'; and while knowledge is central to the point of a free press, some sorts of knowledge will be more central than others. News, conveyed by a 'count-down', that a child celebrity will soon reach the age of sexual consent, is probably not the sort of knowledge required for readers to live well according to their lights, or to participate intelligently in the democratic political process. (See Charlotte Church's submission to the Inquiry, and *Object's* comment on media treatment of her.) On the other hand, news of misdeeds by politicians and police is just the sort of knowledge needed for citizens to hold their governments accountable.

Something would be rotten in the state of the media if it were deaf on issues that matter to its own rationale, and deafening on issues that don't: if its incentives were structured to ignore what matters to its own normative point, and focus on what does not. Norms governing the media need to *empower* the media on activities that give a free press its point; and encourage *responsibility* on its other activities.

Many other factors bear on the responsibilities of the press, including responsibilities to those about whom it reports, and those from whom it obtains information. It has responsibilities, as a source of knowledge, to make its news *assessable* (O'Neill, 2009, 2012) so that readers are in a position to evaluate its accuracy. One aspect of the public interest surprisingly absent from the list of candidates cited in your 'Key Questions' is *social equality*.

3. The Media and Women's Equality

A considerable amount of 'speech' about women in the media is in the form of pictures (but also words) that *objectify* and *subordinate* women, in which case women's *equality* needs to be weighed against this sort of exercise of a free press.

Speech acts can sexually *objectify* when they treat a person as a sex object, reduce her to sexual body parts, treat her as having merely instrumental sexual value, deny or ignore her qualities as a full human being, qualities such as dignity, intelligence or autonomy (Nussbaum, 1995). Speech acts can *subordinate* when they rank members of a certain group as inferior, legitimate discrimination against them, and deprive them of powers and rights (MacKinnon 1987, 1993; Langton, 1993, 2009). Since sexual objectification is one of the ways in which women can be subordinated, portrayals of women in the media that objectify can subordinate as well, depending on background conditions, including the degree of authority they are taken to have. Speech acts that alter norms about violence are especially significant, as Mill himself allowed. In this context, violence bears on equality, if the asymmetric pattern of sexual violence and exploitation of women and girls is regarded as an aspect of social standing. Media speech acts can alter norms about sexual violence, through victim-blaming reports of rape, and objectifying portrayals of women.

Martin Daubney, longest serving editor of *Loaded* magazine, recently described his dawning realization that his magazine's sexually explicit use of women was not, as he initially thought, 'harmless fun, dictated by market forces', but instead objectification, a 'crass sexualization of women' which paved the way for a younger generation to accept a pornographic vision which—

sells boys the debasing view of women as one-dimensional fakes: fake boobs, fake hair, fake nails, fake orgasms and fake hope. How will these tainted children be able to interact with real women later in life if the first ones they 'meet' are on-screen mannequins? By allowing children free access to pornographic images, the next generation of young men are becoming so desensitised, I genuinely fear we're storing up an emotional time-bomb. Porn objectifies women, demeans and cheapens them, because it sells a fantasy where men are always in control and get what they want. But real life isn't like that. In porn, women cry, 'yes, yes, yes!' but in real life, they often say, 'no'. Not all men have the intelligence or moral fortitude to understand they cannot take what they want.

Daubney's perspective (2012) gives additional support to the submissions from *Equality Now*, *Object*, *End Violence Against Women*, and the rape charity *EAVES*. These submissions spell out some of the ways that equality is threatened by treatment of women in the media, in speech acts that objectify women and trivialize sexual harassment and violence.

Equality Now comments that 'women and girls in the UK are bombarded with stereotyped images through the media on a daily basis' and that 'if similar treatment were routinely meted out to a specific group based on religion, race or sexual orientation, it would not be tolerated.' They argue that 'the widespread objectification and sexualisation of women in the UK press' normalizes and promotes 'stereotypical and often subordinate roles of women, promoting their second class status in society.' Their

submission draws attention to uses of stereotyped images that ‘treat’ women a certain way; their concern is with the discriminatory *speech acts* performed with such material. Their thought experiment—suppose this treatment were meted out to a specific group on the basis of race?—reveals such speech acts to be discriminatory, even if the bias is rendered partly invisible because of its success.

Object evaluates a series of sexually explicit portrayals of women in the tabloids, which objectify women and trivialize sexual violence. Their submission calls for consistency in the application of zoning norms for such material, so as to conform to expectations that prevail in broadcasting and the workplace. It is worth observing (as noted at the outset of this submission) that their recommendation, while supported by considerations of equality, should have wider appeal, given that there has traditionally been agreement across the political spectrum that such material should be subject at the very least to zoning.

Both submissions cite further harms to equality that accompany the stereotyping and sexual objectification of women, and cite in support of their recommendations the UK’s commitment to the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). *Equality Now* quotes the concerns of the Committee charged with evaluating the UK’s compliance with CEDAW, about ‘stereotyped media portrayals of women and women’s roles in the family and in society’, and its recommendations—

that policies be strengthened and programmes implemented, including awareness-raising and educational campaigns directed at women and men, and specifically at media and advertising agencies, to help ensure the elimination of stereotypes regarding the roles of women and men in society and in the family, in accordance with articles 2 (f) and 5 (a) of the Convention.

Some of the material cited by these submissions would count as pornography not only in the broad sense mentioned above (Williams, 1979), but in a narrower sense introduced by feminists concerned about equality, who define pornography as:

the graphic, sexually explicit subordination of women in pictures or words [in which] women are presented dehumanized as sexual objects, things or commodities; [...] or women are presented in postures or positions of sexual submission, servility, or display; or women’s body parts—including but not limited to vaginas, breasts, or buttocks—are exhibited such that women are reduced to those parts... (MacKinnon 1987, 1993; full definition available online, with comment, in West 2004).

What is the trade-off, if women’s equality is weighed against this sort of exercise of a ‘free press’? Speech acts that subordinate and objectify women do not seem crucial to the rationale of a free press—to the aforementioned goals of knowledge, and democratic political participation. Such ‘speech’ often does not even pretend to be ‘news’, but is included for entirely commercial reasons. Daubney comments about comparable material for which he was responsible, as editor:

In my time, *Loaded* won eight industry awards for journalistic excellence, but its massive success—it sold more than 500,000 copies a month at its peak—was always down to pictures of scantily-clad women. When I became editor...I realised all our readers really wanted was acres of flesh.

The trade-off is not, after all, between equality and public interests central to free speech, but rather between equality and economic interests.

4. Speech and Silencing

It is well-known that the speech of some can silence the speech of others, whether by hecklers, or in other ways. And when ‘money talks’, economic interests can damage not just equality, but speech itself. Media speech that objectifies and subordinates women may also *silence* women: it may damage women’s powers to perform communicative speech acts.

Theorists have noted two domains in which women’s communicative powers may be so damaged. First, speech relating to sexual consent and refusal: a woman’s ‘no’ may sometimes fail to be recognized as a refusal to a hearer who has taken on board a certain pornographic vision of women. Second, speech relating to testimony about sexual violence: a woman’s capacity to communicate truth about rape may be damaged, when hearers take on board victim-blaming rape myths about women who are ‘asking for it’. This sort of silencing concerns an important kind of speech, which matters not just to broader social goals, but to the communicative powers, individual self-determination and safety of individual women. (For work in legal and political philosophy on this topic, see e.g. Fricker, 2007; Hornsby, 1995; Langton, 1993, 2009; Hornsby and Langton 1998; MacKinnon, 1993; West, 2003, 2004).

5. Conclusion

When women are objectified and subordinated, that can damage not only *equality*, but also *speech*, sometimes disabling women’s speech about sex, and contributing to sexual violence. It can damage *knowledge* (that ‘fake’ and ‘debasing’ vision of women; Daubney, 2012); and *democracy*, given the difficulties faced by subordinate groups in participating politically as equals, and achieving credibility (Fricker, 2012).

The upshot is an irony. Media speech acts that objectify and subordinate women are likely to conflict with the very interests that give a free press its point in the first place.

My focus here has been on the norms that should govern the media, given the public interests that at the heart of institutional freedom of speech. Such norms, I have said, need to *empower* the media on activities that give a free press its point; and encourage *responsibility* on its other activities. I shall not make more specific recommendations about appropriate normative structures, but include below some comments on the Editors’ Code; and references to works cited here.

Thank you for your attention.

Comments on the Editors' Code of Practice

Items 1, 2 and 12. The discussion of procedures relating to inaccuracies, distortions and defamation is couched in individualistic terms. In order to meet 'the highest professional standards' one might hope for acknowledgement of possible harms done to individuals in virtue of their membership of social groups, such as gender or race (1), and supply corresponding opportunities to reply (2). Item 12 (i) requires the press to avoid 'prejudicial or pejorative reference' to, *inter alia*, race and gender. This could be clarified to cover objectifying and sexual stereotyping. Item 12 (ii) requires the press to avoid giving details of an individual's social characteristics such as race or religion unless relevant to the story; it is surprising that 'gender', present on the list in 12 (i), is absent from the list in 12 (ii).

Item 6. This states media responsibilities towards children as *subjects* of news stories. It ignores the role of children as possible *consumers*, which would seem relevant in light of zoning issues raised above.

Item 7. This states media responsibilities in reporting sex offences, but only as they relate to children. The evidence presented to the Leveson Inquiry by the groups mentioned above would indicate wider responsibilities in reporting sex offences, including as they relate to adult women, to avoid promoting 'blame the victim' rape myths, and trivializing sexual violence.

References

Austin, J. L. *How to Do Things with Words* (London: Oxford University Press, 1962).

Daubney, Martin. 'The lad's mag I edited turned a generation on to porn—and now I'm a father I bitterly regret it: a remarkable confession from the longest serving editor of *Loaded*'. *Daily Mail Online*, 8th June 2012.
<http://www.dailymail.co.uk/news/article-2156593/>

Dyzenhaus, David. 'John Stuart Mill and the Harm of Pornography', *Ethics* 102 (1992), 534-551.

Editor's Code of Practice, <http://www.pcc.org.uk/cop/practice.html>

Fricker, Miranda. *Epistemic Injustice: Power and the Ethics of Knowing* (Oxford: Oxford University Press, 2007).

Hornsby, Jennifer. 'Disempowered Speech', in *Philosophical Topics* 23 (1995) ed. Sally Haslanger, pp. 127-147.

_____ and Rae Langton. 'Free Speech and Illocution', *Legal Theory* 4 (1998), pp. 21-37.

Langton, Rae. 'Speech Acts and Unspeakable Acts', *Philosophy and Public Affairs* 22 (1993), 305-330.

_____ *Sexual Solipsism: Philosophical Essays on Pornography and Objectification* (Oxford: Oxford University Press, 2009).

MacKinnon, Catharine. *Feminism Unmodified* (Cambridge, Mass.: Harvard University Press, 1987).

_____ *Only Words* (Cambridge, MA: Harvard University Press, 1993).

Meiklejohn, Alexander. *Free Speech and its Relation to Self-Government* (New York: Harper, 1948). <http://digital.library.wisc.edu/1711.dl/UW.MeikFreeSp>

Maitra, Ishani, and Mary Kate McGowan (eds.). *Speech and Harm* (Oxford: Oxford University Press, in press)

Mill, J.S., *On Liberty* (1859). <http://www.gutenberg.org/ebooks/34901>

_____ (1869) *The Subjection of Women*. <http://www.gutenberg.org/ebooks/27083>

Nussbaum, Martha. 'Objectification', *Philosophy and Public Affairs* 24 (1995), pp. 249-291.

O'Neill, Onora. 'Ethics for Communication?' *European Journal of Philosophy* 17:2 (2009).

_____ 'Media Freedoms and Media Standards', *Centre for Ethics and Law Annual Lecture*, to be presented at University College London, November 28th 2012.

Submissions from *Equality Now*, *Object*, *EAVES*, and *End Violence Against Women*, at <http://www.levesoninquiry.org.uk/evidence/>

UN Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW) <http://www.hrcr.org/docs/CEDAW/cedaw.html>

Waldron, Jeremy. 'Dignity and Defamation: the Visibility of Hate'. The 2009 Oliver Wendell Holmes Lectures, 123 *Harvard Law Review* 1596 (2010).

West, Caroline. 'The Free Speech Argument against Pornography', *Canadian Journal of Philosophy*, 33 (2003), 391-422.

_____ 'Pornography and Censorship' (2004), *Stanford Encyclopedia of Philosophy*
<http://plato.stanford.edu/entries/pornography-censorship/>

Williams, Bernard (chair). *Report of the Committee on Obscenity and Film Censorship*.
Cmnd. 7772 (London: Her Majesty's Stationery Office, 1979).

Statement of Truth

I believe the facts stated in this witness statement are true.

Signed

19 July, 2012

Date.....