

PORNOGRAPHY AS ACTION, PORNOGRAPHY AS INTERACTION

In his novel, *Ulysses*, James Joyce introduces a vulgar, lascivious, female lead, Molly Bloom. This once-popular objection to *Ulysses* was an indictment of the Bloom character particularly, but of *Ulysses* generally, and of Joyce more generally still.¹ Of note, said the objectors, was Bloom's final monologue:

...and then I asked him with my eyes to ask again yes
and then he asked me would I yes to say my moun-
tain flower and first I put my arms around him yes
and drew him down to me so he could feel my
breasts all perfume yes and his heart was going like
mad and yes I said I will yes.²

Presently—several decades since the novel's first publication—mainstream literary critics regularly list *Ulysses* as one of the greatest literary masterpieces of all time.³ Further, if *Ulysses* can be said to constitute “pornography” at all, it is not the sort of pornography to which feminists like Catharine MacKinnon typically object. I do not mention these facts about *Ulysses* to point out that taboos change over time (though they usually do), or to argue that only an ephemeral line separates art from pornography (though I take such an argument to be plausible). Instead, I want to suggest that the literary community now deems *Ulysses* a masterpiece rather than pornography for the following reason: since its inception, the text and its readers have *interacted*, acting in concert upon each other, until the meaning of *Ulysses* had been affected and effected. In short, the movement and history of *Ulysses* changed its very meaning.

This paper deals mainly with the ways in which contexts of production and consumption, and especially the tension between these frequently

competing contexts, affect the meaning of the thing produced or consumed. I hope to apply this family of ideas to Catharine MacKinnon's arguments against pornography by asking: are there any contexts of production or consumption of pornography capable of creating a history of interactions (between the creator and consumer of the pornographic material) that would not subordinate women?

Catharine MacKinnon famously argues that “[p]rotecting pornography means protecting sexual abuse *as* speech...”⁴ Since MacKinnon defines pornography as “sexually explicit materials that subordinate women through pictures or words,” her claim that pornography constitutes a form of sexual abuse, though not quite rising to the level of an *analytic* truth, is at least unsurprising. How do we assess the claim that pornography is a form of sexual abuse?

In this paper, I will argue that MacKinnon's claim should be assessed only after considering the roles of context and interaction in the development of meaning (of words, images, and acts). First, I will argue that context affects the ultimate meaning of words, images, and acts in specific instances. Second, I will argue that the meanings of words, images, and acts are not fixed and imposed by their creator, but arise from an interaction between speakers and listeners, or producers and consumers (I will rely heavily on John Dewey for this portion of my argument). Third, on the basis of this groundwork, I will argue that MacKinnon's indictment of pornography fails to imagine the possibility that different contexts of production and consumption could interact with the discourse of pornography in new and healthy ways.

I. THE ROLE OF CONTEXT

I take to be uncontroversial the proposition that context bears on the ultimate meaning of a particular expression.⁵ Consider the role of context in scientific explanation. In his paper, “The Pragmatics of Explanation,” Bas Van Fraassen debunks the idea of scientific explanation as a relation between theory and fact, and argues instead that scientific explanation is “a three-term relation, between theory, fact, and context.”⁶ Van Fraassen argues that a single “why-question” (Van Fraassen uses the question, “Why did Adam eat the apple?”) may connote numerous different information requests:

- a. Why was it *Adam* who ate the apple?
- b. Why was it the *apple* that Adam ate?
- c. Why did Adam *eat* the apple?

Which of the above information requests do I make when I ask the question “Why did Adam eat the apple?”? The answer, Van Fraassen

explains, depends upon the “contrasting alternatives” or “contrast-class” that I have in mind when I pose the question. If my contrast-class is *persons* in the Garden of Eden, then I am probably asking (a), above; if my contrast-class is *edibles* in the Garden of Eden, then I am probably asking (b), above; so on. For Van Fraassen, the ultimate meaning of the words “Why did Adam eat the apple?” depends in part on a contextual fact about the private understanding of the speaker (in the case of why-questions, the relevant ‘understanding of the speaker’ is her understanding of the contrast-class).⁷ Construing Van Fraassen’s point broadly we might say that one sort of context that affects the meaning of a particular expression is the context of its inception or genesis (hereafter, the “context of inception”).

A second sort of context that may bear on the ultimate meaning of a particular expression is what I will call the “context of receipt.” The context of receipt concerns the audience to whom a speaker directs a particular expression. When I ask, “How did that poor man die?,” the sort of answer my question calls for may depend upon facts about the person to whom I speak. Norwood Hanson explains:

...the cause of death might have been set out by a physician as ‘multiple hemorrhage,’ by the barrister as ‘negligence on the part of the driver,’ by a carriage builder as ‘a defect in the brake-block construction,’ by a civic planner as the presence of tall shrubbery at that turning.⁸

Even if I do not know whether the woman to whom I pose the above question is a physician, barrister, carriage builder, or civic planner, the analysis that she will use to formulate an answer will depend on her own training, perspective, field of knowledge, *et cetera*. Does this affect the meaning of my question? I suggest that it does. Though I may be ignorant of my audience’s position or perspective, my question *effectively* translates into a tailored information request arising from that position or perspective (unknown to me, the speaker). When I ask, “How did that poor man die?” the doctor understands my question to be, “What were the physiological conditions that precipitated the patient’s death?”; the barrister understands my question to be, “What was both the cause-in-fact and proximate cause of the man’s death?” (this is Hanson’s very point). *To the recipient’s ear*, my question sounds in her area of experience.⁹ If this sketchy account has been unpersuasive or unclear, consider a more complete account of the effects of context (of inception and receipt) in the following section.

So far I have suggested that the meaning of a particular expression is affected by: (1) the context of inception (that which is in the speaker’s head

at the creation of the particular expression), and (2) the context of receipt (that which is in the recipient's head at the time of the particular expression's transmission). This is not meant to be an exhaustive list of species of context. I only highlight these two sorts of context because they map on nicely to two types of harms of pornography that MacKinnon is worried about: (1) harm to the women involved in the production of pornography, and (2) harm as a result of the consumption of pornography.¹⁰

I need to take one further step to complete my argument that contexts of inception and receipt actually affect meaning—that is to argue that the meaning of a particular expression is defined by the *interaction* between the speaker and the listener. For this groundwork, I will borrow from the American philosopher and pragmatist, John Dewey.

In his book, *Experience and Nature*, Dewey argues that the meaning of a particular expression emerges, not from the fixed intent of the speaker, but from the ultimate interaction between the speaker and listener. Dewey writes:

The heart of language is not “expression” of something antecedent, much less expression of antecedent thought. It is communication; the establishment of cooperation in an activity in which there are partners, and in which the activity of each is *modified and regulated by partnership*.¹¹

Here, Dewey describes language as discourse, dialectic, or, in his phrase, “a release and amplification of energies...”.¹² The meaning of an expression is not derived by peering into the fixed connotations of signals (verbal or visual). Rather, they arise from the activity between speakers and listeners.

II. THE CONTEXT ARGUMENT APPLIED TO THE CASE OF PORNOGRAPHY — IN THE MICRO

Here, I would like to consider the ways in which various contexts of inception and receipt might affect our view of pornographic materials in *specific instances* of the production and consumption of pornography (“in the micro”).¹³

Framing the analysis of pornography in terms of the effects of production and consumption is of course MacKinnon's chosen way, and one that I think has proven fruitful. Though I suggest in the bulk of this paper that Dewey can be used to press MacKinnon's argument in *Defamation and Discrimination*, MacKinnon's focus on the consequences of pornography stages the debate in a conspicuously Deweyian manner. Why does MacKinnon stage the debate this way? She writes:

Pornography does not leap off the shelf and assault women. Women could, in theory, walk safely past whole warehouses full of it, quietly resting in its jackets. It is *what it takes to make it* and *what happens through its use* that are the problem.¹⁴

Here, MacKinnon carves up her worries about pornography into two sorts of harms: harms of production, and harms of consumption. With an eye to these two harms, let us consider the role of various contexts of inception and receipt.

I will begin with some contexts of inception and receipt offered by MacKinnon herself. Through MacKinnon's use of anecdotal evidence, she catalogs countless contexts of inception¹⁵ and receipt.¹⁶ MacKinnon presents the example of the famous pornographic movie, *Deep Throat*:

If a woman had to be coerced to make *Deep Throat*, doesn't that suggest that *Deep Throat* is dangerous to all women anywhere near a man who wants to do what he saw in it?¹⁷

This passage points up the difference between MacKinnon's analysis of the meaning of pornography and, what I am calling, a Deweyian analysis of the same. Dewey would say that the meaning of *Deep Throat* falls out of the interaction between the speakers (those who created *Deep Throat*, including the woman who was coerced into appearing in the film) and the listeners (those who watch *Deep Throat*). MacKinnon focuses exclusively on the former. By forever tethering the meaning of *Deep Throat* to the context of inception, MacKinnon fails to imagine the possible effects of various contexts of receipt. Therefore, in this instance, she rejects the Deweyian idea that the meaning of *Deep Throat* depends upon the discourse that emerges (which, I claim, depends upon contexts of inception *and* receipt).

MacKinnon is of course right to say that the operation of coercion in the production of *Deep Throat* has the capacity to affect the meaning of the film itself. As I have already acknowledged, the fact of coercion is a particular context of inception—one that affects the meaning of the *speakers'* expression.

MacKinnon could probably persuasively argue that even if a consumer of *Deep Throat* is not consciously aware of the circumstances of coercion that led to the film's production, the context of receipt may be affected if the coercion surfaces in subtle (and not so subtle) ways in the film itself. Even if this is true, however, we can imagine other contexts of receipt that would yield vastly contrasting interactions. I will imagine one such context of receipt in the following section.

A. The Self-Conscious Consumer of Pornography

Consider the case of a “self-conscious” consumer of pornography. In Agoto Kristof’s novel, *The Notebook*,¹⁸ two brothers (“Brothers”) conduct “exercises” to better understand the experiences of others, and to prepare themselves for prospective hardships. After crafting and executing their exercise regime, they reduce the fruit of their exercises—their lessons—to paper (into their “Notebook,” after which the novel is named).

In their “exercises to toughen the body,” the Brothers cut one another with knives, and slap and punch one another until their faces swell. Eventually, the Brothers’ “exercises to toughen the body” effectively callous them to physical pain. Other exercises include: exercise to toughen the mind (which requires that they scream, yell, and hurl profanities at one another), exercise in begging, exercise in blindness and deafness, exercise in fasting, exercise in cruelty, and so on. The Brothers’ experiences are self-conscious and educational *by design*, as are their methods for documenting their experiences. The Brothers only enter “Good” compositions into their notebook. On this rule, the Brothers say, “To decide whether it’s ‘Good’ or ‘Not good,’ we have a very simple rule: the composition must be true. We must describe what is, what we see, what we hear, what we do.”¹⁹ The Brothers do not act for experience alone; they understand their experiences strictly through the lens of the Notebook. In this sense, the Brothers are “self-conscious” consumers.

In addition to the exercises to which the Brothers subject themselves, they keenly (and often covertly) observe others’ activities. Specifically, throughout the novel, the Brothers secretly watch others’ sexual interactions. For example, the Brothers observe: a young female engage in sex with a dog, a purely sexual heterosexual relationship (between the priest’s housekeeper and an orderly), and a deeply troubled homosexual bedroom relationship (between the officer who boards in the Brothers’ home, and the officer’s male lover). In all cases, the Brothers’ voyeurism is dispassionate and self-conscious; their voyeurism appears to be just another part of their quest to understand the experiences of others. Further, and as discussed above, in all cases the Brothers commit their visual experiences to the pages of their notebook. After watching the housekeeper and the orderly, the Brothers’ write in the notebook:

The orderly prefers the housekeeper to bend over or squat on all fours, and he takes her from behind. The housekeeper prefers the orderly to lie on his back. Then she sits on the orderly’s belly and moves up and down, as if she were riding a horse.²⁰

Here, the Brothers take in a potentially stimulating visual experience, but their context of receipt—their myopic focus on learning about the world, and their commitment to reducing all their experiences to “true” compositions—render the sex acts they observe clinical and devoid of any sexual flavor.

Covertly observed sex acts are of course not “pornography” by MacKinnon’s (or any other) definition; I mean only to highlight the brothers’ context of receipt. Can *Deep Throat* “mean” the same thing to the Brothers on the one hand, and to the male consumer of rape pornography and snuff films described in *Only Words* (call him “Tom”) on the other hand? As MacKinnon describes, Tom admits that watching “girly books” and “girly shows” would make him “want to go rape somebody.”²¹ It seems to me that the answer is, no: while the Brothers’ would watch *Deep Throat* in search of bare sensual descriptors that would constitute a “true composition,” Tom would watch *Deep Throat* with an eye toward whatever sexual violence that film has the capacity to trigger.

Obviously, the point here is not to suggest that most (or any) people have non-sexual, or non-violent reasons for consuming pornography. I am not trying to close in on an empirical question. Rather, I am imagining a context of receipt that could effect a non-subordinating meaning of a particular pornographic expression. If I had watched *Deep Throat* in preparation for this paper, then, like the Brothers, I would have been a self-conscious consumer; if MacKinnon ever watched *Deep Throat* as part of her advocacy against the film, she would be a self-conscious consumer too. Surely, these contexts of receipt affect the meaning of *Deep Throat*.

B. The Determined Female Producer of Pornography

Now that I have suggested that certain contexts of receipt can effect non-subordinating meanings of particular pornographic expressions, I will try to show that contexts of inception can do the same.

I will begin by looking at the sort of contexts of inception that MacKinnon forcefully implies through her rhetorical choices. In the following passage, MacKinnon writes about the idea/act distinction in First Amendment jurisprudence. Disregarding for a moment the point she makes on this topic, observe the clear implication of violent contexts of inception and receipt contained her words:

Suppose that the sexually explicit has a content element: it contains a penis ramming into a vagina. Does that mean that a picture of this conveys the idea of a penis ramming into a vagina, or does the viewer see and experience a penis ramming into a vagina? If a man

watches a penis ram into a vagina live, in the flesh, do we say he is watching the idea of a penis ramming into a vagina?...When he then goes and rams his penis into a woman's vagina, is that because he has an idea, or because he has an erection?²²

Here, MacKinnon conspicuously repeats the phrase 'penis ramming into a vagina,' but why? An image of a 'penis ramming into a vagina' could just as easily be described as an image of a 'vagina swallowing a penis.' Which description should be used when, and why? Contexts of inception and receipt are helpful bases from which to select one description of an event over another. Even keeping the phrase 'penis ramming into a vagina,' must we accept MacKinnon's assertion that an image of a 'penis ramming into a vagina' constitutes subordination of women?

Consider the perspective of the following speaker, "Liz":

Every time I see your face
I get all wet between my legs
Every time you pass me by
I heave a sigh of pain.

Chorus

Every time I see your face
I think of things of unpure, unchaste.
I want to fuck you like a dog
I'll take you home and make you like it
Everything you've ever wanted,
Everything you've ever thought of,
Is everything I'll do to you.
I'll fuck you and your minions too.
Your face reminds me of a flower
Kind of like you're underwater
Your hair's too long and in your eyes
Your dick's a perfect suck-me-size.
You act like your 14 years old,
Everything you say is so obnoxious, funny, true,
and mean.
I want to be your blow-job queen.
You're oddly shy and introspective,
That's not part of my objective:
I just want your fresh young jimmy slamming,
jamming,
ramming in me.

Repeat Chorus

I'll fuck you 'till your dick is blue.²³

Here, Liz objectifies the male subject, reducing him to his use as an instrument for her sexual fulfillment. The male subject apparently attempts to converse with Liz, but she quickly dismisses non-sexual dimensions of his person, by saying that he “act[s] like [he’s] 14 years old,” and that in spite of his better substantive qualities (“oddly shy, and introspective”), she only views him as a sexual opportunity (the male subject’s endearing qualities are “not part of [her] objective”).

Liz differs from the women MacKinnon describes in her accounts of pornography in two more ways. First, Liz is the aggressor in the imagined sexual exchange. Upon seeing the male subject *she* becomes aroused, and determined to take the male subject home and “make [him] like it.” In other words, on sighting the male subject, Liz’s attitude can fairly be described as ‘get him.’ She continues to describe herself as the aggressor in the sex act by stating that *she* will “fuck” *him* “like a dog.” Liz’s desire to “fuck” her male subject “like a dog” crystallizes my point about selecting from competing descriptions of a single event. ‘Fucking like a dog’ refers to a sex position in which the male is situated behind the female, who balances on her hands and knees, it is often said, resembling a dog. The common view is that the female, situated like a dog, remains static and immobile while her sex partner ‘fucks’ her ‘like a dog.’ Liz is probably not suggesting that she will have a penis when she has sex with her male subject: the whole point is that she does not need a penis to be the one doing the ‘fucking.’ Liz’s re-description of ‘dog-fucking’ is probably not about which of the two partners moves more, and which remains still, rather, Liz’s description reflects her own contexts of inception and receipt with respect to the imagined sex act. Just as a speaker’s contrast-class relates to the information request actually being made when the speaker poses a why-question, Liz’s attitudes toward her male sex partner and toward herself relate to the power dynamic actually being embodied while ‘dog-fucking’ during an imagined sexual interaction.²⁴

Second, Liz differs from women MacKinnon describes in her account of pornography in that Liz seems to enjoy potentially painful aspects of sex. While MacKinnon uses the phrase a ‘penis ramming into a vagina’ to suggest that the female has no part in the sex act except to absorb the pain inflicted by a ‘ramming’ penis, Liz “just want[s]” her male subject’s “...young jimmy slamming, jamming, ramming” in her. The very image MacKinnon uses to demonstrate subordination, Liz uses to demonstrate her wish fulfillment. Further, Liz seems willing to inflict pain on her male subject (“I’ll fuck you ‘till your dick is blue”).

What difference, if any, would it make to MacKinnon if Liz (and not the woman coerced to make *Deep Throat*, call her “Linda”) filmed her experience of ‘dog-sex’ with her male subject, along with images of her as her male subject’s “blow-job queen”?

If MacKinnon thinks that the meaning of *Deep Throat* is forever fastened to its context of inception, then is she not committed to the correlating proposition with respect to Liz’s dog-sex movie? And if MacKinnon thinks that that context of receipt is an indictment of the content of pornographic films when the consumer reports “want[ing] to go rape somebody,” then is she not committed to the correlating proposition with respect to Liz as the final pornography consumer?

MacKinnon, I think, selectively views contexts of inception and receipt as definitive in her evaluation of pornographic materials. If the production is tainted (*e.g. Deep Throat*), then the context of receipt is impotent to effect a new meaning. If the consumption of pornography is tainted (*e.g. “I would want to go rape somebody”*), then the production is forever stained too. But I doubt very much that MacKinnon would agree that a healthy context of inception or a healthy context of receipt could ever rescue pornography from its status as sexual abuse. MacKinnon’s position can then be schematized in the following way:

Context of Inception

		Liz	Linda
Context of Receipt	Liz /Brothers	[MacKinnon is silent about this possibility]	Sexual abuse
	Tom	Sexual abuse	Sexual abuse

A better view, I suggest, would be schematized as follows:

Context of Inception

		Liz	Linda
Context of Receipt	Liz /Brothers	A use of pornography that does not subordinate women	Interaction between competing understandings
	Tom	Interaction between competing understandings	Sexual abuse

III. OBJECTIONS AND REPLIES

A. The Harm Is Done

In response to the above grids, MacKinnon could raise the following objection. Having framed her discussion of pornography in terms of the harms of production and consumption, she is quite right to mark a cell with “sexual abuse” once either of those harms appears. That is, she would argue, harm resulting from either the production or consumption of pornography is a sufficient condition for moral condemnation of the relevant pornographic materials.

I will begin by conceding a few points to MacKinnon. As previously discussed, the context of inception in *Deep Throat* was one of coercion; that constitutes a harm of production. This harm is worthy of moral condemnation. So far MacKinnon and I are in agreement. But, what happens when Liz consumes *Deep Throat*? Liz’s consumption of *Deep Throat* can never undo the harm inflicted upon Linda. In some sense, MacKinnon might argue, *Linda’s* harm is compounded as the number of viewers of *Deep Throat* increases. Even if I agree that harm to Linda results each time *Deep Throat* is consumed, I can think that MacKinnon is double-counting when she assumes that *Liz* (and every subsequent consumer of *Deep Throat*) is harmed each time the material is consumed.

Unlike MacKinnon, I do not think that Liz would be subordinated by watching *Deep Throat*. Liz’s consumption of *Deep Throat* constitutes an interaction between competing understandings, even if Liz is unaware of the harm inflicted upon Linda. When Liz views *Deep Throat*, let us imagine that her context of receipt leads to her glorification of herself as the “blow-job queen” objectifying her male subject (which I would say is also morally condemnable, but does not constitute female subordination). While Liz’s interaction with *Deep Throat* cannot undo harm done to Linda, it does affect the meaning of *Deep Throat*: insofar as Liz’s consumption of pornography is discourse, and insofar as Liz, in a sense, co-opts a particular expression for her own instrumental use by consuming *Deep Throat*, she affects the film with her interaction. MacKinnon not only double-counts points for female subordination when she views Liz’s consumption of *Deep Throat* as a form of sexual abuse, she also refuses to count a point for female empowerment when she deems Liz’s contribution to the discourse irrelevant.

Likewise, MacKinnon double-counts when she deems Tom’s consumption of Liz’s dog-sex movie a form of sexual abuse. Tom’s context of receipt affects Liz’s particular expression. Like cell 2, cell 3 represents interaction between competing understandings. To be sure, Tom’s context

of receipt constitutes a harm of consumption since he reports being inspired to commit violent sex crimes as a result of consuming pornography. But does Tom's interaction with Liz's movie convert her particular expression into one of sexual abuse? I think not. Again, MacKinnon is double-counting when she assumes that Tom's use of Liz's movie harms Liz.²⁵

My argument is not that Liz's contribution to the discourse always outweighs the harms caused to Linda, or caused by Tom, or that it ever does. Rather, my argument is that: (1) MacKinnon is wrong to view harms as necessarily contagious (*e.g.* a harm of production permanently infects subsequent consumption of pornographic material, and vice-versa), and (2) her view reflects a failure to imagine the possibility of real discourse between competing contexts of inception and receipt.

B. MacKinnon Understands the Importance of Context Very Well — Consider Context “In the Macro”

Even if MacKinnon conceded that particular contexts of inception and receipt could affect the meaning of *specific instances* of pornography production and consumption, she could still maintain that the broader context of social gender inequality (context “in the macro”) renders pornography sexual abuse. Along these lines, MacKinnon says that she:

...does not presume that all pornography is made through abuse or rely on the fact that some pornography is made through coercion as a legal basis for restricting all of it. [Footnote omitted.] Empirically, all pornography is made under conditions of inequality based on sex, overwhelmingly by poor, desperate, homeless, pimped women who were sexually abused as children.²⁶

MacKinnon's argument here is that given the existing conditions of production (context in the macro), choices are constrained, and freedom is impossible. Further, this argument may be a way of denying the possibility that even a woman like Liz can truly consent to be in pornography, view pornography, or act out pornographic scenes.²⁷

I appreciate the force of MacKinnon's point here, and take it to be a separate project in and of itself to get clear about whether free choice and consent are possible against background conditions of inequality. That is an ambitious project, but not the aim of this paper. Consider the following reply, then, only a preliminary suggestion.

I think this portion of MacKinnon's argument (that laid out in this section, above) may prove too much. Conditions of production are “*what it takes* to make women do what it is in even the pornography that shows no

overt violence,”²⁸ but conditions of production are also ‘what it takes’ to make women clean toilets, and pick fruit. Arguably, conditions of production are ‘what it takes’ to make women become homemakers. More contentiously still: as conditions of production make some women *think* that they want to be prostitutes, strippers, or porn stars, conditions of production may make other women *think* they want to be corporate attorneys, or law professors. I am suggesting here that adaptive preferences know no culture or class. There is an obvious sense in which poverty constrains choice, but there is also a sense in which financial freedom does the same (*e.g.* I never *really* had the opportunity to become a bank robber or prostitute).

Of course MacKinnon is not just talking about poverty (though she worries about the ‘choices’ available to poor, desperate, homeless women). She mainly focuses on the background of sex inequality. But surely this inequality does not reside only in the underbelly of the pornography industry. As MacKinnon has written throughout her career, the same inequality pervades the home, school, and workplace.²⁹ If the background of gender inequality suffices to effectively invalidate Liz’s consent to make a dog-sex movie, then why does it not effectively invalidate MacKinnon’s consent to have *Only Words* published with Harvard University Press? MacKinnon thinks her consent is free, but so does Liz.

C. Pornography Is Not “A Particular Expression” At All

From the earliest stages of this paper, a MacKinnon objection has been brewing: by analyzing pornography as instances of “particular expression” I have assumed what I set out to prove. The whole point of *Only Words* is that pornography is *not* ‘only words’ but constitutes the *act* of sexual abuse. By analyzing pornography as expression, this objection runs, I have rejected MacKinnon’s analysis without argument. Making this point, MacKinnon writes:

With pornography, men masturbate to women being exposed, humiliated, violated, degraded, mutilated, dismembered, bound, gagged, tortured, and killed. In the visual materials, they experience this *being done* by watching it *being done*. What is real here is not that the materials are pictures, but that they are part of a sex act. The women are in two dimensions, but the men have sex with them in their own three-dimensional bodies, not in their minds alone.³⁰

To view *Deep Throat* as an expression of ideas, MacKinnon would say, is to turn a blind eye to the reality that the production of pornography requires sex *acts*, and the consumption of pornography is itself a sex *act*.

First, a picky point: I defined my term ‘a particular expression’ to include acts. This will probably not go far in convincing MacKinnon. She could argue that regardless of how I defined my terms, my mode of analysis treated pornography as speech, and not as an act.

In response, I will begin by noting that I am not debating MacKinnon about First Amendment jurisprudence. For the purposes of my argument in this paper, it does not actually matter whether pornography is considered speech or act. Even if pornography is an act at the stages of production and consumption (and I am sympathetic to the idea that it is), acts too are mediated through experience. Acts, too, are the stuff of interaction.

The fact that we call a pornographic film an act, and call its consumption an act too, does not mean that accurate descriptions and understandings of those acts are fixed as MacKinnon claims.

Dewey’s theory of language in fact contains the MacKinnonian idea that, “Gestures and cries are not primarily expressive and communicative... Language, signs and significance, come into existence not by intent and mind but by over-flow, by-products, in gestures and sound.”³¹ I think MacKinnon would agree with Dewey here (or Dewey with MacKinnon): pornography, like a gesture or cry, does not come into existence by ‘intent and mind’ (this is why MacKinnon points out that “an erection is neither a thought, nor a feeling, but a behavior”³²). Immediately after making this point, Dewey continues, “The story of language is the story of the use made of these occurrences; a use that is eventual as well as eventful.”³³ I think MacKinnon would agree with this point as well — why else would she focus on the consequent harms of pornography?

Then we have MacKinnon and Dewey on the same page. They agree that beneath what we call ‘language’ lurks events and actions; they also agree to focus on the *uses* made of these events and actions. Compatible with all of this is the Deweyian view that the ultimate uses made of an expression or action remains an open question, one to be determined in “a context of mutual assistance and direction.”³⁴ Though I do not think MacKinnon would officially disagree with this point either, it is here that I think *Only Words* diverges. A complete discussion of how she diverges appears in the following section.

D. MacKinnon Does Not Deny That Pornography Is “Active,” That Is In Fact Why She Opposes It

As the preceding section hints, MacKinnon seems to endorse something like the Deweyian account of expressions and acts as active. On this point she writes, “[Pornography’s] place in abuse requires understanding it

more in active than in passive terms, as constructing and performative rather than as merely referential or connotative.³⁵ Here, MacKinnon argues that pornography *acts* when injected into social discourse; pornography does more than merely signify an idea. At another point, MacKinnon says:

The fact that [the experience of pornography] is sexual does not erupt *sui generis* from pornography all by itself...The fact that pornography, like rape, has deep and broad social roots and cultural groundings makes it more rather than less active, galvanizing and damaging.³⁶

In this passage MacKinnon not only recognizes that pornography acts on society, but she recognizes this influence in a broader social and historical context. This move Dewey would certainly appreciate.

While MacKinnon's view that pornography acts upon consumers is more right than a view of pornography as 'merely referential or connotative,' her view is incomplete. She argues that pornography acts on consumers and that those consumers act on the world, but fails to notice ways in which consumers act *on pornography*. This is to notice that pornography sparks action, but to deny that it is a medium for interaction.

A better reply comes from Dewey. Dewey's critique in *Experience and Nature* of the Greek philosophers could well pass for a critique of MacKinnon. The Greeks recognized that communication is *discourse* (arguably, MacKinnon recognizes this when she argues that pornography acts on its consumers). Dewey praises the Greeks for this recognition.³⁷ But with measured praise for the Greeks (and, I suggest, MacKinnon), comes measured criticism too:

...[the Greeks] took the structure of discourse for the structure of things, instead of for the forms which things assume under the pressure and opportunity of social cooperation and exchange. They overlooked the fact that meanings as objects of thought are entitled to be called complete and ultimate only because they are not original but are a happy outcome of a complex history.³⁸

Does not MacKinnon take the current 'structure of discourse' for the 'structure of things' when she treats the meaning of pornography as 'original' (which I take to mean necessary, here) instead of treating pornography as the unhappy outcome of a complex history?

Does not MacKinnon treat pornography as *originally* or *necessarily* bearing the meaning it happens to have in the current structure of discourse³⁹ when she writes, "The message of these materials, and there is one,

as there is to all conscious activity, is ‘get her,’ pointing at all women...”⁴⁰ In this passage, MacKinnon treats pornography as necessarily having a single message, as if the message is absolutely constitutive of the materials. Ironically, this passage comes directly on the heels of her recognition that pornography is “constructing and performative.”⁴¹ Like the Greeks, MacKinnon identifies the activity and interaction inherent in communication, but makes too much of it: on the basis of her observation of a particular interaction (the current discourse, which is only the outcome of a complex history), she forms a fixed description of pornography. With finality she concludes that pornography has a single message (‘get her’), and as a result constitutes a form of sexual abuse.

Again, MacKinnon seems aware of the Deweyian point I have tried to develop here. She regularly notes that pornography is nothing in and of itself. Recall MacKinnon’s observation that, “[p]ornography does not leap off the shelf and assault women. Women could, in theory, walk safely past whole warehouses of it, quietly resting in its jackets.”⁴² Later, along the same lines, MacKinnon writes, “There is no such thing as pornography, or any social occurrence, all by itself.”⁴³ These points by MacKinnon would likely please Dewey, for in making them she demonstrates an appreciation for both the consequences of the materials (as in the first passage above), and for the social histories in which the materials are situated (as in the second passage above).

The trouble is that these passages ring hollow. They are unbelievable against the backdrop of her rhetoric and agenda. If there is no such thing as pornography by itself (that is, except as an outcome of a complex history), then why attempt to eradicate it? Why not attempt instead to affect the discourse of pornography (*i.e.* support pornography with female producers and consumers like Liz, who like the idea of a penis “slamming, jamming, ramming” in their vaginas)? If pornography is impotent in and of itself but dangerous only because of the consequences that attend in this particular snapshot of the human spirit (to borrow Hegel’s term), then why should we think that:

Sooner or later, in one way or another, the consumers want to live out the pornography further in three dimensions. Sooner or later, in one way or another they do. *It* makes them want to; when they believe they can, when they feel they can get away with it, *they* do it.⁴⁴

Quite unlike viewing the current discourse of pornography as ‘the forms which things assume under the pressure and opportunity of social cooperation and exchange,’ MacKinnon treats pornography as having cer-

tain, fixed, inevitable, and necessary consequences. It is hard to believe that MacKinnon thinks that pornography is not inherently bad, when she views it inflexibly as ‘sooner or later’ effecting sexual abuse, or as always constituting the same.

IV. CONCLUSION

In this paper, I borrowed from John Dewey’s views about the communication of acts and words to argue that the meaning of pornography arises from the *interaction* between speakers and listeners, or producers and consumers. This interaction, I argued, consists in the agreement or disagreement between, what I called, contexts of inception and contexts of receipt. I attacked MacKinnon’s indictment of pornography because, I argued, she fails to imagine a role for existing and emerging contexts that may alter the social discourse surrounding pornography, as well as the discourse that is pornography. This failure, I tried to show, comes from the fallacious substitution of the ‘structure of things’ for the ‘structure of discourse.’ There is nothing necessary, I argued, about the harms currently associated with pornography.

During my round of objections and replies, I noted that MacKinnon seems aware of most of the points raised in this paper. I was left wondering, though: if MacKinnon appreciates Dewey’s point about the role of interaction in the development of meaning, then why should she seek the eradication of pornography instead of a new influence upon the discourse of pornography?

The answer to the above question might be that it is just naïve to exclaim, “Any reality is possible!,” or to argue that one structure of discourse (*e.g.* the current structure in which pornography harms) can be traded in for another structure of discourse (*e.g.* one in which it does not) if only we begin developing a new complex social history. I am reminded of the infamous majority opinion in *Plessy v. Ferguson*, in which Justice Brown immortalized the following:

We consider the underlying fallacy in the plaintiff’s argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it.⁴⁵

Justice Brown was wrong to suck enforced racial segregation out of its social and historical context; he was wrong to pretend that the enforced segregation was a blank slate upon which ‘constructions’ could be placed.

Perhaps MacKinnon's final objection to this paper would be that, as Justice Brown was wrong in the context of segregation, I am wrong in treating pornography as a discourse open to new influences.

I am sensitive to this point, but view pornography as a discourse open to new influences because I notice a tremendous range of sexual practices, habits, and desires, and because I notice how central sexuality is to human flourishing. If there is any subject that should be interacted with, affected, changed, made, re-made, and re-invented, it is sex. Resistant to the idea that there are non-violent sex acts that cannot be positively affected and effective, I maintain that novel contexts of inception and receipt can produce harmless pornography.

NOTES

- 1 In 1919, prior to the full publication of *Ulysses*, parts of the novel appeared in a London magazine, *The Egoist*. Printers and subscribers promptly objected to the material, and by 1921 the magazine had been found guilty of obscenity. See Declan Kiberd, *Introduction* to JAMES JOYCE, *Ulysses* 933 (Penguin Books 1992) (1922). When driven to American publishers, Joyce still faced resistance on pain of the perceived obscenity of his novel; the United States Government tried (and succeeded between 1920 and 1933) to keep *Ulysses* without the American border. See *United States v. One Book Called "Ulysses"*, 5 F. Supp. 182, 183 (S.D.N.Y. 1933) (lifting a 13 year ban on *Ulysses*, Judge Woolsey found that "in spite of its unusual frankness," the novel lacked "the leer of the sensualist[,]" and was, therefore, not pornographic), *aff'd*, *United States v. One Book Entitled Ulysses by James Joyce*, 72 F.2d 705 (2d Cir. 1934).
- 2 JAMES JOYCE, *Ulysses* 933 (Penguin Books 1992) (1922).
- 3 See, e.g., Paul Lewis, '*Ulysses*' at Top As Panel Picks 100 Best Novels, N.Y. TIMES, July 20, 1998, at E1 (reporting that *Ulysses* had been selected by the Modern Library Board as the best English-language novel of the 20th century, and reporting that even critics of 100 Best Novels List agreed that *Ulysses* is, "the watershed novel of the 20th century from which all modernism flows").
- 4 CATHARINE MACKINNON, *Defamation and Discrimination*, in *Only Words* 9 (1993).
- 5 I will use the phrase "a particular expression" to mean any intentional form of communication, including words, acts, created images, and performances. I will use the term "speaker" to mean the person or persons who created, or were part of the creation of, a particular expression.
- 6 BAS VAN FRAASSEN, "The Pragmatics of Explanation," in *The Scientific Image* 156 (1980).
- 7 This much hopefully does not trigger a general debate about subjectivity/objectivity in philosophy of language. I take Van Fraassen to be making a modest claim that can steer clear of such a debate: the information request one intends to make when posing a why-question is related to the contrast-class she has in mind at the time that she poses the question.
- 8 NORWOOD RUSSELL HANSON, *Patterns of Discovery* 54 (1958).
- 9 MacKinnon seems to acknowledge the importance of contexts of receipt, as in when she writes of consumers of pornography, "Depending upon their chosen sphere of operation, they may use whatever power they have to keep the world a pornographic place so they can continue to get hard from everyday life." (MACKINNON, *supra* note 4, at 19.) I take her point here to be that the ultimate meaning of pornography (as expressed in its consequences) depends in part on the consumer's 'chosen sphere of operation.'
- 10 A complete discussion of MacKinnon's argument regarding these two harms will appear *infra* at 92.
- 11 JOHN DEWEY, *Experience and Nature* 179 (1958) (emphasis added).
- 12 *Id.* at 174.
- 13 A discussion of the context of the entire social background from which pornography emerges (context "in the macro") will appear *infra* at 100.
- 14 MACKINNON, *supra* note 4, at 15 (emphasis added).
- 15 For example, MacKinnon writes, "With pornography, men masturbate to women being exposed, humiliated, violated, degraded, mutilated, dismembered, bound, gagged, tortured, and killed." *Id.* at 17. I take this to be a general claim about

pornography's contexts of inception, or about the circumstances that surround the production of pornography.

16 MacKinnon warns:

As pornography consumers, teachers may become epistemically incapable of seeing their women students as their potential equals and unconsciously teach about rape from the perspective of the accused. Doctors may molest anesthetized women, enjoy watching and inflicting pain during childbirth, and use pornography to teach sex education in medical school. Some consumers write on bathroom walls. Some undoubtedly write judicial opinions. *Id.* at 19.

I take this to be a general claim about the contexts of receipt connected with pornography. MacKinnon's idea seems to be that pornography consumers will receive pornographic material in a way that fits into their areas of expertise. As in Norwood Hanson's example discussed *supra* at 8, to a doctor, even pornographic material will sound in her area of expertise. MacKinnon might say that this occurs as consumers learn *from* pornography, how to apply what they see in the pornography to their own professional and personal domains.

17 *Id.* at 21.

18 AGOTO KRISTOF, *The Notebook* (1986).

19 *Id.* at 29.

20 *Id.* at 86.

21 MACKINNON, *supra* note 4, at 18.

22 *Id.* at 24–25.

23 LIZ PHAIR, *Flower*, on *Exile from Guyville* (Capitol Records 1999).

24 This is not to suggest that Liz's unnamed male subject is powerless to affect the prospective interaction. Dewey writes, "To fail to understand is to fail to come into agreement in action; to misunderstand is to set up action at cross-purposes." DEWEY, *supra* note 11, at 179. If Liz's male subject objectifies Liz, then perhaps they are 'misunderstanding' each other; if he is unaware that Liz objectifies him, then perhaps they are 'failing to understand' each other. In any case, Liz's male subject will have his own contexts of inception and receipt; these may affect the prospective sexual interaction in various ways.

25 There is of course the possibility that speakers feel harmed any time their particular expressions are used in ways they did not envision. This harm, I take it, is not unique to the case of pornography, but shows up in many domains: when Andy Warhol uses Campbell Soup labels to construct art, or any time 'Weird Al' Yankovic writes a pop song that spoofs another artist.

26 MACKINNON, *supra* note 4, at 20.

27 Alternatively, MacKinnon could say that even granting the possibility that women could meaningfully consent to appear in pornography, such consent would still contribute to their subordination since it fits squarely within the prevailing male fantasy. Louis Menand made this point in 1994 when he wrote:

...mass-market pornography was not based, in the beginning, on the image of the sex-driven male. It was based on the image of the sex-driven female. The pop ideology of sexual liberation was that, contrary to the lesson taught by centuries of moral conditioning, women enjoyed sex as much as men and in the same way as men were imagined to enjoy it — that is, actively, promiscuously and without guilt. Most of the sexually explicit films of the era that achieved the status of cultural chic were about women in search of sexual

pleasure: *I Am Curious (Yellow)* (1968); *Deep Throat* (1972), *The Devil in Miss Jones* (1973) and the soft-core Emmanuelle films, which began in 1974.

These movies were produced entirely for the delectation of men, of course, and when Linda Marciano [Lovelace], star of *Deep Throat*, emerged a decade later to reveal that she had performed in that movie under duress, she exposed rather dramatically the extent to which the voraciously promiscuous woman of the sexual revolution, despite all the popular rhetoric about “free love” and “no double standard”, was just another male fantasy. (LOUIS MENAND, “Preaching Pornography, Part II,” *The Australian* (March 12, 1997).

28 *Id.* (emphasis in original).

29 See, e.g., CATHARINE MACKINNON, *Feminism Unmodified* (1987).

30 MACKINNON, *supra* note 4, at 17.

31 DEWEY, *supra* note 11, at 175.

32 MACKINNON, *supra* note 4, at 16.

33 DEWEY, *supra* note 11, at 175.

34 *Id.* at 176.

35 MACKINNON, *supra* note 4, at 21.

36 *Id.* at 18.

37 In contrast, Dewey criticizes modern philosophers, who, he claims, (wrongly) view communication as existing in “separate and private worlds made of sensations, images, [and] sentiments.” DEWEY, *supra* note 11, at 170.

38 *Id.* at 170–71.

39 Here, I am conceding for a moment that in the current structure of discourse, the production and consumption of pornography results in the consequences that MacKinnon describes in *Only Words*.

40 MACKINNON, *supra* note 4, at 21.

41 *Id.*

42 *Id.* at 15.

43 *Id.* at 18.

44 *Id.* at 19 (emphasis in original).

45 PLESSY V. FERGUSON, 163 U.S. 537, 551 (1896).