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*Philosophy and Public Affairs*, Vol. 22, No. 4. (Autumn, 1993), pp. 293-330.

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*Philosophy and Public Affairs* is currently published by Princeton University Press.

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RAE LANGTON

## Speech Acts and Unspeakable Acts

Pornography is speech. So the courts declared in judging it protected by the First Amendment. Pornography is a kind of act. So Catharine MacKinnon declared in arguing for laws against it.<sup>1</sup> Put these together and we have: pornography is a kind of speech act. In what follows I take this suggestion seriously.

If pornography is speech, what does it say? If pornography is a kind of act, what does it do? Judge Frank Easterbrook, accepting the premises of anti-pornography legislation, gave an answer. Pornography is speech that depicts subordination. In the words of the feminist ordinance passed in Indianapolis, pornography depicts women

dehumanized as sexual objects, things or commodities; enjoying pain or humiliation or rape; being tied up, cut up, mutilated, bruised, or physically hurt; in postures of sexual submission or servility or display; reduced to body parts, penetrated by objects or animals, or presented in scenarios of degradation, injury, torture; shown as filthy or inferior;

Special thanks for comments on earlier drafts and ancestors of this paper are due to Susan Brison, Mark Hannam, Sally Haslanger, Richard Holton, Jennifer Hornsby, Lloyd Humberstone, Philip Pettit, Sarah Richmond, Frederick Schauer, Michael Smith, Natalie Stoljar, and the Editors of *Philosophy & Public Affairs*.

1. In, e.g., Catharine MacKinnon, "Linda's Life and Andrea's Work," *Feminism Unmodified* (Cambridge, Mass.: Harvard University Press, 1987), p. 130. Pornography, as defined by MacKinnon, and as discussed in this paper, is not the same as obscenity. See MacKinnon, "Not a Moral Issue," *ibid.*; and Frank Michelman, "Conceptions of Democracy in American Constitutional Argument: The Case of Pornography Regulation," *Tennessee Law Review* 56 (1989): 294n.8. MacKinnon drafted an ordinance that was passed in Indianapolis in 1984, but was then challenged and defeated. See *American Booksellers, Inc. v. Hudnut*, 598 F.Supp. 1327 (S. D. Ind. 1984). The ordinance made trafficking in pornography civilly actionable, rather than simply prohibiting it. I do not address this admittedly important feature of the legislation here.

bleeding, bruised or hurt in a context which makes these conditions sexual.<sup>2</sup>

Pornography is a kind of act that has certain effects. Depictions of subordination, said Easterbrook, “tend to perpetuate subordination. The subordinate status of women in turn leads to affront and lower pay at work, insult and injury at home, battery and rape on the streets.” His conclusion was that the ordinance was unconstitutional: for, he said, “this simply demonstrates the power of pornography as speech.”<sup>3</sup>

Pornography, on this view, depicts subordination and causes it. A closer look at the words of the ordinance shows us that MacKinnon is saying something more. Before describing what pornography depicts, the ordinance begins: “We define pornography as the graphic sexually explicit subordination of women in pictures or words.” Besides depicting and causing subordination, as Easterbrook allowed, pornography *is*, in and of itself, a form of subordination.<sup>4</sup>

This latter aspect of the legislation provoked the ire of judges and philosophers alike. In proposing that pornography actually is subordination, the drafters of the ordinance were tricksters, guilty of “a certain sleight of hand,” said Judge Barker, in the district court.<sup>5</sup> They were guilty of conceptual confusion, and their claim was “philosophically indefensible,” said William Parent in the *Journal of Philosophy*.<sup>6</sup> It is all very well to talk about

2. MacKinnon, “Francis Biddle’s Sister,” *Feminism Unmodified*, p. 176.

3. *American Booksellers, Inc. v. Hudnut*, 771 F.2d 329 (7th Cir. 1985).

4. Easterbrook’s omission has been commented upon by Melinda Vadas in “A First Look at the Pornography/Civil Rights Ordinance: Could Pornography Be the Subordination of Women?” *Journal of Philosophy* 84 (1987): 487–511. Vadas is interested, as I am, in saving the “subordinating” claim from charges of conceptual confusion, and she develops an interesting analysis which differs from that offered here. She says that some predicates can apply to a representational depiction because they apply to the scene depicted. “Subordinates” is such a predicate, in her view, so pornographic depictions of subordination can themselves subordinate. My view is that the link is not as close as she sees it: an utterance’s depicting subordination is neither necessary nor sufficient for its having the force of subordination. The reasons for this will emerge shortly.

5. *Hudnut*, 598 F.Supp. 1316 (1984).

6. W. A. Parent, “A Second Look at Pornography and the Subordination of Women,” *Journal of Philosophy* 87 (1990): 205–11. Parent’s article is a response to Vadas’s. He argues, by means of the following remarkable non sequitur, for the different conclusion that pornography is morally evil (p. 211). “Evil” means “depraved.” “To deprave” means “to debase.” “To debase” means “to bring into contempt.” Pornography brings women into contempt, ergo pornography is evil. What actually follows from Parent’s lexicographical premises is of course that *women* are evil. Women are brought into contempt (by pornography), therefore debased, therefore depraved, therefore evil.

what pornography depicts; and it is all very well to talk about the effects it has on the lives of women. It is all very well to say, with Easterbrook, that pornography depicts subordination and causes it. Such claims may be unnerving, and they may be empirically false, but they are not, at least, incoherent. MacKinnon wants to say something more: she wants to attend not simply to the content of pornographic speech, nor simply to its effects, but to the actions constituted by it.

What she says may strike a chord of recognition among those who recall an older, more tranquil debate in the philosophy of language, and a philosopher who took as his starting point the slogan that “to say something is to do something.” In *How to Do Things with Words*, J. L. Austin complained of a “constant tendency in philosophy” to overlook something of great importance: a tendency to consider the content of a linguistic utterance, and its effects on hearers, but to overlook the action constituted by it.<sup>7</sup> Austin encouraged philosophers to shift their gazes away from statements considered in isolation, sentences that describe, truly or falsely, some state of affairs, and look instead at “the issuing of an utterance in a speech situation.”<sup>8</sup> Words, he said, were used to perform all kinds of actions—warning, promising, marrying, and the like—that philosophy had blithely ignored.

To say something is usually to do a number of different things. An example (from Austin):<sup>9</sup> Two men stand beside a woman. The first man turns to the second, and says “Shoot her.” The second man looks shocked, then raises a gun and shoots the woman. You witness the scene and describe it later. The first man said to the second, “Shoot her,” meaning by “shoot” to shoot with a gun, and referring by “her” to the woman nearby. That description roughly captures the content of what was said: it captures what Austin called the *locutionary* act. To perform a locutionary act is to utter a sentence that has a particular meaning, as traditionally conceived.<sup>10</sup> However, there is more to what you witnessed, so you describe the scene again. By saying “shoot her,” the first man *shocked* the second; by saying “shoot her,” the first man *persuaded* the second to shoot the woman. That description captures some of the effects of what was said: it captures what Austin called the *perlocutionary* act. But if you stop there you will still have left something out. You will have ignored what the first man did in saying what

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

8. *Ibid.*, p. 139.

9. *Ibid.*, p. 101 (my version is a slight elaboration).

10. *Ibid.*, p. 109.

he said. So you go on. *In* saying “shoot her,” the first man *urged* the second to shoot the woman. That description captures the action constituted by the utterance itself: it captures what Austin called the *illocutionary* act. The actions listed earlier—warning, promising, marrying—are illocutionary acts. Austin’s complaint was that this latter dimension to speech was often ignored, that there was “a tendency in philosophy to elide [illocutions] in favour of the other two.”<sup>11</sup>

Pornography is not always done with words. Yet Easterbrook’s description exemplifies the tendency of which Austin complained. Pornography depicts subordination and causes it. That—in Austin’s terms—is to describe its locutionary and perlocutionary dimensions. What is missing is a description of the actions constituted by pornographic utterances: in Austin’s terms, pornography’s *illocutionary* force. MacKinnon supplies such a description when she says that pornography is an act of subordination.

Like Austin, MacKinnon wants to undermine the dichotomy between word and action. “Which is saying ‘kill’ to a trained guard dog, a word or an act?” she asks, in a passage that echoes Austin’s example.<sup>12</sup> MacKinnon has accordingly been interpreted as saying that pornography is unprotected conduct rather than protected speech,<sup>13</sup> and one might imagine that Austin’s approach gives this idea some support. If pornography is a kind of act, and action is conduct, then, one might think, pornography is unprotected by the First Amendment. But that interpretation of MacKinnon is wrong. “To state the obvious,” she says, “I do not argue that pornography is ‘conduct’ in the First Amendment doctrinal sense.”<sup>14</sup> In any case Austin’s approach would give it no support, for it does not help us to distinguish conduct from speech. If there is a line that divides speech from conduct in the law, it does not divide speech from action in Austin’s philosophy. On his view, *all* speech acts are actions. To say that pornography is a kind of act is not to say that pornography is conduct, and nothing that I say will turn on that claim. The important point is that actions, whether speech or conduct, can be protected or unprotected by law.<sup>15</sup> Whether they are

11. *Ibid.*, p. 103.

12. MacKinnon, “Not a Moral Issue,” *Feminism Unmodified*, p. 156.

13. For example by Barker, 598 F.Supp. 1316, 1330 (1984).

14. “Francis Biddle’s Sister,” *Feminism Unmodified*, p. 300n.155.

15. Expressive conduct is protected; speech of various kinds—libel, for instance—is unprotected. See Laurence Tribe, *American Constitutional Law*, 2d ed. (Mineola, N.Y.: Foundation Press, 1988), chap. 12. Tribe also comments: “The trouble with the distinction between speech and conduct is that it has less determinate content than is sometimes supposed. . . . It

protected should depend, in general, on the effects they have, and the actions they are. On MacKinnon's view pornography is speech, not conduct, but it is speech that should be left unprotected for the same kinds of reasons that other actions are sometimes left unprotected: because of the effects they have, and because of the actions they are.

Austin and MacKinnon are emerging as close, if unlikely, cousins. In this article I exploit the work of the former to illuminate and defend the latter. I shall be concerned with two central claims. First is the claim already encountered, that pornography *subordinates* women. If Austin is right, the accusations of trickery and conceptual confusion leveled at this claim may be misguided. Second is the claim that pornography *silences* women.<sup>16</sup> This idea is sometimes offered in reply to the traditional "free speech" defense of pornography. "The free speech of men silences the free speech of women. It is the same social goal, just other *people*," says MacKinnon, arguing that feminist antipornography legislation is motivated by the very values enshrined in the First Amendment.<sup>17</sup> This claim too has been regarded as problematic: its detractors describe it as "dangerous confusion," while even sympathizers have reservations, conceding that the silence in question is "figurative," "metaphorical."<sup>18</sup> Drawing on Austin, we can show that the silence is not metaphorical, but literal, and that the second feminist claim is as defensible as the first.

The claim that pornography subordinates women, however interpreted, is a claim that pornography determines women's inferior civil status. Viewed thus, the ordinance poses an apparent conflict between liberty and

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is . . . not surprising that the Supreme Court has never articulated a basis for its distinction; it could not do so, with the result that any particular course of conduct may be hung almost randomly on the 'speech' peg or the 'conduct' peg as one sees fit" (p. 827). Speech-act theory gives some grounds for being dubious about the distinction, but that is not the point of what I have to say.

16. This idea is developed by MacKinnon and others in many places, but see, e.g., MacKinnon, "Sexual Politics of the First Amendment," *Feminism Unmodified*, p. 209.

17. MacKinnon, "Not a Moral Issue," *ibid.*, p. 156. (I don't think much hinges here on MacKinnon's talk of free speech being a social goal, rather than a right.)

18. Defending censorship in the name of liberty is "a dangerous confusion"; the idea that pornography silences is "confusion"; see Ronald Dworkin, "Two Concepts of Liberty," in *Isaiah Berlin: A Celebration*, ed. Edna and Avishai Margalit (London: Hogarth Press, 1991), pp. 103, 108. The claim that pornography silences is "somewhat figurative," and "metaphorical," according to Frank Michelman, "Conceptions of Democracy," p. 294n.8. (This figurativeness is not a handicap to the silencing argument in his view, however.) Dworkin's argument is criticized in more detail by Jennifer Hornsby, "Language, Power, and 'Silencing,'" and by myself in "Pornography and Liberty: Reply to Dworkin," both in progress.

equality: the liberty of men to produce and consume pornography, and the rights of women to equal civil status. That is how the case was viewed by the courts. It posed a conflict between the right to free speech guaranteed by the First Amendment, and the right to equality guaranteed by the Fourteenth Amendment. The claim that pornography silences women expresses a different conflict, one within liberty itself. Viewed thus, the ordinance poses an apparent conflict between the liberty of men to produce and consume pornography, and the liberty of women to speak.

One eminent liberal theorist is on record as saying that only an argument based on this second claim could have any prospect of success. It is only by developing the argument that pornography silences women that one could “hope to justify censorship within the constitutional scheme that assigns a preeminent place to free speech,” says Ronald Dworkin in a recent essay.<sup>19</sup> His conclusion there is that the “silencing” argument is unsuccessful. Dworkin is mistaken in his assumption, as there are other ways of arguing for censorship. Indeed Dworkin’s own theory provides an excellent resource for supplying such arguments, as I have shown elsewhere.<sup>20</sup> I think he is also mistaken in his conclusion, and although this paper does not address his argument directly, the final section will go some way towards showing why.

My paper divides into two parts, addressing the two ideas one at a time. Once we consider pornographic images and texts as speech acts, we are in a position to apply to them Austin’s distinctions between locutionary, illocutionary, and perlocutionary acts. We can make good sense of some central feminist claims when we focus on the illocutionary aspect of pornographic speech. In the first section I develop and defend the claim about subordinating. In the second section I develop and defend the claim about silencing, drawing again on Austin. The relationship between speech and power is a large and daunting topic, but without getting into deep theoretical water we can begin with the following simple observation. The ability to perform speech acts of certain kinds can be a mark of political power. To

19. Dworkin, “Two Concepts,” p. 108.

20. In “Whose Right? Ronald Dworkin, Women, and Pornographers,” *Philosophy & Public Affairs* 19, no. 4 (Fall 1990): 311–59. There I develop two independent arguments from a Dworkinian theoretical perspective for the conclusion that pornography ought to be censored. The first is an argument of principle: the fact that preferences of pornographers are by Dworkin’s standards external preferences shows that women would have rights against a permissive policy. The second is an argument of policy: a prohibitive policy might have social equality as its goal, and pornographers would then have no rights against it.

put the point crudely: powerful people can generally do more, say more, and have their speech count for more than can the powerless. If you are powerful, there are more things you can do with your words.

This bears on the question about silence. If you are powerful, you sometimes have the ability to silence the speech of the powerless. One way might be to stop the powerless from speaking at all. Gag them, threaten them, condemn them to solitary confinement. But there is another, less dramatic but equally effective, way. Let them speak. Let them say whatever they like to whomever they like, but stop that speech from counting as an *action*. More precisely, stop it from counting as the action it was intended to be. That is the kind of silencing I will consider, and it is a kind of silencing about which Austin had something to say, without commenting on its political significance. Some speech acts are *unspeakable* for women in some contexts: although the appropriate words can be uttered, those utterances fail to count as the actions they were intended to be. If it can be shown that pornography contributes to this kind of silencing, then we will have a new way of understanding the second feminist claim.

My task, then, is partly diagnostic and partly polemical. Some of what I have to say will be as tentative and exploratory as Austin's own suggestions were. Some will not. Readers may find glaring sins of omission. Speech other than pornography may subordinate and silence women, and this raises important questions that are beyond the present project. But I will develop an analysis of the claims about subordinating and silencing that, if correct, will vindicate an argument that has been dismissed as philosophically incoherent. Whatever grounds one might have for doubting MacKinnon's conclusions, philosophical indefensibility is not among them. Understanding how pornographic utterances are speech acts will help to vindicate the claim about subordination. Understanding how some potential speech acts can be made unspeakable for women will help to vindicate the claim about silencing. If the argument makes the first claim plausible, pornography poses a conflict between liberty and equality. If it makes the second plausible, pornography poses a conflict between liberty and liberty: in particular between the free speech of men and that of women.

If pornography does pose these conflicts, how then should it be treated by the law? On MacKinnon's view, speech that subordinates and silences women is speech that should not be protected by law. Those who share MacKinnon's view may find in my arguments direct support for censorship. However, some may see a gap between conclusions about the defen-



sibility of these feminist claims and conclusions about the need for censorship. There may well be such a gap, and if there is, it is one that I do little to bridge here with independent argument. The reader must rest content with a more modest result: the twin feminist claims are certainly coherent, and, granting some not entirely implausible empirical assumptions, they may well be true.

### I. "PORNOGRAPHY SUBORDINATES"

#### *Speech Acts*

Before considering whether pornographic speech acts may subordinate, we will first look at speech acts in closer detail, and then ask whether in principle speech acts may subordinate.

Austin's chief concern was with illocutionary speech acts, and much labor in *How to Do Things with Words* is devoted to discovering what is distinctive about them. An illocutionary act is the action performed simply *in* saying something. A perlocutionary act is the action performed *by* saying something. A perlocutionary act is an utterance considered in terms of its consequences, such as the effects it has on its hearers. Austin took pains to distinguish illocutions from perlocutions, and he thought that the phrases "in saying" and "by saying" were typical—though by no means infallible—markers of the two. "In saying 'I do' I was marrying; by saying 'I do' I greatly distressed my mother." Saying "I do" in the right context counts as—constitutes—marrying: that is the illocutionary act performed. It does not count as distressing my mother, even if it has that effect: that is the perlocutionary act performed.

The illocutionary act bears certain relations to the other two. It can be thought of as a *use* of the locution to perform an action. In the earlier example, the first man used the locution "shoot her" to *urge* the second to shoot, whereas he might have used the very same locution to perform a different action: to *order* the second, or to *advise* perhaps. An illocutionary act may have a particular perlocutionary effect as its goal. When the first man urged the second to shoot, he may have aimed to *persuade* the second to shoot.

Austin's belief that there is something distinctive about illocutionary acts seems right. What we have here are utterances whose force is something more than the semantic content of the sentence uttered—the locution—and something other than the effects achieved by the utterance—the per-

locution. What is responsible for this important third dimension? Austin's answer was that an utterance has illocutionary force of a certain kind when it satisfies certain felicity conditions. These are typically set by conventions, written or unwritten, and typically require that the speaker is intending to do something with his words. Speech acts are a subset of actions in general, so there will always be some description under which a speech act is intentionally performed, and not mere noise and motion of lips.<sup>21</sup> The intention to perform an illocution of a particular kind often has an important role to play in determining what illocution is performed. Whether in saying "I do" the speaker is marrying depends on the felicity conditions of marriage, which require that the speaker intends to marry, and that the utterance takes place in the course of a particular conventional procedure, with appropriate participants (adult heterosexual couple, unmarried, plus priest or registrar). The speaker will also need to secure "uptake": that is to say, the hearer must recognize that an illocution of a certain kind is being performed. So, at any rate, the typical cases run.

However, speech acts are heir to all the ills that actions in general are heir to.<sup>22</sup> What we do, and what we aim to do, are not always the same. Speech acts can be unhappy, can misfire. Sometimes one performs an illocution one does not intend to perform. The first man, of the earlier example, may have ordered the second to shoot the woman, even if he did not intend to order, but merely, say, to advise. "Coming from him, I took it as an order," the second might have said.<sup>23</sup> This is because the intention to perform an illocution of a certain kind is not always a necessary felicity condition for that illocution. Here the context determines the uptake secured, which in turn determines the illocution performed. Moreover, sometimes one fails to perform an illocution one intends to perform. A

21. See Jennifer Hornsby, "Philosophers and Feminists on Language Use," *Cogito* 2 (Autumn 1988): 13–15. For a similar approach to some of the questions addressed in this article, see Hornsby's excellent piece, "Illocution and Its Significance," forthcoming in *Foundations of Speech Act Theory: Philosophical and Linguistic Perspectives*, ed. S. L. Tsohatzidis (London and New York: Routledge, 1994). Hornsby develops a sophisticated and somewhat different account of illocutions, and uses it to explain how women can be silenced. She too considers the examples of refusal and giving testimony considered later in this article.

22. Austin, *How to Do Things with Words*, p. 105.

23. See *ibid.*, p. 76. (The ordering discussed in this passage is contrasted with requesting, rather than advising, as I have it.) This interpretation conflicts with some views about speech-act theory, but not, I think, with Austin's. See for example *ibid.*, p. 114n.1., where the ordering versus advising example appears. What the example has in common with those Austin labeled misfires is that there is a gap between the intended and the actual illocution.

misfire would occur, for instance, if the marriage ceremony was not completed, if the celebrant turned out to be an actor in priestly garb, or (Austin's example) if the prospective spouse was a monkey.<sup>24</sup> This is because the intention to perform an illocution of a certain kind is not the only felicity condition for that illocution. These kinds of unhappiness will occupy our attention in the final section.

### *Subordinating Speech Acts*

We turn now to the second preliminary task: the question of whether speech acts can, in principle, subordinate. Austin placed his theory of speech and action firmly in the arena of social activity, and there is a political dimension to this arena. People manage to do all kinds of things with words. Besides advising, warning, and marrying one another, people also manage to hurt and oppress one another. A child may chant that "sticks and stones may break my bones, but names will never hurt." Names do hurt, though. That is just why she chants. And that is why the law regards some speech as injury. Words can break bones. "Shoot her!" might break a few, as a perlocutionary act at any rate. ("By saying 'shoot her' he caused her skull to be fractured.") Speech can do more than break bones. It can determine civil status, as Easterbrook agreed, interpreting the idea in perlocutionary terms: by depicting subordination, pornographers perpetuate subordination.

When MacKinnon says that speech can subordinate, she means something more: that pornography can have the illocutionary force of subordination, and not simply have subordination as its locutionary content, or as its perlocutionary effect: *in* depicting subordination, pornographers subordinate. This is the alleged "sleight of hand."<sup>25</sup>

We need to evaluate this charge. Can a speech act be an illocutionary act of subordination? The answer, I think, is yes. Consider this utterance: "Blacks are not permitted to vote." Imagine that it is uttered by a legislator in Pretoria in the context of enacting legislation that underpins apartheid. It is a locutionary act: by "Blacks" it refers to blacks. It is a perlocutionary act: it will have the effect, among others, that blacks stay away from polling booths. But it is, first and foremost, an illocutionary act: it makes it the case that blacks are not permitted to vote. It—plausibly—subordinates blacks. So does this utterance: "Whites only."<sup>26</sup> It too is a locutionary act: by

24. *Ibid.*, p. 24.

25. Judge Barker's accusation, see 598 F.Supp. 1316 (1984).

26. MacKinnon uses this example to make the point that words can be "an integral act in a

“Whites” it refers to whites. It has some important perlocutionary effects: it keeps blacks away from white areas, ensures that only whites go there, and perpetuates racism. It is—one might say—a perlocutionary act of subordination. But it is also an illocutionary act: it orders blacks away, welcomes whites, permits whites to act in a discriminatory way towards blacks. It subordinates blacks.<sup>27</sup> If this is correct, then there is no sleight of hand, no philosophical impropriety, about the claim that a certain kind of speech can be an illocutionary act of subordination.

In virtue of what do the speech acts of apartheid subordinate? In virtue of what are they illocutionary acts of subordination? In virtue of at least the following three features, I suggest. They *rank* blacks as having inferior worth. They *legitimate* discriminatory behavior on the part of whites. And finally, they *deprive* blacks of some important powers: for example, the power to go to certain areas and the power to vote. Here I am in broad agreement with MacKinnon, who says that to subordinate someone is to put them in a position of inferiority or loss of power, or to demean or denigrate them.<sup>28</sup>

There are two brief caveats before I go on. First, on the notion of legitimating: the illocutionary act of legitimating something is to be distinguished from the perlocutionary act of making people believe that something is legitimate. Certainly one effect of legitimating something is that people believe it is legitimate. But they believe it is legitimate because it has been legitimated, not vice versa. People believe discriminatory behavior to be legitimate because it has indeed been made legitimate in that particular arena of activity (though there may still be some perspective outside that arena from which one can say that discriminatory behavior is never truly legitimate).<sup>29</sup> Second, I do not suggest that all acts of ranking, legitimating,

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system of segregation, which is a system of force” (MacKinnon, “On Collaboration,” *Feminism Unmodified*, p. 202).

27. Here I depart from Vadas (“A First Look”), for it is not in virtue of depicting subordination that the “whites only” sign subordinates, if it does. That utterance does not depict subordination, any more than “I do” depicts a marriage. So something can subordinate without depicting subordination. The converse is also true. Something can depict subordination without subordinating (a documentary, for example). Some examples of this will be considered shortly.

28. MacKinnon, “Francis Biddle’s Sister,” p. 176.

29. Compare an example borrowed from David Lewis. A master says to a slave: “It is now permissible to cross the white line.” In saying that, the master makes a certain move, performs a certain illocutionary act: he makes it legitimate for the slave to cross the white line. The boundaries of what is legitimate and what is not change immediately. The beliefs of the slave as to what is legitimate will also change—that is to speak of the action’s effects, its perlocution-

or depriving of powers are acts of subordination. Someone may rank an athlete as the fastest, legitimate beer drinking on campus, or deprive a driver of his license. These may be illocutionary acts that rank, legitimate, or deprive people of powers, yet they are not acts of subordination. But, unlike these, the speech acts of apartheid are acts of subordination: they *unfairly* rank blacks as having inferior worth; they legitimate *discriminatory* behavior on the part of whites; and they *unjustly* deprive them of some important powers.

Speech acts of this kind belong to an important class of illocutions discussed by Austin towards the end of his work. Some illocutions involve the authoritative delivery of a finding about some matters of fact or value. Actions of ranking, valuing, and placing are illocutions of this kind, labeled *verdictive* by Austin. For example: An umpire calls "Fault" at a tennis match. He expresses his opinion. He describes the world as he sees it. But he does much more than that: he gives his verdict. A bystander says "Fault." He expresses his opinion. He describes the world as he sees it. What he says has just the same content as what the umpire says: they perform the same locutionary act. But the bystander's utterance makes no difference to the score. The umpire's does. A government's action of ranking members of a certain race as inferior to others can be compared to the speech of the umpire, rather than the bystander. The authoritative role of the speaker imbues the utterance with a force that would be absent were it made by someone who did not occupy that role.

Close relatives of verdictives are illocutions that confer powers and rights on people, or deprive people of powers and rights. Actions of ordering, permitting, prohibiting, authorizing, enacting law, and dismissing an employee are illocutions of this kind, labelled *exercitive* by Austin.<sup>30</sup> The speech acts of apartheid that legitimate discriminatory behavior and unjustly deprive blacks of certain rights have an exercitive force that would be absent if they were made by speakers who did not have the appropriate authority.

It is in virtue of these particular verdictive and exercitive dimensions,

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ary dimension. Here too there may also be some perspective from which we might say that it was never truly illegitimate for the slave to cross the line, but that would be to move outside the bounds of the language game in question. See Lewis, "Scorekeeping in a Language Game," *Philosophical Papers*, vol. 1 (Oxford: Oxford University Press, 1983), pp. 233–49.

30. Austin's discussion of verdictives and exercitives is in lecture 11, especially sections 1 and 2, pp. 152–56. The description I give of exercitives is used by him for what is strictly a proper subset of that class (p. 155).

then, that the speech acts of apartheid subordinate. This already tells us something important about any claim that a certain kind of speech subordinates. For the crucial feature of verdictive and exercitive illocutions is their sensitivity to the speaker's authority, and we can accordingly group them together under the label *authoritative* illocutions: actions whose felicity conditions require that the speaker occupy a position of authority in a relevant domain. Sometimes that authority is officially recognized. That is true of the utterances of the legislator enacting the laws of apartheid, and it is true of the umpire giving a verdict on a fault. But the principle that illocutionary force can vary with the authority of the speaker is more general. A slave may say to his master, "Is there anything to eat?" and the utterance may have the force of an entreaty. The master may say to the slave, "Is there anything to eat?" and the utterance may have the exercitive force of an order. And the domains of authority can vary in size and scope. The domain of the legislator's authority is vast—the entire population of a nation, present and future. There are smaller domains. A parent who prohibits a child from venturing barefoot into the snow has authority in the local domain of the family. A patient who prohibits a doctor from administering life-saving medication has authority in the very local domain of his own life, his own body. In all these cases the action performed depends on the authority of the speaker in the relevant domain. Subordinating speech acts are authoritative speech acts, so if we are ever to count some class of speech acts as subordinating speech, the speakers in question must have authority. This is something to bear in mind in what follows.

### *Pornography*

MacKinnon thinks that pornography in particular subordinates. The courts sometimes view this claim as a description of pornography's content. "Those words and pictures which *depict women in sexually subordinate roles* are banned by the Ordinance," said Judge Barker in the district court, giving this as grounds for the Indianapolis Ordinance's unconstitutionality.<sup>31</sup> Barker is mistaken: the ordinance does not ban material simply by virtue of its content, for at this locutionary level there is nothing particularly distinctive about pornography. Not all sexually explicit depictions of subordination are pornography, as MacKinnon herself points out.<sup>32</sup> Utterances whose locutions depict subordination do not always subordinate.

31. 598 F.Supp. 1316 (1984), my italics.

32. MacKinnon, "Francis Biddle's Sister," p. 176.

Locutions that depict subordination could in principle be used to perform speech acts that are a far cry from pornography: documentaries, for example, or police reports, or government studies, or books that protest against sexual violence, or perhaps even legal definitions of pornography. It all depends, as Austin might have said, on the *use* to which the locution is put. If we are to find what is distinctive about pornography, it seems that we must look elsewhere.

The perlocutionary aspect of pornographic utterances has rightly attracted much attention. This, as we saw, is how Easterbrook interpreted MacKinnon's claim when he said that pornography "perpetuates" subordination. At the perlocutionary level, pornographic speech can be variously described. Some hearers are entertained and sexually aroused by it. At this level a difference between pornography and documentaries that depict subordination does emerge. Although similar locutions may be used in both cases, different effects are achieved in the hearers: sexual arousal in the one case, indignation, perhaps, in the other. Pornography does more than arouse. Some of its hearers are distressed by it, as was made evident at the 1983 Minneapolis hearings. Some, it seems, have their attitudes and behavior altered by it in ways that ultimately hurt women: they can become more likely to view women as inferior, more disposed to accept rape myths (for example, that women enjoy rape), more likely to view rape victims as deserving of their treatment, and more likely to say that they themselves would rape if they could get away with it.<sup>33</sup> This in turn means that some women are hurt by it. In Easterbrook's words, pornography perpetuates the cycle of "insult and injury at home, battery and rape on the streets."

The claim that pornography harms women is not yet the perlocutionary claim conceded by the court that pornography perpetuates women's subordination. Plenty of people are harmed by cigarettes, but they are not thereby subordinated. A link between harm and subordination is made,

33. So I interpret the available evidence. See Edward Donnerstein, Daniel Linz, and Steven Penrod, *The Question of Pornography: Research Findings and Policy Implications* (New York: Free Press; London: Collier Macmillan, 1987). Note that material that is sexually arousing and violent but *not* sexually explicit may also have these effects. See also *Public Hearings on Ordinances to Add Pornography as Discrimination Against Women*, Committee on Government Operations, City Council, Minneapolis, Minn. (Dec. 12–13, 1983); transcript of hearings published as *Pornography and Sexual Violence: Evidence of the Links* (London: Everywoman, 1988); and the *Report of the Attorney General's Commission on Pornography* (Washington, D.C.: United States Government Printing Office, 1986).

though, when we shift our perspective on the asymmetric pattern of sexual violence and view it afresh, not simply as harm or as crime, but as an aspect of women's subordinate status.<sup>34</sup> To view it otherwise would be to obscure its systematically discriminatory nature, and to obscure the fact that the perpetrators are nearly always members of one class of citizens, the victims nearly always members of another. This shift in perspective is an important feature of feminist political analysis, and it affects how we are to characterize pornography in perlocutionary (and, we shall see shortly, illocutionary) terms. If pornography has sexual violence as its effect and sexual violence is an aspect of women's subordination, then pornography is a *perlocutionary* act of subordination. That is how we reach the claim conceded by Easterbrook: pornography perpetuates women's subordination.

However, the claim that pornography subordinates women is an illocutionary claim that goes beyond these locutionary and perlocutionary dimensions, and it is related to other illocutionary claims that feminists have made about pornography. Pornography is said to *rank* women as sex objects, "defined on the basis of [their] looks . . . [their] availability for sexual pleasure."<sup>35</sup> Pornography represents degrading and abusive sexual behavior "in such a way as to *endorse* the degradation."<sup>36</sup> MacKinnon has a striking list of illocutionary verbs: "Pornography sexualizes rape, battery, sexual harassment . . . and child sexual abuse; it . . . *celebrates, promotes, authorizes and legitimates* them."<sup>37</sup> These descriptions bear on the claim that pornography subordinates. Recall that we found three features in virtue of which the speech acts of apartheid were plausibly described as illocutionary acts of subordination. They rank certain people as inferior; they legitimate discriminatory behavior towards them; and they deprive them of powers and rights. The feminist claims we have just considered ascribe to pornography the first two of the three features. Pornography is, first, verdictive speech that ranks women as sex objects, and, second,

34. MacKinnon argues for this change of perspective in "Francis Biddle's Sister" and elsewhere.

35. MacKinnon, "Francis Biddle's Sister," p. 173.

36. Helen E. Longino, "Pornography, Oppression and Freedom: A Closer Look," in *Take Back the Night: Women on Pornography*, ed. Laura Lederer (New York: William Morrow, 1980), p. 29. (Longino has the entire phrase in italics.)

37. MacKinnon, "Francis Biddle's Sister," p. 171, emphasis mine. I do not italicize "sexualizes" because I think it may be a perlocutionary rather than an illocutionary verb, meaning something like "makes viewers find the thought of rape, etc., sexually arousing." But perhaps it is an illocutionary verb meaning something like "legitimizes rape, etc., in describing it as if it were normal sex."



exercitive speech that legitimates sexual violence. Since sexual violence is not simply harm, not simply crime, but discriminatory behavior, pornography subordinates because it legitimates this behavior. (Now we see how the feminist shift of perspective on violence affects our characterization of pornography at the illocutionary level as well.) For these two reasons, then, pornography is an *illocutionary* act of subordination. That, at any rate, is the claim.

However, there is disagreement—to put it mildly—about the correct ascription of pornography's illocutionary force. And this raises some questions. How, in general, do we discover what illocutionary force an utterance has? And what do we do in the face of disagreement? These are difficult questions, whose difficulty Austin acknowledged and sought—with limited success—to alleviate. Disagreements about the ascription of illocutionary force can be hard to settle, the utterances in question needing to have “a construction put upon them by judges.”<sup>38</sup>

In situations of disagreement, the disputed illocution usually falls short of the paradigm case for the given illocution. In the paradigm case, one knows just what the felicity conditions for the given illocution are, and one knows that they are all satisfied. She said “I do” in the presence of priest and groom, the ceremony was uninterrupted, she intended to marry, etc., so in saying “I do,” she must have been marrying. Moreover, in the paradigm case, one knows that appropriate uptake is secured: all present took the parties to have been marrying. And one knows about the perlocutionary effects: the later beliefs of others that the parties were married, the mother's distress, the grandmother's joy, and so forth. But when a speech act falls short of the paradigm, though not far short, there may be dispute as to what illocutionary act was performed. Suppose the marriage ceremony is interrupted at the very end by the priest's sudden heart attack. Not quite all the felicity conditions for marriage are satisfied, and doubtless the event is infelicitous in our usual sense of that term, but it may be near enough, perhaps, to count as a marriage nonetheless. Or suppose it is not known for certain that the priest's qualifications meet the required standard, for he is a refugee whose papers are missing. Not all the felicity conditions for marriage are known to be satisfied, but near enough, perhaps, to count as a marriage nonetheless. The first case presents a problem of vague boundaries: we know that not all conditions have been satisfied, but perhaps it is

38. Austin, *How to Do Things with Words*, p. 114.

close enough. The second presents a problem of ignorance: we do not know that all conditions have been satisfied, but again, perhaps it is close enough. In both cases, what we have resembles but falls short of the paradigm, and we have to ask ourselves, how close is close enough? Here there is scope for argument.

One may argue in different ways. First, one may argue that, vagueness or ignorance notwithstanding, *some* felicity conditions—important ones—are satisfied, and that is good enough. “Shoot her” might count as an order, even if it failed exactly to match the paradigm—e.g., if it was intended merely as advice, but was spoken by someone in authority, in an appropriate context. Second, one may argue that *uptake* appropriate for the claimed illocution has been secured. “Coming from him, I took it as an order,” as the hearer may have said. Its being taken as an order may be a reason for thinking it was an order. Third, one may argue that a speech act’s effects are best *explained* by supposing that it has a certain illocutionary force. Part of the explanation for my arriving at your party is that you performed a certain illocutionary act: you invited me. Part of the explanation for my taking the glass is that you performed another illocutionary act: you offered it to me. Part of the explanation for whites’ discriminatory behavior is that such behavior has been legitimated by law. Part of the explanation for blacks keeping away from certain areas is that they have been ordered away. In such cases the illocutionary acts explain the perlocutionary effects.

All three ways of arguing are fallible, and they come in an ascending order of fallibility. The first, which says that at any rate *some* important felicity conditions have been satisfied, is tolerably secure. It is certainly a part of our practice of ascribing illocutions in everyday life, where the problems of vagueness and ignorance do not halt us in our tracks. “In ordinary life,” as Austin says, “a certain laxness . . . is permitted.”<sup>39</sup> The second is more fallible: securing appropriate uptake may not be sufficient for the illocution in question. The third is also fallible, since there may be other possible explanations for the known effects: I may have come to your party uninvited. However, each of the three, or some combination of them, may be useful, depending on the evidence we have.

We are now in a position to consider the disputed question: does pornography subordinate? Since there is a dispute, it may be that pornography

39. *Ibid.*, p. 37. Austin is speaking in particular here about failures to satisfy completely the procedural felicity conditions for an illocution.

fails to match exactly the illocutionary paradigm. I have not tried to say exactly what the paradigm for subordination is, but I have suggested that the speech acts of apartheid offer a clear example. They have verdictive and exercitive force: they rank a class of people, legitimate discrimination against them, and deprive them of rights and powers. Their felicity conditions include the condition that the speakers occupy a position of authority. They are speech acts that achieve a certain uptake: they are taken to be verdictive and exercitive acts (though not all hearers will take them to be subordinating acts). They are illocutions that have a pattern of perlocutionary effects on the beliefs and behavior of the population: whites believe blacks to be inferior, believe discrimination against them to be legitimate, and believe them to have fewer rights; whites discriminate against blacks, and blacks stay away from polling booths. Such speech acts are clearly acts of subordination.

Pornography falls short of this devastating paradigm in a number of important respects, but it may nonetheless be subordination. There is scope for argument in all three of the ways I discussed above. I begin with the third. We might find *explanations* for pornography's perlocutionary effects in terms of its illocutionary force. If the earlier claims are right, then pornography has a certain pattern of perlocutionary effects. It can affect attitudes and behavior, making its hearers more likely to view women as inferior, more disposed to accept rape myths, more likely to view rape victims as deserving of their treatment, and more likely to say that they themselves would rape if they could get away with it. Part of the explanation for this pattern might be that pornography has a particular illocutionary force: it ranks women as sex objects, and legitimates that kind of behavior. If pornography has the perlocutionary effects MacKinnon claims, then there is some reason for thinking it has the illocutionary force she and other feminist writers have ascribed to it.

This conclusion is reached by inference to the best explanation, and it is fallible. The hypothesis that you invited me to your party may best explain my arrival, but there are other possible explanations. Similarly, the hypothesis that pornography ranks women and legitimates certain attitudes and behavior may well explain the presence of these attitudes and behavior, but there are other possible explanations. The feminist claim would be strengthened if there were other ways to argue for the conclusion that pornography subordinates.

Let us consider the second way of arguing. What *uptake* does pornogra-

phy secure in its hearers? What act do its hearers take it to be? The answer is mixed. Some hearers take it to be entertainment, escapist storytelling. Other hearers take it to be subordination. They take pornography to be something that ranks them, judges them, denigrates them, and legitimates ways of behaving that hurt women. Here we find vivid disagreement among the hearers as to just what the speech act is. Austin said that in such cases utterances are liable to have “a construction put upon them by judges,” but who is in a position to judge? We might say that those women who take pornography to be subordination are in a better position to judge, that they can tell better than some other hearers what ranks them, what demeans and denigrates them, and what seems to legitimate ways of acting that are violent. But unless we privilege one group of hearers in this way, our result with this way of arguing will be inconclusive, though it may give some support to the claim that pornography subordinates.

We come now to the first way of arguing. The task of discovering whether some important *felicity conditions* are met looks more hopeful, for at least we know one felicity condition for subordination, and could in principle know whether pornography satisfies it. Since verdictives and exercitives are both *authoritative* illocutions, we know that the ability to perform them depends on the speaker’s authority. The umpire, and not the bystander, can call a fault. The government, and not the private citizen, can enact law that ranks and legitimates. The authority in question need not be as formally recognized as in those cases, but it needs to be there. This means that in order to answer the question, “Does pornography subordinate?” one must first answer another: “Do its speakers have authority?” If they do, then a crucial felicity condition is satisfied: pornographers’ speech acts may be illocutions that authoritatively rank women, legitimate violence, and thus subordinate.

This question is, I think, at the heart of the controversy. If you believe that pornographic utterances are made by a powerless minority, a fringe group especially vulnerable to moralistic persecution, then you will answer negatively. Not so if you believe, with MacKinnon, that pornography’s voice is the voice of the ruling power. Liberal debate about pornography has typically been premised on the former belief, and part of MacKinnon’s task is to persuade us that it is false. Just as the speech of the umpire is authoritative within a certain domain—the game of tennis—so pornographic speech is authoritative within a certain domain—the game of sex. The authors of pornographic speech are not mere bystanders to the game; they

are speakers whose verdict counts. Pornography tells its hearers what women are worth: it ranks women as things, as objects, as prey. Pornography tells its hearers which moves are appropriate and permissible: if it tells them that certain moves are appropriate because women want to be raped, it legitimates violence. If pornography is authoritative speech it may subordinate.

Does pornographic speech have the authority required to substantiate MacKinnon's claim? Is this crucial felicity condition satisfied? These are not really questions to be settled from the philosopher's armchair. To answer them one needs to know about the role pornographers occupy as authoritative speakers about the facts, or supposed facts, of sex. What is important here is not whether the speech of pornographers is universally held in high esteem: it is not—hence the common assumption among liberals that in defending pornographers they are defending the underdog. What is important is whether it is authoritative in the domain that counts—the domain of speech about sex—and whether it is authoritative for the hearers that count: people, men, boys, who in addition to wanting “entertainment,” want to discover the right way to do things, want to know which moves in the sexual game are legitimate. What is important is whether it is authoritative for those hearers who—one way or another—do seem to learn that violence is sexy and coercion legitimate: the fifty percent of boys who “think it is okay for a man to rape a woman if he is sexually aroused by her,” the fifteen percent of male college undergraduates who say they have raped a woman on a date, the eighty-six percent who say that they enjoy the conquest part of sex, the thirty percent who rank faces of women displaying pain and fear to be more sexually attractive than faces showing pleasure.<sup>40</sup> In this domain, and for these hearers, it may be that pornography has all the authority of a monopoly.<sup>41</sup>

I have tried to show that pornography may subordinate, even if it falls short of the illocutionary paradigm. We earlier distinguished two ways in which actions may fall short. There may be vague boundaries in a situation

40. The first statistic comes from a UCLA study, Jacqueline Goodchild et al. cited in Robin Warshaw, *I Never Called It Rape* (New York: Harper and Row, 1988), p. 120; the second and third from studies by Alfred B. Heilbrun, Emory University, and Maura P. Loftus, Auburn University, cited in Naomi Wolf, *The Beauty Myth* (New York: Vintage, 1990), p. 166; the fourth from research done by Virginia Greenlinger, Williams College, and Donna Byrne, SUNY-Albany, cited in Warshaw, p. 93.

41. For a good discussion of the effect of this monopoly on the fantasy lives of these hearers and women as well, see Wolf, *The Beauty Myth*, esp. pp. 162–68.

where we know that not all conditions are satisfied and wonder whether what we have is close enough. There can be ignorance, where we do not know whether all conditions are satisfied. It may be that pornography falls short in both ways. We have the problem of ignorance: we are not certain that pornography is authoritative, and hence not certain whether it satisfies a crucial felicity condition for subordination. But supposing the problem of ignorance were remedied and pornography was known to satisfy this condition, the problem of vague boundaries might still remain. We might know that pornography satisfied many, but not all, the usual conditions for subordination. One typical feature of actions of ranking and legitimating, for example, is that the speakers *intend* to rank and legitimate. I have not argued that pornography satisfies that condition. But if pornography conforms closely enough to the paradigm in other respects, it may subordinate nonetheless.

The claim that pornography subordinates has good philosophical credentials: it is not trickery, or “sleight of hand”; it is by no means “philosophically indefensible.” Moreover, considerations about explanation, uptake, and the felicity conditions for subordination give us reasons—though not conclusive ones—for thinking that the claim may be true. Pornography’s effects may be best explained by supposing that it has the illocutionary force of subordination. An important group of pornography’s hearers—even if not its intended hearers—take it to be subordination. And if the empirical premise about pornography’s authority turns out to be true, then pornography satisfies a crucial felicity condition for subordination.

What we have not yet considered, however, is whether speech that subordinates should be restricted by law. As we noted at the outset, it does not immediately follow from the claim that pornography subordinates women that censorship is the best answer. What follows is that there is a conflict between liberty and equality, just as the courts declared. One possible response to this conflict might be to fight for equality in ways compatible with respecting the liberty of pornographers. What I have said leaves open that possibility. If pornography subordinates women, then it is not in virtue of its content but of its authority that it does so. It need not have that authority. There are imaginable circumstances where material just like pornography in other respects would have no authority, and in such circumstances such speech would not subordinate. MacKinnon’s claim is that those circumstances are not ours, though one can hope that someday they will be.

This way of understanding the subordination claim thus has implications for policy. There may be ways of undermining pornography's authority that fall short of outright censorship, ways that would eventually relegate pornographers to the status of mere bystanders to the game, whose speech does not count. Perhaps pornographic speech could be fought with more speech: the speech of education to counter pornography's falsehoods, where women tell the world what women are really like,<sup>42</sup> or with the speech of competition to counter pornography's monopoly, where women themselves become authors of erotica that is arousing and explicit but does not subordinate.<sup>43</sup>

All this may be possible if women can indeed fight speech with more speech. But if pornography not only subordinates but *silences* women, it is not easy to see how there can be any such fight. At this point the second feminist claim demands our attention. Whether women can fight speech with more speech depends on whether, and to what extent, women can speak.

## II. "PORNOGRAPHY SILENCES"

### *Silenced Speech Acts*

If speech is action, then silence is failure to act. If pornography silences women, then it prevents women from doing things with their words. Before considering whether pornography silences women, I will look at how speech acts, in general, may be silenced, and then ask whether in principle speech acts can silence.

The ability to perform speech acts can be a measure of political power. Those who are able to use the utterance "Blacks are not permitted to vote" with the illocutionary force of prohibition are, as we saw, the ones with authority. Conversely, one mark of powerlessness is an inability to perform speech acts that one might otherwise like to perform. Corresponding to Austin's threefold distinction, we can distinguish three kinds of silence, for

42. In the final chapter of *The Question of Pornography*, Edward Donnerstein advocates education to counteract pornography's harmful effects.

43. This is advocated by the Women Against Censorship group, who, as *amici curiae*, protested against the MacKinnon ordinance; see also *Pleasure and Danger: Exploring Female Sexuality*, ed. Carol Vance (London: Routledge and Kegan Paul, 1984); and the collection *Sex Exposed: Sexuality and the Pornography Debate*, ed. Lynne Segal and Mary MacIntosh (New Brunswick, N.J.: Rutgers University Press, 1993).

there are three kinds of acts one may fail to perform. All three have their political significance, I think, but my chief interest will be in the third.

At the first and most basic level, members of a powerless group may be silent because they are intimidated, or because they believe that no one will listen. They do not protest at all, because they think that protest is futile. They do not vote at all, because they fear the guns. In such cases no words are uttered at all. In Austin's terms, speakers fail to perform even a *locutionary* act.

Sometimes, however, people will speak, but what they say will fail to achieve the effects that they intend: such speakers fail to perform their intended *perlocutionary* act. Silencing of this second kind, which we can call *perlocutionary frustration*, is a common enough fact of life: one argues, but no one is persuaded; one invites, but nobody attends the party; one votes, hoping to oust the government, but one is outnumbered. Such frustration can have a political dimension when the effects achieved depend on the speaker's membership in a particular social class.

But there is a third kind of silencing that happens when one speaks, one utters words, and fails not simply to achieve the effect one aims at, but fails to perform the very action one intends. Here speech misfires, and the act is unhappy in the way that Austin described: although the appropriate words are uttered, with the appropriate intention, the speaker fails to perform the intended *illocutionary* act. Silencing of this third kind we can call *illocutionary disablement*, and it is that to which we now turn our attention.<sup>44</sup>

In the previous section we considered how certain illocutions include among their felicity conditions the requirement that the speaker have authority in a relevant domain. Having authority can thus enable a speaker to perform illocutionary acts not otherwise available. Illocutionary disablement presents us with the other side of the same phenomenon: not having

44. Habermas too is interested in the connection between the social power of speakers and the opportunities those speakers have to select and employ speech acts. But the constraints on speech acts that interest him (e.g., economic, psychological) are different from the structural constraints that interest me here. Insofar as illocutionary acts are identified by Habermas with *communicative* speech acts, which are to be found in the utopian "ideal speech situation," his version of speech-act theory would in fact make the analysis I give here impossible. See Jürgen Habermas, *The Theory of Communicative Action* (Boston: Beacon Press, 1984), esp. vol. 1, pp. 288–91. I am interested in precisely those illocutions that he leaves aside, those that are made against a backdrop of social inequality and sometimes help to bring that inequality about.



authority in the relevant domain can disable a speaker from performing illocutionary acts. That is why the ability to perform illocutionary acts can be viewed as a measure of authority, a measure of political power. Think again about the master and the slave. The master can order the slave or advise him. The master can grant or deny the slave permission to act in certain ways. The slave cannot grant or deny his master permission. He cannot order his master, though he may entreat him. The asymmetry of the power balance is reflected in the asymmetry of their abilities to perform certain illocutionary acts. Attempts by the slave to order or forbid will always be unhappy in Austin's sense. Such acts are unspeakable for the slave. Something has silenced his speech, not in the sense of rendering his spoken words inaudible or written marks illegible, but in the sense of depriving those sounds and marks of illocutionary force: of preventing those utterances from counting as the actions they were intended to be.

*Example (1): Warning.* This example is from Donald Davidson.

Imagine this: the actor is acting a scene in which there is supposed to be a fire. . . . It is his role to imitate as persuasively as he can a man who is trying to warn others of a fire. "Fire!" he screams. And perhaps he adds, at the behest of the author, "I mean it! Look at the smoke!" etc. And now a real fire breaks out, and the actor tries vainly to warn the real audience. "Fire!" he screams. "I mean it! Look at the smoke!" etc.<sup>45</sup>

The actor says words that are appropriate for the action he wants to perform. He gets the locutionary act exactly right. He intends to warn; if appropriate intention is among warning's felicity conditions, then that is a condition he satisfies. But he does not warn. Uptake is not secured. Something about the role he occupies prevents his utterance from counting as a warning. Something, perhaps, about the conventions of theatre constrains the speech acts he can make. The same words said with the same intentions by an audience

45. Donald Davidson, "Communication and Convention" in *Inquiries into Truth and Interpretation* (Oxford: Oxford University Press, 1984), p. 269. Davidson does not, of course, take this example to illustrate the power of convention, as I do. On the contrary, he infers from this example that convention can do far less than it is commonly supposed to do; in particular, convention could never succeed in making an utterance count as an assertion. I am not sure that I have any quarrel with the latter, but I am interested here in a different question: whether conventions of a different kind, those of theatre, can sometimes be sufficient to block an utterance's having the intended illocutionary force.

member would count as a warning. The actor, though, has been silenced. The act of warning has been made unspeakable for him.

*Example (2): Marriage.* To say “I do” is, given the right circumstances, to marry, given that the felicity conditions of marriage are satisfied. Suppose now that both parties intending to marry are male. They sincerely intend to marry. The speaker uses the right locution. The priest is no mere actor. The ceremony is performed by the book. The speaker satisfies all the felicity conditions but one. Something about who he is, and who his partner is, prevents him from satisfying one crucial felicity condition. The act of marrying misfires. The felicity conditions of marriage are such that two male participants cannot succeed. The act of marriage is not speakable for homosexual couples. The power to marry, an important power available to other citizens, is not available to them.

*Example (3): Voting.* A white South African makes marks on a piece of paper in a polling booth. A black South African makes marks that look just the same, and in similar conditions. Their intentions, we can imagine, are just the same. But the former has succeeded in doing something significant. He has voted. The latter has not. Something about who he is prevents him from satisfying a crucial felicity condition. South African law prevents his utterance from counting as a vote: voting is not speakable for him. He too lacks an important political power available to other citizens.

*Example (4): Divorce.* To utter the words “*mutallaga, mutallaga, mutallaga*” (literally “divorced, divorced, divorced”) is to perform the illocutionary act of divorce in a country where Islamic law is in force, provided certain felicity conditions are met. Pronounced by a husband to his wife, it is an act of divorce. Not so if it is pronounced by the wife to her husband. No matter how hard she tries, a woman cannot succeed in divorcing her spouse by making that or any relevantly similar utterance. Divorce of that kind is an act that is unspeakable for women.<sup>46</sup>

46. As far as *talak* divorce is concerned, “a woman [has] no power of divorce”; see Honorable Moulvi Mahomed Yusoof Khan Bahadur, *Mahomedan Law*, vol. 3 (Calcutta: Thacker, Spink & Co., 1898), p. 47. However, there are some qualifications. The husband may delegate the right of *talaq* to his wife; see Keith Hodkinson, *Muslim Family Law* (London: Croom Helm, 1984), p. 222. Although *talaq* is the commonest kind of divorce, there are other means of achieving divorce, some of which are available to women in certain special circumstances (ibid., pp. 219–306).

*Silencing Speech Acts*

We have just considered briefly some ways in which speech can be silenced: simple silence, where nothing is said at all; perlocutionary frustration, where a speaker says words, succeeds in performing the intended illocution, but fails to achieve the intended effect; and the special silence of illocutionary disablement, singled out and illustrated in the above examples. The next task is to address the question of whether and how speech can actively silence. This question has been addressed by many other writers, and there are all kinds of subtle ways that speech can silence that I shall not consider. But we will see that each of the three kinds of silence to which I drew attention in the last section can be brought about by speech. This means we can usefully distinguish three kinds of silencing speech, in line with Austin's categories. My chief interest is in the question of whether speech can bring about the third silence of illocutionary disablement; and my way in to this question will be to consider, by way of contrast, the two kinds of silencing speech that differ.

Some speech is silencing speech by virtue of being an order or a threat. Suppose a judge, faced with a heckling crowd, says, "Silence in the court." His illocution is an order, and it aims to achieve a certain effect, namely silence in the court. That is the perlocutionary goal of the judge's utterance, as Austin would have put it. The ensuing silence of the would-be hecklers is real, and it is simple silence: no sounds are made at all, not even a locutionary act is performed. The same is true of the silence that is a response to a threat. Some speech, however, silences not by preventing a speaker from uttering words, but by preventing a speaker from achieving their intended effect. The perlocutionary goal of the man who said "shoot her" might have been frustrated had the woman said "Don't!" and the second man heeded her, and disobeyed the first man. Her action might have silenced the first man by frustrating the effect he intended.

Neither of these is the silence of illocutionary disablement. The woman would not make the first man's illocution unspeakable. He has already spoken. She would not prevent him from ordering, but she prevents him from being obeyed. Nor does the judge make the heckler's intended illocution literally unspeakable when he says "silence." Someone courageous enough or foolhardy enough could speak up anyway. He would then be disobeying the judge, and may well be punished for it, but he would have succeeded in performing his intended action nonetheless. Contrast this with the previous examples. A black who makes marks on the

ballot paper does not *disobediently vote*; he does not vote. A homosexual who says “I do” does not *disobediently marry*; he does not marry. These actions, unlike the order, unlike the heckling, really have been made unspeakable.

Is it possible for speech to silence in this latter way? Is it possible to silence someone, not by ordering or threatening them into simple silence, not by frustrating their perlocutionary goals, but by making their speech acts unspeakable? This is a question about the role speech may play in disabling speakers, preventing them from satisfying the felicity conditions for some illocutions they might want to perform. So far we have noted the phenomenon of illocutionary disablement, but not yet asked how it comes about. Austin offers little explicit guidance here, but there is an implicit answer.

Felicity conditions, he says, are fixed by conventions. In examples (2)–(4) they are formal laws spelling out the conditions that must be met for marriage, voting, and divorce. Felicity conditions are not always (not even usually) spelled out in laws though, and for promising, warning, urging, protesting, and so forth, it will not always be clear just what the felicity conditions are, what the conventions are, or whether there are really conventions at all. Suppose we go with Austin and use “convention” as a loose label for whatever sets felicity conditions. How do these come into being? When we consider some of Austin’s paradigm cases, we see that one way that conventions are brought into being, one way that felicity conditions are set, is indeed by means of other speech acts. These are “*words that set conditions*” in MacKinnon’s phrase.<sup>47</sup> In examples (2)–(4), laws are *enacted* that set felicity conditions for marriage, voting, and divorce. Some illocutionary acts fix the range and scope of other illocutionary acts. Some speech acts build a space, as it were, for other speech acts, making it possible for some people to marry, vote, and divorce. Some speech acts, in contrast, set limits to that space, making it impossible for other people to marry, vote, divorce. Some speech determines the kind of speech there can be. This shows that it is indeed possible to silence someone, not just by ordering or threatening them into simple silence, not just by frustrating their perlocutionary goals, but by making their speech acts unspeakable. It is possible to use speech to disable speakers, and possible to prevent them

47. MacKinnon, *Feminism Unmodified*, p. 228, my italics. She is referring here to the words of legal enactments, but it is not quite—or rather, not just—*felicity* conditions she has in mind.

from satisfying the felicity conditions for some illocutions they might want to perform.

Felicity conditions for illocutions in general are rarely spelled out in the words of legal enactments. What then of the conventions that set conditions for other illocutions, warning, protesting, urging, and the rest? If it is hard to say just what the conditions are, it will be harder still to say what sets them. But again, the answer may be that, by analogy with the legal cases, they can be set by what is said, this time by informal practices of speech and communication that gradually establish precedents and informal rules about what counts as, for example, a warning. As in the legal examples, felicity conditions can be set by words. The space for potential speech acts can be built by speakers, as can the limits on that space, the constraints responsible for the silence of illocutionary disablement. Let us at least take this as our working hypothesis.

### *Pornography*

We have seen how speech can be silenced, and we have seen how speech can silence. MacKinnon's claim is that pornographic speech, in particular, silences the speech of women. It is time now to address that claim. But I approach it indirectly, with some more examples.

*Example (5): Refusal.* Consider the utterance "no." We all know how to do things with this word. We use it, typically, to disagree, to refuse, or to prohibit. In sexual contexts a woman sometimes uses it to refuse sex, to prohibit further sexual advances. However, in sexual contexts something odd happens. Sometimes a woman tries to use the "no" locution to refuse sex, and it does not work. It does not work for the twenty percent of undergraduate women who report that they have been date raped. It does not work for the twenty-five percent of final-year schoolgirls who report that they have been sexually forced.<sup>48</sup> Saying "no" sometimes doesn't work, but there are two ways in which it can fail to work. Sometimes the woman's hearer recognizes the action she performs: i.e., he recognizes that she is

48. The first statistic comes from a study of students at the University of South Dakota. There are comparable and worse figures for other universities: St. Cloud State University (twenty-nine percent of the women students reported having been raped), Auburn University (twenty-five percent reported having been raped at least once), and Brown University (sixteen percent reported having been date raped), cited in Wolf, *The Beauty Myth*, pp. 166, 167. The second statistic comes from J. Caputi, *The Age of Sex Crime* (London: The Women's Press, Ltd., 1987), p. 119.

refusing. Uptake is secured. In saying “no,” she really does refuse. By saying “no,” she intends to prevent her hearer from continuing his advances. But the hearer goes ahead and forces sex on the woman. She prohibits, but he fails to obey. She fails to achieve the goal of her refusal. Her refusal is frustrated. “Perlocutionary frustration” is too meek and academic a label for what is simple rape.

Sometimes, though, there is the different phenomenon of illocutionary disablement. Sometimes “no,” when spoken by a woman, does not *count* as the act of refusal. The hearer fails to recognize the utterance as a refusal; uptake is not secured. In saying “no” she may well intend to refuse. By saying “no” she intends to prevent sex, but she is far from doing as she intends. Since illocutionary force depends, in part, on uptake being secured, the woman fails to refuse. She is in the position of the actor in Davidson’s story, silenced as surely as the actor is silenced. He shouts “Fire!” He performs the appropriate locutionary act. He means what he says. He intends to warn. He tries to warn. But what he says misfires. Something about him, something about the role he occupies, prevents him from warning the audience. She says “no.” She performs the appropriate locutionary act. She means what she says. She intends to refuse. She tries to refuse. But what she says misfires. Something about her, something about the role she occupies, prevents her from voicing refusal. Refusal—in that context—has become unspeakable for her. In this case refusal is not simply frustrated but disabled.

*Example (6): Protest.* The following appeared in a mail-order catalog advertising “adult reading,” flanked by such titles as 426. *Forbidden Sexual Fantasies* and 428. *Orgy: an Erotic Experience*.

No. 427 *ORDEAL: an autobiography by Linda Lovelace*. With M. McGrady. The star of *Deep Throat* tells the shocking story of her enslavement in the pornographic underworld, a nightmarish ordeal of savage violence and unspeakable perversion, of thrill seeking celebrities and sadistic criminals. For Sale to Adults Over 21 Only.

*Ordeal* is a book that has been much cited by feminists who oppose pornography.<sup>49</sup> The testimony of Linda Lovelace, or Linda Marchiano, to use her real name, features in evidence about pornography presented at the 1983

49. Linda Lovelace, with Mike McGrady, *Ordeal* (Secaucus, N.J.: Citadel Press, 1980).

Minneapolis hearings.<sup>50</sup> In the book Marchiano tells the story of her involvement with the making of the film *Deep Throat*, describing how she was beaten, hypnotized, and tortured in order to perform her starring role. Austin once commented that one can perform the illocutionary act of protest a number of different ways: one can shout words in protest; one can hurl a tomato in protest.<sup>51</sup> One can also write a book in protest. *Ordeal* is an act of protest, a resounding denunciation of the industry in which Marchiano says she was forced to perform. One can see why it was used in the antipornography hearings. As a locutionary act *Ordeal* depicts the subordination of a woman: it depicts a woman “in scenarios of degradation, injury and torture.” But it does not invite fantasy and arousal. It invites indignation. It does not “endorse the degradation”; it does not “celebrate, promote, authorize and legitimate” the sexual violence. It does not have pornography’s illocutionary force.

Why then is *Ordeal* in a mail-order catalog for adult reading? The answer is simple. It is there because it is pornography after all: here, in this context, for these intended hearers, the uptake secured is bound to be that of pornography. Marchiano says the words appropriate for an act of protest. She uses the right locutions, words that graphically depict her own subordination. She intends to protest. But her speech misfires. Something about who she is, something about the role she occupies, prevents her from satisfying protest’s felicity conditions, at least here. Though the threats and gags are gone, there is silence of another kind. She too is in the plight of Davidson’s actor. Warning was unspeakable for him. Protest is unspeakable for her.<sup>52</sup> What he tries to say comes out as “merely acted.” What she tries to say comes out as pornography. Her protest has been disabled.

MacKinnon claims that pornography silences the speech of women. But how? We noted that one way that speech can silence is in virtue of being an order or a threat that induces simple silence in its hearers. That is the first

50. See *Hearings*.

51. *How to Do Things with Words*, p. 118.

52. *Ordeal* has not misfired *tout court*; in many contexts it has succeeded as an illocutionary act of protest. A similar sexually explicit depiction of subordination that aims to be protest rather than pornography is Andrea Dworkin’s *Mercy* (London: Secker and Warburg, 1990), and it may provoke similar paradoxes. Harriet Gilbert argues that Dworkin’s *Mercy* and Sade’s *Justine* have much in common, and that the former could arguably count as pornography by the ordinance definition, showing, in her view, the futility of attempts at legal definition (“So Long as It’s Not Sex and Violence,” in *Sex Exposed*).

kind of silencing. MacKinnon cites cases where pornography itself is used to threaten: children coerced into pornography are blackmailed into silence by pornographers who threaten to show the pornography to their parents and teachers. Pornographic depictions of their subordination are used to threaten and thereby perpetuate that same subordination.<sup>53</sup> The silence here is simple: the children say nothing because they are afraid.

Pornography may silence in the second way: by preventing women, not from speaking, but from achieving the effects they want to achieve. If, as was argued above, pornography legitimates sexual violence, then it follows that one of pornography's effects may be to prevent a woman's refusal of sex from achieving its intended purpose. If pornography legitimates rape, then it may silence refusal by frustrating its perlocutionary goal. For many cases of rape, and probably all that reach the courts, match the first pattern described in (5) above: the woman whose hearer recognized that she refused, and persisted in spite of it, or perhaps because of it; the woman whose hearer recognized the prohibition and disobeyed. If pornography legitimates rape of this kind, it does so by sexualizing the use of force in response to refusal that is recognized as refusal. Such pornography eroticizes refusal itself, presenting the overpowering of a woman's will as exciting. Someone learning the rules of the sexual game from that kind of pornography would recognize a woman's refusal and disobey it. This would be one way in which pornography frustrates the goals of women's speech.

But we have seen that there is the possibility of a different kind of silence: the silence not just of frustration but of illocutionary disablement, manifested by the would-be warnings, marriages, votes, and divorces of examples (1)–(4). And this silencing is manifested in examples (5) and (6): the illocutionary disablement of the second rape victim, whose attempted refusal is not even recognized as a refusal; the disablement of an author whose attempted protest is not recognized as protest. These misfires betray the presence of structural constraints on women's speech. If Austin is right, the explanation for the unhappiness here is that the felicity conditions for refusal, for protest, are not being met. Something is robbing the speech of its intended force. Whatever the conventions governing sexual interactions may be, they can mean that intending to refuse, intending to protest, is not enough. The rules fixing possible moves in the language games of sex are such that saying "no" can fail to count as making a refusal

53. MacKinnon, "Francis Biddle's Sister," p. 180, citing evidence from the Minneapolis hearings.



move, and telling the story of one's own subordination can fail to count as a move of protest. These are illocutions whose felicity conditions, it seems, cannot be satisfied by women, at least in these contexts.

What, if anything, has pornography to do with this third kind of silence, this disablement of women's speech that can make rape so hard to prevent and hard to protest about? If the felicity conditions for such illocutions constrain women in these contexts, we need to ask how those conditions came into being. This question was asked about the conditions that constrain illocutions of marriage, divorce, and the like, and the answer was that they were set by the speech of the legislator. How then are these other felicity conditions set? We know that felicity conditions for illocutions in general can be set by other speech acts. MacKinnon's claim that pornography silences women can be interpreted in just this way. *The felicity conditions for women's speech acts are set by the speech acts of pornography.* The words of the pornographer, like the words of the legislator, are "words that set conditions." They are words that constrain, that make certain actions—refusal, protest—unspeakable for women in some contexts. This is speech that determines the kind of speech there can be.

Let us see how this might apply to the second refusal in (5). Pornography might legitimate rape, and thus silence refusal, by doing something other than eroticizing refusal itself. It may simply leave no space for the refusal move in its depictions of sex. In pornography of this kind there would be all kinds of locutions the women depicted could use to make the consent move. "Yes" is one such locution. "No" is just another. Here the refusal move is not itself eroticized as in the pornography considered earlier: it is absent altogether. Consent is the *only* thing a woman can do with her words in this game. Someone learning the rules of the game from this kind of pornography might not even recognize an attempted refusal. "Coming from her, I took it as consent," he might say.<sup>54</sup> Refusal would be made unspeakable for a woman in that context.

How common is silencing of this kind and the rape that accompanies it? It is hard to tell because so tiny a fraction of rapes are reported and these would be least reported of all. But the study that found that one in four final-

54. This paraphrases Austin's example, in *How to Do Things with Words*, p. 76. These different motivations for rape were described by an anonymous and articulate young rapist interviewed on the Australian Broadcasting Commission's documentary "Without Consent" (1992), who said that rapes are committed for the thrill of overpowering a woman's will; the gang rapes he had taken part in for the sake of mateship and male camaraderie were not rapes at all, on his view, despite the women's lack of consent. His idea seemed to be that it was only rape if the woman's lack of consent was essential to the rapist's experience.

year schoolgirls had been sexually forced also found that one in seven boys of the same age reported having refused to take no for an answer. One reading of this is that the boys in question recognized the refusal and persisted in spite of it. Naomi Wolf's comment suggests something further: that

boys rape and girls get raped *as a normal course of events*. The boys may even be unaware that what they are doing is wrong; violent sexual imagery may well have raised a generation of young men who can rape women without even knowing it.<sup>55</sup>

If young men can rape without knowing it, then women sometimes fail to secure uptake for their attempted refusals. This is the silence, not simply of frustration, but of disablement.

Refusal, here, is a kind of prohibition, and it is an exercitive illocution, in Austin's terms. To satisfy its felicity conditions, the speaker must have authority in a relevant domain. A government that prohibits has authority over a large domain; a parent who prohibits has authority within the smaller domain of the family; a patient who prohibits treatment has authority within the local domain of his own life, his own body. A woman who prohibits sexual advances also has authority within the local domain of her own life, her own body. If she cannot prohibit, cannot refuse, the authority is absent. If she is disabled from speaking refusal, it is a sign that her body is, in a sense, not her own. If pornography prevents her from refusing, then pornography destroys her authority as it twists her words.

Part of the concern about whether pornography silences women is a concern that pornography may prevent women from fighting speech with more speech. In considering the feminist ordinance, the courts had to consider whether pornographic speech "operates self-entrenchingly, disabling its natural enemies—its victims—from countering it with effective speech of their own."<sup>56</sup> "Effective" is ambiguous. One way your speech can be effective is when you can perform just the illocutionary acts you want to perform: when you intend to warn, marry, or refuse, you really do warn, marry, or refuse. Another way your speech can be effective is when you perform just the perlocutionary acts you want to perform: you warn, aiming to alert your hearers; you refuse, aiming to prevent unwanted sex; and you

55. Wolf, *Beauty Myth*, p. 167. "Refusing to take no for an answer" might be ambiguous between failing to recognize a woman's refusal and failing to obey it. The study of Toronto schoolchildren is discussed in Caputi, *The Age of Sex Crime*.

56. See Michelman, "Conceptions of Democracy," p. 299.

fulfill your goals. Both kinds of effective speaking are important, and both are needed to counter the speech of pornography.

The story about *Ordeal* in (5) is anecdotal, but it illustrates the way that pornography can operate self-entrenchingly. Marchiano tries to protest, but she only succeeds in making more pornography. The pornographers know how to do things with her words: stories of “savage violence” and “enslavement in the pornographic underworld” are simply pornography to readers for whom violence has been legitimated as sex. And there is ironic truth in what the pornographers say: the violence is indeed “unspeakable” for Marchiano, for they have made it so. If you are a woman using sexually explicit speech, describing in some detail the savage sexual violence you have suffered, and especially if you are already a famous pornography star, what you say simply counts as pornography. It is an effective way to silence, not simply by depriving speech of its intended illocutionary force, but by replacing it with a force that is its antithesis.

The story is not, I think, an isolated anecdote. If MacKinnon is right, it has something in common with a phenomenon that is widespread and pernicious, a phenomenon that deserves more attention than I give it here: namely, the analogous disablement encountered by women who give testimony in court about rape and about sexual harassment, and whose testimony, and descriptions of their experience, achieve the uptake appropriate to a description of normal sex.<sup>57</sup> If pornography legitimates violence as sex, then it can silence the intended actions of those who want to testify about violence. This too is an aspect of its self-entrenching character.

If pornography sets up the rules in the language games of sex—if pornography is speech that determines the kind of speech there can be—then it is exercitive speech in Austin’s sense, for it is in the class of speech that confers and removes rights and powers. We saw that the claim that pornography subordinates requires the premise that pornography is authoritative speech, otherwise it could not rank and legitimate. We can now see that the claim that pornography silences requires the same premise: pornographic speech must be authoritative if it is to engender the silence of illocutionary disablement.

The claim that pornography silences women, like the claim about subordination, has been taken to be philosophically problematic. It is at best

57. It is estimated that only one in ten rapes are reported to the police and far fewer make it to court. See MacKinnon, *Feminism Unmodified*, pp. 110–15.

“metaphorical,” and at worst a “dangerous confusion.” I have tried to show that it is neither.

The claim that pornography silences is one that can be taken literally. One might object that the silencing I have described is not literal silencing because pornography does not—except in rare circumstances when it is used to threaten—literally prevent women from uttering words.<sup>58</sup> It does not—in Austin’s terms—usually prevent women from performing locutionary acts. But to think that way is to exhibit just the tendency of which Austin complained, to be preoccupied with the content of what is said, at the expense of the action performed. One way of being silent is to make no noise. Another way of being silent—literally silent—is to perform no speech act. On Austin’s view, locutions on their own are nothing. Locutions are there to be used. Words are tools. Words are for doing things with. There is little point in giving someone tools if they cannot do things with them. And there is little point in allowing women words if we cannot do things with them. That, at any rate, is not free speech.

The claim is not metaphor; it is not confusion either. Dworkin says that it is a confusion to suppose that pornography silences women, because it is a confusion to “characterize certain ideas as silencing ideas.”<sup>59</sup> Dworkin misconstrues the argument. The feminist claim is not that ideas are silencing ideas, but that acts can be silencing acts. That, as we have seen, is no confusion. People do all kinds of thing with words: besides advising, warning, and hurting one another, they also silence one another. They silence by preventing speakers from doing things with words. They can silence simply, by ordering or by threatening; they can silence by frustrating a speaker’s perlocutionary acts; they can silence by disabling a speaker’s illocutionary acts. We have seen that pornography can silence in all three ways.

The silencing claim is not really about ideas at all, but about people and what they do. It is not uncommon, in discussions about free speech, to cast ideas as the heroes of the story. Free speech is a good thing, because it provides a free marketplace for ideas where the best and truest ideas can win out in the end.<sup>60</sup> To say that some speech silences is to describe a kind

58. Michelman says this in “Conceptions of Democracy,” p. 296n.13.

59. Dworkin, “Two Concepts,” p. 108.

60. “The best test of truth is the power of the thought to get itself accepted in the competition of the market,” said Justice Holmes in *Abrams*, quoted in Tribe, *Constitutional Law*, p. 686.

of shopping problem: some ideas that could be on the market are not. Censorship may or may not be needed as a means of improving the marketplace, a little local regulation to improve things overall. Perhaps some ideas must be censored so that others can find space on the shelves.<sup>61</sup> Here again we have the tendency of which Austin complained: a focus on content, while ignoring the speech act performed. The claim that pornography silences women is not about ideas, but about people. Free speech is a good thing because it *enables people to act*, enables people to do things with words: argue, protest, question, answer. Speech that silences is bad, not just because it restricts the ideas available on the shelves, but because it constrains people's actions. It is true that women have problems developing and expressing new ideas about themselves, about sexuality, about life, when pornography has a market monopoly. The marketplace is certainly missing out on some valuable ideas. But that is not the point. The point is that a woman's liberty to speak the *actions* she wants to speak has been curtailed: her liberty to protest against pornography and rape, to refuse sex when she wants to, to argue about violence in court, or to celebrate and promote new ways of thinking about sexuality. The point is that women cannot *do things* with words, even when we think we know how.

### III. CONCLUDING REMARKS

Our exploration has taken us through some rocky terrain. In the first section we addressed the first feminist claim, that pornography subordinates, but in order to do so, we had first to ask how speech can be action, and then to ask whether, in principle, speech can subordinate. The answer was that speech can subordinate when it has a certain verdictive and exercitive force: when it unfairly ranks members of a social group as inferior, when it legitimates discriminatory behavior towards them, and when it unjustly deprives them of some important powers. The speech acts of pornography may subordinate, it was argued, because they may fulfill the first and second of these functions: they may rank women as sex objects, and legitimate discriminatory behavior towards them. Whether pornography subordinates depends on whether it is authoritative.

In the second section we addressed the second feminist claim, that pornography silences; and in order to do so, we had first to ask how speech

61. This is—roughly—Dworkin's version of Frank Michelman's argument, "Two Concepts," p. 108.

acts can be silenced, and whether speech can silence. The answer was that speech can indeed silence, and in a number of ways. The speech acts of pornography may silence if they prevent women from speaking certain actions, frustrating their intended perlocutionary acts and disabling their intended illocutionary acts. I drew special attention to the speech acts of refusal and protest. Whether pornography silences depends, again, on whether it is authoritative. If pornography disables women's speech, then it deprives women of an important power. We thus come full circle, for this is the third aspect of subordination, unattended to in Section I. To subordinate is to rank, to legitimate discrimination, to unfairly deprive of a power; to silence is to deprive of a power. So there is a link between the subordination claim and the silencing claim: one way of subordinating is to silence, to deprive someone of certain liberties that are available to others—the opportunity, for example, freely to speak.

The claims that pornography subordinates and silences women make perfect sense; they are not sleight of hand, not philosophically indefensible, not confused. Moreover, if pornographic speech is indeed authoritative, the claims may well be true. The premise about pornography's authority is an empirical one. If you think it is false, you will disagree with the conclusion about the truth of the claims, but not, I hope, with the conclusion about their coherence.

If pornography subordinates women, it presents a conflict between pornographers' right to liberty and women's right to equality. If pornography silences women, it presents a conflict within liberty itself, between pornographers' right to speak and women's. If pornography silences women, women will have difficulty fighting subordinating speech with speech of their own. Does this give us reason for thinking that MacKinnon may be right, not only in the two claims considered, but in her view that pornography should be restricted by law? Perhaps. Or perhaps we need independent argument to bridge the gap. Such an argument is beyond my project here, but it may not be too hard to find. For an influential liberal view has it that it is wrong for a government to allow private citizens to violate the liberty of other citizens by preventing them from saying what they wish. That liberal view has been eloquently expressed by Ronald Dworkin, among others.<sup>62</sup> If that is correct, it may be wrong to permit some speakers

62. *Ibid.*, p. 108. Dworkin's actual words are "violate the negative liberty." He wants to say that if pornography silences (which he doubts), it does so by depriving women of a positive liberty rather than a negative liberty: it "denies them the right to be their own masters" (p.

to silence others by preventing them from speaking the actions they wish to speak. Women wish to be able to speak some important actions: to be able to refuse, to protest, or to give testimony. The speech of pornographers may prevent them from doing so. If it does, then it may be wrong for a government to allow pornographers to speak.

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106), and prevents them from contributing to the process through which ideas battle for public favor. It should be evident from what I have said that, on the contrary, pornography silences by depriving women of the *negative* liberty to perform some important speech acts.

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