

# Subordination, Silence, and Pornography's Authority

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## *Preamble*

On one picture, free speech is easy to have. It is a matter of saying what you want, when you want. Free speech gets hard to have only when the state starts breathing down your neck. When the state starts breathing down your neck with its threats and orders (Don't say this! Don't say that! *Or else* ...) then free speech is in trouble. But in a liberal society, like the one we live in, the state does not breathe down your neck. Censorship is nowhere. So free speech is easy to have.

On another picture, free speech is hard to have. Nothing you say is really free. Whatever you try to say is silenced before you even begin. Whatever you say is constrained. Culture, discourse, perhaps language itself, all breathe down your neck with their threats and orders (Don't say this! Don't say that! *Or else* ...) and they never go away. You are a prisoner in an invisible cage, invisibly gagged, allowed to say one thing, prevented from saying others. To say one thing is to leave everything else unsaid. To speak about one thing is to be silent about everything else. The very idea that *you* say what you *want* to say is a joke. What is this *you*?—this self, this nothing, with its delusions of grandeur and agency? And whence comes the *want*? Censorship is everywhere. So free speech is hard to have.

These pictures are two sides of a coin which, however tossed, will yield the same result for a debate about pornography and women's silence.<sup>1</sup> If censorship is nowhere, women are not silenced at all. So women are not silenced by pornography. If censorship is everywhere, then women are silenced—but so is everyone, all the time, in every way. If censorship is everywhere, there is no point in making distinctions. If censorship is everywhere, there is no point in saying that some people are silenced, some are not; some are silenced at some times, not at others; some are silenced here, but not there; some are silenced in a bad way, some in an innocent way. If censorship is everywhere, it might as well be nowhere.

And the coin will yield the same result, however tossed, for a debate about pornography and women's subordination. The state is not breathing down women's necks, so women are not subordinated. Or else, women are indeed subordinated, imprisoned in an invisible cage, deprived of agency—but then agency always was a myth. Everyone is imprisoned, all the time. So there is nothing special about women, or about pornography.

Somewhere between these two pictures is one (at least) that has some hope of being true. And somewhere between these two pictures is one (at least) that allows debate about pornography which does not pre-ordain a conclusion. I do not know exactly what the alternative picture is, but, as I seek it, I explore once again the question of whether pornography subordinates and silences women.<sup>2</sup>

In thinking about this, one is led to think rather generally about what subordination and silence involve. In thinking about subordination, one is soon led to general questions about the nature of speech, whether speech holds up a mirror to reality, or creates it; and if it creates it, how it does so, and when. In thinking about silence, one is soon led to general questions about what speech, and hence silence, amounts to. In considering these questions I draw on a thought-provoking discussion by Leslie Green presented in this volume.<sup>3</sup> Green considers arguments that I have developed elsewhere, in which I conclude that pornography may well subordinate and silence women.<sup>4</sup> He thinks this is mistaken. I think it is not, and I hope to say why. Green is another who wants an alternative to the two cartoons I sketched above, and although he sometimes seems to slide towards the first picture, he also shows great sensitivity to the issues of power implicit in the second.

Pornography *is* the graphic sexually explicit subordination of women, in pictures or words, said Catherine MacKinnon. That claim was attacked for (among other things) philosophical confusion.<sup>5</sup> The claim was not, or not simply, that pornography depicts the subordination of women, or that it has, among its effects, the perpetuation of women's subordination, but that pornography *is* subordination. When we bring speech act theory to bear on the claim, it makes good sense—or so I argued. In terms of J. L. Austin's three-way distinction between the content of an utterance (locution), the effect it has (perlocution), and the act it is (illocution), MacKinnon's idea is clear.<sup>6</sup> Pornography is itself an illocutionary act of subordination, in addition to being a locutionary act that (perhaps) depicts subordination, and a perlocutionary act that perpetuates subordination. My understanding of MacKinnon's idea was developed before the appearance of *Only Words*, but her more recent work suggests I may be on the right track. MacKinnon explicitly cites Austin, seeks a "performative" understanding of pornography, and compares pornography with such utterances as "Ready, aim, fire," "Not guilty," and "I do," uttered in contexts where to say something is to do something—order an execution, find not guilty, marry.<sup>7</sup>

An example of subordinating speech is the utterance "Blacks are not permitted to vote," uttered in a context (thankfully past) where it enacts apartheid law. The illocutions of apartheid law subordinate blacks, I suggest, because they rank blacks as inferior, deprive them of rights and powers, and legitimate discrimination against them. Despite some evident dissimilarities, the speech acts of pornography may also be illocutionary acts of subordinating, for similar reasons. According to the feminist argument, pornography ranks women as inferior, deprives women of certain powers, and legitimates

discrimination against them. Speech acts of ranking, legitimating, and depriving someone of rights and powers are *authoritative* illocutions. It takes authority to be able to perform them: an umpire, but not a bystander, can call a fault; a jury, but not a bystander, can acquit; a government, but not a private citizen, can disenfranchise. And I suggest that if pornography is to be subordinating speech, then pornography too must be authoritative. This is in harmony with MacKinnon:

Together with all its material supports, authoritatively *saying* someone is inferior is largely how structures of status and differential treatment are demarcated and actualized. Words and images are how people are placed in hierarchies, how social stratification is made to seem inevitable and right, how feelings of inferiority and superiority are engendered, and how indifference to violence against those on the bottom is rationalized and normalized.<sup>8</sup>

What follows, if the speech act analysis of pornography succeeds? One thing that clearly follows is that there is nothing confused about MacKinnon's claim. Another is that there is an argument about pornography that differs from the traditional causal argument. Does anything more dramatic follow? Green seems to think so: "If saying simply *is* doing, there is no need to worry about the contingent causal connection and the problematic evidence for it. The evidence for the harm is the evidence for the saying."<sup>9</sup> We should be so lucky. I, for one, never suggested anything quite as easy as this. If the analysis succeeds we do face two different claims about pornography: a claim about its perlocutionary effects, and a claim about its illocutionary force. But Green's suggestion is that if pornography is an illocutionary act of subordination, we have a claim about what is *necessarily* the case, and one which requires no additional *evidence*. The causal claim, on the other hand, concerns a merely "contingent" connection, and requires "evidence" which is "problematic."

Causal questions are not the only questions that involve contingent connections and evidence: illocutionary questions may do so as well. Whether some particular speaker has authority is a contingent matter. While it is not a contingent matter that, for example, the umpire has authority over the tennis score, it is a contingent matter that *that man* is the umpire. In order to determine what illocution was performed one needs to know not only that *he said "Fault"* but also that *he is the umpire*. So one needs not only "evidence for the saying," as Green puts it, but also evidence for the authority of the speaker.<sup>10</sup> In the case of the umpire, evidence for the authority comes as easily as evidence for the saying. (There he is, sitting in his funny high chair by the net, in his uniform.) Likewise in the case of the speech acts of apartheid. But it is not always so; one can imagine cases in which the authority of an alleged umpire, an alleged legislator, is in dispute. And in the case of pornography, evidence for the authority is much more controversial than evidence for the saying. So the question about pornography's illocutionary force inevitably involves evidence and contingent connections: if pornography had no author-

ity, then I think it would not subordinate, no more than that man could call a fault, if he were not the umpire. So it is a contingent, context-dependent matter whether pornography has authority and, hence, whether it subordinates. It cannot, I think, wholly be answered from the philosopher's armchair.<sup>11</sup>

Green goes on to argue against the feminist conclusion that pornography subordinates, and as a preamble to this he introduces two very useful tools for thinking about this difficult and complex issue. One is a thought experiment: a clear example of subordinating speech, and variants of that example that may or may not be subordinating speech. The other is a suggested analysis of authority, and in particular of *de facto* authority.<sup>12</sup>

Green asks us to consider a plausible case of a speaker "authoritatively saying someone is inferior" and thereby subordinating him: the Roman Catholic Church says that homosexuality is an "objective disorder" and an "intrinsic moral evil." What the Church says is not "only words," but an authoritative illocution. But who exactly does it subordinate? We are asked to consider two men, living in a location where Catholics are a minority and where there is a liberal constitution. Mick, a gay Catholic, is subordinated by the Church's authoritatively saying that he is inferior, since he is within the domain of the Church's authority, accepting its jurisdiction. But what of someone who does not accept its jurisdiction? Green considers Mick's neighbor Max, who is gay and Jewish, and asks two questions: "Is Max subordinated by the words of the Church? Does *he* have an objective disorder because the Church says he does?"<sup>13</sup> The implication here is that Mick, the Catholic, is subordinated, and has an objective disorder, because of the Church's say-so. Green's questions ask whether the same applies to Max.

Notice now that we have two important and different issues before us. One concerns the constructive power of authoritative speech: can saying so really make it so when the Church says that someone has an "objective disorder"? The second concerns the jurisdiction of authoritative speech: can the Church's words subordinate Max, even though he does not accept its jurisdiction? The first issue is about *how* and *whether* words "construct" reality; the second is about *whose* reality gets "constructed." The second issue brings us to Green's analysis of *de facto* authority and the limits of authority's jurisdiction. In what follows I address first the general issue of the constructive power of authoritative speech and then the issue of jurisdiction. These two issues concern the argument about subordination. The argument about silence is conducted by Green on rather different terms, and I address this as a third issue. A common theme running through all three sections is that Green's arguments are enlightening, helpful—and mistaken.

### *The Constructive Power of Authoritative Speech*

Green's implication is that Mick is subordinated and has an objective disorder because of the Church's say-so. Postponing the question about Max, which concerns the jurisdiction of the Church's authority, let us think about this implication for Mick. What are we to make of Green's apparent assimilation



of the claims that Mick is subordinated and that he has an objective disorder—or, rather, Green's assumption that these two claims have the same kind of status? It is plausible to suppose that Mick is subordinated because of the Church's say-so. But it is far less plausible to suppose that Mick has an objective disorder because of the Church's say-so. Just as well: for if Mick did have an objective disorder, the Church would, on the face of it, be *right* in saying he had. There is surely a limit to how far saying so can make it so, even when the sayings are authoritative. There are limits to what illocutions can do when they "construct" social reality, and it seems unlikely that anyone's say-so—even in conditions of authority—can simply bring it about that someone has an *objective* disorder. To be sure, Mick may believe he has an objective disorder, and he may count as having an objective disorder in the eyes of the Church and his peers—but that doesn't mean he really has one.

For some illocutions, authoritatively saying so *can* instantly make it so: "You're fired" uttered by the authoritative employer instantly makes it the case that you are fired. "This ship is named the Queen Elizabeth," uttered by the official as she smashes the champagne bottle against the ship, instantly makes it the case that the ship is named the *Queen Elizabeth*. These authoritative illocutions belong to a class Austin described as *exercitive*.

Contrast these examples with the words of the umpire who says "Out." His verdict alters the score of the game. But does he bring it about that the ball *is* outside the white line? No, or a photograph could not show that the umpire had made a mistake. It is the player, not the umpire, who brings it about that the ball *is* outside the white line, if indeed it is—and she brings it about, not by saying something, but by hitting something. To be sure, the umpire does bring something about. The ball does *count* as outside the line for the purposes of the score—something that would not hold if a bystander, or player, were to say "Out"—but that does not mean the umpire made it the case that the ball *was* outside the line. This authoritative illocution belongs to a class Austin described as *verdictive*.<sup>14</sup>

A verdictive illocution is an authoritative judgment that something *is* so (and it may be criticized for being false). An exercitive illocution is, as Austin put it, an authoritative decision "that something *is to be so*" (and it cannot be criticized for being false, though it may be ill-advised, mistaken, or wrong).<sup>15</sup> A finding of "Guilty" is verdictive; a sentencing is exercitive. "It is yours" is verdictive; "You shall have it" is exercitive. Both kinds of illocution require authority, but there is, so to speak, a difference in their direction of fit.<sup>16</sup> A verdictive aims to fit the world; an exercitive aims for the world to fit the words. A verdictive purports to map a reality. ("The ball is out.") An exercitive purports to create a reality. ("You're out, fired!") When a verdictive is performed, the words fit the world: he *says* "Out," because it *is* out. When an exercitive is performed, the world fits the words: you *are* fired, because he *says* "You're fired." Actions of ranking and grading are verdictive. So too is the action of saying that homosexuals have an objective disorder. The Church aims or purports to map some independent moral reality: "Homosexuality is

an objective disorder, and an intrinsic moral evil." What it says aims to be true (and is doubtless believed by the speaker to be true), but saying so does not make it so, though it may make it count as so—just as the umpire's "Out" does not make the ball so, though it may count as so for the purpose of the game. Neither Mick nor Max has an objective disorder because the Church says they do, although one or both may be subordinated because it says they do.

Does this mean that verdictives do not after all "construct reality," are not truly "performative," and are hence irrelevant to the question of subordination? By no means. Consider these remarks from MacKinnon about word-world direction of fit, when it comes to the speech of those in power or authority.

Having power means, among other things, that when someone says, "This is how it is" it is taken as being that way ... [The] beliefs of the powerful become [proven], in part because the world actually arranges itself to affirm what the powerful want to see. If you perceive this as a process, you might call it force, or at least pressure or socialization or what money can buy. If it is imperceptible as a process, you may consider it voluntary or consensual or free will or human nature, or just the way things are. Beneath this, though, the world is not entirely the way the powerful say it is or want to believe it is.<sup>17</sup>

Clearly the thought here is close cousin to the thought in the passage above about "authoritatively saying someone is inferior," so for present purposes we can slide over the possible distinction between power and authority. MacKinnon is talking here of both the speech and the beliefs of those in power or authority, and for present purposes I will focus on speech.

When "This is how it is" is said by someone in authority, it is an authoritative judgment that something is so: it is verdictive. There is at least one clear sense in which verdictives do "construct" part of reality: when they bring it about that something *counts* as thus and so, it is "taken to be" thus and so. When someone in authority says, "This is how it is," it is "taken as being" that way. If the ball is called "Out" by the umpire, it is "taken as being" out: it *counts* as out for the purposes of the match. Part of the world—namely the score—does indeed adjust itself to fit the umpire's words. And in this latter respect a verdictive has an exercitive dimension. So a verdictive's direction of fit is a complex matter. The umpire's verdict has, on the one hand, a word-to-fit-world direction of fit, since it aims to conform to a truth about the physical location of the ball. That is why it is appropriate to say, of a correct call: the umpire *says* it is out because it *is* out. But what the umpire says also has, in part, a world-to-fit-word direction of fit, since it aims for part of the world—the score, and the beliefs of the crowd—to conform to the verdict. That is why it seems almost as appropriate to say: the ball *is* out (it *counts* as out) because he *says* it is out.

Apply this now to people. If you are authoritatively ranked as inferior, you count socially as inferior, and in this sense your social being is constructed as

inferior, where the construction concerns how you stand in the eyes of others. It may also be that as a result of the authoritative ranking you count *in your own eyes* as inferior, and in this sense you construct yourself as inferior. The ranking, on its own, ensures that you count as inferior, and since status really is a matter of how you are viewed, the ranking does alter your status for the worse. In this way, authoritatively saying that someone exists *as* thus-and-so can indeed construct the social reality of what someone *is*<sup>18</sup>—though it does not make it the case that you have an objective disorder, or that you are objectively inferior, independent of what you count as being in the eyes of others.

There are certain realist assumptions behind the distinction between verdictive and exercitive speech. (That realism is implicit in MacKinnon's view when she says "the world is not entirely the way the powerful say it is or want to believe it is.") Whether the ball *is* out is a fact independent of people's sayings and believings; whether it *counts* as out is not. In the case of verdictives, but not exercitives, there is a difference between being thus-and-so and counting as thus-and-so according to authoritative judgment. There is a difference between really being out and counting as out (in the verdictive case); there is no difference between really being fired and counting as fired (in the exercitive case). And someone who rejects these realist assumptions might object.

Someone who thinks reality is exhausted by social, or mental, or textual reality may find the alleged distinction implausible. If the ball is authoritatively called out, it counts as out, is believed to be out—the ball *is* out, and there is no point wasting breath and time on drawing these apart. But the implications of abandoning the realist assumptions are grim. If the Church authoritatively says Mick has an objective disorder, he not only counts as having an objective disorder and is believed to have an objective disorder in the eyes of Church and community—he *does* have an objective disorder. But it is surely no waste of breath and time to draw *these* apart. The Church's verdictive saying so may make it seem so, make it count as so, make it believed to be so. But the Church's saying so does not make it so.

There is a second way in which verdictives, while aiming to reflect the world, may actively construct it. MacKinnon suggests that when the powerful say "This is how it is," what they say can *become true*, at least in part, "because the world actually arranges itself to affirm" what the powerful say. This suggests a different way in which saying so can make it so. This second kind of construction has to do with the causal effects of verdictive speech—the perlocutionary acts associated with verdictive illocutionary acts, the effects that depend on circumstance, contingencies of psychology, and the influence of expectation on behavior and ability. The illocutions of ranking can have perlocutionary effects that are disastrous: acts of ranking can sometimes be self-fulfilling, not just with respect to the rank a person counts as having, but with respect to certain real properties she comes to have (properties caused, but not constituted, by the way she is viewed). When a person "counts" as thus and so in the eyes of others, he or she can, at least in part, really become so.

An old example may help here—provided that we can avoid being sidetracked into contested questions about intelligence, IQ, and their probable or possible noncorrelation. The point, I hope, will be clear. When a child is authoritatively ranked as having a lower than average intelligence, and is accordingly believed by her teachers to have a lower than average intelligence, the child can, to a certain degree, really come to have a lower than average intelligence or, in any case, one that is lower than she would otherwise have. When you are ranked as worse, you are believed to be worse, and then you really become worse.<sup>19</sup>

Whether and to what degree this happens depends very much on contingencies of psychology and context, and this empirical self-fulfilling aspect of some verdictives is to be sharply distinguished from the constitutive self-fulfilling aspect of the exercitive illocution—the self-fulfilling “You’re fired,” which instantly makes it the case that you are fired. The verdictives of the Pygmalion studies—“Anna has a low IQ score”—are by no means instantly self-fulfilling, though with time and the classroom neglect of Anna which they legitimate, the verdictives may become true. In saying “Anna has a low IQ score,” the experimenter ranks Anna’s intelligence as inferior. He says something false, at the time of his saying. But by saying “Anna has a low IQ score,” the experimenter causes Anna to have a low (or lower) IQ score. His ranking has become true (or at any rate, more accurate than it had been at the time of uttering.) His illocutionary verdictive has in a sense been made true later, causally, by his associated perlocutionary act.

When verdictives are self-fulfilling, their world-altering power can resemble the world-altering power of simple exercitives. As a verdictive, an act of ranking (“Anna has a low IQ score”) purports to conform to reality, claims to hold up a mirror to the world. In its exercitive aspect, the speech act constructs some small part of the social world: it constitutively alters the social analog of the score in tennis, what Anna’s intelligence *counts* as in the eyes of teachers and classmates, though not—yet—what Anna’s intelligence really is. But now what Anna’s intelligence *counts* as being begins to have an effect on what Anna’s intelligence really *is*, and the speech act constructs a different small part of the social world—it empirically alters Anna’s abilities, because people’s lives and abilities are sensitive to rankings in a way that balls and lines on a court are not.

So in short there are two ways in which verdictive saying so can sometimes, at least partly, make it so, two ways in which verdictive speech can “construct” reality. The first, and constitutive, way is by making it count as so. (“When the powerful say ‘This is how it is,’ it is taken to be that way.”) The second, and empirical, way, is by sometimes making it (in part) really so. (“When the powerful say ‘This is how it is,’ the world arranges itself to affirm” what the powerful say.)

One result is that verdictives *disguise* their own constructive power. When someone says “This is how it is,” what he says does not seem to be constructing the world: he purports to represent the world. His words aim to fit the



world. A mirror does not create, it merely reflects. But words which aim merely to mirror—which purport merely to mirror—can also create, and make the world fit the words.<sup>20</sup>

In what ways, then, does *subordinating* speech “construct” reality? The notion of subordination I described at the outset incorporates a mixed bag of verdictive and exercitive speech acts: the speech acts of apartheid, I suggested, *rank* a particular group as inferior, *deprive* them of powers and rights, *legitimate* discrimination against them. Illocutions of ranking are basically verdictive; illocutions of legitimating certain behavior, and depriving of powers, are basically exercitive. We can see that this mixed bag of authoritative speech acts is probably present in Green’s example as well. The Church ranks homosexuals as inferior; deprives at least some of them of powers and rights (Mick cannot, for example, obtain the Church’s blessing for his relationship with his partner); and legitimates discrimination against them whether in the workplace or in social life. The Church has a role that is in some ways comparable to the role I attributed to pornography, as a source of normative guidance about sex that legitimates certain patterns of sexual behavior and not others. Green thinks the Church is in fact *unlike* pornography in this respect: “It would be hopelessly naive . . . to think that each [pornographic] image bears the message ‘Look, this is how it is to be done: this is right and proper.’”<sup>21</sup> Perhaps so. But it would also be hopelessly naive to think that everything that is a source of normative guidance bears the message “Look, this is how it is to be done: this is right and proper.” Pornography legitimates—makes permissible—certain ways of acting in part by representing them as ordinary, as normal.

That is why MacKinnon says that “words and images are how . . . social stratification is made to seem inevitable and right . . . and how indifference to violence against those on the bottom is rationalized and normalized.”<sup>22</sup> Empirical work suggests MacKinnon is right: whatever their intentions in consuming pornography, people’s *normative beliefs are indeed altered* by exposure to it. They are more likely to view women as inferior, more likely to accept rape myths (that women enjoy rape, and that they do not mean to refuse when they say no), more likely to think rape a less serious offense, more likely to think that rape victims deserve their treatment, more likely to say that they themselves would rape if they could get away with it. These perlocutionary effects on normative beliefs are well explained by supposing that pornography has *legitimated* such beliefs. Such data are ignored and left unexplained by theorists who decide *a priori* that pornography presents its norms as impossible, as unrealizable, or as not-to-be-realized.<sup>23</sup> So we can allow that the say-so of the Catholic Church and pornography are alike in being illocutions that legitimate certain patterns of sexual behavior. Such speech acts, as Green says, “create a status hierarchy of desires, acts, relationships, and thus, in certain respects, people.”<sup>24</sup>

When the Church authoritatively says that “homosexuals have an objective disorder,” while its verdict does not make it true that gays have “an objec-



tive disorder," it does *subordinate* gays, in part because it makes them *count*—in the eyes of Church and community—as beings who have an objective disorder. They are, to shift MacKinnon's words out of context, "taken as being that way."<sup>25</sup> Just as the umpire's verdict has an exercitive dimension in the way it alters one social part of the world—the score of the game—so the Church's verdict has an exercitive dimension in the way it alters one social part of the world—the status of gays. In addition there are the empirical psychological and social harms that befall an individual who is taken to be subordinate, harms that are the effects of being made to count that way, in the eyes of Church and community.

So far we have been thinking about the first of the two issues raised by Green's questions, the issue of the constructive power of authoritative speech, the different ways in which saying so can really make it so, the different ways in which words can "construct" reality. It is time now to turn to the second of the issues he raised, the question of authority's jurisdiction—the question of *whose* reality gets "constructed."

#### *De Facto Authority and Its Jurisdiction*

Assuming that Mick is subordinated and has an objective disorder, Green asks whether the same is true of Max. We need to restrict the question, however, since not even Mick has an objective disorder because of the Church's say-so. We can think about whether Max is *subordinated*. Green's conclusion is that Max is *not* subordinated, despite the fact that the Church's verdicts are, as claims about natural law, addressed to him as well as Mick. Max is insulated from the Church's verdicts, not only because he himself rejects the Church's jurisdiction but also because his country has a liberal constitution, the Church is in a minority, and its speech is merely tolerated, not endorsed, by the broader society. These factors mean, according to Green, that Max is not within the jurisdiction of the Church's authority. If, on the other hand, "the Church were established and its dictates widely accepted as binding standards of behavior," then the Church *would* have effective authority—*de facto* authority—over Max, and he too, like Mick, would be subordinated, notwithstanding his own rejection of its jurisdiction.<sup>26</sup>

The guiding principle behind Green's argument is in harmony with my own, namely that "whether speech has the power to subordinate is not simply a function of what is said but on the whole social context in which it occurs."<sup>27</sup> His example convincingly shows how speakers whose authority is less than, and different from, that of the state can nonetheless subordinate. His conclusion about the jurisdiction of authority is based on a particular analysis of *de facto* authority and its conditions, however, and it is this which grounds his later conclusions about pornography. It is, I think, a mistaken analysis.

According to Green, the first necessary condition for the Church's *de facto* authority over someone like Max, who does not accept the Church's authority, is one of a perceived legitimacy: "the norms prescribed by the Church

must be generally accepted as setting binding standards of behavior." Since the idea is that the norms be *generally* accepted, I'll call this a condition of *general perceived legitimacy*. The second is one of efficacy:

The Church's norms must also be generally efficacious. There must be... significant contact between Max and those who do endorse the Catholic view: they must, for example, have the power to hire or fire him, to control his education, to affect his civil rights, and so on, and they must sometimes actually exercise their power.<sup>28</sup>

Since the idea here again is that the norms be *generally* efficacious, I'll call this a condition of *general efficacy*. Is Green right about these being *necessary* conditions for the Church to have authority — *de facto* authority — over Max?

Surely not. First, suppose that the norms prescribed by the Church are not "generally accepted," but that the Church is a powerful minority, whose members accept its voice as authoritative while nonmembers are substantially in the power of the members: suppose, in other words, that general efficacy is satisfied, though general perceived legitimacy is not. The minority, being powerful, have the power to hire and fire Max and most other gays, have the power to control his civil rights, and they sometimes exercise that power. In these conditions, I suggest, Max would indeed be subordinated. What surely matters is that the ones in power over Max (and other gays) take the voice of the Church to be authoritative — not that *everyone* takes it to be authoritative. Thinking about this variation of Green's example leads us to two conclusions: first, general perceived legitimacy is not, after all, a necessary condition of the Church having the kind of authority needed to subordinate Max; and second, general efficacy appears to be a sufficient condition of *de facto* authority.<sup>29</sup>

Indeed we can say more. Max would surely be subordinated if there were merely *local* analogs of both of Green's two general conditions. Suppose there is a local version of Green's first general condition: call it *local perceived legitimacy*. Suppose that the norms prescribed by the Church are locally accepted as setting standards of behavior in Max's community. Suppose, moreover, that there is a local version of Green's second general condition: call it *local efficacy*. Suppose there is significant contact between Max and those in his community who endorse the Catholic view, so that they have the power to hire or fire him, control his education, and affect his civil rights, and suppose that they sometimes exercise it. Suppose that this authority is merely local, so that in some — perhaps many — places beyond Max's local community the norms prescribed by the Church are not accepted as binding, and that if he lived in any of these places he would be outside the coercive and restrictive power of those who endorse the Church's norms. Shouldn't we say that *where he is*, he is subordinated — though if he lived elsewhere, perhaps he would not be? Why should the absence of *general* perceived legitimacy and *general* efficacy of the Church's norms undermine the apparent fact that Max is subordinated, here and now? Demanding *general* perceived legitimacy and *general*

efficacy comes close to demanding that no gay non-Catholics are subordinated unless all are.<sup>30</sup>

Perhaps the reasoning is that if legitimacy and efficacy are merely local, Max can escape the authority by moving elsewhere—so he is not subordinated where he is. But surely if he *can* escape his community (and this questionable assumption supposes he has the requisite knowledge, inclinations, and material resources), then what he escapes is the local *de facto* authority of the Church and of the local community where he *is* subordinated. I conclude that Green's analysis is mistaken: neither general perceived legitimacy nor general efficacy is a necessary condition for the church's *de facto* authority over Max and hence for its ability to subordinate Max. Instead, it seems that local perceived legitimacy and local efficacy are sufficient conditions for the Church's ability to do so.<sup>31</sup> This conclusion about the conditions for the jurisdiction of *de facto* authority is important, given its role in Green's argument about pornography.

In applying his analysis to pornography, Green begins by supposing that women are not directly within the domain of pornography's authority: "The first chain of command is... the authority of pornographers... over *men and boys*."<sup>32</sup> Women are to be compared not with Mick, but with Max, the outsider to Catholicism. This means that the conditions under which women could be subordinated by pornography are like the conditions under which Max would be subordinated according to Green's analysis—namely, when the two (alleged) necessary conditions of general perceived legitimacy and general efficacy are in force. Green says, however, that it is implausible to think that pornography subordinates women, precisely because the two conditions of general perceived legitimacy and general efficacy are not fulfilled. After all, pornography "must compete with other putative social authorities, including the state, the family, and the church." In a liberal society the state merely tolerates the speech of pornographers; it does not endorse it, and it denounces sexual violence. Pornography is "private, nonauthoritative speech."<sup>33</sup> The competing authoritative voices contradict the voice of pornography, and this undermines the perceived legitimacy of pornography and its efficacy.

One could remark on the swiftness with which Green casts women as the outsiders to the illocutions of pornography. (Perhaps there are women who accept pornography's jurisdiction as Mick accepts that of the Church: are they most subordinated of all?) One could remark on Green's denial of a general perceived legitimacy of pornography and his assumption that the voice of the courts unequivocally contradicts the voice of pornography, rather than all too often echoing it. ("Women who say no do not always mean no. It is not just a question of saying no," says judge to jury.<sup>34</sup>) One could remark on Green's sanguine belief that "the broader society condemns [rape] and regularly prosecutes it"<sup>35</sup>—when rape is the most underreported crime because women know that the broader society also condemns rape victims, and regularly torments them in the courts. One could remark on Green's denial of general efficacy, his assumption that there is no "significant contact" between

women and men who accept pornography's authority—his assumption that most women are *never* in the power of men who consume pornography, men who have power in women's workplaces, homes, and sexual relationships and who sometimes exercise that power. I shall not argue that Green's two conditions of general perceived legitimacy and general efficacy are in fact satisfied, though I believe it can well be argued. For these conditions are not after all necessary conditions for women's being subordinated by pornography.

We saw that Max would be subordinated if there were merely *local* analogs of Green's two general conditions, and the case is likewise for women. Suppose that the norms prescribed by pornography are locally accepted as setting standards of behavior in a woman's community, although she does not accept them. Suppose, in other words, that the condition of local perceived legitimacy is satisfied. And suppose there is a local version of Green's second general condition: suppose there is significant contact between the woman and those in her community who accept the norms of pornography, so that locally they have the power to hire or fire her, control her education, affect her civil rights, and suppose that they sometimes exercise that power. Suppose, in other words, that the condition of local efficacy is satisfied. It is not true that "in these circumstances, pornography has the character... of a private view," notwithstanding the presence of competing norms elsewhere.<sup>36</sup> Perhaps the woman could escape that local community by moving elsewhere, but that, again, supposes requisite knowledge, inclinations, and material resources, an especially questionable assumption given many women's poverty and material dependency on men. And again, the possibility of escape does not alter the fact that such a woman, where she is, in that context, *is subordinated*—for the reasons we thought Max would be subordinated, under conditions of local perceived legitimacy and local efficacy. To demand otherwise comes close to demanding that no women are subordinated by pornography unless all are.

Pornography does subordinate some women, even if one grants Green's very questionable assumptions about the absent conditions of general perceived legitimacy and efficacy. Then the question is not whether, but how many: How many women are subordinated? And how many women must be subordinated before it begins to matter?

### *Silence*

In addition to his negative verdict on the claim that pornography subordinates women, Green delivers a negative verdict on the second, and distinct, claim that pornography silences women. He argues that the notion of illocutionary silencing I develop to elucidate this claim is quite irrelevant: free speech does not protect illocutionary speech acts. To determine whether his argument is just, I shall need to return to what I initially said.

In "Speech Acts and Unspeakable Acts" I argue for the coherence and plausibility of the claim that pornography silences women.<sup>37</sup> Speech act theory helps in two ways: first, when we focus on the speech of women, it

provides a way of understanding how women can be silenced because of pornography; second, when we focus on the speech of pornographers, it provides a way of understanding how pornography, as speech, can be a kind of speech that silences. My chief task in "Speech Acts" was to show how women's speech may be silenced because of pornography. Notice that it is really this first task that matters in developing a free speech argument against pornography. Regardless of whether pornography is speech or whether speech act theory helps us to understand pornography, if pornography silences women's speech, then there is at least the beginning of a free speech argument against pornography.

I suggest in "Speech Acts" that women are silenced when they are unable to perform the illocutions they intend to perform, and I introduce a notion of illocutionary disablement, first by examples. An actor has a role in which he shouts, "Fire! I mean it! Look at the smoke!"; but then a real fire breaks out in the theater, and he shouts, "Fire! I mean it! Look at the smoke!" A man fills out a ballot slip, but he is black, in apartheid South Africa. Someone tries to divorce by *talak*; "*Mutallaqa, Mutallaqa, Mutallaqa*," she says to her spouse; but she is a woman. A couple try to marry; both say "I do," but the two speakers are men. The speakers in these examples fail to warn, vote, divorce, or marry—although they intend to, and they use words appropriate to their intentions. These "misfires," as Austin would have called them, show illocutionary disablement.<sup>38</sup> The speakers fail to satisfy the success conditions—the felicity conditions—of the illocutions they intend to perform. And they fail to do these things because they are prevented from doing so—by law, in the last three examples. The law prevents them far more thoroughly than if it threatened such attempts with legal sanction. The law does not forbid such illocutionary acts, but makes them literally unspeakable, for those speakers. And the law is itself a special kind of speech.<sup>39</sup> So some speech makes other potential speech acts unspeakable.

I use these highly conventionalized examples because they are clear examples of something I want to emphasize. The silencings in these cases are clearly distinguishable from a failure to perform an intended locutionary act (saying no words at all) and from a failure to perform an intended perlocutionary act (failing merely to achieve the effect wanted—for example, the evacuation of a crowded theater). Most of the examples have an obvious political dimension, an asymmetry of power between classes, which is appropriate. They illustrate the idea that one's power to do illocutionary things with words can sometimes be constrained and circumscribed by someone else's speech—that some speech builds a space that makes other speech possible and still other speech impossible.

When MacKinnon says that pornography silences women, she is speaking not of the highly conventional illocutionary acts whose conditions involve specific ceremonial procedures, but of illocutionary acts generally. She is concerned about some of the ways that women's ordinary communicative speech acts can go wrong in sexual contexts.<sup>40</sup> She doubtless has a variety of



problems in mind, but one may be this. When a woman says "No," her "no" sometimes fails to count as an act of refusal: it fails to achieve the necessary recognition—what Austin would call "uptake"—on the part of the hearer. She is like the actor who says "Fire," intending to warn, and using the right words, but failing to warn. She is silenced there and then. It may be that her hearer is unusual, unreasonable, idiosyncratic—though perhaps not all will share Green's optimism about the near ubiquity of reason and competence.<sup>41</sup> It may be that a reasonable, competent hearer would recognize what she said as what she meant to say: that "any reasonable person would take the refusal for what it is."<sup>42</sup> That is to say: in other circumstances she would not be silenced. That does not help her this time, however. To suppose that a woman is silenced only if *no* hearers recognize a woman's refusal—to suppose that a woman is silenced only if the reasonable and competent hearer would also fail to recognize a woman's refusal—is to suppose that no woman is ever silenced unless all women's refusals are silenced always. Here we have an echo of the all-or-none-ism of Green's story about subordination. Just as it would be a mistake to think that no woman is subordinated unless all, or most, are, so it would be a mistake to think that no woman is silenced unless all, or most, are. (That, to steal Green's nice phrase, would be much too tidy for such an unruly subject.)<sup>43</sup>

Pornography may contribute to this illocutionary disablement by undermining reciprocity, a background condition of receptiveness that enables the performance of ordinary communicative speech acts.<sup>44</sup> Illocutionary disablement, in general, is a matter of failure to satisfy the felicity conditions of illocutions, conditions that are sometimes highly conventional, as with some of the earlier examples, and sometimes utterly minimal, as with ordinary communicative illocutionary acts. With the latter, doing illocutionary things with words can be very easy—when reciprocity obtains. Saying something, intending it to be taken a certain way, and then having it taken that way by your hearer, is enough for you to succeed in doing the illocutionary thing you intend. Reciprocity is something like: mutual capacity for uptake. When reciprocity is present, a hearer is able to recognize what it is a speaker is trying to do with her words, and a speaker is able to secure uptake, and do the illocutionary thing she intends to do with her words.

Perhaps pornography undermines reciprocity in the cases of disabled sexual refusal by creating an expectation—legitimizing an expectation—that when a woman says "No," she does not really intend her "no" as a refusal. If pornography legitimates "rape myths" as the evidence suggests, then it may make refusal unspeakable for some women in some contexts. And so pornography silences women.

Free speech is not a matter of mere freedom of locution, which would be satisfied if one said words in a solitary room. Free speech includes illocution.<sup>45</sup> Free speech is not freedom to perform any old illocution (knighting, *talak* divorcing, canonizing, making wills—or subordinating), but then that was never my claim (though Green misses this).<sup>46</sup> If that were the claim,

then my first argument, that pornography itself is an illocutionary act of subordination, would amount to a *defense* of pornography, not an attack: pornography is an illocutionary act, all illocutionary acts are to be protected, therefore pornography is to be protected. No. The idea is simply that the ability to refuse is an important illocutionary capacity, an important communicative power. If there are conflicts between freedoms to speak—if (as MacKinnon puts it) the free speech of men silences the free speech of women—then there is a choice about which speech is to be protected.<sup>47</sup> If there is a conflict—for example, between freedom to perform illocutions of subordination and freedom to perform illocutions of refusal—it just might be that refusal matters more.

Against this argument Green develops a distinction between two kinds of silencing, one of which is intolerable, the other tolerable. He wants to argue that silencing of the kind I describe falls within the tolerable class. He distinguishes between what he calls *narrow* and *broad* silencing. Narrow silencing occurs when “one cannot realize one’s communicative intentions because someone stops that person from speaking.” Broad silencing occurs when “one cannot realize one’s communicative intentions because even if that person succeeded in speaking, there is no guarantee that he or she will be heard as intended.”<sup>48</sup> The silencing I describe—the silencing that is illocutionary disablement—amounts in his view to broad silencing. Narrow silencing is not to be tolerated, but broad silencing must be tolerated. After all, Green says, narrow silencing “requires someone’s intervention or blameworthy omission,” whereas broad silencing does not. Narrow silencing “is *prima facie* harmful,” whereas broad silencing is not.<sup>49</sup>

Little wonder that it seems that way, for Green has offered the reader a false dichotomy. What is missing, in what he offers, is precisely the notion of silencing at issue. Narrow silencing, as he describes it, has these ingredients: (a) you fail to speak at all; (b) you fail because someone else stops you. (That is: locutionary silence, because of interference.) Broad silencing has these ingredients: (a) you speak, but fail to be heard as you intend; (b) you fail because there is no universal guarantee that you will be heard as you intend. (That is: illocutionary silence, but not because of interference.) Because narrow silencing seems bad and broad silencing does not, Green concludes (in effect) that locutionary silencing is bad and that illocutionary silencing is not.<sup>50</sup> But it is the *interference*, or lack of it, that is doing the intuitive work here.

What is missing is this alternative: (a) you speak, but fail to be heard as you intend; (b) you fail because some else stops you. (That is: illocutionary silence, because of interference). Now it is this kind of illocutionary silencing, not the broad illocutionary silencing described by Green, that most resembles the silencing that I describe. The example was this. (a) A woman speaks, but fails to be heard as she intends. (She says “No,” but her “no” is not recognized as the refusal she intends.) (b) She fails because someone else stops her (pornography interferes with the reciprocity that is a condition of her suc-

cessfully performing the illocution of refusal). This silencing does require "someone's intervention or blameworthy omission," and it is *prima facie* harmful. Since Green evidently thinks these are good reasons for restricting speech that silences, perhaps he will think they are good reasons for restricting pornographic speech that silences.

### *A Surprise Ending*

At the end of his chapter, Green raises an interesting possibility. He points out that pornography is not bought and sold with the intentions typically involved in speech: pornography is intended to produce sexual arousal. It is, as MacKinnon puts it, "masturbation material."<sup>51</sup> The ordinary notion of pornography is, Green says, a functional notion. He expresses doubt that pornography is communicative speech at all. He wonders "whether it even makes sense to extend the speech act analogy into this realm and to theorize about the force of 'pornographic utterances' in general."<sup>52</sup> To raise this doubt, he thinks, is to raise a doubt about the entire enterprise of bringing speech act theory to bear on the issues of pornography, silence, and subordination.

My arguments are indeed premised on the assumption that pornography is speech, as the courts have said. It is disputable that pornography is speech, and it has been disputed.<sup>53</sup> Notice this, however: if pornography is *not* speech, then *free speech* does not protect pornography, if anything does.<sup>54</sup> Either pornography is not speech, in which case a free speech principle does not protect it; or pornography is speech, in which case speech act theory can help us understand it. And notice this, too: whether pornography is speech, or whether pornography is nonspeech, speech act theory can help us understand how women may be *silenced*. It can help understand how women may be *silenced by pornography*, since here it is, without question, women's speech that is at issue. Someone may be silenced by something that is speech or by something that is not speech. A heckler may silence a would-be speaker by shouting abusive words, or by blowing a whistle. One person may silence another by gently but ominously tapping a stick. One radio station may jam another by broadcasting not words, but a blaring cacophony. And women's potential speech acts may be restricted and thwarted by pornography, whether or not pornography is itself speech. It would not then be true to say that pornography is speech that silences—but it would still be true to say that pornography silences.

Now, consider: if pornography is not even speech, as Green suggests in his conclusion, and if pornography does sometimes silence women (and it really is women's *speech* that is silenced), then a free speech argument *against* pornography looks stronger than ever.<sup>55</sup>

Well—it is nice to find agreement in surprising places.

## Notes

1. A sense of these two pictures emerged for me at the Getty seminar on censorship and silencing, and I am indebted to all those present for comments which helped me clarify some of the ideas in this paper, written entirely since then. I doubt any of the contributors to this volume would quite endorse either picture, but a view that seems (to me) to approach the second is in Richard Burt's chapter in this volume, "(Un)Censoring in Detail: The Fetish of Censorship in the Early Modern Past and the Postmodern Present" (see pages 17–41). I am also grateful for helpful comments from Sally Haslanger, Richard Holton, and Lloyd Humberstone — though I regret I have not been able to do justice to all their suggestions.

2. The idea that pornography subordinates and silences women is developed in Catharine MacKinnon's work: see especially "Francis Biddle's Sister," in *idem*, *Feminism Unmodified* (Cambridge, Mass.: Harvard Univ. Press, 1987); and *Only Words* (Cambridge, Mass.: Harvard Univ. Press, 1993). For discussions drawing on speech act theory to defend the coherence and plausibility of these claims, and arguing that free speech includes illocution, see Rae Langton, "Speech Acts and Unspeakable Acts," *Philosophy and Public Affairs* 22, no. 4 (1993): 293–330; Jennifer Hornsby, "Speech Acts and Pornography," *Women's Philosophy Review* 10 (1993): 38–45, reprinted with a postscript in Susan Dwyer, ed., *The Problem of Pornography* (Belmont, Calif.: Wadsworth, 1995), 220–32; Jennifer Hornsby, "Illocution and its Significance," in S. L. Tsohatzidis, ed., *Foundations of Speech Act Theory* (London: Routledge, 1994); Jennifer Hornsby, "Disempowered Speech," *Philosophical Topics* 23, no. 2 (1997): 127–47. See also Jennifer Hornsby and Rae Langton, "Free Speech and Illocution," *Journal of Legal Theory*, forthcoming. For some critiques of my arguments (apart from those of Green, which I discuss in this volume), see Daniel Jacobson, "Freedom of Speech Acts? A Response to Langton," *Philosophy and Public Affairs* 24, no. 1 (1995): 64–79; and Wojciech Sadurski, "On 'Seeing Speech through an Equality Lens': A Critique of Egalitarian Arguments for Suppression of Hate Speech and Pornography," *Oxford Journal of Legal Studies* 16, no. 4 (1996): 713–23.

3. Leslie Green, "Pornographizing, Subordinating, and Silencing," pages 285–311 in this volume. Perhaps I can also say at this point what should go without saying: that it is a privilege to have one's arguments taken seriously, and I am grateful for the care and thought so evident in what Green has said.

4. Langton (see note 2).

5. See, for example, W. A. Parent, "A Second Look at Pornography and the Subordination of Women," *Journal of Philosophy* 87 (1990): 205–11. The claim that pornography *silences* women is philosophically confused, according to Ronald Dworkin; see his "Two Concepts of Liberty," in Edna and Avishai Margalit, eds., *Isaiah Berlin: A Celebration* (London: Hogarth Press, 1991), 108.

6. J. L. Austin, *How to Do Things with Words* (Oxford: Oxford Univ. Press, 1962), see especially chapters 8 through 10.

7. See MacKinnon, *Only Words* (see note 2), 12–13, 21, and 31 n. 31; and Austin (see note 6). MacKinnon complains that Austin did not "generalize the performative to all speech" (31 n. 31), and since she is interested in the "doing" aspect of *all* speech, she slightly distances her approach from Austin's. Of course the "doing" aspect of all speech

is captured by Austin in the notion of the *illocution*, which is indeed an aspect of all speech. So she has more in common with him than she allows. Austin thought that a "performative" is a special kind of illocution and that the notion of a performative is not synonymous with the notion of an illocution. Performatives are, roughly, illocutions achievable by using the tag "I hereby . . .," and so are not strictly applicable to pornography, or for that matter most illocutions — though see Green (see note 3), 304, for what I take to be a suggestion about the remote conceptual possibility of pornography being a *performative* that subordinates. The distinction between performatives and illocutions is sometimes ignored or abandoned by others, possibly for the reason that the notion of *performative* wears on its face the notion of *doing* with words, whereas *illocution* does not. See, for example, Green (see note 3); and Judith Butler, who develops an interesting and different conception of the idea in *Gender Trouble: Feminism and the Subversion of Identity* (London: Routledge, 1990), and applies it to the feminist debate about pornography in her "Burning Acts," in A. Parker and E. Sedgwick, eds., *Performativity and Performance* (New York: Routledge, 1995), 197–226. Butler and I have shared interests in the topic of speech acts and pornography, though not (it seems) shared conclusions.

8. MacKinnon, *Only Words* (see note 2), 31.

9. Green (see note 3), 291.

10. Ibid.

11. This assumes a nonstipulative usage for *pornography*, following Green's usage of an "ordinary concept" of pornography (see note 3), 32, 33 (though my discussion has an implicit content restriction on the kind of pornography for which one might make a case that it subordinates women and legitimates violence). If, however, one follows MacKinnon in saying that as a matter of definition pornography subordinates, then it will no longer be a contingent matter whether *pornography* subordinates: it then becomes part of the meaning of the word that pornography subordinates. However, the question about illocutionary force will return as an empirical question, not this time in the form "Does pornography subordinate?" but in the form "Is there any pornography, so defined?" (Caroline West has emphasized this point in a manuscript, "The Pragmatics of Pornography.") In saying that it is a contingent matter whether pornography subordinates, I do not speak for all who have defended a noncausal understanding of MacKinnon's claim. Melinda Vadas, for example, would disagree with me about the contingency of the question of whether pornography subordinates — and not for merely definitional reasons. She argues in a forthcoming paper, "The Manufacture-for-use of Pornography and Women's Inequality," that pornography (defined functionally in terms of its masturbatory use) *necessarily subordinates women*. Vadas's argument is discussed and compared with my own view and others in Rae Langton, "Sexual Solipsism," *Philosophical Topics* 23, no. 2 (1995): 181–219. I develop a quite different noncausal argument in "Whose Right? Ronald Dworkin, Women and Pornographers," *Philosophy and Public Affairs* 19, no. 4 (1990): 311–59, but this argument too depends on contingent premises — this time about the reasons and attitudes of those who consume pornography, which are relevant to developing a Dworkinian rights-based argument against pornography.

12. Green (see note 3), 293–94.

13. Ibid., 293.



14. Austin's discussion of verdictives and exercitives occurs, with some of these examples, in *How to Do Things with Words* (see note 6), 152–56.

15. You might think (following Austin) that exercitives are neither true nor false. Alternatively, you might think that they are true, but if they are true they could be false. I incline to neither view, but rather to the view that an exercitive (for example, "You're fired") is *true* whenever it is a successful illocution (successful in the sense of having satisfied the felicity conditions); then it *cannot be false*. This distinguishes exercitives from verdictives, which, when successful at the illocutionary level (successful in the sense of having satisfied the felicity conditions), may be *either true, or false*. This gives a sense in which exercitives are instantly self-fulfilling in a way that verdictives are not. Thanks to Richard Holton for helping me to clarify this (he favors the second of the above views).

16. The distinction between what are now known as "directions of fit" was introduced by G. E. M. Anscombe in her *Intention* (Oxford: Blackwell, 1957), and it is widely used in discussions of propositional attitudes of belief and desire. For some applications to speech acts see John R. Searle, *Expression and Meaning: Studies in the Theory of Speech Acts* (Cambridge: Cambridge Univ. Press, 1979); and Lloyd Humberstone, "Direction of Fit," *Mind* 101 (1992): 60–83. The distinction is applied to feminist arguments about power and oppression in Rae Langton, "Beyond a Pragmatic Critique of Reason," *Australasian Journal of Philosophy* 71, no. 4 (1993): 364–84. The illocutionary direction of fit implicit in MacKinnon's work seems both more complex and less mysterious than Butler suggests in "Burning Acts" (see note 7): more complex, because it is different for different kinds of illocution, and less mysterious, because there is nothing magical or "divine" about it. Perhaps Butler's equation of performatives and illocutions in her interpretation of MacKinnon has disadvantages here, if it leads her to the (to my mind) oversimple view that all illocutions are supposed to be "self-fulfilling" in the same way and that pornography is supposed (by MacKinnon) to work like a divine command.

17. MacKinnon, *Feminism Unmodified* (see note 2), 164. Following a suggestion of Sally Haslanger's, I have substituted *proven* here for MacKinnon's own word *proof*, since it seems to make better sense of MacKinnon's point. See Sally Haslanger, "On Being Objective and Being Objectified," in Louise Antony and Charlotte Witt, eds., *A Mind of One's Own: Feminist Essays on Reason and Objectivity* (Boulder: Westview Press, 1992).

18. Contrary—or so it seems—to Butler, who suggests in "Burning Acts" (see note 7) that MacKinnon makes a grammatical mistake in supposing that what pornography depicts women *as* can have implications for what a woman *is*: "But if the 'as' is read as an assertion of a likeness, it is not for that reason the assertion of a metaphorical collapse into identity. Through what means does the 'as' turn into an 'is'?" (222). What I say in what follows is, in part, an attempt to explain some of the different ways in which an "as" can turn into an "is," ways that are different for exercitive and verdictive illocutions.

19. See Robert Rosenthal and Lenore Jacobson, *Pygmalion in the Classroom: Teacher Expectation and Pupils' Intellectual Development* (New York: Holt, Rinehart & Winston, 1968).

20. These conclusions about verdictive speech have connections with epistemology when we come to the *beliefs* of those in power or authority. Verdictive speech aims to fit the world. Beliefs, too, aim to fit the world. Verdictives are the speech act analogs of beliefs, or (better) of authoritative beliefs, and all the complexities of direction of fit noted above with verdictives have their exact parallel with beliefs. I noted that MacKinnon speaks not only of what the powerful *say*, but of what they *believe*. Beliefs aim to fit the world, but in some circumstances, the world comes to fit the beliefs: "[The] *beliefs* of the powerful become [proven], in part because the world actually arranges itself to affirm what the powerful want to see"; *Feminism Unmodified* (see note 2), 164. The belief that purports merely to mirror can also create, and can make the world conform to itself. The belief that claims to map reality can construct reality, at least to some extent, by the mechanisms we considered when thinking about verdictives. But again, that constructive power is disguised, as with verdictives. If belief aims to fit the world, it aims to be objective. That disguises, for the powerful believer and others, the extent to which the belief appears to match the world for the wrong reason: the belief appears to match, not because the belief fits the world, but because the world has come to fit the belief. (Despite its aim, the belief is not really objective—or so I argue.) If the belief concerns someone's subordinate status—"Women are submissive," for example—and if it appears to be true because the women encountered are made to conform to expectations, then an apparently uncomfortable conclusion looms for epistemology. The aim for objectivity—the aim for apparent fit—can help to objectify women. That is my interpretation of MacKinnon's complaint that reason is gendered: her complaint, overstated but with a point nonetheless, is that "to look at the world objectively is to objectify it"; *Feminism Unmodified* (see note 2), 50. This critique of objectivity, and its merits and faults, is a topic of my article, "Beyond a Pragmatic Critique of Reason" (see note 16). See also Sally Haslanger's extended analysis in "On Being Objective and Being Objectified" (see note 17).

21. Green (see note 3), 296.

22. MacKinnon, *Only Words* (see note 2), 31.

23. This understanding of the social science data is based on, for example, Edward Donnerstein, Daniel Linz, and Steven Penrod, *The Question of Pornography: Research Findings and Policy Implications* (New York: Free Press, 1987). These authors do not favor MacKinnon's legal solution, but instead advocate education and tort action for particular cases of incitement to rape. For authors who seem to decide *a priori* that pornography presents its norms as not-be-realized, see, for example, Butler, "Burning Acts" (see note 7), 222–23, and for a rather different version, Green (see note 3), who argues against the idea that pornography legitimates what it presents, saying that feminists ignore "the fact that [pornography] can also evoke sexual fantasies that are widely held to be *illegitimate*" (296).

24. *Ibid.*, 293. Green seems to interpret the norms of some norm-giver with a paradigm of orders—prescriptions and prohibitions—in mind. MacKinnon sometimes does so too, as does Butler in "Burning Acts" (see note 7), 220. Perhaps some pornography does have this character—it would be too "tidy" to assume any uniform rule. Some, however, is probably better thought of in terms of permissions, as I describe

above. This discrepancy makes it difficult for me to try to couch the above points in terms of the account of authority Green develops in more detail in his book, *The Authority of the State* (Oxford: Clarendon Press, 1988), chapter 2. What Green says there about the contrast between *having* authority and *being an* authority on a subject matter seems particularly interesting. The contrast he makes seems highly relevant to the distinction between exercitives (whose speakers *have* authority) and verdictives (whose speakers typically *are* authorities on a subject matter and *have* authority). It may well be that these two notions of authority are connected (contrary to Green). These issues deserve more thought than I give them here.

25. MacKinnon, *Feminism Unmodified* (see note 2), 164.

26. Green (see note 3), 294.

27. Ibid.

28. Ibid.

29. Perhaps general perceived legitimacy would likewise be a sufficient condition—even in the absence of efficacy—but we would need to adapt the story appropriately to test intuitions about this.

30. The same idea is present in some of Butler's work, though her philosophical perspective is very different from Green's. She implies that unless pornography constructs "unilaterally" and "exhaustively" the social reality of what a woman is, MacKinnon is wrong and pornography "fails to wield the power to construct the social reality of what a woman is"; "Burning Acts" (see note 7), 222.

31. Perhaps they are also both necessary—or perhaps only the local efficacy condition is necessary. We don't need to settle this for present purposes.

32. Green (see note 3), 295.

33. Ibid., 298.

34. Judge David Wild in 1982, as discussed by Jennifer Hornsby in "Speech Acts and Pornography" (see note 2), 226. Hornsby also discusses some more recent judicial pronouncements that are in the same vein.

35. Green (see note 3), 295.

36. Ibid., 296.

37. Langton (see note 2).

38. Austin (see note 6), 16.

39. Contrary to Green (see note 3), 301, who says that law is not speech. Green also complains that disablement is not prevention. I think it is one of many kinds of preventing. He thinks forbidding is preventing, and says gay marriages are not forbidden, hence not prevented. (He thinks I am mistaken in suggesting, like Jacobson, that there are "laws forbidding same sex-marriage." Well, Jacobson is indeed mistaken. But, unlike Jacobson, I explicitly contrasted disablement with forbidding in the remark that the gay couple does not *disobediently marry*, as they could if they were merely forbidden from marrying.) Forbidding is not, or not always, preventing: theft, for example, is forbidden but not prevented by law. Disablement is a much more effective preventing. Green's own assimilation of "forbidding" and "preventing" thus seems a mistake to me, though of course he is entitled to introduce a technical usage if he wishes.

40. MacKinnon, *Feminism Unmodified* (see note 2), passim, but see, for exam-

ple, 156, 181, 190, 193; MacKinnon, *Only Words* (see note 2), passim, but see, for example, 67–68.

41. Green (see note 3), 298.

42. Ibid.

43. Ibid., 305.

44. The notion of reciprocity is named and described by Jennifer Hornsby in the articles cited above (see note 2) and applied by her to issues about pornography and women's silence. My notion of silence as illocutionary disablement has much in common with Hornsby's idea of a person's being deprived of illocutionary potential.

45. The idea that free speech includes illocution is implicit in the arguments of Langton (see note 2) and Hornsby (see note 2) and MacKinnon (see note 2), though I don't say MacKinnon would express it in that way; it is explicit in Hornsby and Langton, "Free Speech and Illocution," (see note 2).

46. Green (see note 3), 299–301.

47. MacKinnon, *Feminism Unmodified* (see note 2), 156.

48. In describing narrow silencing Green (see note 3) says, to quote more fully, "someone stops that person from speaking or denies that person a fair opportunity to be heard" (303). I take the latter clause to involve the positive speech liberties described on the previous page: fair opportunity "to try to reach an audience" and so on. Someone deprived of such an opportunity is presumably someone who does not speak, that is, does not perform even a locutionary act.

49. Ibid.

50. Ibid.

51. Ibid., 304; and MacKinnon, *Only Words* (see note 2), 17.

52. Green (see note 3), 304.

53. For example, by Fred Schauer and (to some degree) Jennifer Hornsby. See Frederick Schauer, *Free Speech: A Philosophical Enquiry* (Cambridge: Cambridge Univ. Press, 1982); and Hornsby (see note 2).

54. On the speech versus expression issue, see Hornsby (see note 2); and Hornsby and Langton (see note 2).

55. Green (see note 3), 303–305.