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# Pornography as Illocutionary Harm: Why Censorship is Not the Answer

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## Abstract

According to speech-act theory, we do things with words every time we speak. The most striking thing one can do with words is to exercise authority over others, such as when a judge issues a guilty verdict in a criminal trial. Some speakers hold this kind of authority without good reason; this kind of speech constitutes an unjust imposition of authority, and thus arguably harms in a direct, non-metaphorical sense; it would seem, therefore, that it should not be protected by freedom of speech. The problem in these cases, however, does not lie in the words that harmful speakers utter, but in the things they have the power to do with them. It is this power, it seems, that must be dismantled: in speech-act terms, we must tackle felicity conditions, not locutions. This paper defends this insight. By providing an account of the (alleged) authority of pornographers as both epistemic and informal, I claim that the presumption against censoring porn is not lifted *even if* the speech-act argument succeeds in showing that pornography can be constitutive of harm. This does not mean that such harms should not be countered, but they should be countered as the specific kinds of harms that they are.

Show people as one thing, and only that one thing, over and over again, and this is who or what they become. (Adichie 2009)

## Introduction

We do “things with words” (Austin 1962) every time we speak—sometimes we “merely” express an opinion; some other times we do more striking things. One of the most striking things one can do with words is to exercise authority over others—such as when a judge says, “I hereby sentence you to 20 years in prison.” Some speakers have authority to do things with their words without good reason; this kind of speech, when exercised, is an unjust exercise of authority—it would thus seem that it should not be protected by freedom of speech. Is this really the case, however? The problem, after all, does not lie in the words these kinds of speakers may utter, but in *the things they have the power to do* with them: their speech *counts* as (harmful) exercise of authority, but should not.

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In speech-act theoretical terms: felicity conditions, not locutions, are the problem. The present paper tries to defend this insight.

It does so by intervening in the speech-act debate on pornography. Rae Langton (1993) has ingeniously argued that, if certain circumstances obtain, pornographers can exercise authority in the domain of sex; if this is the case, pornography can be “like the law” in some important ways (Langton 2017)—and *unjust* law at that. Langton carefully refrains from positively advocating censorship; her argument, however, is widely interpreted to entail *at least* that censorship can, in principle, be allowed back into the available policy toolkit in this domain. I shall argue that Langton’s diagnosis is compelling, but leaves the presumption against censorship intact.<sup>1</sup> It can establish that it is possible to harm with words, and that is a striking achievement in and of itself; however, it is the power of pornographers to do certain things with words (or pictures)—not the words (or pictures) themselves—which is proven problematic by it. Thus, my argument is not that censoring pornography remains just as problematic as before because Langton is mistaken, but that it does *even if* she is right.

The choice to focus on porn, however, is not merely literature-driven; whilst my argument rests on certain *general* features of speech-act theory and the implications (or lack thereof) it has for censorship, there is indeed something striking about pornography. On the one hand, when we see it through the lenses of the speech-act analysis, a genuine *Gestalt* effect occurs: we suddenly “get” why feminists do not see porn as “only speech.” If pornographers are not a “powerless minority” (Langton 1993, 312), but authorities in the domain of sex (at least for certain audiences), their speech can do things that are precluded to the powerless: it can *set standards*. Porn is thus a particularly striking example of how the stark distinction between speech and conduct crumbles under the scrutiny of speech-act theory. On the other hand, however, it is also a case where keeping the focus on felicity conditions seems particularly important. This is due to some specific features that the authority of pornographers—if they indeed turn out to have it—exhibits. When speakers wrongfully enjoy *epistemic* authority (i.e., authority over what counts as *true*), and they enjoy it thanks to *informal* mechanisms (such as ideology, cultural and social norms, or sheer overexposure), their unjustified power is one over viewers’ and hearers’ *minds*.<sup>2</sup> It thus becomes of paramount importance to erode their very credibility qua authorities in the relevant domain. If pornographers really have authority in the way Langton argues they might, it must be authority of this sort; and if their credibility qua experts is eroded, they can no longer do harm *even when they speak*;<sup>3</sup> their potential victims are thus protected in a *robust* way (i.e., across a range of counterfactuals). This has implications well beyond pornography.

What about, however, cases where taking wrongfully authoritative voices out of the public arena for some time is the only available way to dethrone wrongful authorities? This is possible, if arguably empirically rare. As we shall see, this potential justification of censorship (1) is different from the one that the speech-act argument is usually taken to provide support for; and (2) is ultimately reducible to other traditional liberal arguments allowing censorship in extreme cases, *in spite* of the strong presumption against it. My argument, thus, shall not be that censorship in these cases is never justified, but rather that the speech-act argument is no game-changer in that regard.

Figuring out *how* wrongful, informally held epistemic authority can be taken apart (including whether censorship should ultimately be in the picture or not) is a largely empirical matter, and falls beyond the scope of this paper. Two brief remarks, however, are in order. First, the Mill-inspired motto, according to which the “remedy” to problematic speech is “more speech” (Haiman 1991), may come to hold a new meaning

within this context: speech might, in some cases, be defended as instrument to expose the scam of those who hold epistemic authority without good reason, and *dismantle* that very authority. Thus, some of the intuitive appeal of the motto may lie, not in the (inaccurate) distinction between harmless speech and harmful actions, but in the fact that speech *might* be a weapon against some harms done with words—whilst recognizing that they are real harms indeed. Whether that can actually work is, of course, a largely empirical matter; there might be some significant limitations to the sheer power of rational persuasion. This brings us to the second remark. It could well be that changing *how* and *how much* (when; under what conditions; in the presence of which alternative options; etc.) hearers access certain forms of speech plays a crucial role in whether these are perceived as authoritative or not. If this is the case, background framing, rather than the “free market of ideas” left to its own devices, might be the route to follow. Far from being a *laissez-faire* approach, this would entail a significant amount of speech *regulation* (arguably well beyond current levels in many liberal-democracies)—whilst remaining very different from censorship.

The paper proceeds as follows. The next section lays out Langton’s view. I then defend her view against an important objection, and thereby unpack certain crucial features of porn’s alleged authority. I then move on to the heart of the paper, which argues that harmful illocutions call primarily for a targeting of their felicity conditions, rather than of the locutions used to perform them. I finally discuss two possible objections to the argument, and conclude by sketching some implications and caveats.

### Pornography and speech acts

Critics typically respond to anti-porn feminist arguments (according to which porn eroticizes the degradation of women; celebrates violence against them; portrays a false depiction of female pleasure and sees it as ancillary to male pleasure; etc.)<sup>4</sup> by arguing that pornography is a form of speech or expression, and should thus only be restricted when it directly and demonstrably *causes harm* (Mill 1978).<sup>5</sup> Now, whilst some have sought to establish causal links of this kind (for instance, between porn and rape), the evidence on this matter is shaky at best.<sup>6</sup> Against this background, MacKinnon has pioneered an altogether different brand of anti-pornography argument, claiming that porn *directly constitutes* the wrongful subordination and silencing of women (1987, 1993).<sup>7</sup> In particular, if pornography silences women, letting pornographers speak might curtail the free speech of women—thus turning the freedom of speech argument on its head. Whilst this claim has been dismissed as a “sleight of hand” in court (*American Booksellers Inc. v Hudnut* 1984, 598 F.Supp. 1316), Langton has insightfully used speech-act theory to defend its coherence (1993) and relied on some empirical evidence to support its plausibility (2017).

According to the theory of speech acts (Austin 1962), speaking always involves three dimensions. When I tell you “You are invited to my wedding!” I use the *locution* constituted by those six words to attempt to perform a specific speech act or *illocution*—in this case, an invitation; the *perlocutionary* dimension, in turn, is the effect which the performance of an illocution produces—for instance, you coming to my wedding, or becoming jealous. For illocutions to succeed, certain “felicity conditions” must be in place—some of which pertain to the speaker, others to the hearer, others still to the context and background norms. For instance, you might not understand that I am genuinely inviting you to my wedding because I constantly make jokes on the matter; or my speech may not count as an invitation if relevant norms dictate that invitations

may only be issued by the parents of the betrothed. Finally, a speech act might succeed as such, yet fail in its intended perlocutionary aim—you might understand yet decline my invitation.

Within this paradigm, it becomes obviously inaccurate to claim that speech—*unlike conduct*—is something which one, bar exceptional circumstances, has always a claim to engage in (and whose performance should therefore be legally protected). Clearly, free speech defenders do not contend that all speakers should nearly always be able to, say, marry people or declare them guilty of murder. What they must mean is, instead, that the performance of *certain, specific categories of speech acts*—e.g., expressions of opinions, ideas, artistic concepts, etc.—should enjoy said special protection.<sup>8</sup> Thus, MacKinnon’s startling claim could be reformulated as such: when certain conditions are in place, the speech of pornographers constitutes *a different kind* of speech act, not covered by those categories. Some things we can do with our words are particularly striking. If I occupy a certain role, if the two people in front of me meet certain criteria, and if certain other background conditions hold, my saying “I hereby declare you wife and wife” actually *marries* them. Speech acts of this kind are often called performatives, and interrogating their correct moral and legal status is clearly legitimate.

In Langton’s view, the best interpretation of MacKinnon’s apparently mysterious claim is that she had something like performatives in mind. Two categories of performatives are particularly relevant here: (1) verdictives, which constitute “authoritative deliver[ies] of a finding about some matters of fact or value” (Langton 1993, 305); and (2) exercitives, which confer powers and rights on people, or deprive them thereof (Langton 1993, 304). Both can, in Langton’s view, subordinate as well as silence. Verdictives can subordinate people, by authoritatively ranking them as inferior; and silence them, by establishing that their speech acts ought to be ignored, or interpreted in ways that are systematically different from what the speaker actually means. For instance, a Soviet doctor diagnosing a political dissenter with “sluggish schizophrenia” under Stalin’s regime performs a verdictive that arguably silences the dissenter’s speech—which will now be, by default, interpreted as the delirium of a mentally ill individual rather than a genuine expression of dissent. Similarly, exercitives can deprive people of certain rights, and declare them incapable of performing certain acts with their speech. Langton argues, for instance, that a legislator in Apartheid South Africa declaring “Blacks are not permitted to vote” subordinates black citizens, by ranking them as inferiors; and silences them, by depriving them of the power to perform the speech act of voting.

Whilst the sense in which performatives can subordinate is probably fairly clear, it may be worth clarifying in which way they can silence. Ordinary language most often understands silencing in a *locutionary* sense, that is, as actually preventing people from speaking, period. Langton argues, however, that the key to understand MacKinnon’s claims is *illocutionary* silencing. Her initial definition of the latter is that it consists in depriving speakers of the capacity, not to speak, but to perform certain speech acts: “Let them speak. Let them say whatever 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” (Langton 1993, 299; emphasis in the original). Unlike this general characterization, however, virtually all of Langton’s concrete examples are cases where the attempted speech of speakers suffers lack of “uptake” (Austin 1962; Langton 1993) in particular, that is, where hearers problematically (for reasons other than a random misunderstanding) do not *understand* what speech act the speaker is trying to perform. This is somewhat unfortunate, and scholars have rightly pointed out that plausible

candidates of illocutionary silencing can occur in ways other than via failed uptake. Hearers can, for instance, understand which speech act the speaker is trying to perform, yet unfairly doubt their sincerity, seriousness, or reliability (McGowan 2003, 2014; Caponetto 2017, 2021). When this occurs because of porn, we might say that women suffer “testimonial injustice” (Fricker 2007, 17–18)<sup>9</sup>—a kind of epistemic injustice which occurs when a speaker receives an unfair deficit of credibility from a hearer. This can happen, say, when women are taken to be either positively lying when they say “no,” or “confused” about what they actually mean and want. Alternatively, silencing can happen when certain speakers are taken not to be *entitled* to perform certain speech acts to begin with—for instance, to have no standing to refuse sex (Caponetto 2017; Hesni 2018). These insights have led Caponetto to offer a novel definition of illocutionary silencing, whereby the latter occurs when a hearer *systematically fails to recognize* the fact that a given speaker meets certain relevant criteria to perform certain speech acts (this covers uptake but also sincerity, seriousness, entitlement, etc.). Whilst I agree that we should go beyond uptake and that Caponetto’s definition is an insightful step in the right direction, I think we are better off staying somewhat closer to Langton’s original characterization. Caponetto’s definition, whilst enabling us to go beyond failed uptake, appears under-inclusive in other respects. Take, for instance, a legal system where women are not deemed competent to give evidence in court. Judges following this law are not failing to recognize anything, in their capacity qua judges; yet, having a definition of illocutionary silencing which does not enable to call this a case of silencing appears a great price to pay indeed. Of course, one might say that the law *itself* is committing a recognitional mistake here; but then it is not quite the hearer, as in Caponetto’s definition, who is committing a recognitional failure. I submit that a more straightforward way of capturing the same idea is to say that *one is silenced when one is systematically deprived of the capacity to perform certain speech acts that one has a rightful claim to perform*.<sup>10</sup> This has the same virtues as Caponetto’s definition, in that (1) it goes beyond uptake and (2) allows for the possibility that one may *justly* suffer illocutionary disablement (and thus not be silenced).<sup>11</sup> At the same time, it avoids the implausible implications which the criterion of recognitional failure leads to. I do endorse, however, Caponetto’s emphasis on systematicity, although I shall understand this notion in more common-sense terms:<sup>12</sup> speakers are silenced when they are incapable of performing certain speech acts which they ought to be able to perform with a certain level of consistency and predictability—at least vis-à-vis some *salient* audiences—and not just in the odd random case.<sup>13</sup>

A crucial aspect of illocutionary silencing is that one can be silenced with regard to speech acts other than those which traditionally pertain to freedom of speech. Hence, illocutionary silencing comprises both, say, being systematically misunderstood in one’s attempts to express a view, but also being deemed unfit to make certain exercitives (e.g., “I do not consent to this”). I believe this to be the correct outcome, if perhaps not perfectly in line with ordinary language, because it allows us to include all cases where one is harmed, through speech acts, in one’s capacity to perform certain speech acts.<sup>14</sup> Finally, it is worth noting that silencing can occur *as a result of* subordination: if women are established as mere playthings during sex, then their withdrawal of consent does not matter, even when expressed (and understood).

We can now appreciate Langton’s point: what if MacKinnon had illocutionary silencing and subordination in mind? For that argument to go through, pornographers must be able to perform subordinating and silencing verdictives and/or exercitives. One crucial felicity condition is necessary for both: speakers must have *authority* within

the relevant domain. If pornographers are a shunned, powerless fringe, then their speech cannot subordinate or silence; if, however, they are recognized authorities in the domain of sex for certain audiences, then their speech positively *sets standards*. If this is the case, pornographers are able to perform both verdictives (authoritatively *establish* truths about sex) and exercitives (establish “which moves in the sexual game are legitimate,” Langton 1993, 312). If the verdictives convey, say, that women’s resistance to sexual advances is just another form of foreplay; and if the exercitives establish, say, that certain fantasies are not just “hot,” but also constitute an appropriate way to treat women; then porn can indeed both silence and subordinate women. Langton clarifies how this sheds light on MacKinnon’s use of Linda Marchiano’s case (1993, 321). In publishing her memoir *Ordeal*, ex-porn worker Marchiano intended to denounce her fate as a slave in the porn industry; the book, however, was advertised as an “erotic autobiography” when it first appeared; her story, coming from her, *could not but be seen* as a titillating piece of erotic literature. If an episode like this is not just a freak, extremely unfortunate event, but occurs because porn is systematically perceived as setting standards on what women desire (at least for certain salient audiences), then the claim that pornography subordinates and silences women is perfectly *plausible*—although whether this is actually the case depends, of course, on empirical factors.<sup>15</sup>

### Publishing porn and the epistemic, informal authority of pornographers

Langton’s argument has been criticized for being itself a “sleight of hand”: several critics, in particular, have argued that she has failed to show how porn can *constitute* illocutionary subordination and silencing (Jacobson 1995; Butler 1997; Bird 2002). Many compelling responses already exist (Hornsby and Langton 1998; McGowan 2003; Mikkola 2011; McGowan et al. 2011). One further challenge to that effect, however, remains largely unmet (Saul 2006),<sup>16</sup> addressing it, I believe, is not only possible, but also indirectly brings to the fore some specific features of the kind of authority possibly enjoyed by pornographers, which shall become relevant later.

Saul argues that Langton makes a category mistake: pornographic material, as such, is merely a *locutionary medium*. To illustrate this, she introduces the example of Ethel, who lives in an environment where people communicate to each other only by exchanging notes. Ethel writes “I do” on a piece of paper and “has a very eventful week, during which she uses the sign to get married, to agree to return her books on time, and to confess to murder” (Saul 2006, 235). Now, surely the sign as such does not constitute any of these illocutionary acts—it is merely the locutionary medium used to perform all three. Illocutions are *utterances in context*; this is the whole point of distinguishing them from locutions, after all. Similarly, a piece of pornographic material as such is no illocution whatsoever. We therefore must ask what the relevant “utterance in context” is in this case: is it the *production* of the pornographic material or its *consumption* (say, a viewing)? Surely the latter, Saul argues. The actual production of pornographic material is like Ethel’s writing of her sign: it is nothing but the creation of a locutionary tool, which can then be used to perform different illocutions. However, depending on context, viewings may or may not be subordinating and silencing; a radical feminist, after all, can successfully show pornographic material in a lecture in order to vindicate MacKinnon’s argument. Therefore, claiming that pornography as such subordinates and silences women is, indeed, a sleight of hand after all.

Saul is right in drawing our attention to utterances in contexts. Viewings, however, cannot be the right category of utterances in context, in that MacKinnon and Langton

clearly have in mind speech acts performed by *pornographers* (whereby the latter term is understood widely, as including writers, directors, producers). A viewing of, say, a porn video is, instead, performed by whomever organizes the viewing, rather than necessarily by the pornographer who wrote/directed/produced it. However, Saul has neglected a third possibility: the *publication* of pornographic material.<sup>17</sup> Publishing pornography (in whatever form) is indeed an utterance in context, just like publishing an op-ed in a newspaper. Unlike Ethel's neutral, multi-purpose note, it means making a *meaningful statement*. When we publish something, we publicly put content "out there" via specific channels and within a given context—which jointly co-determine (together with the actual content of what we publish, certain features about ourselves, and certain features and predispositions of hearers and viewers—in sum, jointly with the broad set of *felicity conditions*) the nature of the specific illocution we thereby perform. This is equally true of a journalist, a vlogger, the author of a book, and the producer of a porn movie: it is one thing to conceive and produce the material, another is to put it out there.

Now, saying that we should compare the publishing of pornography to speech acts such as the publication of op-eds seems to put pornography back into the protected category of expressions of opinions and ideas. Publishing something does not, however, *always and necessarily* constitute the speech act of expressing a view in the free market of ideas. When the American Psychiatric Association (APA) publishes the latest edition of the *Diagnostic and Statistical Manual of Mental Disorders* (one of the standard references on mental conditions for the discipline) it does not only express a view—it *sets a standard*. Publishing an edition where homosexuality no longer features does not mean, for instance, expressing the "opinion" that gay people are not mentally ill; it means that, from now on, not considering homosexuality an illness becomes the new, authoritative default—in a way that directly informs clinical practices and diagnostic criteria. Publishing porn *may* do something similar in the domain of sex—at least for some relevant and salient audiences. Publishing mainstream porn content can *count*, for certain salient audiences and given certain pre-conditions, as the "putting out there" of authoritative content—which, say, *instructs* said audiences about how women are to be treated and understood during sex.<sup>18</sup> This can occur, for instance, if it is the case that vast amounts or salient groups of teenagers see porn not only as a tool for sexual arousal, but also as the primary "go to" place to find out what sex is like.

An act of publishing can fail or succeed as an illocution and/or in its intended perlocutionary aims, just like any other speech act. I might want to persuade many people by publishing a pamphlet, and succeed in the illocution of putting out there a forceful opinion, yet suffer perlocutionary frustration in that most people are not persuaded. Or I might intend to exercise authority (rather than just express a view) by publishing a manual, yet audiences may not take it as a canon—thus causing my intended illocution to fail. For some speech-act theorists, the opposite can also occur: one can sometimes *perform a speech act that one does not intend to perform*. In the 1979 film *Monty Python's Life of Brian*, crowds elect Brian of Nazareth as their chosen religious guru—as a result, everything he says, despite his intentions, *counts* as authoritative religious teaching for them (including his desperate plea "You are all individuals!", whereby he actually intends to reject the very role of spiritual leader). Similarly, when pornographers publish porn, this can arguably count as setting standards on sex for some audiences (if the relevant felicity conditions obtain) even if unintended. Pornographers might simply be exploiting the opportunities offered by the web, by circulating more and more material in order to make more and more money, following "trendy" tropes (e.g., rape fantasies). Indeed, with these perlocutionary aims in mind, they might not

even give much thought to which illocutions they might be performing at all—they might not even intend to “express” certain views (i.e., to make truth-apt statements about sex), let alone to exercise authority. They might just be in the business of filming certain kinds of scenes again and again, because they sell well. However, the thereby arising omnipresence of pornographic material—together with, say, prevailing sexist norms<sup>19</sup> in society and the absence of alternative sources of sex education—can lead, say, the current generation of teenagers to see porn as a “go to” place to learn about sex, and thus to take certain tropes, chosen by pornographers because they sell well, as truths about women. On this reading, a speech act can be an exercise of authority even if its performer does not intend it to be; thus, hearers can not only *ratify* whether the intended speech act is successfully performed or not, but *contribute to determining* which speech act it is (see, e.g., Langton 2018a and MacDonald 2021). This account is contested in the literature, and I do not have the space to adequately defend it here. The only remark I shall make here is that at least a weak version of this view, according to which hearers have the power to determine the nature of the speech act performed at least in *some* cases, is necessary to make sense of some important everyday concepts—especially the idea that those who have authority should watch their words, because, *coming from them*, they are not “just words.” The idea that someone with authority might exercise that very authority even when they do not intend to, just because of the privileged position they occupy, is a powerful intuition, which we should be able to account for (I owe this to Kukla 2014). This is the way in which, if Langton is right, pornographers might come to hold authority.<sup>20</sup>

Now, the publication of something can count as an authoritative act for some audiences and not for others; what is more, its authority can also be less than perfect—that is, it is possible to make a dent in it. These are two ways in which authorities can be *partial*. For instance, it could be that porn is only taken as authoritative by current teenagers—who are simultaneously overexposed to it, largely illiterate about sex, and not exposed to sufficient good-quality sex education. For this salient audience, porn might constitute not only a source of sexual arousal, but also a “go to” place to teach oneself about sex, in a way that teenage magazines might have done for previous generations—whilst for many other groups porn has no authority whatsoever. Of course, only empirical evidence can tell us whether porn really has authority of this kind, for whom, and how much of it (how robust the authority is). The kind of evidence we need is not, however, on whether “porn causes rape,” but rather on this very authoritative status. In the series *Mrs Fletcher*, for instance, the main character’s 18-year-old son is genuinely taken aback when he realizes that certain “moves” he has learnt from porn—and “learnt” really is the right word here—are perceived as forms of assaults by one of his sexual partners. What needs to be settled empirically is whether this is a plausible scenario (for some evidence, see Maddy et al. 2013; Langton 2017, 28–35; Doornwaard et al. 2017). In most cases of this kind, authority will also be partial in that it is possible to erode it: we can imagine Mrs Fletcher’s son starting to question whether he really should have relied on the authority of porn so much; but we can also imagine cases where instilling doubt might be very difficult, even after experiences of this kind.

This response to Saul enables us to zoom in on two crucial features of the authority of pornography. First, like the APA and unlike a legislator, its authority is *epistemic* in kind.<sup>21</sup> Recognizing an entity as an epistemic authority means being committed to defer one’s judgment to it on relevant matters of knowledge—what it says counts as standard-setting for us. This constitutes genuine harm if the epistemic authority is held without



good reason, and especially so if it is wrongfully used to rank certain people as inferior, irrational, mentally ill, etc. Epistemic authorities can make a major practical difference. When an epistemic authority declares certain people mentally ill, for instance, it thereby has the power to sanction as appropriate certain behaviours that would otherwise count as disrespectful and indeed often impermissible (i.e., involuntary psychiatric treatment). If pornographers have authority, it is authority of this kind, *mutatis mutandis*: they can have, for instance, the authority to establish that “no’s” uttered by women can be ignored, or that women may permissibly be used as playthings during sex.

This is compatible with epistemic authorities being challenged, and with their power being imperfect. Dissenting voices to mainstream psychiatry exist, and can at times get some traction—but this, *up to a point*, does not result in a full loss of authority for the medical establishment. Langton herself notes that the success of illocutions is not a sharp matter of yes or no, but a question of degree (1993, 301 and 308–09). What matters is for the relevant speaker to enjoy authority in a sufficiently robust and systematic way. In other words, there must be significant and salient audiences, and not just the odd case here and there, who believe certain things about women and sex *because* this is what porn shows. This is why a given content *can* be consumed in different ways by different audiences and still be meaningfully authoritative. If porn counts as authoritative for certain salient audiences, this will of course affect future acts of consumption, which will be disproportionately taken to be *acts of learning*. However, just like the APA’s manual can be read with critical or even derisive aims in a conference of heterodox psychologists without *thereby* losing its authoritative status, similarly porn can *sometimes* be used for different purposes (including for feminist advocacy). As we shall see below, the fact that the authority of wrongfully authoritative speakers can be partial and imperfect is one of the reasons why there are more than one way to dismantle it.

A second, crucial feature of porn’s authority is that, if it exists, it must be *informal*. No official legal construct confers authority upon pornography—feminists would say that what upholds it is the ideology of the patriarchy; others might say that pornography holds authority because it is, currently, the dominant or even only game in town for teenagers who want to find out how sex works. Now, can informal authorities (whether practical or epistemic) subordinate and silence? For much speech-act theory, the answer is clearly yes. The law is one social construct among others, if a very important one (see, e.g., Searle 1995). Thus, agents can come to enjoy authority through *de facto*, informal means without having it formally conferred upon them.<sup>22</sup> This is true of both practical and epistemic authorities. A criminal or terrorist organization (say, the Camorra or Hezbollah) may function as an *ersatz* state in certain circumstances. Similarly, whereas some epistemic authorities are officially sanctioned, others function through informal mechanisms. A particularly congenial example is the case of Pickup Artists (PUAs), a community of self-proclaimed seduction experts who have gained a lot of traction in recent years. A common trope among PUAs is the idea of “last minute resistance,” according to which women often “resist” sexual intercourse just before it is about to happen (even if they are actually interested) because they are either biologically or socially “hardwired” to do it (Urban Dictionary *n.d.*). If salient groups of men come to see PUAs as genuine experts (they do, after all, publish manuals and teach workshops), their claims will become epistemically authoritative for them—for certain audiences, “last minute resistance” will be a serious idea, and women resisting sex after having initially showed interest will no longer count as having genuine second thoughts. Similarly, and in much larger numbers indeed, pornography may come to enjoy

informal authority over teenagers. One may say that, by allowing porn to be omnipresent; by not providing alternative forms of sexual education with sufficient *impetum* and thoroughness; and by doing so in the knowledge that we live in societies that are already ridden with sexism, we *enable* pornography to come to hold informal epistemic authority. We send the message that “*this is how men are taught, around here* [...] about how women are to be treated” (Waldron 2012, 91; emphasis in the original—also quoted in Langton 2017, 34). Now, as Langton argues (2018b), speakers can hold epistemic authority because they *are* experts, or because they enjoy credibility qua experts without being actual experts—when the latter is the case, the authority is held without good reason: the speaker counts as epistemically authoritative, but should not. Arguably, both PUAs and porn fall in this category.

Summing up, a successful response to Saul can be offered—and it allows us to draw attention to certain underappreciated features of the authority of porn: its being epistemic rather than practical; informal rather than formal; and partial/imperfect rather than absolute. These features will turn out to have important implications.

### Felicity conditions, not locutions! On what exactly is inadmissible about inadmissible illocutions

The claim that (publishing) pornography subordinates and silences women is therefore perfectly coherent. If it is also empirically correct, Langton argues, this might cast doubt on whether pornography should enjoy the special protection granted to free speech: “Women wish to be able to speak some important action [...]. 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” (Langton 1993, 330, emphasis added). This section argues that, contrary to what this quotation might suggest, the speech-act argument against pornography is *not* a game-changer for the status of censorship, even if successful in and of itself.

One clarification is necessary before I proceed. Langton carefully shies away from *actively vindicating* censorship (1993, 299–300, 313–14, 328).<sup>23</sup> Her argument, however, has been widely interpreted to provide some positive support for it (Jacobson 1995, 65 calls it a “new argument for censorship”; but see also West 2004), or at least to lift the strong *presumption* against it (see, among others, Jacobson 1995, 2001; Bird 2002). If pornographic speech constitutes harm in and of itself, so the story goes, censorship becomes at least *prima facie* an option, if not necessarily all things considered recommended—say, because measures short of censorship prove to be sufficient, or because censorship might dangerously drive the porn industry underground in a way that might harm many women in it. Thus, Langton makes a very careful claim indeed, but many commentators take such careful claim to imply *at least* that the speech-act argument against porn is a game-changer, in that it puts the issue of censorship on a different footing. We can at least, it is suggested, *entertain the issue* of whether to censor porn or not. My claim is that the speech-act argument is indeed ground-breaking in showing that porn can be constitutive of harm but involves no shift of perspective with respect to the status of censorship.

The argument is very straightforward but might appear counter-intuitive; I shall therefore first lay it out, and then offer some examples to support it. If an act is wrongfully harmful, it becomes justifiable to (try to) counter it—indeed, it might even be required to do so. And if we have established that a specific harm is committed *with words*, it is tempting to conclude that it becomes *prima facie* (if not necessarily all things

considered) justifiable to stop those words from being uttered to begin with. Censorship, in other words, appears to be allowed back into the policy toolkit—although whether it is also, ultimately, the right thing to do remains to be seen. This is not, however, what the speech-act argument establishes. The problem it identifies starts and ends at the illocutionary level: it is wrong for the speech of pornographers to *count* as an authoritative, subordinating, and silencing act, not for such speech to occur at all. Thus, suggesting that the strong protection granted to free speech might not apply to porn rests on a double standard. When it comes to understanding what (publishing) pornography *is*, it is pointed out that it is a kind of illocution; when it comes to deciding what to do about it, one reverts back to putting the emphasis on its locutionary dimension.

Recall that MacKinnon's argument and its speech-act reconstruction claim to be fully compatible with, and indeed grounded in, the principle of freedom of speech: "It is the same social goal, just other people" (1987, 156). Banning locutions, however, means disallowing *all* illocutions that need those locutionary means to be performed (included expressions of opinions and ideas, however abhorrent these may be). Jacobson (1995) unpacks this thought by claiming that freedom of speech should be understood as freedom *of locution*. Is he right? Not quite, yet there is a kernel of truth in this claim. Freedom of speech, as we have seen, is the protected freedom to perform a certain category of illocutions; however, it is true that, for that to be possible, locutions to perform those speech acts must remain available. If, say, I wish to express a view, but this is taken as an authoritative verdict by certain salient audiences (and it should not be), it is the latter issue that constitutes a problem and should be fixed. This does not mean downplaying the speech-act argument in any way: establishing that (publishing) pornography may very well constitute harm is ground-breaking and its importance cannot be overstated. If empirical evidence lends support to the view that the problem exists and is extensive, this potentially grounds a case for trying to dismantle the misplaced authority of porn (and the felicity conditions that sustain it) very forcefully indeed. What pornographers must suffer, however, is not censorship, but rather (just) *illocutionary disablement*: they must be deprived of their power to silence and subordinate.

This claim might seem striking; yet, at closer look, it captures the standard way in which we *already* tackle other kinds of wrongfully harmful illocutions. Let us focus on the paradigmatic case of legal authority, with two examples made by Langton herself. The first, already encountered, case consists in a legislator uttering "Blacks are not permitted to vote" in an Apartheid regime (Langton 1993, 302). The second consists in a husband saying "I divorce you, I divorce you, I divorce you" to his wife in a jurisdiction where Sharia law is in force and thus, allegedly,<sup>24</sup> where saying so counts as unilateral divorce. The same is not true if the wife says the same to her husband: "Divorce of that kind is an act that is unspeakable for women" (Langton 1993, 317). Now, what we normally regard as appropriate counter-measures in cases such as these is not to prevent people from speaking.<sup>25</sup> We do not legislate that people are no longer allowed to *say* that Blacks should not be allowed to vote. We legislate, instead, that no such claim should ever *count* as the disenfranchisement of Black citizens (for instance, via constitutional constraints on legislation). Similarly, in the Islamic divorce case, the point is not to prevent married men from *saying*, "I divorce you, I divorce you, I divorce you" to their wives, but to not make that *count* as unilateral divorce. Once the relevant legislative change is in place, husbands can still yell "I divorce you, I divorce you, I divorce you" at their wives as much as they want; their wives, however, can

perfectly well respond, “Fine, you had to get that out of your system. Now, for the real thing, talk to my lawyer.” In both cases, the relevant speakers have not been deprived of the power to pronounce certain locutions—they have, instead, suffered (justified) illocutionary disablement. The same reasoning applies, *mutatis mutandis*, to pornography: if pornographers have no claim to their epistemic authority, we must dismantle the felicity conditions that make their speech an exercise of authority. When this occurs, pornographic material may very well carry on portraying phantasies of women who say “no” but are thereby just engaging in foreplay; this, however, will no longer count as a standard-setting claim about what women are “really” like.

This can also be true for *epistemic* authorities. Suppose, say, that the APA enjoys epistemic authority without good reason; its view on mental disorders should therefore no longer be seen as standard-setting. This does not lift the strong presumption against censoring their manual—it merely implies that the manual must be deprived of its misplaced authoritative status. It should still be legally permitted to sell it and read it (including in schools and universities, under certain conditions and with the right disclaimers), but we might need to legislate against it being adopted *as a textbook* in schools, or as reference in official psychiatric protocols and diagnoses. None of this amounts to censorship: it merely means downgrading a text from epistemic authority to mere expression of a view.

Are things really that straightforward, though? A cluster of rejoinders might be raised at this point. One could object, first, that censorship may be justified, as a non-ideal strategy of sorts, if we have reasons to be skeptical about the prospects of the “ideal” strategy of illocutionary disablement. If the harm committed by pornographers is real, and we do not know for sure whether tackling felicity conditions will work, are we not justified in preventing them from doing harm in the most straightforward way, that is, by not letting them speak? The same, after all, is true in the Apartheid and divorce cases: if we do not know whether we will manage to implement legislative change, it seems that seeking to prevent Apartheid legislators and husbands from speaking is justified after all, at least for the time being. There is, however, one important disanalogy between the two considered examples and pornography, which actually makes the case for censoring porn *harder*. Pornographers, as we have seen, enjoy authority of an epistemic kind (if at all). When practical authorities—such as Apartheid legislators or husbands in the hypothetical example—are prevented from speaking altogether, they are indeed *thereby* prevented from exercising their authority in that specific occasion. The husband who is prevented from saying “I divorce you, I divorce you, I divorce you,” cannot thereby perform the illocution of unilateral divorce. Epistemic authorities, instead, make us believe certain things to be true and certain types of behavior to be appropriate. Therefore, it seems that whenever the issue of censorship becomes relevant, it is because hearers *already* believe certain things because of certain (past) speech acts—it is a matter of *undoing* harms, rather than straightforwardly preventing them from happening.<sup>26</sup> What is more, the power of epistemic authorities is *sticky*: if hearers are under the spell of the epistemic authority of pornographers, they will not just cease to believe certain things the moment pornography is no longer around, like a snap of a wizard’s fingers which can undo a spell.<sup>27</sup> This is especially true for epistemic informal authority, which cannot be removed simply by withdrawing an official investiture—although it is doubtful whether that is ever the case, even for formal authorities. At most, one could claim that censorship might, *in the course of time*, break the spell under which pornographers hold their audiences (a point to which I shall return below)—not that the harm stops *the very moment* they are censored. Some of this is

true, in a certain way, also for practical authorities. If I physically prevent a judge from applying an unjust law during by breaking into a courtroom, I may block a very specific incidence of unjust harm, but to the extent that the law remains in place, the threat of injustice for all its potential victims remains. In the case of informal epistemic authorities, however, we can hardly ever prevent even individual harms in that way. Thus, taking apart felicity conditions must be the ultimate goal.

Now, one could argue that preventing pornographers from speaking, at least for some time, *might do just that*—by no longer being exposed to porn, hearers might progressively cease to regard it as authoritative. The first thing that should be noted about this rejoinder is that it actually accepts one of the central claims of this paper: censorship is here suggested as a *means* to erode the wrongfully placed epistemic authority, rather than something in principle legitimate simply because we are no longer in the domain of free speech. This key point is grossly underappreciated in the debate. Yet, if the remark implies that censorship is something that we can just *try out*, hoping it might work, then it must still be rejected. If the speech-act argument against porn wishes to remain compatible with freedom of speech, as it does, we cannot recur to censorship casually: doing so will curtail the freedom of certain speakers to express views and opinions, hence the bar must be significantly higher than that. Things are different, of course, if we have compelling reasons to believe that it might be *the only successful strategy*. If this is actually the case, and if the harm of porn is significant enough, then we may indeed have reasons for recurring to censorship after all, *despite* the presumption against censorship. For this argument to fly, however, we must have strong evidence, first, that censorship *will work*; and, second, that dismantling felicity conditions alone, without preventing locutions, will be impossible or nearly so. For instance, confirmation biases might be so deeply enrooted that the *mere availability* of pornographic material showing women enjoying rape is a prohibitive obstacle to the erosion of the authority of porn. Thus, letting pornographers speak *means* letting them perform certain illocutions—under the current circumstances, their speech *cannot but* be taken as authoritative. If these two conditions obtain, we might say that censorship is, sadly, *necessary* for harm prevention.

There may be cases where the *only way* of depriving a text of its dangerous, unjustified authority is to remove it from circulation altogether, at least for a while; this was deemed to be the case, for instance, with respect to *Mein Kampf* in post-war Germany. This however, does not indicate that the presumption against censorship is lifted in cases of misplaced epistemic authority, and we can thus openly debate the opportunity of recurring to it. It just means that censorship may be viewed as an instrument of last resort to *disable certain illocutions* under some very exceptional circumstances, *despite* the strong presumption against it. This, however, would not be a new argument for censorship. Several—if not all—free-speech defenders already accept that, if censorship is the only way in which we can counter some very real and grave harm, we may have to recur to it in some exceptional cases. Langton has provided a powerful argument to show that pornography can indeed constitute harm; and such argument could very well constitute the premise of a complex, empirically informed justification for the (presumably temporary) censorship of porn in some extreme cases. This, however, is very different from the way in which the speech-act argument about porn is commonly understood to affect the *very standing* of censorship and the relationship between porn and freedom of speech.

Now, whilst the jury is by all means out on the matter whether censorship is necessary in this case, it may be worth pointing out that current empirical evidence in

support of the epistemic authority of porn identifies the problem in its *omnipresence* and in the absence of easily accessible alternatives, rather than in its sheer availability (Maddy et al. 2013; Doornwaard et al. 2017). Thus, it seems to offer *prima facie* support for the *regulation of access* to porn (especially by certain salient groups, such as teenagers), possibly in much more extensive ways than is currently the case (more on this in the Conclusion), rather than for censorship outright. What if, however, *conceptual* reasons, with no need for empirical evidence, were sufficient to prove that measures short of censorship are inadequate in the case of porn? This is the question to which I now turn.

### Is pornography special?

In this section, I respond to two attempts to establish that in the case of porn, tackling felicity conditions alone simply cannot work, for reasons that are conceptual rather than just empirical.

The first runs as follows. Dismantling the wrongful authority of pornographers without preventing them from speaking is *impossible* if women are not only subordinated, but indeed also *silenced* by porn. Some of Langton's choices of words can be seen as gesturing towards this view, and she is fairly often interpreted in this way by critics, although recent writing seem to clarify unequivocally that her view is much more careful (2018a). Either way, the view is worth addressing. Langton recognizes the power of speech as a means of blocking wrongfully harmful illocutions (1993, 313–14; 2016, 2018a). For this to be an option, however, it must be *possible* to fight speech with more speech. If women are silenced, however (rather than merely subordinated), how can they “talk back” (Butler 1997) in the way that matters? “If pornography not only subordinates but *silences* women,” Langton remarks, “it is not easy to see how there can be any such fight [...]. Whether women can fight speech with more speech depends on whether, and to what extent, women *can* speak” (1993, 313–14). Notably, Langton does not linger on justifying this point much. Yet, this claim has been largely taken to imply that “the solution preferred by many liberals (and feminists) of countering the harms of pornography with more speech-protest, satire, education and public debate” (West 2004) is simply delusional if pornographers can *silence*, for women simply cannot engage in such fight.

I believe this conclusion to be unwarranted. Recall how the alleged authority of pornography is plausibly partial; as such, it is not immune from counterattacks. Women who are illocutionarily silenced by pornography suffer something close to Fricker's (2007) testimonial injustice: they cannot *count* on succeeding in their attempted illocutions with the reliability and robustness which they deserve. They can expect to be often misunderstood, not taken seriously, etc. In Fricker's wording, they suffer an unfair *deficit* in credibility and reliability, rather than watertight illocutionary disablement; theirs is a significant impairment rather than an impossibility. This means that there is a window of opportunity to be explored and exploited. To have a sense of how this might unfold, consider a scene from the 1968 *Planet of the Apes* movie. The human astronaut who has crash-landed on the “planet of the apes” is captured and restrained; however, unlike other humans on the planet (who are mute and lead primitive existences) the astronaut is articulate, and makes an eloquent case for the equal rationality (and therefore moral standing) of humans and apes. The hardliners within the ape community dismiss his words, saying that he is simply “parrotting” rational argumentation, without actually understanding what he is doing.<sup>28</sup> Clearly, however, his plea leaves an

impression on many apes in the audience, instils doubts in them, and ultimately wins him some precious allies. This is a very clear case of an attempt at illocutionary *silencing* proper which, although starting from a background position of authority, ultimately fails because its victim succeeds in eroding the relevant felicity conditions. What is more, if actors other than victims may also engage in this erosion attempts—for instance, in the case of pornography, men—they might stand an even better chance to succeed.

Of course, if speakers are not only subordinated, but also silenced (if imperfectly so), engaging in this kind of resistance will prove more difficult for them—and possibly for third parties, as well. It could be that countering silencing by tackling felicity conditions alone is prohibitively hard in many cases. Speech as an instrument against wrongful authoritative speech has, after all, a structural disadvantage in all cases, for undoing conversational norms is much harder than initiating them (McGowan 2009; but see Lepoutre 2019). My claim is merely that the mechanisms underpinning subordination and silencing are ultimately the same, and so are the means to fight both. What is more, tackling felicity conditions with means other than censorship need not—indeed, most likely will not—be a matter of isolated attempts. It will most likely entail regulating access to porn; making such access conditional to the reading of certain disclaimers or exposure to alternative sources; and injecting the public with healthy doses of alternative sources of information in a concerted manner.

Let me now turn to the second objection. According to it, porn is importantly unlike the cases discussed in the previous section due to the very *informal* character of its authority. In formal cases, we can simply invalidate the legal status of certain statements;<sup>29</sup> things are different when a speaker enjoys authority through informal norms and mechanisms. This is not a mere issue of feasibility. When certain power equilibria are in place, changing laws is incredibly hard—as slavery abolitionists and suffragettes know all too well. The point is rather that, when the power is sustained by social norms, one has to erode those very social norms in order to take it apart, and this raises *epistemic* obstacles, not just sheer issues of power inequality. We very often simply *do not know* how to dismantle felicity conditions. And until we do, certain actors saying certain words, it seems, will unavoidably *count as* them performing certain illocutions for some hearers—the only way to stop them, or so the argument goes, is to prevent them from speaking altogether. Letting them speak *means* letting them perform certain (wrongful) speech acts.

To illustrate this point, let us return to the divorce example. Let us suppose that we have deprived the utterance “I divorce you, I divorce you, I divorce you” of its legal power. Let us also suppose, however, that social norms have not followed suit. A married man saying “I divorce you, I divorce you, I divorce you” to his wife still *de facto* counts as performing unilateral divorce in the community. Married men are still widely perceived as being entitled to initiate divorce unilaterally in this way in a way that is not available to women; *de facto* still do it; and women in the community, by and large, comply, by leaving the marital home without protesting (and possibly without advancing any claims) when these words are uttered to them. Now, is the authority of pornography not similarly sustained by informal social norms? And if it is, is it not true that pornographers cannot but be perceived as making authoritative statements as soon as they speak? And, finally, does this not imply that the only way to allow other “stories” on sex to have a chance is to remove the dominant “single story” from the shelf for a while?

Now, it is certainly true that, when the authority of harmful speakers is sustained by informal social norms, dismantling felicity conditions is particularly tricky. Again,

however, this implies neither that it is impossible, nor that censorship will, instead, succeed. If anything, the example further illustrates that the capacity of some speakers to enjoy power over their hearers' *minds*—even if the law says they should not—is what allows them to do harm with their words. Thus, if anything, it casts some doubt on the efficacy of legal means (of which censorship would be one) in these cases. We are thus back where we started: pornography *could* be special—such that censorship as measure of last resort, in a way that most free-speech advocates would also accept, is warranted; but the case still needs to be made, and it must be an empirical one.<sup>30</sup>

### Conclusion: Caveats, clarifications, and implications

This paper has argued that the speech-act argument regarding porn, even if coherent and potentially rife with important implications, does not lift the presumption against censorship. What the argument grounds is a case for tackling the misplaced authority of pornographers—censorship can, at most, be justified as a necessary instrument of last resort to that aim, in a way that does not differ from other justifications of censorship already accepted by many free-speech advocates. Before ending the paper, I would like to briefly sketch some implications and qualifications of its main argument.

First, the issue of how to erode the authority of pornographers is highly complex, largely empirical, and must be the task for another day. I would like to suggest, however, that the chief, traditional liberal strategy of “fighting speech with more speech,” may acquire a new *meaning* in this context: it maybe be interpreted, not as a failure to recognize that speech can be constitutive of harm, but as an attempt to either debunk wrongful authorities or create alternative ones, whilst fully recognizing that real harm is at stake. Debunking efforts are what feminists have been engaging in all along; prominent examples include practices of feminist reappropriation of words; “No Means No” campaigns; consent workshops; and, last but not least, feminist scholarship itself. The creation of alternative authorities, on the other hand, can occur both at the level of civil society and through state intervention. Civil society actions may include the creation of feminist erotica, as well as women-led informative venues on female sexuality (such as the website [OMGYes.com](http://OMGYes.com)). State-run interventions might come in the form of mandatory, comprehensive, and “keep it real” sexual education in schools, as well as state subsidies for alternative forms of sexually explicit material (such as feminist erotica). Of course, whether strategies of this kind work—and indeed which, among those briefly listed, stand a better chance than others—depends on a whole set of empirical issues, such as how open audiences are to rational persuasion (Lewandowski et al. 2012) and the structural disadvantage of reactive “second movers” (McGowan 2009). We might, for instance, have to put more emphasis on the establishment of the “right” forms of epistemic authorities as ex-ante antidotes (e.g. schools), rather than reacting with fact-checking ex-post (Lepoutre 2019). The point of this paper is not to defend strategies of “fighting speech with more speech” as clearly sufficient. What matters is instead that these strategies may acquire a whole new meaning: they may no longer be just moves within a *harmless* “battle of ideas,” but tools to fight very concrete harms done with words.<sup>31</sup>

Second, strategies which fall short of censorship can still be significantly “hands on.” If the wrongfully held epistemic authority of certain speakers is caused by what Chimamanda Ngozi Adichie calls “the danger of a single story” (2009), taking it down may well involve proactive measures. We might need to ensure that hearers are not overexposed to such speech (or overexposed to it at epistemically vulnerable junctures, such as adolescence for porn); that they are exposed to it with an appropriate



background framing; and that other stories get to be heard, too. The state does not violate the freedom of speech of intelligent design advocates when it prevents school curricula from using intelligent design-based manuals as textbooks—it merely deprives them of authoritative status, whilst the view can still be advocated in public debates. Similarly, it would not violate the freedom of speech of pornographers (although it would negatively affect their economic interests) if it subjected porn to much more heavy-handed regulation than is currently the case. This might include, say, making access to porn more difficult and expensive; ruling that sexually explicit venues must mandatorily offer a diverse range of material; legislating that teenagers may only watch porn once they have been extensively exposed to other forms of sexual education; and requiring more rigorous evidence than a sheer self-declaration to allow access to porn sites. If it is true that humans tend to regard certain views as authoritative when they are constantly exposed to them (Lewandowski et al. 2012), similar measures might be appropriate even in cases beyond pornography.

Finally, the argument made in this paper is fully compatible, in principle, with endorsing MacKinnon's and Dworkin's civil ordinance proposal (Dworkin and MacKinnon 1988)—if speech acts harm, those who perform them may be made civilly liable for these harms.

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## Notes

1 Throughout this paper, by censoring porn I mean banning its publication and distribution. Many feminists have concerns about the harms done to women in the very *production* of porn, and might deem a tighter regulation or even prohibition of the porn industry justified as a result, but no speech-act theoretic argument is needed to ground those concerns.

2 For a congenial account of how power operates, see Forst's concept of “noumenal power” (2015).

3 At least the kind of “illocutionary” harm in question; they can of course still cause harm in other ways.

4 See, e.g., Dworkin 1981; MacKinnon 1987, 1993; Jensen 2007; Dine 2010.

5 Ronald Dworkin (1985) has offered a different argument, grounded in equality (for a reply, see Langton 1990).

6 The *locus classicus* is Dworkin 1981. Studies, however, have produced mixed results at best (for a general overview on the first wave of literature on this, see Saul 2003, 79–83).

7 It should be noted that MacKinnon defines pornography not simply as sexually explicit material with real sex in it and primarily aimed at sex arousal, but as sexually explicit material that depicts women's subordination in such a way as to *endorse* that subordination (1987, *passim*; see also West 2004). Both MacKinnon and other anti-porn feminists who have endorsed her definition, however, claim that most porn available via mainstream channels is actually covered by this definition.

8 I take the belief in freedom of speech to be the position according to which expressing one's views is something one nearly always has a *moral* claim to do—even if the views themselves are morally wrong or even abhorrent—and should be, *therefore*, nearly always legally permitted. The justification for this

standpoint can vary. It can, for instance, be grounded in the deontological belief that there are some rights to do wrong; or in some more mixed, at least partially consequentialist, accounts (à la John Stuart Mill). Now, in the pornography debate—which was initially US-oriented and dominated, on both sides, by figures with a law as well as a philosophy background (e.g. Ronald Dworkin and Catharine MacKinnon)—appeal is often made to the First Amendment, thus seemingly suggesting that all that is at stake is the correct *legal* status of pornography under current legislation. Whilst it is true that this legal point is often made, I take it that most participants in the debate see legal freedom of speech, as stated in the US constitution and other jurisdictions, to be the fairly straightforward *legal protection of a moral right or value* (the link between morality and law is, of course, not always this linear). Thus, they are not interested in sheer legality only, but in establishing whether a certain kind of speech falls under a category that is rightly legally protected on moral grounds. Some feminists are, of course, critical of the very principle of free speech. I understand MacKinnon, however, to be claiming that one can accept the moral standpoint that the freedom to express views is sacrosanct, and *yet* question whether pornography really belongs to *this*, rightly legally protected, category. I am grateful to an anonymous reviewer for prompting me to clarify this point.

9 See McGlynn 2019 for a critical account of this perspective.

10 Of course, only substantive moral and political theory can tell us what speech acts agents should be able to perform when—and rightly so. Hence, we deem pornography as a plausible candidate for illocutionary silencing if we (agree with the steps in Langton’s speech-act theoretic argument and) are committed to women’s equality, to them having authority over their own bodies, etc.

11 Note that Langton, instead, uses the terms illocutionary disablement and illocutionary silencing somewhat interchangeably (1993, 315 and *passim*). Under my definition, you can be justly disabled but you are always unjustly silenced.

12 This is not due to a disagreement, but simply to the fact that space constraints prevent me from discussing Caponetto’s technical definition properly, and a more ordinary understanding is sufficient for this paper.

13 The issue of *what counts* as systematic in this way can only be established in dialogue with empirical work. We need to know what it takes, empirically, to make a justified and reasonable prediction that being a member of a certain group means being likely to encounter certain obstacles in performing certain speech acts; or, conversely, that being a member of a certain other group means being prone to consider members of the first group incapable or not entitled to perform those speech acts. I am grateful to an anonymous reviewer for prompting me to clarify this point.

14 It is not entirely clear whether Langton also sees things this way or whether she only has cases in mind where one is silenced in one’s capacity to express oneself. One might think that sticking to failed uptake would indicate the latter; as Caponetto shows (2021), however, failed uptake would be an under-inclusive criterion even if we restricted ourselves to expressions of views (broadly conceived): there can be, for instance, systematic reasons why certain speakers are not taken seriously, or taken to be lying, when they report matters of fact or express views—even if uptake succeeds (they can be systematically and unjustly deemed to be unreliable witnesses).

15 Langton 2017 argues that empirical evidence to that effect is available, for instance from Maddy et al. 2013.

16 For other discussions of Saul’s argument, see Bianchi 2008 and Mikkola 2008, 2020; I believe that Bianchi’s reliance on “intended contexts” is a step in the right direction, but does not completely succeed for the reasons pointed out by Mikkola (2008). I here try to offer a different response—which, however, preserves some of the spirit of Bianchi’s argument.

17 I hereby mean “publication” in the broadest possible sense, i.e., as the public “putting out there” of some content—applicable for instance to video material as well as written (or painted, etc.) one (e.g., videos are “published” on YouTube or—more saliently—Pornhub).

18 The status of a published piece of work as a standard reference can fade away over time. In the early Middle Ages, publishing a treaty on the theory of the *homunculus* set the standard of what doctors should consider to be true medical knowledge; the fact that the theory is now discredited does not influence the success of the illocutionary act that was performed in publishing the book at the time.

19 Some would argue that porn merely reflects existing sexist norms, rather than establishing them. This could of course be true. A very plausible intermediate option is that, jointly with other factors (such as over-exposure), sexist norms *facilitate* the alleged authority of pornography, which then reinforces them and sets further, more specific norms, pertaining to sexuality in particular.

- 20 Of course, they might well also have the relevant intention; nothing I say here is incompatible with it. If they lack the intention, they might not be morally responsible for the harm they do (although still liable to being blocked) or at least not until they are made aware of it.
- 21 Langton herself (2017) has also pointed out that the authority of pornographers can be epistemic as well as practical; she has not, however, drawn any specific implications from this remark.
- 22 See Barnes 2016 for a congenial take on hate speech.
- 23 She is, however, somewhat more forward in highlighting the strength of the case for censorship in her critical engagement with Dworkin (Langton 1990).
- 24 The issue is actually deeply contested within Islamic jurisprudence.
- 25 An exception is constituted by cases where letting certain actors speak generates confusion about what the valid rules are. If shop-owners are not allowed to refuse to serve non-whites; and if post offices are obliged to be open to the public until 5 p.m., removing signs saying “Whites only” or “This till will close at 2 p.m.” is necessary to avoid sending out confusing messages about the content of the law and of people’s entitlements. I am grateful to Mahmoud Bassiouni for drawing my attention to this point.
- 26 The only exception to this would be cases where we intervene ex-ante, i.e., before a given wrongful epistemic authority has established itself. This, however, would entail acting on the basis of the perceived risk that it *might* become authoritative, something clearly liable to slippery-slope objections and hardly compatible with any plausible account of free speech.
- 27 By censoring porn we could, perhaps, prevent new audiences from being exposed to its false authoritative truths; whether this would ultimately succeed is an open question. In any case, as I shall argue just below, it would only be justified as a measure of last resort.
- 28 Compare also McGowan’s example of small girls engaging in the very same behavior as small boys, but their actions being interpreted as “mimicry” rather than genuinely similar development (2014, 460).
- 29 This is true for both practical and epistemic authorities.
- 30 One might say that censorship is likely to have little effect in cases of unilateral divorce, because we are talking about speech acts performed *in private*. Banning the phrase “I divorce you, I divorce you, I divorce you” does not have much of a point if those who are supposed to report violations are either the very victims or third parties within the relevant community who are likely to support the practice. With pornography, instead, censorship means removing it from public, widespread consumption. This is certainly true; at the end of the day, however, the strategy of “removing porn from the shelf” for a while can only be justified if it is, demonstrably, the *only way* of eroding its harmful authority, and its informal nature does not change the fact that settling this matter is an empirical rather than conceptual issue.
- 31 Yet another strategy might be that of “blocking” (Langton 2018a) processes of authority-formation with quick acts of “counterspeech” (e.g., “What do you mean by saying that women are always up for it even when they say no?”). This strategy is possible, but likely of limited use, in the case of porn, where those subject to its authority are likely to be dispersed in space and time, rather than witnesses or recipients of immediate conversational moves.

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