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ON PRAGMATICS, EXERCITIVE SPEECH ACTS AND PORNOGRAPHY¹

Abstract

Suppose that a suspect being questioned by the police says, “I think I’d better talk to a lawyer.” Whether that suspect has invoked her right to an attorney depends on which particular speech act(s) her utterance is. If she is merely thinking aloud about what she ought to do, then she has not invoked that right. If, on the other hand, she has thereby requested a lawyer, she has. Similarly, suppose that an unhappily married man says “I want my wife dead.” Whether he has thereby solicited his wife’s murder depends on which particular speech act(s) his utterance is. If he is merely describing his desires, he has committed no crime. If, by contrast, he has thereby hired an assassin, he has. As one can see, experts on speech acts (e.g. philosophers, linguists, psychologists and sociologists) have a lot to say about various issues in the law.

I believe that expertise in speech act theory also illuminates various issues regarding free speech. In what follows, we consider how speech act theory may apply to certain arguments regarding the free speech status of pornography. In particular, we consider several speech act accounts of MacKinnon’s claim that pornography subordinates women, but, before turning to such accounts, some background is offered.

Keywords

Pragmatics, pornography, speech acts, conversational exercitives

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1. On verbal acts of discrimination

Although we enjoy freedom of expression, we do not thereby have the legal right to say whatever we please. Some utterances are actually illegal. When Albert Michael said, for example, “I’ll pay you \$500 to rob my father’s store,” he committed an illegal act of criminal solicitation. Although freedom of expression in general guarantees the free expression of ideas, some utterances are nevertheless prohibited based on what such utterances do. In saying what he said, Albert Michael hired someone to commit a crime and that action is illegal. As one can see, mere speech can be a crime.

As a further illustration, suppose that an employer gives the following instruction to his hiring committee: “From now on, we no longer hire non-whites. They are just too damn lazy and they never manage to do anything right!” Clearly, this utterance does more than merely express the employer’s (highly objectionable) opinion. It enacts a policy. In saying what he said, the employer prescribed the subsequent hiring practices for his company. By exercising his authority as the boss, the employer’s words obligate his employees to do as he says.

Enacting such a policy is illegal under U.S. law. Since the employer’s utterance enacts that policy, the employer’s utterance is an illegal act. As can be seen, some utterances are verbal acts of discrimination. By enacting a (racially) discriminatory hiring policy, the employer commits an illegal act of (racial) discrimination.

Of course, there is an important difference between the action that enacts the discriminatory policy and the discriminatory hiring practices that that policy prescribes (under U.S. law, both are illegal). Now, it may well seem that most discriminatory practices do not result from the explicit sort of enacting that the employer performed. A certain community may well be involved in racially discriminatory housing practices without anyone ever explicitly prescribing those practices. Furthermore, many societies are sexist but it seems utterly implausible to suppose that some person (or some group of persons) is responsible for enacting explicit sexist social norms. In light of this, it seems that most discriminatory practices are not enacted in this explicit manner.

Notice, however, that even if most discriminatory practices are not enacted in this *explicit* manner, it does not follow that they are not enacted at all. After all, it could be that such practices are *implicitly* enacted. This is certainly what Catharine MacKinnon thinks. According to MacKinnon, pornography (somehow sneakily) enacts unjust gender norms and is thus akin to the employer’s utterance in virtue of being an act of gender discrimination. In what follows, this idea is explored further using the resources of speech act theory.

2. Causing vs. constituting

A certain distinction is crucial for understanding MacKinnon's enterprise. There is an important difference between speech that causes discrimination and speech that actually constitutes it. If I were to persuade you that non-whites are inferior, for example, my speech might cause you to perform discriminatory acts. In such a case, my words cause discrimination. Contrast that with the employer's utterance. When the employer said, "From now on, we no longer hire non-whites," he does not merely cause his employees to engage in racially discriminatory hiring practices (although he certainly does that as well). He dictates that they do so. His utterance actually enacts a policy that prescribes that discriminatory practice. As such, his utterance is an act of discrimination. His words constitute discrimination.

This distinction is also important to the law. Words that actually constitute discrimination are illegal despite our commitment to free speech. In fact, the criminalization of things like "Whites Only" signs, declarations that "No Irish Need Apply," and the employer's utterance are perfectly compatible with a commitment to free speech. Words that cause discrimination, by contrast, are (typically) highly protected by a free speech principle. Although my persuasive racist words will no doubt cause harm by encouraging discriminatory conduct, merely causing harm is insufficient for regulation. Further conditions are required for the regulation of speech that merely causes (as opposed to constitutes) harm.

According to MacKinnon, pornography does not just cause harm to women (although it certainly does that as well). On her view, pornography is harm to women. Pornography subordinates women by enacting gender norms that subordinate women. If this is right, then pornography functions like the employer's utterance. Notice further that if this is right, then there are important consequences for the regulation of pornography (Maitra and McGowan 2007: 64-66).

3. MacKinnon on Pornography

In understanding MacKinnon's views on pornography, it is especially important to realize that she is really interested in a proper subset of pornography; that subset that subordinates women. In order to target the materials that interest her, MacKinnon defines pornography accordingly. "Pornography shall mean the graphic sexually explicit subordination of women, whether in pictures or in words" (MacKinnon and Dworkin 1997: 444). Clearly, this definition excludes plenty of material that would otherwise count as pornographic. Material that does not subordinate, for example, does not satisfy this definition. According to MacKinnon then pornography is defined as material that subordinates (women). As a result,

anything that does not subordinate (women) cannot be pornography in MacKinnon's sense.

Other clarifications of this definition are in order. Although pornography for MacKinnon must be sexually explicit material, not all sexually explicit material is pornographic according to her. Documentaries about human sexual relations may be sexually explicit but they are not pornographic in MacKinnon's sense because they do not subordinate women. Furthermore, MacKinnon notes that not all sexually explicit material that depicts the subordination of women is pornographic either. A documentary about sexual slavery may well depict the sexual subordination of women, but this material is not pornographic, according to MacKinnon, because it does not subordinate them. One might well wonder what it means to say that pornography (mere pictures and words) subordinates. Although this issue will be discussed in more detail in what follows, a bit can be said now to help illuminate what MacKinnon has in mind. The mark of the pornographic for MacKinnon is that it *celebrates*, *eroticizes* or *legitimizes* the sexual subordination of women. On this view, pornography does not just depict the sexual subordination of women: it *endorses* the sexual subordination of women and by legitimating women's subordination, pornography subordinates.

Although MacKinnon is primarily concerned with the subordination of women, it does not follow that she is only concerned with adult heterosexual pornography. According to MacKinnon, non-women (e.g. children, men and transsexuals) can play the role of the subordinate (which is, after all, the traditional role of women) in other sorts of pornography (MacKinnon and Dworkin 1997: 444). Child pornography, for example, may depict children in a subordinate position and gay pornography may depict one man in a subordinate position. According to MacKinnon, if such material *endorses* or *eroticizes* the hierarchy it presents, then such material implicitly endorses traditional oppressive gender relations and thereby oppresses women. On this view, even these other sorts of pornography (i.e. non-heterosexual pornography) may subordinate women and hence be pornographic in her sense.

Although some gay pornography may satisfy MacKinnon's definition of pornography (by endorsing and eroticizing hierarchy), it is important to note that not all of it does. Depictions of mutually respectful and consensual lesbian encounters, for example, would not satisfy MacKinnon's definition. Far from subordinating, this lesbian erotica may well liberate in virtue of questioning oppressive social norms. Arguably, lesbian erotica questions the alleged compulsory nature of heterosexuality, the view that sex is only for procreation, and the view that women are to tolerate sex as their duty to men but not enjoy it. So although some gay pornography may fall under MacKinnon's definition, not all sexually explicit gay material would.

In addition to this provocative claim about what pornography does, MacKinnon also has views about how pornography does what it does. According to MacKinnon, pornography works in a highly covert manner. Rather than functioning at the conscious level, pornography programs its consumers to be sexually aroused by the degradation, humiliation, brutalization and objectification of women (MacKinnon 1993: 16). By so doing, it reconditions our desires and it does so without our conscious awareness. According to MacKinnon then, since the real (i.e. subordinating) nature of pornography is thus masked, it manages to be as effective and hence as harmful as it is (MacKinnon 1987: 174).

Since our assessment of MacKinnon's claims about pornography will involve certain aspects of speech act theory, a brief presentation of the requisite background in speech act theory is now offered.

4. Background on speech acts

In his *How to Do Things with Words*, Austin (1962) drew our philosophical attention to the many ways in which our words function. Besides making true or false claims about the world, utterances sometimes constitute actions. Promises and verbal bets, for example, are utterances that constitute the performance of an action. Austin also distinguished between various forces of an utterance. First, the locutionary force of an utterance is the proposition asserted by that utterance. When I say, for example, "Proven plagiarists should not be granted tenure," my utterance has the locutionary force of asserting the proposition that proven plagiarists should not be granted tenure. Second, the perlocutionary force of an utterance is the causal effect that the utterance has on its audience in virtue of functioning as speech. Notice that not all causal effects of speech are perlocutionary. If, for example, my shrill voice breaks glass, then the breaking of the glass is a causal consequence of my speaking, but it is not a perlocutionary effect. This is because the breaking of the glass does not causally depend on my speech functioning as speech. When I persuade my brother that sending his daughter to the U.S. for the summer would be good for her, by contrast, the causal effect of persuading him does depend on his understanding the words I utter. As a result, my persuading him is a perlocutionary effect of my utterance. Finally, the illocutionary force of an utterance is the action constituted by it. "I promise to give you a bag of M&Ms" has the illocutionary force of promising and "I order you to shut the door," has the illocutionary force of ordering.

Austin also offered a taxonomy of illocutionary acts, but we will focus

exclusively on one type.² Exercitive speech acts fix what is permissible in a certain realm. In Austin's own words, an exercitive speech act "is an assertion of influence or exercising of power" (Austin 1962: 163). Verbal enactings of law are paradigm examples of exercitive speech acts. Such utterances enact facts about what is legally permissible. When a college president verbally enacts new college policy by declaring that smoking is no longer permitted in any college building, for example, her utterance is exercitive in virtue of changing what is permissible on that campus.

Notice first that exercitives are authoritative speech acts. The speaker must have the appropriate authority over the relevant realm. In order to verbally enact rules in a certain realm, the speaker must have the requisite authority over that realm. Although I can, my oldest child cannot set the bedtime for the rest of his siblings because he lacks the appropriate authority to do so. The speaker's authority is also limited to the relevant realm. Although I have authority over my children, for instance, I do not thereby have authority over other people's children.

Notice further that not all exercitive speech acts are as ceremonial as the cases discussed by Austin. The case of the college president is a fairly ceremonial example of an exercitive speech act. The role of college president and the authority of that office are fairly well delineated. Like a judgeship, for example, there is an official procedure for inducting college presidents. Moreover, both what a college president has the authority to do and the circumstances under which she is permitted to do it are explicitly defined. Not all cases of exercitive speech acts, though, involve the formal exercising of the powers of an official office. Parenthood, for example, is not an official office, but parents nevertheless manage to verbally set the rules (i.e. permissibility facts) for their children. Thus, there are less ceremonial cases of exercitive speech acts and they are common enough in everyday life.

Both the ceremonial sorts of cases discussed by Austin and the less ceremonial cases just mentioned are instances of what I call standard exercitives.³ An exercitive that somehow expresses the content of the permissibility fact being enacted is a standard exercitive (exercitives will be discussed in more detail in section 6). When the college president said, "Smoking is no longer permitted in any college building," she explicitly stated the permissibility fact she was enacting. This utterance is therefore a standard exercitive. Although standard exercitives must somehow express the content of the permissibility fact being enacted, they need not make explicit that a permissibility fact is being enacted. I may say "no gum in public," for example, without being explicit about the fact that I am thereby

² Although Searle (1979) offers a different taxonomy, I here follow the speech act literature on pornography by using Austin's (1962) taxonomy of speech acts.

³ Since these are the sorts of exercitives discussed by Austin, elsewhere (McGowan 2003) I called them Austinian exercitives.

enacting new rules for my children. Such implicit (standard) exercitives are nevertheless (standard) exercitives.

5. Langton's analysis and the five challenges

MacKinnon's claim that pornography subordinates women struck many as utterly preposterous. Pornography may depict subordination and it may even cause subordination (by altering beliefs and thereby changing behavior) but it is not at all clear how it could actually be subordination as MacKinnon claims. In a now famous paper, Rae Langton (1993) appeals to the work of J.L. Austin to defend the coherence of MacKinnon's claim. Langton first argues that by affording pornography the special protections of a free speech principle, the Courts treat pornography as speech. As a result, MacKinnon's claim is coherent so long as speech can subordinate.

Langton then demonstrates that speech can subordinate by offering a paradigmatic example of a subordinating speech act. Imagine a lawmaker in apartheid South Africa enacting a law by saying, "Blacks are no longer permitted to vote." Such an utterance enacts a law and that law subordinates blacks, according to Langton, by unfairly ranking blacks as having inferior worth, legitimating discriminatory behavior towards them and unjustly depriving them of the important power to vote (Langton 1993: 303). Since the apartheid lawmaker's utterance subordinates blacks, speech can subordinate. As a result, MacKinnon's claim is at least coherent. Furthermore, if it can be shown that pornography (somehow) does what the lawmaker's utterance does, then MacKinnon's claim is actually true.

As one can see, the lawmaker's utterance is a standard exercitive. It expresses the content of the permissibility fact it enacts (e.g. that blacks are not permitted to vote). It is a subordinating speech act because those permissibility facts subordinate. Applying this to pornography, Langton contends that pornography is an exercitive speech act that subordinates women in virtue of enacting permissibility facts that subordinate women. Those permissibility facts subordinate because they (1) unfairly rank women as having inferior worth; (2) legitimate discriminatory behavior towards women and (3) unjustly deprive women of some important powers.

If pornography is a speech act, one might well wonder who the speaker is. Although this is an important issue, for present purposes, I simply assume that the producers, distributors and purveyors of pornography (mostly men) collectively constitute the speaker. Since standard exercitives are the only sort of exercitive currently discussed in the literature, they afford the only model of speech that enacts permissibility conditions. As such, they are the model for Langton's

analysis. In what follows, I point out that standard exercitives have certain characteristics that pornography does not. As a result, Langton's analysis is undermined. In particular, I argue that several important conditions for standard exercitives fail in the case of pornography. Consequently, if pornography is the sort of speech act that Langton contends (i.e. an standard exercitive), then it is a highly defective speech act.

Before turning to a consideration of these characteristics, a brief note on defects. Not all defects are fatal. A speech act can be defective even though it manages to have the intended illocutionary force. Suppose I say, "I promise to go to mass every week" even though I have no intention of doing so. My insincerity is a defect of my speech act, but I nevertheless promised by saying what I said. An illocution with a fatal defect, on the other hand, fails and the illocutionary act attempted is not performed (Austin calls such failed illocutions misfires). Suppose that I try to verbally enact higher speeding limits in order to avoid being pulled over for speeding. Try as I might, I will fail to enact new speeding limits exactly because I do not have the authority to do so. In what follows, I often leave it open whether a particular defect is fatal or not. As we shall see, the cumulative effect of all of these defects (whether the defects in question are fatal or not) undermines Langton's analysis by eroding the very grounds for saying that pornography is a standard exercitive in the first place.

5.1. Locutionary content

As we have seen, standard exercitives (somehow) express the content of the permissibility facts enacted. When I tell my children that they are no longer allowed to chew bubble gum in public, my utterance contains the locutionary content of the very permissibility fact I am thereby enacting. Even implicit exercitives express that content. "No phone calls until you have done your homework" expresses the content of the permissibility fact enacted without being explicit about the fact that a permissibility fact is being enacted. So it seems that in order to verbally enact a permissibility fact, one must express the content of that fact.

According to Langton, pornography enacts permissibility facts such that women are subordinated and yet the locutionary content of pornography (whatever that may be) does not seem to express the content of such permissibility facts. Langton and West (1999) argue that pornography expresses, via a complex combination of presupposition and contextual implicature, various hateful messages about women (e.g. women enjoy being raped). Even if they here establish that pornography expresses such messages, it is unclear that such messages match the locutionary content of the permissibility facts allegedly

enacted by it. At best, therefore, Langton owes us more of an explanation regarding how pornography enacts permissibility facts without expressing the content of those facts.

5.2. Speaker intention

Exercitives are sensitive to two kinds of speaker intention. First, consider the speaker's illocutionary intention. A standard exercitive is defective unless the speaker intends that her utterance have exercitive force. Suppose, for example, that during an administrative meeting (the purpose of which is to enact new college policies) the college president says "Smoking should be impermissible in any college building" but she merely intends, by so doing, to be expressing her personal opinion. That the president did not intend to be enacting new college policy is at least a defect (whether fatal or not) of her (exercitive) speech act. Since the producers, distributors and purveyors (that is, the speakers) of pornography do not intend to be enacting permissibility conditions of any kind (never mind ones that subordinate and silence women), speaker illocutionary intention fails in the case of pornography. Thus, at best, pornography is a defective exercitive speech act.

Exercitives also depend on the speaker's locutionary intention. Since standard exercitives express the content of the permissibility fact being enacted, such a speech act is defective if the speaker's locutionary intention fails to match that content. Suppose, for instance, that I intend to be prohibiting my children from drinking any carbonated beverages but that I falsely believe that Soda-Co is the only manufacturer of carbonated beverages. When I say "You are no longer allowed to drink anything made by Soda-Co," my exercitive is defective because my locutionary intention (to prohibit the drinking of any carbonated beverage) does not match the locutionary content of my utterance. If pornography fails to express the locutionary content of the relevant permissibility facts, then this condition fails by default. Suppose, however, that pornography somehow manages to express that content. Since the speakers (producers, distributors and purveyors) of pornography do not intend to be expressing the content of the permissibility fact that they are (allegedly) enacting, speaker locutionary intention fails in this case too. Thus, if pornography is exercitive speech (as Langton contends), it is doubly defective at best.

One might be tempted to challenge this conclusion in the following way. If neither sort of speaker intention is a necessary condition of illocution (a possibility that I stress repeatedly), then pornography may have exercitive force, just as Langton contends, despite these so-called defects. If this is so, then pornography may do precisely what Langton maintains regardless of the failure of these two

conditions. This is correct but the failure of these conditions undermines Langton's analysis all the same. First, since speaker intention is an important part of how exercitive speech acts are supposed to work (even if it is possible for such speech acts to have such force without such conditions being met), the failure of these conditions nevertheless constitutes a (non-fatal) defect. Second, and perhaps more important, even if these sorts of speaker intention do not constitute a necessary condition of exercitive force, the satisfaction of these conditions constitute important evidence that a particular speech act has such force (that a speaker intends to be enacting permissibility conditions is some reason to think that the speaker is so doing). Therefore, the failure of these conditions undermines Langton's analysis because it erodes the grounds for establishing (as she needs to do) that pornography is the sort of speech that she contends.

5.3. Hearer recognition

Exercitives are also sensitive to four kinds of hearer recognition. Consider first, the hearer's recognition of the speaker's illocutionary intentions. Suppose that my children think that I am only kidding when I say that they will have to go to bed early unless they finish the rubbery scallops that I have prepared for their dinner. Their failure to recognize my illocutionary intentions is a defect (whether fatal or not) of my (exercitive) speech act.

The hearer's recognition of the speaker's locutionary intention is also an important felicity condition of standard exercitives. Suppose that my children misunderstand what I said and think that I intend to be declaring a new rule such that they must go to bed **only** unless they finish their dinner. In this case, they recognize my illocutionary intention (to enact a new rule), but they misunderstand the content of that rule. Such a misunderstanding also constitutes a defect (whether fatal or not) of my standard exercitive.

Since I leave open the possibility that a speech act can have a particular illocutionary force and/or a particular locutionary content without the speaker intending that her utterance have that force and/or that content, there are two more ways in which hearer recognition may fail. A standard exercitive is defective if the hearer fails to recognize the actual illocutionary force of the utterance (whether intended by the speaker or not) and/or the actual locutionary content of the utterance (whether intended by the speaker or not).

As we have seen, the relevant speaker intentions fail in the case of pornography. Since the hearers (that is, those exposed to pornography) cannot recognize non-existent intentions, these two conditions fail by default in the case of pornography. I leave open the possibility, however, that a speech act may have unintended (locutionary and/or illocutionary) force. Suppose then that Langton is

correct. Suppose, that is, that pornography is an exercitive speech act that enacts permissibility facts that subordinates women. Since pornography is not (at least generally) recognized as such, hearer recognition of pornography's (alleged actual) illocutionary and locutionary force also fail.

Again, one may be tempted to think that the failure of these conditions is irrelevant if these conditions are not necessary conditions of illocution. But, since the satisfaction of these conditions is an important part of how such speech acts are supposed to work, the failure of such conditions constitutes an (albeit non-fatal) defect. Second, since the satisfaction of (some of) these conditions are important epistemic criteria for establishing that a particular utterance has standard exercitive force, the failure of these conditions undermines Langton's project since part of her project is to convince us that pornography is a standard exercitive speech.

5.4 Authority

As we have seen, standard exercitives are authoritative speech acts. In order to enact permissibility facts in some particular domain (with a standard exercitive), a speaker must have the authority to do so. I am unable to enact new speed limits in Massachusetts, for example, exactly because I do not have the requisite authority. If, as Langton contends, pornography is a standard exercitive then the speakers of pornography must have the authority to enact permissibility facts in the (heterosexual) socio-sexual arena. Arguably, this requirement is doubly problematic for Langton's analysis. First, it is unclear that the speakers (that is, the producers, distributors and consumers) of pornography have any peculiar authority over the (heterosexual) socio-sexual arena. Second, and perhaps more important, it is entirely unclear precisely what would constitute such authority in the first place. For this reason, it is unclear how one would even go about trying to establish that the speakers have the requisite authority. Although one could make a case that this authority condition can be met (by appealing, for example, to a structural or power-based analysis of gender), as far as I know, no one has yet done so. Since the authority of the speaker is, in this case, necessary, establishing the authority of the speaker is crucial work yet undone. For this reason, it poses a serious challenge to Langton's analysis.

As we have seen pornography fails several important felicity conditions of exercitive speech acts. As a result of failing all of these important felicity conditions, the grounds for supposing that pornography is an exercitive speech act have all but eroded. It is unclear, at this point, what could possibly establish that pornography is nevertheless an exercitive speech act. In the next section, I consider reasons for supposing that pornography cannot be a speech act of any sort.

5.5. Pornography as unconscious conditioning

As we have seen, speech acts typically work via the hearer's recognition of the speaker's communicative intentions. In other words, they function at the conscious level. Pornography, by contrast, appears to work on us without our awareness. As we saw in section 4, MacKinnon maintains that pornography conditions our responses and it manages to be as effective as it is exactly because it functions without our conscious awareness of its harm.

In light of what we have learned about (exercitive) speech acts, Langton's hypothesis certainly seems to require that pornography function at the conscious level of communicated intentions. Since pornography does not function at that level, the entire speech act approach to pornography appears to be undermined. It seems that such an approach cannot do justice to the masked manner in which pornography allegedly conditions our responses.

6. A different model

In what follows, I argue for a previously overlooked sort of speech act, the conversational exercitive. In particular, I argue that any conversational contribution invoking a rule of accommodation changes the bounds of conversational permissibility and is therefore an exercitive speech act. Such utterances enact permissibility facts without expressing the content of those facts, without the speaker intending to be doing so and without the hearer recognizing that it is so. Clearly, the felicity conditions of conversational exercitives are importantly different from those of their Austinian counterparts. They also afford a more promising model, for Langton's purposes, of an exercitive speech act. Because my argument appeals to Lewis' notion of a rule of accommodation, I begin with a brief summary of his relevant work.

6.1. Lewis' scorekeeping

In his "Scorekeeping in a Language Game," Lewis (1983) argues that there are several ways in which conversations are like baseball games. First, each of these activities is governed by rules. Just as it is impermissible for a runner to walk after only three balls are thrown to him, it is unacceptable for a participant in a conversation to cite what is known to be entirely irrelevant to the topic at hand. Second, each activity is such that the permissibility of future behavior depends on the rules and what has already happened in the game or conversation. Whether or

not it is appropriate for a runner to walk immediately after a ball is thrown depends on how many balls have just been thrown to that runner. Similarly, whether it is permissible for a participant in a conversation to start talking about lemons depends on whether lemons are somehow relevant to the topic at hand and this, of course, depends on what has already transpired in the conversation. Third, both activities can be understood as having a score.

That a baseball game has a score is obvious but the notion of baseball score that Lewis has in mind is considerably more inclusive than the familiar one. The commonsense concept of a baseball score tracks only the number of runs but Lewis' notion includes all those facets of the game that are relevant to its assessment and proper play. It tracks, among other things, the inning, number of balls, strikes, outs and errors as well as the number of runs. So, too, the score of a conversation keeps track of that which is relevant to its proper development. This includes, among other things, the presuppositions, the appropriate standards of accuracy, and the relevant topics. Since the various components of conversational score include such a wide variety of linguistic phenomena, it is worthwhile to briefly consider some examples.

Definite descriptions purport to uniquely refer and yet many definite descriptions uniquely refer while failing to uniquely describe their referent. Salience appears to account for this. On this account, a definite description refers to the most salient satisfier of the description. Suppose that Mike mentions that his dog has just been to the vet and I ask if the dog is healthy. Mike's dog is certainly not the only dog in the universe and his dog may not even be the only dog present, but I have nevertheless managed to refer to his dog with the expression "the dog." This is because Mike's dog is the most salient dog in the context of this conversation. Having just mentioned his dog, Mike thereby makes his dog conversationally salient. Salience is a part of the conversational score.

Consider presuppositions. When a participant in a conversation makes a conversational contribution involving a presupposition, that presupposition becomes a part of the score so long as the other participants in the conversation do not immediately question the presupposition. Suppose, for example, that I am discussing the sound quality at a local movie theater with one of my colleagues. Suppose also that at a certain point I say, "My boyfriend just saw a movie there and he said the sound was fine." My utterance presupposes that I have a boyfriend (and perhaps also that he is able to hear). So long as my interlocutor does not question these presuppositions, they become a part of the conversational score. Everyone in the conversation is subsequently entitled to presuppose that I have a (non-hearing-impaired) boyfriend.

Lewis stresses that the rules governing a conversation are importantly different from the rules governing a baseball game. In particular, the rules of baseball are rigid in a way that the rules of conversation are not. In baseball, if a runner walks

after only three balls are thrown, the runner has violated the rules. That he walked under these circumstances does not make it correct for him to have done so and this is so even if no one takes notice and the runner manages to get away with it. The rules governing conversation are different. Lewis calls them rules of accommodation. These rules adapt to the actual behavior of participants. Rules of accommodation make the score automatically adjust (within certain limits of course) so that what actually transpires counts as fair play. Consider again the case of presupposition. When I say "My boyfriend just saw a movie there and he said the sound was perfect," the presupposition that I have a boyfriend automatically springs into existence and becomes a part of the conversational score. In other words, the score automatically adjusts itself to make my contribution count as correct.

Standards of accuracy are another component of conversational score that (can) adjust to accommodate what is said. Suppose that Donal says that Ireland is shaped like a sideways teddy bear and his interlocutors happily accept his claim. This shows that the standards of accuracy operative in the conversation at the time of Donal's utterance are such as to render his utterance true enough. Suppose that Seamus subsequently points out that Italy is not really shaped like a boot because it is squiggly on both sides and boots generally are not. Seamus' denial that Italy is boot-shaped requires higher standards of accuracy than were operative in the conversation at the time of Donal's utterance. The standards immediately and automatically adjust, though, so that what Seamus said is true enough. Since standards of accuracy are a component of the score, this is a case where the score adjusts itself to accommodate what is said.

What I now aim to show is that something very important, but previously overlooked, follows from the peculiar nature of rules of accommodation. Although Lewis did not point this out, his rules of accommodation generate exercitive force. I will now argue that any utterance whatsoever that invokes one of these rules thereby changes the bounds of conversational permissibility and is therefore an exercitive speech act.

6.2. Conversational exercitives

Here is the argument in a nutshell: Since rules of accommodation make the score automatically adjust so that what actually happens count as fair play, any conversational contribution that invokes a rule of accommodation thereby changes the score. Since what counts as fair play depends on the score, changing the score changes the bounds of conversational permissibility. Thus, any conversational contribution that invokes a rule of accommodation is an exercitive speech act in virtue of changing what is permissible in that conversation.

Since the exercitive force of conversational contributions is so subtle and since my argument is both general and abstract, some examples may help to illuminate the phenomenon. Before such examples are offered, however, a clarification, concerning my methodology, is warranted. In what follows, I briefly describe conversational contexts and argue that certain utterances are exercitive because they change the bounds of conversational permissibility. I argue that the permissibility facts have changed by citing utterances that are thereby rendered conversationally impermissible. A problem may seem to arise from the fact that such conversational contexts are inevitably under-described. There are always an infinite variety of factors that are (or may be) relevant to the proper specification of any such context. Because of this, there may well be ways of filling in unmentioned details that falsify particular claims I make about which utterances are subsequently conversationally impermissible. Even if it were always possible to do so, this does not establish that such utterances are not conversationally inappropriate (at least sometimes or even most of the time). That there are some ways to fill in the details such that the utterance in question is appropriate does not establish that there are not other ways to do so such that it is indeed inappropriate. Since it is impossible to avoid under-describing conversational contexts, the best I can do is to specify those details most likely to be relevant. That said, I turn now to illustrations of conversational exercitives.

Consider first salience facts. Conversationally changing salience facts changes the score and is thereby exercitive. Suppose that, when discussing Mike's dog, I say "We had a hyperactive Irish setter named Finbar who stole undergarments from neighborhood clotheslines and so we had to get rid of the dog." By introducing Finbar into the conversation, I made Finbar the most salient dog (and that is why I managed to refer to Finbar with the expression "the dog"). Because of what I said, Mike cannot refer to his dog with the expression "the dog" (until the salience facts change back again). My utterance changed the salience facts that are a part of the conversational score and thereby changed the bounds of conversational permissibility. My utterance is an exercitive speech act even though it is not obviously so.

Conversational contributions with presuppositions are also exercitive. Consider a conversation where I say something early on that presupposes that I have a dog. If my interlocutor does not immediately question that presupposition, then the presupposition that I have a dog immediately and automatically becomes a part of the score. Since my utterance changes the score, this contribution changes facts about what constitutes fair play from then on out. Suppose we go on to discuss the best vets in an intelligent and informed manner and then my interlocutor asks me whether I have any pets. This query is conversationally weird because my being a dog owner has become a shared part of the conversation. To later question that presupposition is conversationally impermissible. Thus, cases of presupposition are

also cases of conversational permissibility and they are therefore exercitive speech acts.

Before demonstrating that conversational exercitives afford a better model for Langton's purposes, a potential objection is addressed. One might object that the enacting of conversational permissibility facts is a mere causal (that is, perlocutionary) effect of conversational contributions. If conversational contributions merely cause the score to change (by invoking a rule of accommodation) then they merely cause the enacting of new conversational permissibility facts and are thus not exercitive speech acts at all.

Recall that it is important for both Langton and MacKinnon that pornography be subordination (in addition to causing it). This, in turn, requires that pornography enact permissibility facts that subordinate. If pornography merely causes those permissibility facts, then pornography merely causes subordination and MacKinnon's grounds for regulating it are fiercely undermined (see section 3).

Fortunately, the concern that conversational exercitives are merely caused is misplaced. When I say to my children, for example, "You are no longer permitted to chew bubble gum in public," the new permissibility fact enacted springs into existence as I speak. It would be incorrect to say of such a case that my utterance merely caused the rule be enacted. Similarly, because of the peculiar nature of rules of accommodation, when one makes a conversational contribution invoking a rule of accommodation, the score automatically changes (it is not merely caused to change) and that, in turn, automatically changes what is conversationally permissible.

7. Meeting the five challenges

As we have seen, conversational exercitives are speech acts that enact permissibility facts. They change the bounds of conversational permissibility and are therefore exercitive. We saw, in section 5, that the felicity conditions of standard exercitives undermine Langton's claim that pornography is an exercitive speech act. In what follows, I demonstrate that the felicity conditions of conversational exercitives are different from those of their Austinian counterparts. They are covert exercitive speech acts that afford a much more promising paradigm for Langton's purposes.

7.1. Locutionary content

As we saw in section 5.1, the fact that pornography does not (appear to) express the content of the permissibility facts it allegedly enacts undermines Langton's

analysis. Unlike standard exercitives, though, conversational exercitives enact permissibility facts without expressing the content of those facts. Thus, if pornography is akin to a conversational exercitive, the fact that it does not express the content of the relevant permissibility facts is no reason to suppose that it does not, in fact, enact them. In this regard then, conversational exercitives afford a better exercitive paradigm for Langton's purposes.

7.2. Speaker intention

As we saw in section 5.2, standard exercitives are sensitive to both the speaker's illocutionary and locutionary intentions. Langton's analysis was undermined by the fact that each of these important felicity conditions fails in the case of pornography. Unlike their Austinian counterparts, however, conversational exercitives are not sensitive to either of these sorts of speaker intention.

Consider first the speaker's illocutionary intention. Recall that when I changed the subject and started talking about my childhood dog Finbar, I changed salience facts (and thus the score) and thereby changed the bounds of conversational permissibility. That I did not intend to change the bounds of conversational permissibility is simply irrelevant and does not constitute a defect. Consider now the speaker's locutionary intentions. As a conversational exercitive, my Finbar utterance managed to enact a new permissibility fact by making Finbar the most salient dog at the time of utterance. That my locutionary intentions do not match (by default or otherwise) the content of this permissibility fact is simply irrelevant. The fact that the speaker's locutionary intention fails to match the content of the permissibility fact enacted is simply not a defect of conversational exercitives.

Thus if pornography is akin to a conversational exercitive, then the fact that both sorts of speaker intention fail, in the case of pornography, in no way undermines Langton's claim that pornography is an exercitive speech act. As such, conversational exercitives afford a much more promising paradigm.

7.3. Hearer recognition

As we saw in section 5.3, standard exercitives are sensitive to four sorts of hearer recognition and, in the case of pornography, all four of these important felicity conditions fail. As a result, Langton's claim that pornography is an exercitive speech act was undermined. Unlike their Austinian cousins, however, conversational exercitives are not sensitive to any of these sorts of hearer recognition.

Consider first the hearer's recognition of the speaker's illocutionary and

locutionary intentions. Clearly, conversational exercitives cannot be sensitive to either sort of hearer recognition. Since the analogous speaker intentions are absent in the case of conversational exercitives, no issue regarding the hearer's recognition of them can arise. For this reason, I will consider instead the hearer's recognition of the actual illocutionary and locutionary force of the utterance. Even if my interlocutor does not consciously recognize that I changed the bounds of conversational permissibility when I started talking about my childhood dog Finbar, I changed the bounds of conversational permissibility all the same. Her failure to recognize the exercitive force of my conversational contribution is not a defect of my utterance. Moreover, the exercitive force of my Finbar utterance is non-defective even though my interlocutor fails to recognize the precise content of the (permissibility) salience fact that my utterance enacts.

Clearly, conversational exercitives are not sensitive to hearer recognition in any of the many ways that standard exercitives are. Thus, the fact that all four sorts of hearer recognition fail in the case of pornography in no way undermines the claim that pornography is akin to a conversational exercitive.

7.4. Authority

Recall that standard exercitives are authoritative speech acts. The speaker must have authority over the domain in which the expressed permissibility facts are enacted. If, as Langton contends, pornography is a standard exercitive, then the speakers (that is, the producers, distributors and consumers) of pornography must have the authority to enact permissibility facts in the (heterosexual) socio-sexual arena. As we saw in section 5.4, however, it is unclear that this condition is met.

If, as I have suggested, pornography is akin to a conversational exercitive, though, then this authority condition is either met or misplaced. On the one hand, there is a sense in which conversational exercitives, like their Austinian counterparts, are authoritative speech acts. In such a case the authority condition must be and is met. Recall that the authority required of the speaker is limited to the domain over which the enacted permissibility facts preside. Since conversational exercitives enact permissibility facts in the very conversation to which they are contributing, conversational participants must have authority over the actual conversation in which such participants are contributing. It is clear that a competent contributor to a conversation is an authority over the conversation that he or she is creating. On the other hand, one might deny that conversational exercitives are authoritative speech acts exactly because no peculiar authority is required. In such a case, the authority condition is misplaced. It matters little, therefore, whether we say that conversational exercitives are authoritative (and that all conversational participants have the requisite authority) or that they are not

(since no peculiar authority is required). Either way, the authority condition is either met or inapplicable and thus poses no challenge to the current hypothesis.

7.5. Pornography as unconscious conditioning

As we can see, conversational exercitives, unlike other speech acts, do not function at the level of communicated intentions. They are unintended, unrecognized and unexpressed. The rules of accommodation operative in the context of a conversation are sufficient to generate the non-defective exercitive force of such utterances. Conversational exercitives function in the covert manner in which pornography is alleged to unconsciously condition our responses. That pornography works on us without our awareness therefore does not prevent it from being a speech act since conversational exercitives are speech acts that function in a similarly covert manner.

In sum, conversational exercitives demonstrate that speech can enact permissibility facts without expressing the content of those facts, without the speaker intending to be enacting such facts and without the hearer recognizing that such facts are being enacted. As such, they help Langton to meet the five challenges raised in section 5.⁴

8. The hypothesis and subsequent developments

The proposal offered here is that pornography functions like a conversational exercitive. Since I am not suggesting that pornography actually is a conversational exercitive, there is no need to establish that pornography is involved in what can properly be called a conversation. In order for pornography to be akin to a conversational exercitive, however, rules of accommodation need to be operative in the domain over which pornography allegedly enacts permissibility facts. Since pornography is alleged to enact permissibility facts in the socio-sexual arena, the proposal that pornography is akin to a conversational exercitive requires that there are rules of accommodation operative in that arena.

Notice, however, that there is ample reason to believe that such is the case. First, the socio-sexual arena is (albeit loosely) rule-governed. In any particular socio-sexual context, some behavior is clearly out of bounds. Second, the rules operative in that arena are accommodating in the relevant sense since they adapt to the actual behavior of participants. In that arena (and within certain bounds, of

⁴ Of course, they also raise challenges of their own. For a discussion of such challenges, see my discussion elsewhere (McGowan 2003).

course), what passes as appropriate thereby is appropriate. If Hans and Heidi are each sexually aroused by yodeling, then yodeling is for them an appropriate form of foreplay. Since sexual activity, like a conversation, is a cooperative activity and since what is sexually appropriate is jointly negotiated by participants, there is good reason to suppose that rules of accommodation are operative in the socio-sexual arena.

Since doing this work on conversational exercitives (McGowan 2003, 2004), however, I have realized that the phenomenon generalizes (McGowan 2009). As we shall see, the rules in question need not be rules of accommodation per se. Any contribution to any rule-governed activity changes what is subsequently permissible in that activity. When my opponent moved her checker, for example, her doing so made it permissible for me to subsequently move mine. The rules of checkers are such that her action immediately changes what is subsequently permissible in the game. Similarly, when the receiver signals for a fair catch, he thereby makes it impermissible for the defense to tackle him. As one can see, since conversations are rule-governed activities, conversational exercitives are really just an instance of this more general phenomenon.

Notice that I am here working with a fairly loose conception of rules. Any norm-governed activity is rule-governed in my sense. The “rules” in question need not be explicit, formal, exception-less or even consciously recognized. If at least some behaviors (as contributions to the activity in question) would count as out of bounds or otherwise inappropriate (as contributions to the activity in question) then that activity is rule-governed in the relevant sense. Conversations, dancing, playing music, walking, chess, checkers, and baseball are all rule-governed in the appropriate sense.

Of course, not all actions involved in a rule-governed activity change what is subsequently permissible. If a baseball player were to scratch his nose while waiting in the outfield, for example, his doing so would have no affect on the permissibility facts of the game. This is because his doing so is not a proper part of the game. His action is not a move in the game. A *move* in a rule-governed activity is a contribution to, and thus a component of, that activity. As a result, moves are governed by the rules of the activity in question. Swinging your bat while at the plate during an at-bat, for example, is a move in baseball and dipping your partner is a move in the rule-governed activity of ballroom dancing. As we have seen, moves in rule-governed activities enact changes to what is subsequently permissible in that activity.

Sometimes speech constitutes a move in a rule-governed activity. When it is, the speech in question has exercitive force in virtue of enacting new permissibility facts for the activity in which it is a move. When a poker player says, “I call,” she thereby makes it impermissible for anyone else to raise the bet. Her utterance is an exercitive speech act. Similarly, when a conversational partner says something that

successfully presupposes that she has a kitten, her utterance makes it subsequently inappropriate for her conversational partner to ask her if she has any pets.⁵ Although her utterance does not wear its exercitive force on its sleeve, it nevertheless enacts permissibility facts for the conversation and is therefore exercitive.

One might well wonder how this development affects the hypothesis offered here. How might pornography be a move in a rule-governed activity? To begin to answer this question, notice first that gender subordination is a structural phenomenon (Young 1992). It is a complex and systematic human activity. Since a system of gender subordination ranks people according to their gender and since this ranking involves treating persons of one gender differently than persons of other genders, this system is clearly norm-governed. As a result, it is rule-governed in the relevant sense.⁶

Since gender subordination is a rule-governed activity, moves in (i.e. contributions to) that activity covertly enact new permissibility facts for the activity. Thus, if pornography (or, more accurately, behaviors involving pornography) are moves in the rule-governed system of gender oppression, then pornography (or such behaviors involving pornography) covertly enact new permissibility facts for the system of gender oppression.

To be explicit about how this development has changed my view: I once (McGowan 2003) suggested that pornography might covertly enact (subordinating) permissibility facts by triggering the rules of accommodation operative in the hetero-sexual social arena. I am now suggesting that pornography may also covertly enact permissibility facts by triggering the rules operative in a system of gender oppression (notice that the two hypotheses are perfectly compatible. Since a single action can be a move in several different rule-governed activities at once, that single action can covertly enact various permissibility facts in various rule-governed activities (McGowan 2009)).

To be up front about what I have and have not accomplished: The above considerations are sufficient to show that pornography is covertly exercitive but this is insufficient to show that it actually subordinates (as MacKinnon contends). Whether an exercitive actually subordinates depends entirely on the permissibility facts enacted. In short, if the enacted permissibility facts subordinate, then so does

⁵ The case of presupposition is a bit tricky. One successfully presupposes so long as one's interlocutor does not immediately question that presupposition (Lewis 1983: 234).

⁶ Thus, although the rules in question are often not explicit, they are nevertheless operative. Plenty of norms are implicit. Consider, for instance, cultural norms regarding how much physical space to give a conversational partner (such norms differ, for example, between the United States and France). Although such norms are operative, they are not made explicit.

the action that enacts them.⁷ Establishing the precise nature of the covertly enacted permissibility facts, though, must be left for another investigation.

9. Conclusion

MacKinnon claims that pornography subordinates women. Many dismissed the claim as mere hyperbole. Appealing to Austin's theory of speech acts, Langton defends the coherence of MacKinnon's claim and she argues for its plausibility. By arguing that pornography fails to satisfy several important felicity conditions of exercitive speech acts, I argued that Langton's analysis was undermined. Offering an alternative model of exercitive speech (the conversational exercitive), I also argued that this alternative model meets the challenges raised against Langton's account. Finally, I argued that conversational exercitives are an instance of a much more general phenomenon and that pornography (or actions involving pornography) may covertly enact permissibility facts by triggering the rules operative in a system of gender oppression.⁸

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⁷ As discussed elsewhere (McGowan 2009), covertly enacted permissibility facts tend to be of limited scope and duration.

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