Speech-Act Theory:
Social and Political Applications

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The motivating insight of speech-act theory is that we do many things by speaking, but one can't normally tell what someone is doing merely from the expressions that they utter. In the terminology introduced by Austin (1962), the *locutionary act* of uttering a given sentence with a given meaning does not determine the *illocutionary act* that one thereby performs. For example, someone who utters (1) might be describing local bylaws or issuing a command. For that matter, they may be joking around, speaking sarcastically, or acting in a play.

(1) You can't park your car there.

Austin further distinguished illocutionary acts from *perlocutionary acts*—acts performed *by* performing illocutionary acts and whose nature depends on the downstream consequences of those illocutionary acts. By commanding someone not to park next to the hydrant, one might also perform an act of annoying them and an act of making them move their car, for example.

So what does it take to perform an illocutionary act, and what makes it an illocutionary act of one kind rather than another? The central task of a theory of speech acts is to answer these questions, and the main contenders in speech act theory give different answers. In §1, we will describe an ongoing debate between three families of answers, which ground the nature of illocutionary acts in conventions, intentions, and normativity, respectively.

When conducted wholly within the philosophy of language, the debate between these views can seem abstractly metaphysical. In §2, we will survey a range of issues in social and political philosophy that can be profitably understood as applications

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of speech-act theory. We will consider the roles of speech acts in the social contract (§2.1), the nature of laws (§2.2), the nature of social norms and practices (§2.3), the mechanisms by which speech may be silenced (§2.4), and freedom of speech (§2.5). It will turn out that debates about the roles of conventions, intentions, and norms show up in many of these venues. Our contention is that the intricacies of debates about speech acts are actually widely applicable to the social and political realms.

1   Speech-Act Theory

The three theories of speech acts on which we will focus all emerged in the 1950's and 1960's, and remain influential today. The first, originally developed by J. L. Austin (1962; 1963; 1970), is that illocutionary acts are conventional procedures whose conditions of felicitous performance are defined by localized social conventions. Different illocutionary acts, on this view, are performed by acting in accordance with different linguistic or social conventions. The second view, originating in the work of Paul Grice (1957; 1968; 1969) and translated into the idiom of speech acts by P. F. Strawson (1964), is that many illocutionary acts are performed by acting with overt, audience-directed intentions. Different illocutionary acts are distinguished by the fact that they are performed with intentions to change others' minds in different ways. The third view, which originates in the work of Wilfrid Sellars (1954; 1969), is that speech acts (along with intentional mental states) should be understood in terms of their functional roles in broader patterns of "norm-conforming behavior"—activities that are constitutively governed by social norms (Sellars, 1954, 204). On this view, different illocutionary acts are governed by different norms and give rise to normatively different outcomes.[1]

Rich traditions have followed in the wakes of these theories. Conventionalists have followed Austin in taking illocutionary acts to be primarily a matter of convention, though latter-day conventionalists have often placed greater emphasis on narrowly linguistic conventions rather than the broadly social conventions emphasized by Austin.[2] Conventionalism has some obvious things going for it. We normally do perform speech acts by exploiting linguistic conventions. And many of the

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[1] There are several other theories of speech acts that we won't discuss in detail here. One view, originally stemming from some remarks by Wittgenstein (1960, 67–74), is that at least some speech acts are be direct expressions of the speaker's states of mind—see Bar-On (2004, 2013); Davis (2003); Green (2007); Pagin (2011). Another, which takes inspiration from Sellars' functionalism while eschewing his appeal to normativity, understands illocutionary acts in terms of the effects on addressees that it is their proper function to produce (Harms, 2004; Millikan, 1998; Skyrms, 2010; Zollman, 2011). For a more comprehensive survey of recent work on speech acts, see Harris et al. (2018); and for the history of these views, with emphasis on the influence of Wittgenstein, see Harris (fc).

[2] Alston (2000); Lepore and Stone (2010, 2015, 2018); Searle (1965, 1968, 1969, 1975); Searle and Vanderveken (1985).

speech acts emphasized by Austin, such as the act of marrying someone or christening a ship, really could not be performed except against the backdrop of complex social conventions and institutions. It may be similarly tempting to think, as Searle (1965) influentially argued, that, for example, asserting that you have a PhD in philosophy just isn't something that could be done without without the aid of convention-governed linguistic expressions.

Intentionalists tend to agree that Austin was roughly right about the institutionalized acts on which he focused, but argue that Grice was right to think that the basic *communicative* acts, such as asserting, requesting, and questioning, are not essentially conventional.[3] They are, rather, exercises of basic human capacities for inferring and shaping others' states of mind. They have offered several influential arguments against across-the-board conventionalism. One is that we often communicate indirectly and nonliterally, so that what we mean diverges from or goes beyond the conventional meaning of what we utter. When Romeo says to Juliet that death "hath sucked the honey of thy breath", it is only by going beyond the conventional meanings of "sucked" and "honey" that Romeo means what he does.[4] Moreover, even when we are speaking literally and directly, our conventions don't fully determine the content and force of an illocutionary act. Our example (1) illustrates this point, but so do arguably all other sentences, given the ubiquity of context-sensitive expressions and the possibility of using any sentence in a normal interaction, in a joke, when acting in a play, and so on.[5] Finally, as Grice (1957) took pains to illustrate, we seem able to regularly perform communicative acts by nonlinguistic and unconventional means. Indeed, it would seem necessary to suppose that communication can happen in the absence of conventions in order to explain how those conventions are created and acquired by children in the first place (Harris, 2016). For these reasons, intentionalists tend to think that although linguistic convention plays an important role in allowing speakers to give evidence of their intentions, communicative acts are not inherently conventional.

The third major family of theories tells us that illocutionary acts are fundamentally normative. One kind of theory in this family, which owes much of its popularity to Williamson (1996; 2000), analyzes illocutionary acts in terms of the norms that

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[3]Bach and Harnish (1979); Harris (2016); Schiffer (1972); Strawson (1964).

[4]The most notable conventionalist response to this line of argument is to deny that what we do when speaking metaphorically or indirectly is best understood as communicating or performing illocutionary acts at all. See, for example, Lepore and Stone (2010, 2015). For criticisms of this argument, see Camp (2006); Harris (2016).

[5]Carston (2002); Condoravdi and Lauer (2012); Davidson (1979); Neale (2004, 2007); Recanati (2004); Searle (1978); Sperber and Wilson (1995); Travis (2008); Wilson and Sperber (1988). The most promising conventionalist strategy in response to this line of argument has been to argue that intentionalists have failed to appreciate the richness of the discourse-level conventions that govern our exchanges. See, for example, Lepore and Stone (2010), and Harris (2016) for a response.

constitutively govern them. Although these theories are quite influential, especially among epistemologists, only assertion has received detailed attention. Williamson argues that assertion is constitutively governed by the "knowledge norm," according to which one should assert only what one knows. On Williamson's view, this is not merely a norm that happens to govern assertions; being governed by this norm is what makes a speech act an assertion. His most influential argument for this claim is that the account explains why it is normally infelicitous to assert something of the form, 'p, but I don't know that p'. Few conventionalists and intentionalists have been persuaded by this argument, however, since it is possible to accept that assertion is governed by the knowledge norm while insisting that this follows from the intentional or conventional nature of assertion together with broader norms that govern all sorts of social interactions.[6]

A second kind of normative theory has sought to analyze speech acts, along with intentional mental states, such as belief, desire, and intention itself, in terms of the commitments and entitlements that they involve.[7] For example, we might think of asserting p as the undertaking of a commitment to the truth of p—a commitment that entitles the addressee to take the speaker at their word, to ask for supporting reasons in case of doubt, and to rebuke the speaker if p turns out to have been false. Again, the most obvious motivation for this view is that speech acts typically do have normative consequences like these. Of course, we might again try to explain how these commitments and entitlements arise by appealing to a non-normative theory of a given speech act, together with an account of how commitments and entitlements arise from conventions or communication more generally (see, for example, Harris 2019). Another motivation for normative views is to avoid the assumption—common to intentionalism and many versions of conventionalism—that intentional mental states are explanatorily prior to, or more fundamental than, illocutionary acts. Brandom (1994) has argued that the intentionality of language and thought are on an explanatory par, so that neither should be used to give an account of the other. In place of such a reductive strategy, Brandom argues that we should explain the intentionality of both speech and thought in terms of underlying normative concepts. This motivation itself has often been a target of criticism. One problem is that the approach seems to conflict with theories that attribute intentional mental states to nonlinguistic creatures, such as animals and young children. For example, many models of language acquisition tell us that young children learn the meanings of words in part by forming beliefs about other language users' beliefs and intentions (see, e.g., Bloom 2000, ch.3). Some critics have also worried that normativity is a

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[6]On this and related issues, see Ball (2014); Benton (2011); Sosa (2009).

[7]Brandom (1983, 1994, 2000); Geurts (2019); Kukla (2014); Kukla and Lance (2009); Lance and Kukla (2013); Peregrin (2014).

dubious unexplained explainer in the context of theories of these kinds (e.g. Rosen 1997).

Speech-act theorists have found ways of abstracting away from their foundational disagreements, at least for some purposes. The most widespread method involves the idea that conversations revolve around discourse contexts, which are databases of information that affect how speech acts are performed and that are in turn updated by the performance of speech acts. The most influential model of this kind is due to Stalnaker (1978; 2002; 2014), who takes a discourse context to be the set of propositions that interlocutors are treating as common ground for the purposes of their conversation. To assert p, says Stalnaker, is to propose adding p to the common ground. Others have generalized this idea to other speech acts. For example, Roberts (2004; 2012) thinks of asking a question as a proposal to add a new "question under discussion" to the context—the question that it is the participants' immediate conversational goal to answer. And Portner (2004; 2007; 2012) models directives and permissions as proposals to alter the "to-do list", which he thinks of a component of the context that tracks the preferences on which the participants' have coordinated. An influential generalization of these ideas is due to Lewis (1979), who argues that we should think of the context of a conversation as being akin to the scoreboard of a baseball game, tracking all facts about a conversation that may play a role in determining how it will unfold and that may be altered by the performance of further speech acts. Following Lewis, it is common to refer to a conversation's discouse context as its "conversational score," or "scoreboard."[8]

These ideas are abstract enough that they can be made to fit with each of the competing theories of speech acts discussed above. On the intentionalist construal, the discourse context consists of the participants' shared states of mind, and illocutionary acts are understood in terms of their intended effects on these states (Roberts, 2018; Stalnaker, 2018; Thomason, 1990). The conventionalist interpretation thinks of the context as a social construct whose state is determined by the conventions governing a conversation together with the objective facts about its history—facts that may trump the intentions of speakers and the shared attitudes of the interlocutors (DeVault and Stone, 2006; Lepore and Stone, 2015; McGowan, 2017). Within the tradition that thinks of speech acts in fundamentally normative terms, the context can be thought of as the sum total of commitments, entitlements, and other normative facts that are currently in play in a conversation (Brandom, 1994; Geurts, 2019; Nickel, 2013). Some theorists have argued that we need more than one of these conceptions of discourse context to coexist within an adequate theory of speech acts (Camp, 2018). More often, discussions of discourse context, common ground, and conversational score take place at a level of abstraction that

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[8]Another early statement of a similar view is due to Gazdar (1981).

ignores these different possible interpretations. This can facilitate interesting debates across theoretical boundaries, but it can also mask deep theoretical disputes in ways that confuse some issues.

2 Social and Political Applications

2.1 Speech Acts and the Social Contract

One of the major issues in the history of political philosophy is a question about speech acts: how can agents make promises to each other? More specifically: how can agents *credibly* make *binding* commitments to each other, such that they have trust or assurance enough to motivate cooperation for mutual benefit? This question lies at the heart of any inquiry into the nature of contracts, which the contractarian tradition has placed at the center of theories of the nature of both political institutions and morality.

Hobbes gives us one classic answer:[9] because each individual is such that they are better off when they are able to cooperate and coordinate with others, and because each individual knows of others that this is true of them too, each individual has a prima facie motivation to make commitments that another agent has reason to accept as binding—hence, a promise. However, it is also common knowledge that agents will have incentives to break promises. Hobbes argues that it is therefore rational for self-interested agents to develop some system of sanction to back up their commitments to make them binding on pain of harm to reputation or punishment.

Thus Hobbes renders the speech act of promising (which can be irrational to break) as the first step in a series that can eventually lead to contract (which can be but is not always punishable upon breaking). The transition from promise (that is, binding commitment) to promise with a sanction upon defection (that is, assurance) is key. Hobbes thus proposes to bootstrap a social contract (something like laws of a commonwealth) out of mutually enforced promises:

> A man is obligated by an agreement, i.e. he ought to perform because of his promise. But he is kept to his obligation by a law, i.e. he is compelled to performance by fear of the penalty laid down in the law (Hobbes, 1984, 14.2n)

Note what is absent so far in this story: any appeal to practices, conventions, customs, or prior rules. Hobbes may have answered how agents can in principle

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[9]Hobbes' interest in and application of speech-act-theoretic ideas is not limited to his investigations into the social contract. We will discuss his theory of the nature of laws as imperatives in §2.2. Hobbes also takes speech acts to be of enough inherent interest that he offers an extended attempt at a taxonomy in Chapter 4 of Leviathan (1651).

form credible binding agreements and how—in principle—such agreements can serve as the rational ground for something like a social contract, but so far such agreements appear to be made through one-off promises, entered into on the basis of the recognition of an individual speaker's intentions, and backed by (perhaps fairly ad hoc) social sanction—harm to reputation or punishment by a sovereign. He appears to think such a structure is possible, stable, and enforceable absent anything like a convention of promise-making (though perhaps not absent a *regularity* of promise-making). Another way of putting the point: Hobbes thinks agents in the state of nature can promise.

Hume famously critiques Hobbes on this point, arguing that in order for promises to be both credible and binding, agents must be party to a prior convention according to which an utterance of "I promise..." counts as an instance of a type of action recognizable even by third parties as generating commitment—hence other parties will judge that an agent who breaks a promise has done something to violate a rule, not merely something that happens to have disadvantageous consequences.

> I say, first, that a promise is not intelligible naturally, nor antecedent to human conventions; and that a man, unacquainted with society, could never enter into any engagements with another, even though they could perceive each other's thoughts by intuition. (Hume, 1738, T 3.2.5.2, SBN 516)

Here we see an early instance of what would become the debate between intentionalism and conventionalism about speech acts. This debate about the nature of what has come to be called "promissory obligation" picked up steam in the late 20th century, among both political philosophers and philosophers of language alike.[10]

One influential conventionalist about promising is Rawls (1955), who—foreshadowing Lewis's use of the same metaphor—describes the making of a promise as akin to a move in a baseball game. He reasons as follows. Consider someone who makes a promise and then—failing to do what is promised—tells the promisee that actually, upon reflection, it wasn't all things considered the best thing to do after all. We would judge such a person to be confused or misinformed about the nature of promises—what it is to make one and what it requires one to do. Rawls says that we would have grounds for judging the promiser to have misunderstood the practice of promising. Similarly: consider the baseball player who asks the umpire "can I have four outs?"—because it would be better overall for him, or his team, if it was so. Such a player would be confused about what it is to play the game of baseball. Rawls argues that such a question constitutes a confusion between practical ques-

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[10]For a more comprehensive overview of this debate than we can offer here, see Habib (2018).

tions that are internal to a practice and questions about how to justify the practice itself. Promissory obligation, Rawls thinks, is itself a practice-internal notion.

Building on Rawls' ideas, Searle (1964) uses promissory obligation as his case study in how the conventional constitutive rules of a social practice can ground normative facts in non-normative facts. In later work, Searle builds his own theory of speech acts around this same notion of a constitutive rule, again taking the act of promising as his paradigm case (Searle, 1965, 1969). On Searle's view, to perform an illocutionary act is to speak in a way that conforms to a collection of constitutive rules, all of which ultimately apply in virtue of linguistic convention. To felicitously promise, for example, requires that the speaker express a proposition to the effect that they will perform some act, that the hearer would prefer the speaker to perform this act, that it is not obvious that the speaker would perform it anyway, that the speaker forms an intention to carry out the act and for his utterance to place him under an obligation to do so, that the speaker communicatively intends the hearer to recognize that the speaker has these intentions, and that all of this follows from the linguistic conventions governing the expressions that the speaker uses to perform their speech act. According to Searle, promising is not special in being made possible by conventional constitutive rules of this kind. An analogous suite of rules sets the parameters for the performance of any illocutionary act. Failure to keep a promise, on Searle's view, is analogous to violating the felicity conditions of other illocutionary acts—for example, by asserting what one knows to be a falsehood.[11]

There are some reasons to doubt that promising is constituted by the conventional rules of a particular social or linguistic practice, however. One influential argument, pressed by Scanlon (1998, Ch.7), is that it really does seem possible to make promises outside of any shared conventional framework, in the state of nature. Scanlon imagines two hunters from tribes who have had no previous contact and do not share a language, and who meet on opposite sides of a river, having each accidentally thrown their hunting weapons to the other's side. Scanlon argues that these two individuals can enter into a promissory arrangement, despite lacking a common conventional framework in which to do so.[12]

Instead of thinking of promissory obligation as a conventional practice, Scanlon (1990; 1998) instead argues that we should think of it as arising from the expectations that a promiser instills in a promisee. To instill these expectations in someone and then fail to live up to them is to manipulate others in a way that is normally morally unacceptable. Scanlon explains this moral unacceptability by appeal

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[11] Aside from Rawls and Searle, other conventionalists about promising include Fried (2015); Gauthier (1986); Kolodny and Wallace (2015).

[12] Similar arguments have been made by intentionalists to show that other speech acts, such as asserting, requesting, and asking questions are likewise not conventional acts. See, for example, Harris (2016, 2019).

to his own brand of contractualist ethics, while other expectation-based accounts of promissory obligation appeal to other background theories of moral obligation.[13] On expectation-based views, promising is, first and foremost, a communicative act whose point is to produce expectations in an addressee. Although Scanlon does not commit himself to any particular theory of communication, his view fits naturally with intentionalism, which is built to explain the possibility of communication in the absence of convention. And at least some intentionalists have offered accounts of promising that would fit in nicely with expectation-based accounts of promissory obligation.[14]

A third school of thought takes promissory obligation to be a normative status that is more fundamental than any social convention but that is not reducible to the promisee's expectations. Theories of this kind take the act of promising to be fundamentally normative in nature: they take promises to be possible by virtue of our powers to shape the normative statuses that govern us. Within this genre, theories differ with respect to the nature and sources of the normative status involved. Some examples:[15] Raz (1977) takes promissory obligation to be a kind of right enjoyed by the promisee and created by the promiser as a result of communicating their intention to undertake a commitment. Shiffrin (2008) argues that promissory obligation and other related forms of commitment are "integral part[s] of the ability to engage in special relationships in a morally good way, under conditions of equal respect" (485). Owens (2006) argues that promising arises from moral agents' legitimate interest in having the ability to have authority over others (such as when one has accepted their promise to do something).

Again, we can find norm-theoretic accounts of speech acts that fits nicely with these views by social and political philosophers (see, e.g. Kukla and Lance 2009, 24, 90). But by the same token, normative theories of promising are subject to some of the same criticisms that face normative theories of speech acts more generally, some of which we discussed in §1.

2.2   Speech Acts and the Law

What are laws? An answer inspired by Thomas Hobbes and made influential by the early legal positivists Jeremy Bentham (1782) and John Austin (1832) was that a law is an "assemblage of signs" whose meaning is a command addressed by a sovereign to their subjects and backed by the threat of force. 'Imperativalism', as this theory is sometimes called, is no longer a popular view.[16] Its most influential critic was

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[13]See, for example, Atiyah (1981); Norcross (2011).

[14]For example: Schiffer (1972, 108–109); Bach and Harnish (1979, 50).

[15]For others, see Hart (1955); Rosati (2011); Watson (2004).

[16]Though, for a contemporary defense, see Landenson (1980).

H. L. A. Hart (1994, §3), much of whose criticism draws on ideas about speech acts that resemble those of J. L. Austin.[17] Hart argues that laws cannot be thought of as pieces of language, although they are in many cases put into effect by linguistic means. Ultimately, though, the fact that a given utterance—for example, a statute—constitutes law must be due to extra-linguistic social conventions that govern a society's practices, institutions, and norms. Hart also argues that laws needn't have the force of commands or even permissions, but may instead confer a range of other kinds of normative status, such as the power to enter into contracts or the right to marry. The speech acts by which laws are created thus form a sub-category of what Austin (1962, 152) called *exercitives*—acts that bring new and often normatively loaded facts into being. Moreover, in modern bureaucratic democracies, there is no one entity that plays the role of the sovereign—the "speaker" of these exercitives. Rather, city clerks, law enforcement, and regulators act as agents in relation to a principal—representing the interests of the people within a domain of state authority sharply indexed to an organizational role. In this respect laws resemble the conventional procedures on which Austin focuses: passing legislation, like a felicitous marriage ceremony, requires a structure that indexes rights and responsibilities to institutional roles occupied by agents empowered to act on those powers. Hart also points out that laws needn't express any person's will, may be misunderstood by the very legislators who vote on them, and may "bind the legislators themselves"; in these respects they resemble Austin's conventional acts more than they do ordinary commands.

Austin himself emphasized the roles of exercitives in lawmaking, but he also distinguishes them from a second category of speech acts, verdictives, that play a related legal role (Austin, 1962, 150). Verdictives, he says, "consist in the delivering of a finding, official or unofficial, upon evidence or reasons as to value or fact" (152). A verdictive "is done in virtue of an official position: but it still purports to be correct or incorrect, right or wrong, justifiable or unjustifiable on the evidence. It is not made as a decision in favour or against" (153). Paradigm cases include the decisions of juries, arbitrators, umpires, and judges.

The question of how judicial decisions are justified is one of the central issues in the philosophy of law. Consider the task faced by a judge when interpreting a

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[17]This collision of jurisprudence and speech-act theory was no coincidence. Hart was part of the same postwar-Oxford scene that Austin and Grice inhabited, regularly attended Austin's Saturday-morning reading group, co-taught seminars with Austin, and later described Austin as his greatest philosophical influence (Sugarman and Hart, 2005, 273–275). Hart also influenced Austin, and is one of three philosophers cited by name in *How to do Things with Words*, where he is given credit for helping Austin to understand the relationship between performatives and their felicity conditions by analogy with the relationship between the "operative" part of a statute and "the rest of the document [which] merely 'recites' the circumstances in which the transaction is to be effected" (Austin, 1962, 7).

statute or constitution in order to decide a case. As in ordinary communication, the precise content and force of a piece of law often isn't made satisfactorily determinate by the words in which it is framed.[18] Another way to put this is that legal texts typically display a kind of semantic underdetermination—a phenomenon that they presumably inherit from everyday language use, where semantic underdetermination is endemic and perhaps inevitable.[19]

Consider an example discussed by Scalia (1997, 23–24) and Neale (2007, 251–252). *Smith v. United States*[20] turned on the interpretation of Title 18, section 924(c)(1) of the U.S. Code, which mandated a five-year prison sentence for anyone who "uses…a firearm during and in relation to…[a] drug-trafficking offense". John Angus Smith had traded a bag containing an unloaded gun for two ounces of cocaine, but had not brandished or threatened to use the gun at any time. The Supreme Court was faced with the question of whether this counted as "using" the gun "during and in relation to" the trade. The answer apparently turns on the question of whether "using a gun" should be understood, for the purpose of this statute, as implicitly equivalent to "using a gun *as a weapon*". How should judges overcome semantic underdetermination in cases like this one? What further information should they be seeking? Or, to approach the issue from a different direction: In virtue of what underlying facts does the law have the content and force that it does, such that judges should be seeking out *those* facts? This central question about jurisprudence turns out to be a question about the nature of speech acts.

The debate over how to answer these question has spawned a range of answers that resemble different positions on the nature of illocutionary acts. For example, intentionalists about the law (also known as 'purposivists') argue that the content of the law is fixed by the intentions of those who create it, and that judges should interpret a legal text by attempting to infer the legislative intent behind it. This sort of reasoning dominated the American courts until a few decades ago (Manning, 2006), and is still common. There is some evidence that the Supreme Court reasoned this way in deciding *Smith v. United States*. Here is an excerpt from Justice O'Connor's majority opinion, which upheld the lower courts' opinion that trading a gun *does* constitute using it.

Had Congress intended §924(c)(I) to require proof that the defendant

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[18]Indeed the problem generalizes beyond judges: parties to a contract cannot specify in advance every possible contingency that may occur. This—the problem of *incomplete contracts*—creates space for disagreement, arbitrage, and opportunistic renegotiation. See e.g. Grossman and Hart (1986); Hart (1995).

[19]On semantic underdetermination in the law, see Marmor (2008); Neale (2007, 2008); Soames (2008).

[20]508 U.S. 223 (1993)

> not only used his firearm but used it in a specific manner—as a weapon—
> it could have so indicated in the statute. However, Congress did not.

One straightforward argument for intentionalism about the law takes intentionalism about ordinary communicative acts as a key premise. In ordinary communication, the argument goes, the content of what is communicated is always determined by the speaker's intentions; the language used (and the conventions governing the language, as well as information about the context in which it was uttered, and so on) only ever serves as partial and defeasible evidence of the speaker's intentions. But legal texts are formulated in the same language as ordinary communicative acts, and so it would be bizarre if language is (or even *could be*) serving an entirely different, non-evidential role in that context. By analogy, then, we should take the content of the law to be what was asserted or stipulated by the legislators, and this is of necessity a matter of what they intended—something of which the texts they create can only serve as partial evidence.[21]

However, there are some important disanalogies between the law and most ordinary communicative acts with which any intentionalist about the law will have to contend. One problem is that the legislators who pass a statute can't consider every possible eventuality, and so their intentions may not be determinate enough to settle some cases. *Smith v. United States* provides a plausible example: legislators may not have considered whether trading a gun for drugs should count as using it to commit a crime, and so knowing their intentions might not help to settle the case. This sort of thing happens in ordinary communication, which is not usually a big problem: we can ask for clarification, or just let some indeterminacy slide. But a judge who has to make a decision doesn't have these options.[22]

A second problem is that constitutions, statutes, and contracts are generally created not by individual speakers but by groups of agents. This raises the question of what it takes for a group of agents to collectively perform a speech act, and for the intentionalist it raises the further question of what it takes for a group of agents to intend something.[23] Moreover, the members of a legislative body often have differ-

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[21]For this and related arguments, see Neale (2007, 2008); Soames (2008, 2013). For other defenses of intentionalism about the law, see Ekins (2012); Ekins and Goldsworthy (2014); Fish (2008); Goldsworthy (2010); Solan (2005). Marmor (2014) defends a modified version of this view on which legal interpreters should rely on the plain meaning of a text up to the point at which that fails to fully determine the content of the law, at which point intentions enter the picture. Matczak (2017) argues that the intentions grounding the illocutionary aspects of laws, and not merely their locutionary aspects, should be considered the proper object of legal interpretation.

[22]Soames (2013; 2017) argues that in such cases, the content of the law is itself indeterminate, and it is the role of the judicial authority to make new law that is in keeping with the "original rationale for the law". If Soames is right, then judicial decisions are sometimes better understood as exercitives rather than as verdictives.

[23]There is a considerable philosophical literature on collective intentionality. For major recent

ent and even conflicting goals when they write and pass a piece of legislation. For example, suppose we are able to determine that the creators of the above-discussed statute had the following intentions: one third explicitly intended trading a gun to count as using it, one third explicitly intended trading a gun not to count as using it, and the remaining third were aware of this conflict, had no opinion on the matter, and intended to deliberately leave the law underdetermined on this point so that the other two factions would vote for the statute. What is the legislative intent in a case like this? An intentionalist about the law owes us a principled way of answering questions like this.[24]

A third problem is that legislators' intentions aren't always easy to discern. Legislators might even seek to hide their true intentions for political reasons, and the causal pathway by which the specific wording of a statute is reached is usually intricate and impossible to accurately reconstruct (Manning, 2003, 2005). This issue poses a special problem in the legal context, since it is important for the law to be publicly accessible to those who are bound or empowered by it.

These and other problems have led some legal theorists to recoil from legislative intentions, often under the banner of textualism—a theory of legal interpretation that has become highly influential in recent decades, both among scholars and in American courts.[25] Textualism is often associated with a skepticism about the existence or legal relevance of legislative intentions, and with the idea that the content of a legal text is the "plain meaning" that a reasonable language-user would extract from it, independent of the author's intentions. This position resembles conventionalism about speech acts, which emphasizes the role of publicly accessible linguistic conventions in determining the content and force of an utterance.[26] Scalia (1997, 24) tells us that this was the sort of textualist reasoning behind his his dissent in *Smith v. United States*.

One way to see the central appeal of textualism is to understand it as a response to the problem about how to aggregate the intentions or preferences of a group of legislators. Textualists point out that the legislative process itself is our method of accomplishing this aggregation, and that what survives this process is a legal text, not any of the many possibly-conflicting intentions with which it was assembled,

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works on group agency and intentions in particular, see Bratman (2014); Gilbert (2013); Ludwig (2016, 2017); Tuomela (2014). For work on collective intentionality in general, see the chapters in Jankovic and Ludwig (2017), and in particular Yaffe (2017) on applcations to the law. Note that the problem about collective speech acts is not specific to intentionalists. For work on collective speech acts in general, see Hancher (1979); Lackey (2017); Ludwig (2020).

[24]For attempts to overcome this problem, see Hurd (1990, 968–975); Ekins (2012, 47–76).

[25]Influential defenses include Easterbrook (1988, 1990); Eskridge, Jr. (1990); Manning (2003, 2005, 2006); Scalia (1989, 1997).

[26]Matczak (2016) explicitly argues that Lepore and Stone's recent push for conventionalism about speech acts should be taken up by legal theorists who wish to do away with legislative intentions.

and which are inaccessible to judges. It is the text, supplemented with public aspects of its context, that should be understood to constitute the law (Manning, 2006).

Intentionalists have responded that there is no escaping legislative intentions, because to interpret any utterance, including a legal text is, ipso facto, to infer the intentions with which it was produced (Alexander and Prakash, 2004; Ekins, 2012; Neale, 2008). Nonetheless, contemporary intentionalists have tended to include constraints on legislative intentions to the effect that these intentions must be publicly accessible to a reasonable person (Ekins and Goldsworthy, 2014; Neale, 2008; Soames, 2013). And contemporary textualists no longer deny that a text can be interpreted independently of context. Textualism and intentionalism have thus converged in some ways, and the debate between them has become finer-grained (Manning, 2006)—much in the same way as the debate between intentionalists and conventionalists debate about speech acts.

2.3   Speech Acts and the Creation of Social Norms and Practices

In the context of the right social institutions, speech acts can create laws. Other speech acts are similar in that they give rise to new normative statuses, but dissimilar in that they are embedded in informal social practices rather than formalized legal institutions. A parent might grant their children permission to use the family car. A person might consent to a sexual act. Children playing a game of hide and seek might decide to adopt the rule that a player can't hide in the same spot twice. Informal exercitives of these kinds have been of major interest to socially and politically minded speech-act theorists in recent decades.

Consider Catharine MacKinnon's (1993) claim that the creation and distribution of pornography constitutes an act of subordinating women. MacKinnon begins from the idea, encouraged by the American courts, that pornography is a kind of speech. But, MacKinnon argues, it is a form of speech that must be understood not merely in terms of what it represents, but in terms of what it does.

> …But the way it works is not as a thought or through its ideas as such, at least not in the way thoughts and ideas are protected as speech. Its place in abuse requires understanding it more in active than in passive terms, as constructing and performative rather than as merely referential or connotative. (MacKinnon, 1993, 21)

"The message of these materials," she continues, "is 'get her,' pointing at all women…" (21). MacKinnon defines pornography as "graphic sexually explicit materials that subordinate women through pictures or words. …This definition includes the harm of what pornography says—its function as defamation or hate speech—but defines

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it and it alone in terms of what it does—its role as subordination, as sex discrimination, including what it does through what it says" (MacKinnon, 1993, 22).

Several philosophers have attempted to defend MacKinnon's claims about pornography by explicitly framing them in the idiom of speech-act theory.[27] The central claim of this literature is that we should think of pornography as speech that subordinates women as a matter of its illocutionary force, and not merely as a locutionary act that depicts subordination or a perlocutionary act of causing subordination. Langton draws an analogy to acts of subordination in legislative contexts:

> Consider this utterance: "Blacks are not permitted to vote". Imagine that it is uttered by a legislator in Praetoria in the context of enacting legislation that underpins apartheid. It is a locutionary act: by "Blacks" it refers to blacks. It is a perlocutionary act: it will have the effect, among others, that blacks stay away from polling booths. But it is, first and foremost, an illocutionary act: it makes it the case that blacks are nor permitted to vote. It—plausibly—subordinates blacks. (Langton, 1993, 302)

Langton argues that pornography is like the South African legislator's utterance in that both acts unfairly rank some people lower than others, legitimate harmfully discriminatory behavior toward them, and unjustly deprive them of important powers (Langton, 1993, 303–304). Like the act of passing a law, Langton argues that the creation and publication of pornography can itself bring into existence a new kind of normative status.

Of course, there are disanalogies between pornography and the law. The legislator's authority to alter the normative facts derives from their formal position in a legislative institution. Langton argues that pornography enjoys a kind of *de facto* authority, in virtue of the role it plays in shaping norms about sexual power among its consumers. As she puts it, pornography "shapes desire, eroticizing hierarchy" (Langton, 2017). But it is important to Langton's position that this shaping of desire is a matter of pornography's illocutionary force, rather than merely an effect of repeated viewing (on this point, see Langton and West 1999).

Langton (2018a; 2018b) and McGowan (2003; 2004) have defended related theories of how pornography exerts its authority that draws on work in the philosophy of language about presupposition accommodation. If a speech act triggers a presupposition, the act's felicity depends on whether the presupposed proposition is common ground (Stalnaker, 1974, 2014). When someone presupposes something

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[27]Hornsby (1993); Hornsby and Langton (1998); Langton (1993, 2017); Langton and West (1999); Maitra (2012); McGowan (2003, 2004).

that is not common ground, it is possible to object, though this typically has the effect of derailing the conversation, since presuppositions are typically "not at issue". If no one does object, then the presupposition is normally accommodated—silently added to the common ground, as if through the back door (Lewis, 1979). McGowan and Langton both argue that accommodation is a typical process by which *de facto* authority arises: the act of publishing pornography would be felicitous only if certain social norms or practices are in place—it *presupposes* these norms and practices—and so pornography winds up being part of what makes these very norms operative.[28]

Perhaps the weakest link in this project is the idea that pornography is speech in a sense that invites a speech-act-theoretic treatment. Langton mostly does not try to defend this premise of her argument, instead merely repeating MacKinnon's point that the American courts have deemed pornography to be speech for First-Amendment purposes. But this is not very convincing on its own: "speech" is one technical term in the context of the American legal system and another technical term in the context of a theory of illocutionary acts. It is not obvious that the extensions of these two technical terms are sufficiently aligned for Langton's purposes. Langton has sometimes responded to this worry by pointing out that it suits her broader purposes if pornography does not turn out to be speech. For example: "Notice that if [pornography does not work as speech after all], then feminist arguments against pornography ought to have an easier time of it than they do, since it cannot be a right to free *speech* that protects pornography, if anything does" (Langton and West, 1999, 305). But this does not address our point. Some things count as speech by the technical definition of the American legal system—e.g., monetary contributions to political campaigns—that probably don't count as speech by either ordinary or speech-act-theoretic standards. The question is whether pornography is one of these things.

There are reasons for doubt. One is the problem of saying who is the "speaker" of pornography. This interacts with the authority question in interesting ways. No individual pornographic actor, director, producer, or publisher has authority over societal norms. It is more plausible that the industry as a whole has this power. But it is doubtful whether an industry is a well-enough organized entity to be capable of performing illocutionary acts.[29] Pornography also seems to lack some of the essential characteristics of illocutionary acts by the standards of most theories of speech acts. An intentionalist can object that there is no communicative intention to subordinate behind pornography; most pornographers presumably intend merely to

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[28]For another accounts of how pornography may achieve authority, see McGlynn (2016).

[29]For a different argument that pornography is not authoritative, see Green (1998). See also Langton's (2009, ch.4) response.

make money and perhaps also gratify themselves. A Searlean conventionalist might additionally object that pornography has no sincerity or preparatory conditions, and does not have straightforward propositional content. A Brandomian could object that someone who creates or publishes pornography needn't thereby commit themselves to any content, any more than someone who publishes any other work of fiction. Even Austin, whose work has had the most direct influence on Langton, might object that it is difficult to articulate the felicity conditions of an act of subordinating women by creating or publishing pornography, such that failure to meet these conditions would result in a misfire or an abuse (see Austin 1962, 18). Unless objections like these can be satisfactorily answered, one worries that the idea of pornography as an illocutionary act is crudely metaphorical.

One attempt to answer some of these objections is due to McGowan, (2004; 2009; 2017), who argues that exercitive speech acts that operate via a mechanism like presupposition accommodation lack many of the features that speech-act theorists have thought essential to speech acts, including communicative intentions, uptake requirements, and propositional content. McGowan goes on to argue that this is the right way to construe pornography as a kind of speech act, and draws on a normative theory of illocutionary acts in order to do so (see also McGowan 2003).

Some of the same theoretical moves that have been applied in these debates over pornography have also been used to understand other kinds of harmful, subordinating speech.[30] Interestingly, these theories have often been built on conflicting approaches to the nature of speech acts, and so have posited different mechanisms by means of which speech acts manipulate social norms. Langton's influential early work is framed in largely Austinian terms, though more recent work by Langton, McGowan, Maitra, and others also borrows from work by Stalnaker and Lewis on presupposition accommodation. Stanley (2015) develops a similar theory of how some forms of propaganda do their work by sneaking "not-at-issue content" into the common ground of a whole society (as it were).[31] Maitra, McGowan, and Langton have developed analogous treatments of how hate speech inflicts harm by covertly manipulating social norms.[32] Meanwhile, Tirrell (2012) has developed an account of how hate speech creates the conditions for political oppression and violence that builds on a theory of speech acts inspired by the normative-functionalist views of of Sellars and Brandom.

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[30] For more detailed discussions of this work, see Maitra and McGowan's chapter on "Language and Free Speech" in this volume, as well as the chapters in Maitra and McGowan (2012).

[31] See the chapter on propaganda by Stanley and Beaver in this volume for discussion of this and other work on propaganda.

[32] Langton (2018a,b); Maitra (2012); McGowan (2004, 2012, 2017).

2.4   Silencing Speech Acts

All theories of speech acts agree that successfully performing an illocutionary act requires more than performing a locutionary act—more than the utterance of meaningful expressions. This raises the possibility of manipulating speakers' ability to meet these further conditions, either by undermining the conditions necessary for performing an illocutionary act or by creating the conditions for the performance of an illocutionary act against the will of the speaker. The former phenomenon has been dubbed "silencing" (Hornsby, 1993; Langton, 1993) and "illocutionary disablement" (Maitra, 2009) and the latter has been called "extracted speech" (McKinney, 2016).

The notion of illocutionary silencing emerged from the same feminist critique of pornography discussed in §2.3.[33] In addition to subordinating women, MacKinnon (1993) argues, pornography also silences them—a claim that forms the basis of an argument for regulating pornography on free-speech grounds. In building their case for this claim, Langton (1993) and Hornsby (1993) both take inspiration from Austin's view that performing an illocutionary act normally requires achieving "uptake":

> I cannot be said to have warned an audience unless it hears what I say
> and takes what I say in a certain sense. An effect must be achieved on
> the audience if the illocutionary act is to be carried out. …Generally
> the effect amounts to bringing about the understanding of the meaning
> and of the force of the locution. So the performance of an illocutionary
> act involves the securing of *uptake*. (Austin, 1962, 115–116)

Langton and Hornsby claim that the act of felicitously refusing sex likewise requires securing uptake—that in order for someone to successfully perform the act of refusing sex, their addressee must understand them as doing so. By manipulating men's expectations about female sexual desire, Langton and Hornsby argue, pornography lowers the chance that its consumers will understand acts of refusing sex, and so lowers the chance that women who attempt to refuse sex will secure uptake. Pornography thus systematically undermines the felicity conditions of refusing sex, thereby making the act impossible for some women to perform.[34]

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[33] A precursor is due to Frye (1983, 89), who uses the notion to theorize situations in which women are unable to express anger due to structural oppression.

[34] It is worth pointing out that Austinian speech-act theory gives us several other ways to diagnose what is going wrong in cases of silencing, since Austin takes speech acts to possess a variety of felicity conditions. Hesni (2018) explores some of these other options, arguing that an act of refusing sex may misfire (or may be treated as misfiring) because the speaker lacks (or is treated as lacking) *standing*, which is (roughly) the social position one needs in order to authoritatively perform a given illocutionary act.

As Maitra (2009), Unnsteinsson (2019), and others have pointed out, the phenomenon of silencing is interesting in ways that go far beyond the use of it to understand the effects of pornography. It is plausible that silencing is a mechanism of structural oppression across many domains, as prejudice prevents the members of oppressed groups from making themselves understood in the performance of all manner of illocutionary acts. Since the ability to perform some speech acts—those involved in political deliberation and protest, for example—may be considered constitutive of full citizenship in a democracy, silencing and the mechanisms by which it happens should be of paramount interest to political philosophers.

There are interesting questions about how the notion of silencing can be taken up by speech-act theorists who do not share the Austinian approach on which Langton and Hornsby's approach is based. One matter of controversy is the claim that securing uptake is a necessary condition for performing an illocutionary act. Intentionalists typically draw finer-grained distinctions between ways that a communicative act can succeed.[35] Performing an act requires making an utterance with a communicative intention—(i) an intention to produce a response (such as a belief) in an addressee, (ii) an intention for the addressee to recognize intention (i), and (iii) an intention for the addressee to satisfy (i) as a result of satisfying (ii) (Grice, 1957, 1969). To successfully communicate requires that the addressee recognize which response the speaker intends to produce, thereby satisfying clause (ii). Actually producing this response is a further, extra-communicative achievement: it is possible to be understood without being persuasive. Uptake, on this view, is identified with the fulfillment of clause (ii) of a communicative intention (Strawson, 1964, 448). Although securing uptake is a necessary (and sufficient) condition for successful communication, it is not a necessary condition for performing an illocutionary act.

On this view, someone who cannot secure uptake is not prevented from performing an illocutionary act, but they are prevented from communicating. Maitra (2009) argues that this sort of inability to communicate still deserves to be thought of as a pernicious form of silencing, since much of the social and political value of in our ability to perform communicative acts lies in our ability to communicate with them. What use is someone's ability to state political opinions, to engage in protest, or to refuse sex, one might ask, if others are systematically incapable of understanding?

Unnsteinsson (2019) points out a further mechanism by which silencing might work, given the intentionalist view. Most theorists of intention, including intentionalists about speech acts, hold that it is either impossible or irrational to in-

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[35]See, for example, Strawson (1964) and Harris (2020).

tend what one believes can't be done.[36] Someone who is aware that they are in a communication-undermining predicament of the kind that Maitra describes will therefore be unable to (rationally) attempt to communicate, and so will be unable to (rationally) perform a communicative act at all.[37] Unnsteinsson also argues that a speaker in this situation may believe that they are powerless to communicate in a situation like this, and yet be sufficiently self-deceived about this belief that they go through the motions of performing a speech act without actually having the intentions necessary to genuinely perform it. These forms of silencing undermine speakers' ability to perform illocutionary acts, and not merely their ability to communicate with them.

Other theories of speech acts give us different ways of understanding how silencing works. Stanley (2011) adopts Williamson's (2000) view that assertion is constitutively governed by the norm that one must assert only what one knows. It follows that in contexts where the knowledge norm is not operative, genuine assertion becomes impossible. Stanley argues that U.S. political discourse is on the cusp of falling into this state, to the detriment of all those involved, because Americans have all but ceased to expect political actors to say only what they know, and have stopped holding them accountable when they fail to meet this standard. If Stanley is right, then genuine assertion is on the verge of becoming impossible in U.S. political contexts. Kukla (2014) builds a theory of silencing using tools from the normative framework of Kukla and Lance (2009). On Kukla's view, illocutionary acts are ways of altering normative statuses, such as commitments and entitlements. Crucially, though, Kukla and Lance argue that speech acts can be performed only when certain "input conditions" are met, and these input conditions themselves consist of normative statuses possessed by those involved. Facts about social power—for example, the fact that employees generally aren't entitled to give commands to their boss—make certain illocutionary acts available to some speakers but not others. On Kukla's view, if social practices are arranged in such a way that women's social power is systematically undermined, then they too may simply be unable to perform speech acts, such as commands, that presuppose that power, even if they are nominally in positions that grant them the authority to do so.

Finally, McKinney (2016) has argued that just as attempted illocutionary acts may be silenced, they may also be extracted from speakers against their interests or will. This can happen either as a result of a situation that incentivizes or tricks speakers into saying things that will come back to haunt them—as in McKinney's example of unjust police confessions—or it may happen when speakers are manipulated into satisfying the felicity conditions of illocutionary acts with whose rules

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[36]See, for example, Bratman (1987); Broome (2013); Donnellan (1968); Grice (1971); Neale (2016).

[37]This is closely related to what Dotson (2011) calls "illocutionary smothering".

they are unfamiliar.

2.5   Freedom of Speech

Many democracies accord their citizens a right to free speech, and protect this right by constitutionally limiting the ways in which the state can interfere with citizens' speech. In this context, 'speech' sometimes has an expansive definition. In the United States, for example, speech may include the publication of pornography and donations to political action committees, and these activities enjoy considerable protection from government regulation.

Still, there is much variation in what kinds of speech are protected in different jurisdictions and at different times. For example, defamation is subject to criminal or civil liability in many countries, though the details vary considerably. The Swedish Criminal Code (Ch. 18, Sec. 2) specifies a special punishment of up to six years for defamation of the King or another member of the Royal Family.[38] Article 274 of the Danish Criminal Code specifies a punishment of up to four years for defaming the deceased.[39] Hate speech is another variable category of exception to free-speech protections. Germany has strict laws against hate speech, including, for example, a prohibition on "denying or downplaying" the Holocaust—a crime that is punishable by up to five years in prison (German Criminal Code, §130.3). By contrast, the First Amendment of the United States Constitution has been interpreted so as to protect nearly all forms of hate speech. In the words of Schauer (2005), this is one thing that makes the United States' expansive free-speech protection "a recalcitrant outlier to a growing international understanding of what the freedom of expression entails" (30). This variation makes salient the question of which speech protections are just, and why?

Most traditional arguments for free-speech protections presuppose that the speech being protected is assertoric, and that its function is to express beliefs or opinions. For example, Mill (1859) defends broad speech protection on the ground that the airing of opinions is ultimately for the public good, whether the opinions are true or false.

> But the peculiar evil of silencing the expression of an opinion is, that it is robbing the human race; posterity as well as the existing generation; those who dissent from the opinion, still more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth: if wrong, they lose, what is almost as great a benefit,

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[38] Laws against insulting heads of state remain quite common. See Griffen (2017, 15–18) for further examples.

[39] For similar examples in other countries, see Griffen (2017, 26–27).

the clearer perception and livelier impression of truth, produced by its collision with error. (Mill, 1859, ch.2)

A defense of free speech framed in this way is open to an accusation of ignoring the fact that we do many things other than express beliefs when we speak. A basic awareness of speech-act theory thus raises deep and challenging questions about what forms of speech—which speech acts—should enjoy state protection.

This line of thought has been the basis for several critiques of expansive, American-style free-speech protections. One implication of the feminist arguments that pornography silences women (see §2.4) is that pornography is a threat to free speech, since it undermines the possibility of performing illocutionary acts that, quite plausibly, ought to count as protected speech. Hornsby and Langton (1998) draw out this implication, arguing that laws that protect the publication of pornography undermine rather than support free speech.

In a similar vein, McGowan (2012) argues that some acts of hate speech should be regulated on the grounds that they they *constitute* illocutionary acts of discriminating against their target groups, and don't merely *cause* discrimination. Waldron (2012) defends the regulation of hate speech on the ground that its publication constitutes an act of undermining the basic dignity of its targets, and ultimately their status as equal citizens (4–5, 166). Although Tirrell (2012) does not draw out the implications of her analysis of hate speech for free-speech law, a similar upshot to that of Waldron is easy to anticipate. In the right conditions, Tirrell argues, hate speech enacts a normative framework that permits terrible acts of oppression and violence. Since to do this is to undermine basic human rights, Tirrell's analysis would seem to offer support for the regulation of hate speech in at least some contexts.

Beyond offering us these avenues to critique broad free-speech protections, speech-act theory forces us to confront fine-grained questions about how to interpret the free-speech law that already exists. To take just one example, the First Amendment to the United States' constitution tells us that "congress shall make no law…abridging the freedom of speech". How should we translate this directive into the idiom of speech-act theory, with its multifarious distinctions? Jacobson (1995) argues that the first amendment protects only the freedom to perform locutionary acts, and not the freedom to perform illocutionary acts. After all: as Austin showed, many illocutionary acts, such as the act of performing a wedding ceremony or placing someone under arrest, are limited to the purview of speakers acting in particular institutional roles that grant them unique powers. Hornsby and Langton (1998) grant Jacobson's point that we lack a blanket right to perform any illocutionary act whatsoever, but argue that freedom of speech does entail the freedom to perform communicative acts. Similarly, Maitra and McGowan (2007; 2010) argue that free-speech protections should not be understood to protect any illocutionary acts that

enact obligations, including the exercitive acts that, they argue, are constituted by pornography and hate speech. Perhaps the most fully worked-out theory in this vein is due to Solum (1989), who develops a detailed theory on which freedom of speech should be equated with freedom of communicative action, in the sense theorized by Habermas (1981).

3 Loose Ends

We have attempted to give an opinionated tour of some of the fruitful intersections of speech-act theory and social and political philosophy. Of course, there are various other overlaps that we would have liked to explore, given more space. One example is the role of speech acts in deliberative democracy—a topic that is at the core of Habermas' (1981; 1998) theory of communicative action. A second example is the analogy between the roles played by cooperativity and trust in communication, on one hand, and in human social organization more generally, on the other (see, for example, Williams 2002). A third is the influence of speech-act theory on ideas about gender performativity (Butler, 1990; Salih, 2007). Although the foregoing survey has not been exhaustive, however, we hope to have shown off some of the ways in which the theory of speech acts has proven illuminating outside of the narrow confines of the philosophy of language.

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