

# 24.150 Liberalism, Toleration, and Freedom of Speech, Fall 2023

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1. Cohen says that 'protections of expressive liberty' (that is, freedom of speech) serve an 'expressive' and a 'deliberative' interest. What are these interests? Have we seen these (alleged) benefits of free speech in other writers, or are they new with Cohen?

The *expressive* interest is a direct interest in articulating thoughts, attitudes, and feelings on matters of personal or broader human concern, and perhaps through that articulation influencing the thought and conduct of others.

Cohen, Joshua. From "Freedom, Equality, Pornography." Chapter 11 in *Prostitution and Pornography: Philosophical Debate about the Sex Industry*. Edited by Jessica Spector. Stanford University Press, 2006. © Stanford University Press. All rights reserved. This content is excluded from our Creative Commons license. For more information, see <https://ocw.mit.edu/help/faq-fair-use/>.

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The *deliberative* interest has two principal aspects. The first is rooted in the abstract idea—shared by different evaluative conceptions—that it is important to do what is genuinely worthwhile, not simply what one now believes to be worthwhile.

The second aspect of the deliberative interest is rooted in the idea that it is important that one's evaluative views not be affirmed out of ignorance or out of a lack of awareness of alternatives.

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## 2. What does Cohen think is the 'expressive interest' in sexually explicit materials?

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Earlier I mentioned cases of bearing witness and of expression on matters of political justice. In a third class of cases, concerns about human welfare and the quality of human life prompt expression; the evident importance of those concerns provides substantial reasons for the expression.

A paradigm is expression about sex and sexuality—say, artistic expression (whether with propositional content\* or not) that displays an antipathy to existing sexual conventions, to the limited sensibilities revealed in those conventions, and the harms they impose.

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\*i.e. claims that are assessable as true or false

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### 3. What does he think is the 'deliberative interest'?

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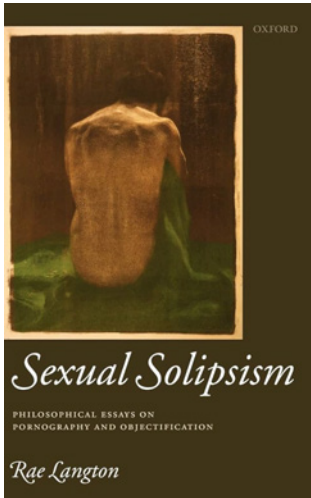
pornography can play a role in advancing the deliberative interest in a world of unequal power in part by engaging our sexual desires, categories, identities, and fantasies as they are—even if our aim is to transform them.

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## “Speech Acts and Unspeakable Acts”

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1. “Pornography, on this [Judge Easterbrook’s] view, depicts subordination and causes it. A closer look at the words of the ordinance shows us that MacKinnon is saying something more.” What more? Would Cohen disagree?

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Pornography, on [Judge Easterbrook’s] view, depicts subordination and causes it. A closer look at the words of the ordinance shows us that MacKinnon is saying something more. Besides depicting and causing subordination, as Easterbrook allowed, pornography is, in and of itself, a form of subordination....What is missing is a description of the actions constituted by pornographic utterances: in Austin’s terms, pornography’s illocutionary force.\*

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\*All quotations from “Speech acts...” unless otherwise noted

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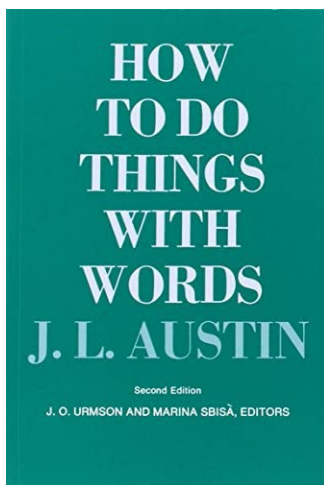
Cohen:

1. The production of pornography regularly uses force.
2. Sexual force against women sometimes involves the use of pornography as a model: men force women to view pornography and to do what the pornography shows women doing.
3. Pornography reproduces sexual inequality by shaping gender identities and sexual desires in ways that make force attractive, subordination natural, and their injuries invisible. Given male power, pornography has those effects; and once those effects are in place, the reproduction of sexual inequality is the inevitable result.

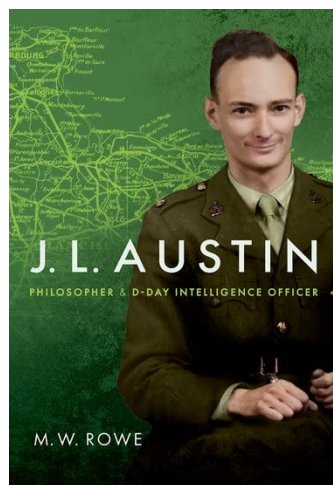
I offer these three points as explication of the claim that pornography is 'the graphic, sexually explicit subordination of women.' But do they really explain the 'is'? I have two responses: 'yes' and 'wrong question.'

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Austin, J.L. *How to Do Things with Words*. 2nd ed. Edited by J.O. Urmson and Marina Sbisa. Harvard University Press, 1975. © Harvard University Press. All rights reserved. This content is excluded from our Creative Commons license. For more information, see <https://ocw.mit.edu/help/faq-fair-use/>.



Rowe, M. W. *J. L. Austin: Philosopher and D-Day Intelligence Officer*. Oxford University Press, 2023. © Oxford University Press. All rights reserved. This content is excluded from our Creative Commons license. For more information, see <https://ocw.mit.edu/help/faq-fair-use/>.

J. L. Austin (1911-1960)

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To perform a locutionary act is to utter a sentence that has a particular meaning, as traditionally conceived.

...the effects of what was said: it captures what Austin called the *perlocutionary act*.

the action constituted by the utterance itself...what Austin called the *illocutionary act*.

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2. Give your own examples of a locutionary act, an illocutionary act, and a perlocutionary act.

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locutionary

illocutionary

perlocutionary

I say the words

in saying the words

as a result of saying the words

'I promise to pay you'

I promised to pay you

I reassured you

'Watch out!'

I warned you

I saved you from being hit by a bus

'I'm sorry'

I apologized

I impressed you

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## Subordination as a illocutionary act

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Consider this utterance [in apartheid SA]: 'Blacks are not permitted to vote.' ... In virtue of what do the speech acts of apartheid subordinate? In virtue of what are they illocutionary acts of subordination? In virtue of at least the following three features, I suggest. They *rank* blacks as having inferior worth. They *legitimate* discriminatory behavior on the part of whites. And finally, they *deprive* blacks of some important powers: for example, the power to go to certain areas and the power to vote.

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

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...in order to answer the question, 'Does pornography subordinate?' one must first answer another: 'Do its speakers have authority?' If they do, then a crucial felicity condition is satisfied: pornographers' speech acts may be illocutions that authoritatively rank women, legitimate violence, and thus subordinate.

This question is, I think, at the heart of the controversy.

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if you believe, with MacKinnon, that pornography's voice is the voice of the ruling power...Just as the speech of the umpire is authoritative within a certain domain—the game of tennis—so pornographic speech is authoritative within a certain domain—the game of sex. The authors of pornographic speech are not mere bystanders to the game; they are speakers whose verdict counts. Pornography tells its hearers what women are worth: it ranks women as things, as objects, as prey. Pornography tells its hearers which moves are appropriate and permissible: if it tells them that certain moves are appropriate because women want to be raped, it legitimates violence. If pornography is authoritative speech it may subordinate.

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Pornography may (or may not) be subordination

Another topic: silencing

Before considering whether pornography silences women, I will look at how speech acts, in general, may be silenced, and then ask whether in principle speech acts can silence.

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At the first and most basic level, members of a powerless group may be silent because they are intimidated, or because they believe that no one will listen...Sometimes, however, people will speak, but what they say will fail to achieve the effects that they intend: such speakers fail to perform their intended perlocutionary act. Silencing of this second kind, which we can call *perlocutionary frustration*, is a common enough fact of life...

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What are some examples?

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

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Example (1): Warning. Imagine this: the actor is acting a scene in which there is supposed to be a fire. . . . It is his role to imitate as persuasively as he can a man who is trying to warn others of a fire. 'Fire!' he screams. And perhaps he adds, at the behest of the author, 'I mean it! Look at the smoke!' etc. And now a real fire breaks out, and the actor tries vainly to warn the real audience. 'Fire!' he screams. 'I mean it! Look at the smoke!' etc.

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Why does Langton think the actor does not warn?

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Sometimes 'no', when spoken by a woman, does not count as the act of refusal. The hearer fails to recognize the utterance as a refusal; uptake is not secured. In saying 'no' she may well intend to refuse. By saying 'no' she intends to prevent sex, but she is far from doing as she intends. Since illocutionary force depends, in part, on uptake being secured, the woman fails to refuse.

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Some speech determines the kind of speech there can be. This shows that it is indeed possible to silence someone, not just by ordering or threatening them into simple silence, not just by frustrating their perlocutionary goals, but by making their speech acts unspeakable. It is possible to use speech to disable speakers, and possible to prevent them from satisfying the felicity conditions for some illocutions they might want to perform.

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