

Language and Legitimation

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Abstract. The verb *to legitimate* is often used in political discourse in a way that is *prima facie* perplexing. To wit, it is often said that an actor legitimates a practice which is officially prohibited in the relevant context – for example, that a worker telling sexist jokes legitimates sex discrimination in the workplace. In order to clarify the meaning of statements like this, and show how they can sometimes be true and informative, we need an explanation of how something that is officially illegitimate can have a kind of *ersatz* legitimacy conferred on it, and how this can occur even when the actor ‘doing the legitimating’ lacks formal authority. I examine one putative explanation centred around the phenomenon of *normalization*, and I highlight some advantages that this account has in comparison to an alternative explanation, one which makes reference to the phenomenon of *licensed authority*.

1. Introduction

How should we understand the meaning of claims that have the form “A legitimates x”? More narrowly, how should we understand such claims in cases where x stands for something that is recognized as formally illegitimate in the relevant context? Suppose I say to you “jokes that play on racist stereotypes legitimize racial discrimination in employment and education”. And suppose I say this in a context where such discrimination is subject to effective legal sanctions, and where we both know this to be true. What am I attempting to convey in this remark? I’m not saying that racist jokes officially nullify the legal restrictions on racial discrimination. And I’m obviously not saying that racist jokes somehow

make racial discrimination ethically unproblematic. Rather, on the more reasonable interpretation of my remark, I'm saying that racist jokes give a kind of *ersatz* legitimacy or pseudo-legitimacy to discrimination, despite its official illegitimacy in the relevant context. But what does this claim amount to, exactly?¹

This question only really becomes philosophically interesting in the cases where the actor who conveys their support for x, and thereby lends *ersatz* legitimacy to x, doesn't occupy a formal position of political or legal leadership. In the kind of case where a formally egalitarian state elects an anti-egalitarian President, who then disparages certain egalitarian legal standards that obtain in that state, it is rather easier to see how we end up with the kind of conflict which characterizes our target concept, i.e. between *de jure* and *de facto* legitimacy facts. Some official, legal source of information about what is legitimate says one thing. But the leader, who also has some authority to say what is legitimate – considerable *de facto* authority, at least – says another. When this occurs there isn't any grand mystery around how the formally illegitimate behavior might acquire a kind of pseudo-legitimacy. And some uses of legitimation-talk refer to cases like this.² But the question I'm examining here – the more puzzling one – is how an officially illegitimate thing can be made pseudo-legitimate by actors who aren't in such a position.

¹ Why shouldn't we think that "A legitimates x" just means something like "A causes some other party, B, to think of x as legitimate"? The answer is that when people use legitimation talk in contemporary political discourse – both informal and scholarly – they often seem to be saying, or purporting to say, something stronger than this. They seem to be saying that x can actually acquire a kind of *de facto* legitimacy – some form of *to be done-ness*, something a little like *becoming unofficially lawful* – that is weightier and more action-guiding than the kind of *de facto* legitimacy that x acquires merely by dint of B's *believing* x to be legitimate. My inquiry is driven by the conviction that this stronger usage probably has something going for it. But then the immediately perplexing concern is: if x is *de jure* illegitimate, in the relevant context, then what could any *de facto* legitimacy that's supposedly conferred upon it actually consist in? This question is very much in line with the one Nancy Bauer presses, in her critique of Rae Langton's analysis of how pornography legitimates sexual violence – see Bauer, "How to do Things with Pornography" in Alice Cray and Sanford Shieh (Eds.), *Reading Cavell* (London: Routledge, 2006): 68-97 – and I will draw on Bauer's insights at several points in what follows. Unlike Bauer, though, I think the doubts that underpin our question can be answered.

² There are various present-day examples, like Trump, who, as Tam Warner Minton says, "does not espouse new belief systems, but brings out the old and familiar anger, hatred, racism, and sexism of his base". "Trump legitimates these feelings", she says; see "The charismatic appeal of Donald Trump", *Huffington Post Blog*, 10th October 2016, via huffingtonpost.com/tam-warner-minton/the-charismatic-appeal-of_b_12406854.html. In §3 I will be discussing the idea that legally proscribed acts can be legitimated by being normalized. In this connection, note that Michel Foucault characterizes the modern technocratic state's power as being rooted in its capacity to establish public standards of normalcy, and to use institutional mechanisms to pressure the citizenry to adhere to these standards, e.g. see the section on 'Normalizing Judgement' in Foucault, *Discipline and Punish: The Birth of the Prison*, 2nd Edn, trans. A. Sheridan (New York: Random House, 1995). But for the reasons stated above, I'm focusing on a problem that is distinct from cases where state actors are the ones normalizing, and thus putatively legitimating, unjust practices.

This isn't only a matter of philosophical curiosity. Many people are skeptical about the idea that expressive acts are a crucial factor in sustaining social injustice, and about the critical buzzwords that are commonly used to convey that idea. Claims about legitimation can easily elicit such skepticism. If I say that A's speech is bad because it legitimates some injustice, x, it may sound as if I'm using a crafty rhetorical gambit to blame A for x, regardless of there being a specifiable causal relation between A's speech and x. If I lack any evidence that A contributes to x, but I want to say something meatier than "A *tacitly sanctions* x", I can split the difference by saying "A legitimates x". At any rate, that's how things may appear to the skeptic.

There are good reasons to try to address this skepticism. First, it is a chance to sharpen our vocabulary. If legitimation-talk is gesturing towards some genuine, discernible phenomenon, then we should try to put a finer point on what that phenomenon is. Second, getting clearer about what legitimation is may make it easier to explain why it's wrong, in the cases where it is wrong. And third, the skeptics might yet change their minds. Some readers may see this is naïve, but I am going to proceed on the assumption that many people are ingenuously skeptical about progressive critical buzzwords. People are unclear about what these terms are supposed to mean, and they see them used in ways which suggest that they are merely rhetorically expedient tokens, whose meaning is ever-shifting and indeterminate. For some buzzwords this perception may have something to it, but I think it is off-target in this case. I will argue that there is a phenomenon which is fittingly referred to using legitimation-talk, and propose an account of the meaning of claims that have the form "A legitimates x" centred on this phenomenon. This account should be welcome to people making such claims, because it rebuts the suggestion that they're trading in empty rhetoric. But it should also be useful for contesting instances of such claims, because it proposes some constraints on when it is apt to say that "A legitimates x".

Before getting too far along, I should say about the current methodological trend – one that is largely inspired by Sally Haslanger's influential writing on the metaphysics of social kinds – to classify our conceptual inquiries into one of a few predefined categories.³ In one's inquiry, one may be trying to identify what most speakers understand themselves to be saying when they invoke a target concept. Alternatively, one may be carrying out an *ameliorative* inquiry: trying to say what we *should* take the target concept to mean, insofar as we're aiming to advance a certain political program. For better or worse, I don't believe my inquiry here neatly slots into the major predefined classifications. I don't think the term 'to legitimate' is one for which there is a widely-shared meaning, which a competent speaker can intuitively latch onto by reflecting on her intuitions about whether it sounds natural to apply the term in reference to this or that scenario. At the

³ For discussion see for instance Sally Haslanger and Jennifer Saul, "Philosophical analysis and social kinds", *Proceedings of the Aristotelian Society, Supplementary Volume* 80 (2006): 89-143.

same time, however, I do think many claims of the form “A legitimates x” have a similar intended meaning: (again, roughly) that A gives a kind of *de facto* legitimacy to x, despite x’s *de jure* illegitimacy in the relevant context. Further inquiry is still required, though, in the wake of this provisional observation, and this further inquiry has a partly ameliorative nature, because the term ‘legitimacy’ brings in a web of conceptual associations and connotations, which, to the extent that they’re taken seriously, threaten to make the very notion that is being postulated – of x’s becoming *de facto* legitimate, despite its *de jure* illegitimacy, due to the actions of someone without any *de jure* social authority – simply unintelligible. The challenge is partly about trying to say what we *should* mean, then, in employing our target concept, given one of our reasonable political aims – namely, having a diagnostic vocabulary for pernicious communicative practices – but also our related aim of wanting that terminology to refrain from rhetorical sleight of hand, and to instead take seriously the subtleties and connotations of its lexical ingredients.

This might sound a little unclear as a brief prefatory précis, but I believe the form of the conceptual inquiry will become clear enough as I work through the steps of the argument itself. The structure of the paper is as follows. In §2 I’ll do a little more ‘housekeeping’ to distinguish our target concept, and to identify the considerations that need to be factored into an adequate account of it. In §3 I describe two phenomena that have been examined in philosophical work on speech and social injustice, and which I think can be used as starting-points for an account of our target concept. One phenomenon is exemplified in the kind of case where A expresses her views or preferences, and finds that others basically just accede to them, such that they come to be *de facto* markers of legitimacy in a local context, irrespective of the wider background facts about what is officially legitimate. Ishani Maitra offers an account of this phenomenon, and I follow her in using the term ‘licensed authority’ to refer to it.⁴ The other phenomenon is exemplified in a case where A portrays some officially illegitimate thing, x, as if it were descriptively normal. On its face, a representation of x as normal doesn’t amount to an assertion of x’s legitimacy. But it can have a similar upshot, by activating *de facto* norms that enjoin people to go along with conventions of normalcy. By representing x as descriptively normal, A (sometimes) gives an *ersatz* normative legitimacy to x. I allow that there is something to be said for both of these phenomena, in terms of how they can be used to formulate an account of the meaning of “A legitimates x”. But then in §4 I discuss some theoretical advantages that an account of legitimation as normalization has over an account of legitimation as licensed authority.

⁴ Ishani Maitra, “Subordinating Speech” in Ishani Maitra and Mary Kate McGowan (Eds.), *Speech & Harm: Controversies over Free Speech* (Oxford: Oxford University Press, 2012): 94-120.

2. Clarifying the Target Concept

So: we are examining claims that have the form “A legitimates x”, where x stands for something that is illegitimate, in some official sense, in the relevant context. For example, consider Catharine MacKinnon’s claim that “pornography sexualizes rape, battery, sexual harassment, prostitution, and child sexual abuse”, and that it “thereby celebrates, promotes, authorizes, and legitimizes them”.⁵ Or consider Bhikhu Parekh’s claim that acts of racial discrimination are legitimated by a cultural milieu which is built up by racially offensive remarks.⁶ Or consider Mari Matsuda’s claim that public expressions of racism from a group like the Klan legitimize illegal racist practices, and that their strength “derives from their offering legitimation... for otherwise socially unacceptable emotions of hate, fear, and aggression”.⁷ In each case there is a practice or state of affairs which the author – and by assumption, we, the readers – recognize as formally (and rightfully) illegitimate, but which is allegedly being given some legitimacy. And in each case this is said to be occurring due to the communicative acts of a specifiable group of actors – actors who aren’t formally authorized to change the official legitimacy facts.⁸

⁵ Catharine A. MacKinnon, “Francis Biddle’s Sister: Pornography, Civil Rights, and Speech” in *Feminism Unmodified: Discourses on Life and Law* (Cambridge Massachusetts: Harvard University Press, 1987): 163-97, at 171. Similarly, in her defense of MacKinnon, Rae Langton says pornography subordinates women because it legitimates sexual violence; see “Speech Acts and Unspeakable Acts”, *Philosophy & Public Affairs* 22/4 (1993): 293-330, at 307. For the record, I don’t think we shed much light on our target concept by recycling Langton’s move of using Austinian speech act theory to interpret the meaning of claims of the form “A legitimates x”. Even if legitimating can be characterized as a type of illocutionary act, this leaves the crucial question dangling, namely, what is the nature of – including, for instance, the outcome of a successful performance of – the illocutionary act that we have postulated?

⁶ Bhikhu Parekh, *Rethinking Multiculturalism: Cultural Diversity and Political Theory*, 2nd Edn (London: Palgrave MacMillan, 2006), at 314.

⁷ Mari J. Matsuda, “Public Response to Racist Speech: Considering the Victim’s Story”, *Michigan Law Review* 87/8 (1989): 2320-81, at 2379. Many of the Klan’s activities throughout its history have involved acts of racialized violence, and it might seem inapt to say of *those* acts that they legitimate hate. The more apt thing to say would be that those acts *manifest* hate. In Matsuda’s paper, though, the emphasis is on expressive and symbolic acts of white supremacy, as performed by groups like the modern day Klan, and how these expressive acts harm their targets, and should therefore be subject to legal restriction. The claim cited above is about how these expressive acts confer a kind of legitimacy upon racially discriminatory practice that are nowadays officially marked as illegitimate.

⁸ Why should we focus on cases where the thing receiving *de facto* legitimacy is something *officially* illegitimate, in the relevant context? One may be equally interested in what we should understand people as trying to convey when they talk about *purely de facto* legitimation, i.e. cases involving the *de facto* legitimation of a thing that’s initially *de facto* illegitimate. For example, if you say the increasing prevalence of tattoos is legitimizing other forms of conspicuous body modification, like earlobe gauging, you seem to be invoking a concept similar to the one I’m trying to isolate. The only difference is that earlobe gauging isn’t illegitimate in any legal or otherwise official sense (or if so, only in a low-key way, e.g. being contrary to some legally-backed institutional dress codes). The putative illegitimacy of earlobe gauging, such as it is or was, is an ostensibly *de facto* legitimacy fact. I have two main reasons for setting these kinds of cases aside, however, and concentrating on cases that involve the *de facto* legitimation of the *de jure* illegitimate.

This is a different concept than the one that the term ‘legitimation’ denotes in philosophical work on the authority of the state. When someone like Bernard Williams refers to the basic legitimation demand, he’s referring to the conditions that must be satisfied in order for a government’s exercise of authority to be right-ful or justified.⁹ When someone like Jürgen Habermas speaks of a legitimation crisis, he’s referring to what a government loses when the citizenry no longer sees its authority as legitimate.¹⁰ The first usage is more normative, in that A’s being legitimated means that its exercise of authority is actually rendered normatively *justified*, whereas the second usage is more descriptive, insofar as A’s being legitimated only means that the legitimacy of its rule is *accepted* by the citizenry, whether justifiedly or not. What is common to both usages, though, is that the thing gaining or losing legitimacy is a government, or a similar entity. By contrast, with the concept of legitimation that we’re homing in on, the practice or state of affairs which is legitimated, x, is something that conflicts with the *de jure* legitimacy standards, as they are enshrined in contextually-relevant institutions. With our concept, then, x will generally be a practice or state of affairs that is not enacted by government.¹¹

One way that a practice can acquire *ersatz* legitimacy, despite conflicting with *de jure* legitimacy standards, is if a society’s allegiance to its *de jure* standards is subverted by systemic cultural-historical forces that operate beyond any individual’s

First, cases of the latter kind are more often a focal point in recent scholarly debates that trade in legitimation-talk, e.g. debates about the harms of hate speech and pornography. Second, it is more difficult – and I think more philosophically illuminating – to explain how legitimation-talk can or should be understood in reference to cases of the latter kind. There’s nothing especially opaque as to what someone is trying to convey when they say that something *de facto* illegitimate has become *de facto* legitimate. This sort of change can be as simple as the evolution of local customs. But there is something opaque, at first flush, as to what someone is conveying when they claim that something *de jure* illegitimate has been legitimated. This makes it sound like *de jure* legitimacy facts can be overridden by *de facto* legitimacy facts. My inquiry isn’t skeptical about this conjecture, but it’s aimed at clarifying when and how it occurs. Also, while all of my examples above refer to something bad or unjust being *de facto* legitimated, note that we can also speak of the legitimation of things that are good and just. Such cases still exemplify the structural features of the concept we are investigating, but their inverted normative valence makes them atypical for my purposes.

⁹ For Williams it is a condition of government’s legitimacy that it resolves ‘the first political question’, i.e. secures basic order in a way that’s justifiable to each subject; see “Realism and Moralism in Political Theory” in *In the Beginning Was the Deed: Realism and Moralism in Political Argument* (Princeton: Princeton University Press, 2005): 1-17.

¹⁰ Jürgen Habermas, *Legitimation Crisis* (Boston: Beacon Press, 1975).

¹¹ We find a distinctive technical usage of our target concept in an influential paper by the critical legal theorist Alan David Freeman, “Legitimizing Racial Discrimination through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine”, *Minnesota Law Review* 62/6 (1978): 1049-119. Freeman argues that the legal reforms stemming from the civil rights movement legitimated the social order they were meant to transform. Specifically, while antidiscrimination law purported to overturn identity-based social hierarchy, it actually entrenched it, by marking certain forms of racial discrimination as legally and socially acceptable. Note that Freeman’s view of the law is crucially unlike the one that underpins our target concept. In a society where racial discrimination is unlawful, the person who says “racist jokes legitimate racism” insists that such laws are *insufficient* to delegitimize racism. By contrast, Freeman is claiming that such laws can positively impair efforts to delegitimize racism.

control. The sociologist Cecilia Ridgeway says that in a society where one group gains material advantages over another, and where this influences subsequent interactions, the disparity gradually transforms “into status beliefs favoring the advantaged social category” in a way that “legitimize[s] the structural inequality” between the groups.¹² Ridgeway is thus using legitimation-talk to refer to a process in which racial hierarchies come to be seen as acceptable, regardless of any *de jure* guarantees of social equality. Of course there is nothing untoward about this usage, in principle. But note that this sort of legitimation, if we are happy to call it that, isn’t the same phenomenon that’s adverted to in the characteristic usage of our target concept, as outlined above. It wouldn’t make sense, on Ridgeway’s picture, to say that a specific agent or group is doing the legitimating. The processes that she is talking about arise out of innumerable many acts, of many different kinds, performed by people who occupy a whole variety of roles and positions in the social ecosystem. By contrast, MacKinnon is claiming that *pornographers* legitimate sexual violence. Matsuda is claiming that *the Klan* legitimates racism. Even if we grant that macro-level social forces sometimes cause the state’s legally-underwritten legitimacy standards to be overridden by rival, *de facto* standards of conduct, we still have the question of when (if ever) it makes sense for the Klan, or the purveyors of pornography, or some other specifiable individual or group, to be nominated as the party that is setting these rival, overriding standards in place.¹³

In order for something formally illegitimate to become legitimated, in our target sense, one might imagine that it needs to be made legitimate in a way that’s normatively equivalent to an act being legalized after having previously been legally proscribed. Something like this notion can be read into Robin West’s discussion of the idea that pornography legitimates sexual violence. West says “we should

¹² Cecilia L. Ridgeway, “The Emergence of Status Beliefs: From Structural Inequality to Legitimizing Ideology” in John T. Jost and Brenda Major (Eds.), *The Psychology of Legitimacy: Emerging Perspectives on Ideology, Justice, and Intergroup Relations* (Cambridge: Cambridge University Press, 2001): 257-77, at 273.

¹³ Ridgeway follows many other social theorists who describe legitimation processes grounded in social forces that operate beyond any individual’s control, and who don’t nominate specific actors as the authors of these processes’ outcomes. For instance, the sociologists Peter Berger and Thomas Luckmann use the term ‘legitimation’ to describe the process through which a confluence of social-historical forces cause cultural practices to acquire an appearance of objective reality; see *The Social Construction of Reality: A Treatise in the Sociology of Knowledge* (Harmondsworth: Penguin, 1966). Or as another example, Ernest Gellner speaks about the legitimation of belief, by which he means the process in which certain frameworks of understanding are privileged in deciding what ideas are taken seriously. Again, though, he doesn’t see this as something attributable to specific actors; it results from a confluence of cultural forces; see *The Legitimation of Belief* (Cambridge: Cambridge University Press, 1974). By my reckoning, there is really no room for honest skepticism about whether these kinds of *systemic* legitimation actually occur, nor is there a problematic lack of clarity about what “A legitimates x” is supposed to mean, in cases where A stands for a supra-agential set of social-cultural forces. Again, to echo my point in footnote 1, our reason for focusing on cases in which A is a specifiable agent, and where x is something *de jure* illegitimate, is because these are the cases in which it is *prima facie* perplexing as to *how* x could be getting made legitimate, in any meaningful sense, and hence where someone’s good faith uncertainty – about whether legitimation talk is just hollow rhetoric, or something more – deserves an answer.

think of pornography as the authoritative ‘legal text’ – the Constitution, so to speak – of patriarchy”.¹⁴ In a liberal legal order, she says, “coercion is not required to secure compliance”; instead, “law replaces brute force” with a “hierarchy enforced... through the legalistic mechanisms of authoritative texts”.¹⁵ West thinks that pornography exerts control via this mechanism, as an authoritative text that replaces institutional coercion.

This equivalence is difficult to pin down, though. If pornography authorizes sexual violence, it does so in a way that isn’t announced and backed up in the same way as the permissions granted by law. The state uses general taxes to fund a mass bureaucracy that coercively enforces compliance with precisely formulated standards of conduct. Pornographers don’t do any of this.¹⁶ West downplays the differences, because, again, she says that authoritative texts – rather than coercion – are enough to secure norm-compliance in a liberal legal system. Now, more needs to be said about how norms might be written into pornographic texts. But even if we set aside any misgivings related to this point, West’s claim about coercion seems unconvincing. While it is true that coercion isn’t always needed to secure compliance in a liberal legal order, it is misleading to say that coercion isn’t needed to secure compliance, *period*. This premise will only support West’s conclusion – about the parity in how pornography and legal texts bear authority – if we understand it as saying that people’s compliance with the law in a liberal society never (or almost never) relies upon coercion. But of course liberal regimes routinely need to enforce law coercively. Granted, many people internalize and voluntarily comply with legal standards much of the time.¹⁷ And this internalization might be, moreover, part of what the rule of law itself consists in. But the law’s action-guiding power still relies upon the state’s monopolization of coercive force, and its ability to wield this force in the service of its legal mandates.¹⁸ The pornographers’ ability to enforce mandates is loosely analogous at best.

¹⁴ Robin West, “Pornography as a Legal Text: Comments from a Legal Perspective” in Susan Gubar and Joan Hoff (Eds.), *For Adult Users Only: The Dilemma of Violent Pornography* (Bloomington: Indiana University Press, 1989): 108-30, at 110. Langton argues that pornography is like the law because it shares various features with legal enactments, e.g. subordinating, setting norms, and expressing a certain kind of authority; see “Is Pornography like the Law?” in Mari Mikkola (Ed.), *Beyond Speech: Pornography and Analytic Feminist Philosophy* (Oxford: Oxford University Press, 2017): 23-38. I do think we need to split hairs here, though, between saying, with Langton, that pornography has important features in common with law, and saying, with West, that pornography is equivalent to a legal text.

¹⁵ West, “Pornography as a Legal Text”: at 110, 117.

¹⁶ For a discussion of disanalogies between the pornographer’s putative *de facto* authority and the law’s *de jure* authority, see Leslie Green, “Pornographizing, Subordinating, and Silencing” in Robert C. Post (Ed.), *Censorship and Silencing: Practices of Cultural Regulation* (Los Angeles: Getty Research Institute for the History of Art and the Humanities, 1998): 285-312.

¹⁷ See Chapter IV in H. L. A. Hart, *The Concept of Law*, 3rd Edn (Cambridge: Cambridge University Press, 2012 [1961]).

¹⁸ See Andrei Marmor, *Philosophy of Law* (Princeton: Princeton University Press, 2011), at 43-44.

What I am trying to drive at here is how difficult it is to locate an equivalence between the *de facto* legitimation of some act that was once formally proscribed, *x*, and the formal legalization of *x*. If we want to insist that “A legitimates *x*” is only true in cases where *x* becomes a socially permissible act in *just the same way* as it would have as a result of being legalized, then our target concept will become almost useless. Given this sort of specification of our concept’s truth conditions, all (or nearly all) of the claims that we’re interested in, of the form “A legitimates *x*”, will turn out to be straightforwardly false. What we are needing to specify, then, instead, to reiterate from §1, is some notion of *ersatz* or pseudo-legitimacy. We want to know how something that’s formally illegitimate could be made *sort of* legitimate – not the same as if it had been legalized, but authorized in a meaningfully similar sense, nevertheless – thanks to the activity of a person or group without any special, authorization-granting prerogatives.

3. Two Candidate Phenomena

3.1 *Legitimation as Licensed Authority*

I will now discuss how an account of our target concept could be formulated with reference to the phenomenon that Maitra calls licensed authority. Maitra’s discussion of this phenomenon appears as part of an inquiry into the question of whether ordinary instances of hate speech can subordinate people in a way that’s akin to legal subordination – whether they can “rank their targets as inferior, deprive them of rights and powers, and legitimate discriminatory behavior towards them, just as the legislator’s utterance does”.¹⁹ As Maitra rightly notes, one obvious difference between legislation and ordinary hate speech is the difference in the authority underwriting them. She notes that this discrepancy has received plenty of attention in relation to claims about the harm of pornography, but less in relation to claims about the harm of hate speech.²⁰ And this is surprising, as Maitra points out, because while it’s true that some hate speech comes from the mouths of political leaders, intellectual elites, and media companies, a great deal of hate speech – on the street, online, in the workplace, or in schools – comes from

¹⁹ Maitra, “Subordinating speech”, at 95. Following Langton, Maitra understands these three things – (i) *ranking* people, (ii) *legitimizing* discriminatory treatment, and (iii) *depriving* people of rights – as related elements of subordination. And while the paper of Maitra’s that I’m discussing focuses on the ‘ranking’ element, and how it can be authoritatively performed by people who lack positional authority, she also says the conception of authority that she articulates to this end applies, *mutatis mutandis*, to the other components of subordination; *Ibid* at 100.

²⁰ E.g. Rae Langton, “Subordination, Silence, and Pornography’s Authority” in Robert C. Post (Ed.), *Censorship and Silencing: Practices of Cultural Regulation* (Los Angeles: Getty Research Institute for the History of Art and the Humanities, 1998): 261-84.

people who are relative nobodies in the larger social pecking order. Maitra is asking a question that's broadly in line, then, with the one that we have been zeroing in on: how can this hate speech, by relative nobodies, carry the authority that's needed to subordinate its targets, in a way that's able to override the targets' officially *non*-subordinate status?

Her contention is that the relevant form of authority "needn't derive from social position at all". People can effectively wield authority "even when they lack it prior to speaking".²¹ To show how this occurs, she discusses some examples of people taking authority in a situation, despite not having any antecedent prerogative to do so. One of them is as follows.

HIKE ORGANIZER: A group of friends are planning a hike and discussing logistics: where to go, for how long, etc. Some people express mild preferences, but no one has strong views, and the discussion drags on until one person, Andy, decides to take over and make decisions. He assigns everyone a task: one is to pick a location, another is to buy food, etc. No one objects, everyone completes their assigned tasks, and the hike runs smoothly.²²

Maitra says that Andy has a form of authority in this case that is similar to the speaker in the following case of ordinary hate speech, coming from someone without positional authority.

SUBWAY RIDER: An older white man walks up to an Arab woman on a crowded subway car, and says "F***in' terrorist, go home". The woman doesn't respond. The man carries on, loud enough for all to hear. The rest of the car falls silent, but no one interferes.²³

The kind of authority that Andy exercises in HIKE ORGANIZER is, as Maitra concedes, unlike the lawmaker's authority in several respects. Most obviously, it doesn't involve institutional backing, and hence it lacks the kind of relatively uncontested status that legal authority carries in an effective legal system. In short, if the group rejects or ignores Andy's instructions, then he doesn't get to decide how things go. This is what makes the authority *licensed*, on Maitra's account. Andy's audience gives him his authority.²⁴ Maitra then transposes her insights about Andy's putative authority to the racist older man in SUBWAY RIDER. He ranks his target as inferior, and because no one challenges his speech, it is given authority and it succeeds in ranking her.²⁵ Because the speaker has no official positional authority, this outcome wouldn't have resulted if the group hadn't stayed

²¹ Maitra, "Subordinating Speech", at 96.

²² *Ibid*, at 106. The example has been paraphrased and abridged.

²³ *Ibid*, at 100-01. Again, this is paraphrased and abridged.

²⁴ *Ibid*, at 107.

²⁵ *Ibid*, at 115.

silent. His speech carries an authoritative weight, then, but only because he has been handed a kind of local, spur-of-the-moment leadership.

This notion of licensed authority can be used to formulate an account of our target concept. Maitra says that when someone without formal authority legitimates discriminatory behavior this is the kind of authority they're wielding.²⁶ The proposal, then, would be that "A legitimates x" is true if or to the extent that A's endorsement of x acquires licensed authority. In a context where racial discrimination is illegitimate from a formal institutional perspective, A can convey – verbally, most likely, but perhaps also non-verbally – the view that racially discriminatory behavior is in fact acceptable. And A may acquire licensed authority in doing this. The idea would be that this what A's legitimation of discrimination consists in.

Although we haven't yet examined this facet of our concept, notice that claims of the form "A legitimates x" generally carry an implicit qualification about *who* – which people or groups falling under A's influence – x has been legitimated *for*. And notice, then, that an account of legitimation as licensed authority brings in a complication on this front. In *SUBWAY RIDER* there is a speaker, a target, and some onlookers. One thing that is stressed in Maitra's analysis is the important role of the onlookers in the process through which the speaker acquires his authority. This means the onlookers are simultaneously the audience for whom x is legitimated, *and* active participants in the social dynamics through which x is legitimated. In §4 I will discuss some complications that follow from this feature of Maitra's account.

But if we bracket-off those complications, for now, Maitra's account looks like it could offer a neat solution to our puzzle. We are trying to identify a phenomenon in which something that's formally illegitimate is given an *ersatz* legitimacy, thanks to the conduct of actors without any special, norm-prescribing prerogatives. This seems like a more or less apt description of what's going on in *SUBWAY RIDER*. And *HIKE ORGANIZER* shows us that this phenomenon of licensed authority crops up in all sorts of social settings, and hence that it hasn't just been theoretically reverse-engineered, in order to rationalize a prior conviction that the bigoted subway riders of this world are especially terrible or powerful villains. Once we can name the phenomenon, we can articulate the nebulous sense we (some of us) have that the aggressive xenophobe on the subway wields a kind of authority, even though we also know that he's just some random bloke. Various details about the phenomenon remain to be considered, including how much compliance we think ought to be required before we would say that the relevant kind of licensing is in effect. But the dynamic in question is a familiar one. Maitra's description of it sharpens our apprehension of something about ordinary social intercourse that we already know of by acquaintance. If this phenomenon is what we

²⁶ Maitra "Subordinating speech", footnote 31.

are gesturing towards in our use of legitimation talk, it gives us a way of understanding how someone without political authority can impart pseudo-legitimacy to some activity which is formally illegitimate.

3.2 *Legitimation as Normalization*

Let's turn to an alternative account of our target concept. Several authors writing about social injustice and speech allude to the phenomenon of normalization in their work, and it's particularly emphasized by Rae Langton. For example, in response to Leslie Green's remark that it is a mistake to think each instance of pornography carries the message "this is how sex works; this is right and proper",²⁷ Langton agrees, but counters that it would also be a mistake

To think that everything that is a source of normative guidance bears the message "Look, this is how it is to be done: this is right and proper". Pornography legitimates... certain ways of acting, in part by representing them as ordinary, and normal.²⁸

The idea suggested in this remark is that legitimating *x* is a matter of representing *x* as descriptively ordinary to an audience in some understanding-altering way. Another place in contemporary scholarship where we find something like this idea of legitimation is in the work of psychologists trying to explain how unjust social relations can come to have widespread support, including from victims of injustice themselves. Rui Costa-Lopes and his co-authors use the term legitimation to refer to "the social and psychological processes via which attitudes, behaviours, and social arrangements are justified as conforming to normative standards".²⁹ Now, 'conforming to normative standards' is ambiguous. Part of what these authors are advertent to is the way people in an unjust social system can acquire a set of ideas – like what some critical theorists call an ideology – that makes the system appear fair, just, and reasonable. But they're also interested in people "coming to see social inequality as not only legitimate but also *natural and necessary*".³⁰ In short, legitimation is about making injustice seem ordinary and inevitable.³¹

²⁷ Green, "Pornographizing, Subordinating, and Silencing", at 296.

²⁸ Langton, "Subordination, Silence, and Pornography's Authority", at 269.

²⁹ Rui Costa-Lopes, John F. Dovidio, Cícero Roberto Pereira, and John T. Jost, "Social Psychological Perspectives on the Legitimation of Social Inequality: Past, Present and Future", *European Journal of Social Psychology* 43/4 (2013): 229-37, at 230.

³⁰ *Ibid*, at 232, my emphasis.

³¹ On the notion of ideology as a worldview that leads people to view an unjust social order as natural, see for instance Raymond Geuss, *The Idea of a Critical Theory: Habermas and the Frankfurt School* (Cambridge: Cambridge University Press, 1981), at 9ff.

This suggests a different type of process through which pseudo-legitimacy can be conferred upon an illegitimate practice or state of affairs, x , and a different explanation of how the putative ‘legitimator’, A , can fulfil a key role in this, which makes it fitting to attribute the outcome to their action. When A enjoys no formal authority, but A legitimates x by normalizing it, a complex stew of authority relations come into effect. A doesn’t necessarily acquire any normative authority – not even evanescent, licensed authority – over the people for whom x is legitimated. Rather than making a bid to acquire normative authority of his own, A commandeers and redirects a source of normative authority, which the audience for whom x is legitimated already recognize themselves as being subject to. The source of authority in question is that which is embedded in the *de facto* social norms that enjoin everyone to align their behavior to whatever practices are the descriptively ordinary ones in the relevant context.

As Cristina Bicchieri and Hugo Mercier explain, an effective way to alter social norms is through dialogue that alters people’s expectations.³² And this is because social norms function in a way that relies upon people’s expectations about how others will act.³³ But it is useful to prise apart the two types of expectations that Bicchieri and Mercier are referring to here: normative and empirical. If A has no authority to issue prescriptions for others, then she is quite limited in her ability to change people’s understanding and expectations about which normative standards they ought to answer to. The best A can do is to air her views, try to be persuasive, and hope that her views are taken up by others. But A will have an easier time shifting things if she’s trying to change people’s empirical expectations. In this case, her audience’s beliefs – about the *de jure* standards that they should try to comply with – needn’t change. A can change a norm’s *substantive* content, even while its *schematic* content – roughly: “conform your behavior to whatever is ordinary or commonplace behavior, in the relevant context” – remains fixed. All A needs to do, in essence, is make it seem to others that the ordinary thing to do in context C is to ϕ , rather than to not ϕ . If A can achieve this, then the norm “conform your behavior to whatever is descriptively ordinary in context C ” becomes, to all practical purposes, a norm in favor of ϕ -ing in C . And hence a person without any formal authority, and with little more than the preparedness to speak or act in a manner which represents ϕ -ing as descriptively ordinary, can

³² Cristina Bicchieri and Hugo Mercier, “Norms and Beliefs: How Change Occurs” in Maria Xenitidou and Bruce Edmonds (Eds.), *The Complexity of Social Norms* (Dordrecht: Springer International Publishing, 2014): 37-54.

³³ While there are different ways to explain the exact mechanism through which the reasons for action generated by social norms get a purchase on agents, the key idea in all accounts is that there are rules of conduct which – unlike coercively enforced laws, and unlike purely personal standards that we set for ourselves – are followed mainly because each agent believes that most other agents are following them too. See, for instance, David Lewis’s classic account of conventions (see “Languages and Language” in Keith Gunderson (Ed.), *Language, Mind, and Knowledge* (Minneapolis: University of Minnesota Press, 1975)), and Cristina Bicchieri’s influential recent work (see *The Grammar of Society: The Nature and Dynamics of Social Norms* (Cambridge: Cambridge University Press, 2006)).

lead others to believe that they're required to ϕ , lest they infringe against those generic social norms which compel us to follow crowds and not buck trends.³⁴

This looks like another candidate solution to our puzzle, then. We are trying to identify a phenomenon in which something that is formally illegitimate is given an *ersatz* legitimacy, thanks to the activity of some person or group without any special norm-prescribing prerogatives. To a general approximation, this seems like an apt description of what is going on when something is normalized in the sense indicated above. Consider the issue Langton is addressing, of pornographers normalizing sexual violence towards women. We have a legally underwritten, background understanding that sexual violence is wrong. But pornography represents sexual violence towards women as ordinary and natural, and hence for those who absorb this representation, misogynistic sexual violence – regardless of its formal illegitimacy – acquires a kind of pseudo-legitimacy, in the same way that ‘doing what’s normal around here’ *always* enjoys a kind of pseudo-legitimacy. Again, various details and complexities in the phenomenon remain to be explored, and I will say more about some of these in the following section. But again, the dynamic is one which is observable in all sorts of social contexts, and thus it looks like something more than just a convenient rationalization for our use of a political buzzword. As with licensed authority, if this phenomenon is what we’re gesturing towards in our use of legitimation talk, it gives us another way of making sense of how actors without any formal authority can impart pseudo-legitimacy to something which is officially illegitimate.

4. Authority and Pre-emptive Reasons

While there is something to be said for both accounts of legitimation – legitimation as licensed authority, and legitimation as normalization – we need to subject both of them to a little more critical pressure. Both accounts give us a sense of how a certain kind of ‘to-be-done-ness’ can be afforded to acts that are officially

³⁴ Recent research by Adam Bear and Joshua Knobe supports the hypothesis that in being depicted as descriptively normal, things are made to seem normatively legitimate. Their key finding is that when asked what they believe are ‘normal’, ‘ideal’, and ‘average’ quantities of a variable, people’s judgments about *normality* deviate from judgments about descriptively *typicality*, in a way that’s influenced by judgments about *ideal-ness*. Judgments of normative ideal-ness and descriptive normality aren’t independent, then; they blend and influence each other; see “Normality: Part Descriptive, Part Prescriptive”, *Cognition* 167/1 (2017): 25-37. This builds on earlier research finding that children easily acquire views about what’s normatively ideal based on observations about descriptively typicality; see Marco F. H. Schmidt, Hannes Rakoczy, and Michael Tomasello, “Young Children Attribute Normativity to Novel Actions without Pedagogy or Normative Language”, *Developmental Science* 14/3 (2011): 530-39. And it dovetails with classic studies which find that focusing people’s attention on information about how others actually behave, instead of injunctive norms, has greater impact in influencing people to conform with social norms; see Robert B. Cialdini, Raymond R. Reno, and Carl A. Kallgren, “A Focus Theory of Normative Conduct: Recycling the Concept of Norms to Reduce Littering in Public Places”, *Journal of Personality and Social Psychology* 58/6 (1990): 1015-26.

illegitimate. But still, we are flirting with an abuse of our concepts – a misrepresentation of what the words we are using really mean, imply, and connote – in claiming that these acts are afforded legitimacy, even if only *ersatz* legitimacy. Nancy Bauer presses this worry rather pointedly, in a discussion of the alleged legitimating power of pornography. Any account of our target concept, she argues, will need to explain how the legitimation of some proscribed practice “provides its practitioners with [some type of] official, conventionally recognized justification for their action, should they find themselves in need of one”.³⁵ It will be verging on meaningless to say that A legitimates φ -ing, for some other actor, B, if B acquires no passable excuse for his φ -ing, or his toleration of other people’s φ -ing – no way of saying “but I reasonably took φ -ing to be legitimate”. If φ -ing is legitimated for B, then there must be some sense in which B’s φ -ing can be reasonably regarded as legitimate. And if B’s φ -ing patently *cannot* be regarded as legitimate, by any standard, then it cannot be true that φ -ing was legitimated, for B or for anyone else. In such a case, we’ll have to see the claim that “A legitimates φ -ing” as, at best, an overegged way of saying “A tacitly sanctions φ -ing”.

The guiding intuition here isn’t just about the pointlessness of having a concept whose applicability conditions are made overly-inclusive. The worry isn’t merely that the conjectures whose meaning we are trying to clarify – that pornography legitimates sexual violence, for example, or that racist jokes legitimate workplace discrimination – could end up being trivially true. The worry is that we are downright distorting our central, operative concept. To speak of ‘legitimation’ is to invoke a network of associated concepts and meanings which encompasses, among other things, notions of authority and lawfulness. To say that x is illegitimate isn’t just to say it’s wrong, but that it requires some authority or authorization which is lacking. And to say that x is legitimated isn’t just to say that it’s okay, but that the requisite authorization has been given. And the authorization in question is meant to be somehow law-like: the upshot of an authorizing procedure, not just a capricious sanction by someone wielding power.

It will be useful, then, to briefly reflect on the nature of legal authority. As Joseph Raz argues, relations of authority involve more than just one person getting their way over others.³⁶ Authority relations involve some surrender of judgement by the subject, B, to some authority A’s ruling. A’s ruling replaces the reasons on which it depends, for B, in a way that settles the question for B of what (if anything) she is obliged to do.³⁷ If B is answerable to some authority, then, with respect to some decision, whether to φ , B isn’t supposed to tally up her reasons for action, and then update the tally by counting A’s prohibition of φ -ing as a strong

³⁵ Bauer, “How to do Things with Pornography”, at 82.

³⁶ Joseph Raz, *The Morality of Freedom* (Oxford: Oxford University Press), at 27-28.

³⁷ *Ibid*, at 41.

pro tanto reason against φ -ing. Rather, B is meant to take A's prohibition of φ -ing as settling the question of whether she may φ , in a manner which forestalls any revision that might ensue as a result of her reviewing the first-order reasons there are concerning whether or not to φ . In short, the reasons for action that stem from an authoritative ruling are pre-emptive: they override the subject's own reasons for action, with respect to the matter governed by the ruling, and import a verdict handed down by the authority's appraisal of the reasons bearing on that matter.

Now, as I said at the end of §2, we shouldn't simply equate our target concept with the idea of legalization. The two proposals in §3 are an attempt to say how something that's formally illegitimate could be given *ersatz* legitimacy, not the same as if it had been legalized, but still, authorized in a meaningfully similar sense. The question is: which dimension of similarity matters? And the answer, I think – the way in which *ersatz* legitimacy must resemble official, *de jure* legitimacy – is that it should involve a displacement of people's reasons for action. Suppose φ -ing is legally proscribed at time t_1 , but then legally authorized at t_2 . The fact that a subject, B, is forbidden to φ at t_1 , and permitted to φ at t_2 , owes to the legal authority's edicts about φ -ing overriding B's own assessment, at any given time, of her reasons for φ -ing or not φ -ing. Now, B may happily comply with the requirements that she is subject to, or she may comply only begrudgingly, or she may positively rebel. But the fact that B is subject to these requirements is independent of which of these stances she adopts. Again, to be clear, if you claim that φ -ing is legitimated, in examples like those in §§1-2, you needn't be insisting that the people for whom φ -ing is legitimated have their reasons for action displaced in a way that's backed by institutional coercion, as is the case when reasons for action are displaced by legal authority. However, you *are* saying – at any rate, you really should be saying – that their reasons for action are displaced via some process or other. Because if this *isn't* what's occurring, then your claim seems hollow. As per Bauer's objection, what we would want to say in reply to your claim, is that there just isn't any sense in which φ -ing has been made legitimate for anyone: no good justification that a person can wheel out, if called upon to explain why they regard φ -ing as acceptable.

This worry seems inescapable for an account of "A legitimates x" which is formulated with reference to Maitra's notion of licensed authority. Maitra is arguing that in a case like SUBWAY RIDER, someone without recognized authority, A, is able to legitimate the discriminatory treatment of another person, B, in a way that is relevantly similar to the law authorizing discriminatory treatment of B. Now, if A's speech isn't in fact authoritative, then A is actually just a random nobody who is mistreating B, *sans* interference only because the bystanders are intimidated or apathetic. Conversely, if we want to see A as imparting legitimacy to his wrongful mistreatment of B, then we will have to insist that A really is an authority, who is overriding the other passengers' reasons, and compelling them to follow suit in his treatment of B. But by Maitra's own lights, that isn't what is taking

place. The bystanders aren't compelled by A's authority to follow suit in his discriminatory treatment of B. The order of authorization is the other way around: A's speech is authoritative *because* the bystanders go along with it. We can still call this licensed authority, by way of stipulation. But it doesn't bear the features of authority – specifically, the giving of pre-emptive reasons for action – which it needs in order to substantiate the idea that A really *legitimizes* other people's discriminatory treatment of B.³⁸

This should deter us from endorsing the notion that A legitimates a formally proscribed act, φ -ing, if A's endorsement of φ -ing acquires licensed authority. We are battering our target concept out of shape, in allowing such an account of it, and also facilitating a subtle misrepresentation of the social dynamics and normative relations we are using it to refer to.³⁹

What about when it comes to legitimation as normalization? In this case there are further complexities such that, in some instances, the kind of conceptual misuse that I have just described is not in effect. Or so I will argue. The first thing to note, to this end, is that acting in line with what one takes to be the conventions of normal conduct, in a specific context, can be similar to following the law in the relevant sense. A convention which requires φ -ing will at least sometimes settle the question of whether I must φ in a way that – like a law which requires φ -ing – pre-emptively overrides my own reasoning about whether or not to φ . This isn't to say that a normative social convention literally *forces* me to φ , as if I were supernaturally possessed. (The law doesn't do that either.) It means that in some meaningful sense I am required to φ , and that I will incur the burdens of not φ -ing, irrespective of my own reasoning on the issue.

One intuition that's in effect in relation to the remarks just made is about excusability. Every individual's behavior is cued in a pervasive and inescapable way by beliefs – often passively-acquired, and not fully critically-vetted beliefs – about the conventions that are in effect in the contexts in which she is acting. It isn't just that being a rebel is socially costly, but that the level of conscious deliberation that would have to be expended in adhering to or resisting every convention on its independently-assessed merits would be computationally unmanageable for

³⁸ Saray Ayala and Nadya Vasilyeva argue that responsibility for the oppressive ramifications of interactions like these, i.e. cases in which bystanders allow oppressive speech to go unchallenged, is shared between the speaker and the bystanders; see “Responsibility for Silence”, *Journal of Social Philosophy* 47/3 (2016): 256-72.

³⁹ To be clear, my point isn't to deny that everyday communicative interactions, in which no-one is speaking from an officially authoritative position, contribute to identity-based discrimination. There are various accounts in the literature of how this occurs – see in particular Mary Kate McGowan, “Oppressive Speech”, *Australasian Journal of Philosophy* 87/3 (2009): 389-407 – and Maitra's account subtly analyses the social dynamics that are involved in one significant subset of these communicative processes. What I am resisting is the idea that the phenomenon of concern to Maitra is one in which formally illegitimate acts, e.g. illegal forms of racial discriminatory conduct, are really, in a strict sense, having *legitimacy* – even just *ersatz* legitimacy, or pseudo-legitimacy – conferred upon them.

any human agent living in any moderately complex society. And if it is indeed unavoidable in some sense to be governed by one's reasonable take on the local conventions of normal conduct, then acting wrongfully as a result of this should be at least partly excusable.

But this still leaves it to be explained why it would not be excusable, to the same degree, to have one's view of what's normal or appropriate behavior cued by a lone actor, who defies the local legal requirements, as in cases like *SUBWAY RIDER*. To tease out the putative difference here, we must say more about what normalization in the relevant sense consists in. Our proposal, sketched in §3.2, was to say that "A legitimates x" is true in cases where A effectively represents x as descriptively normal to some audience. But notice that one could, without too much conceptual disfigurement, say that the racist older man on the subway effectively represents discriminatory verbal attacks on Muslims as being a normal thing to do in that context. If this qualifies as an instance of normalization, then an account of legitimation as normalization will become untenable, for much the same reasons as with the previous account.

One could run with this insight, and propose that every public act is in some measure self-normalizing, insofar as the very performance of an act makes it seem normal on the occasion of its own performance. But that would be an unhelpful exaggeration. Consider the following example. Two school teachers, Lucy and Luke, tell made-up stories to their classes at recess each day. Once or twice a week Lucy's stories involve criminal characters. She loves to tell cops and robbers-type stories, let's imagine. By contrast, Luke's stories involve criminal characters only very rarely, e.g. once a year. Suppose that, in a given year, every criminal character that appears in either teacher's stories is assigned a name which suggests that he is a member of a racialized minority group. By my lights there is an important difference in the representational character of Luke's and Lucy's stories, with respect to the relation between racial identity and criminality. We can still find fault with Luke's story, of course, but intuitively it seems apt to say that Lucy's many stories normalize a prejudicial view of racialized minorities in a way that Luke's one story doesn't. This intuition about conceptual fittingness owes to the fact that our concept of normality is, in part, about statistical frequency. One cannot represent x as being descriptively normal without making some kind of representation as to the frequency of x's occurrence, relative to some reference point, e.g. the frequency of some other thing's occurrence.⁴⁰

⁴⁰ Granted, there is a sense in which we might want to say that someone normalizes ϕ -ing for B if one represents it as being a *more* normal practice than B antecedently took it to be. This way of understanding the concept of normalization does tie it to statistical frequency, but given my remarks above, we will want to hold this apart as a distinct conception of our concept. Adherence to social norms results from people believing that a majority of others are following suit (see note 33). If we want to understand legitimation in terms of normalization, and if we allow that normalization sometimes just means making something appear a little bit *more* normal than others once believed, then we will have cases in which A

It would be difficult – and moreover, it would be overestimating the granularity of our linguistic intuitions about a relatively esoteric concept and term – to postulate necessary and sufficient conditions for “A normalizes x”. But still, we may be able to sketch out some approximate rules of thumb for the concept’s application. First, one or two instances of φ -ing, by a lone actor, in a context, C, where there is a general recognition that φ -ing is prohibited, are not sufficient to normalize φ -ing in the relevant sense, i.e. to make it seem to others that the ordinary thing to do in C is to φ , rather than to not φ . Isolated instances of φ -ing are not usually sufficient to portray φ -ing as being *commonplace* in C. Second, in A’s representation of φ -ing as statistically commonplace, there needs to be some kind of approval being conveyed. Suppose A is trying to draw attention to the fact that φ -ing is widespread in C, despite its being officially – and quite rightly – prohibited in C, and that she’s doing this precisely in order to mobilize opposition to the frequency of φ -ing. It would seem inapt in such a case to say that A is normalizing φ -ing, and thereby legitimating φ -ing, in drawing attention to this. The kind of normalizing representation that confers *ersatz* legitimacy is the one that conveys to its audience something like: ‘look, as far as the official rules say, you aren’t supposed to engage in φ -ing, but in fact loads of people do it, and it’s perfectly fine’. In principle, someone could convey such a representation just by telling others that things are thus and so. But for actors who lack *de jure* authority, it will sometimes be more efficacious to show that φ -ing is commonplace. Whatever the case, the point is that in order to normalize φ -ing, in the sense that’s relevant for our purposes, some kind of approval of φ -ing’s statistical ordinariness needs to be conveyed, whether overtly or covertly.⁴¹

legitimizes φ -ing, even though A’s representation of φ -ing doesn’t cause others to feel any of the crowd-following compulsion which is essential to the account that I am presenting.

⁴¹ This insight is part of what underpins the classic feminist critique of pornography. Pornographers aren’t official authorities, and by and large they don’t overtly *tell* their viewers that misogynistic violence is sexy. But they portray misogynistic violence as sexy, and thereby normalize such an understanding of it, and thereby confer legitimacy upon it. When MacKinnon, Langton and others put a fine point on what kind of authority pornographers have, they often discuss the domain-specific nature of knowledge about sex, and the uniquely influential position of pornographers in shaping attitudes about sex. Sex happens behind closed doors, depictions of it are taboo, and sex education is often inadequate. For all these reasons, the misogynistic depictions of sex we find in much pornography end up being our culture’s closest thing to a definitive characterization of sex. Pornography lacks *de jure* authority, but this isn’t the important thing; rather, “what is important is... whether it is authoritative for the hearers that count: people, men, boys, who... want to know which moves in the sexual game are legitimate. What is important is whether it is authoritative for those hearers who – one way or another – do seem to learn that violence is sexy and coercion legitimate”; see Langton, “Speech Acts and Unspeakable Acts”, at 311-12. Naturally, these claims about what pornography is and does are open to contestation. Some authors view pornography as a more multivalenced, and thus not so straightforwardly pernicious, form of representation, e.g. see Susan Sontag, “The Pornographic Imagination” in *Styles of Radical Will* (London: Penguin, 2009 [1969]); Leslie Green, “Pornographies”, *Journal of Political Philosophy* 8/1 (2000): 27-52. But suffice it to say, if one reads pornographic texts the way that anti-pornography feminists read them, then they are precisely the kind of thing that can normalize and thereby legitimate formally proscribed practices, e.g. of sexual violence, in a way that epitomizes the phenomenon I am characterizing.

If A is able to normalize φ -ing, for B, in a way that satisfies these rules of thumb, then I think we can properly say that A has legitimated φ -ing for B. By giving an approving representation of φ -ing as something mundane, routine, and statistically commonplace, despite its formal proscription, A gives B the impression that φ -ing is *de facto* permissible, and – crucially – that its *de facto* permissibility, much like its *de jure* impermissibility, obtains in a way that is insensitive to the deliverances of B’s own reasoning about whether φ -ing ought to be allowed.⁴²

Now, there will be more to say about how those exposed to such representations ought to respond. We may want to leave room to say that B was careless, or even motivatedly obtuse, in treating A’s representation of matters as informative, reliable, or in some other way a proper basis for action.⁴³ But we can do that without rushing ahead to a questionable, further conclusion: that the legitimacy φ -ing acquires is something that B himself bestows on it.⁴⁴

To illustrate, imagine that B is a student in a philosophy graduate research program. Let’s assume that he recognizes, as part of his background understanding of how people are required to interact in educational institutions, that barking gratuitous insults at people one disagrees with is a borderline case of harassment (or some related type of justifiably proscribed conduct). But suppose B also often observes cases of professors in his program – people who are, to all appearances, in good standing in his institution, and in the profession at large – barking gratuitous insults at their interlocutors in seminars. It may be less than fully epistemically or ethically assiduous for B to form the belief that this is the normal way of

⁴² But consider a counterexample. Suppose A is someone who tends to adopt a mocking and belligerent tone in the academic seminar series that he convenes and chairs. And suppose he begins every seminar with a little rant: “political correctness is ruining academia; we need to learn to have fun, and so, while adopting a mocking and belligerent tone in academic seminars is abnormal nowadays, that’s how I’m going to run this series, and that’s how academia *should* be”. (Thanks to Quinn White for the example.) One may feel that it’s apt to say that A is legitimating behaviors that violate academic codes of conduct, codes that are both *de facto* widely-followed, nowadays, and in some contexts – perhaps in A’s own home institution – officially enshrined. But A of course *isn’t* representing his behaviors as being normal in the sense of being mundane, routine, and statistically commonplace. So if legitimating x means normalizing x, in the sense I have described, then it can’t be the case that A is legitimating these behaviors. Is this counterexample a problem for my account? I don’t think so. To the extent we regard it as apt to say that A is legitimating his belligerent behaviors, I think the best way to unpack what is being postulated, in such a claim, is that A has *licensed authority* in endorsing those behaviors (or is hoping to acquire it). And so while calling this a case of legitimation may *sound* fitting, to some ears, this would be an inapt usage of our target concept for the reasons outlined above.

⁴³ We may, further, want to interrogate the systematic ‘epistemologies of ignorance’ via which perniciously misleading representations of oppressed groups are taken up by others who *could* recognize them as pernicious, but only with a little more effort at viewing the world truthfully; see Charles Mills, “White Ignorance” in Shannon Sullivan and Nancy Tuana (Eds.), *Race and Epistemologies of Ignorance* (Albany: State University of New York Press, 2007), at 11-38.

⁴⁴ Bauer suggests that an appeal to the language of legitimation inexorably pushes us towards this diagnosis; no actor that isn’t officially vested with the power to authorize wrongful, prohibited acts, she says, can be ascribed such authority “apart from individuals’ granting it to them”; see “How to do Things with Pornography”, at 87.

things in philosophy seminars, and to regard it as pseudo-legitimate conduct in light of that. But it doesn't follow that B has bestowed that sense of legitimacy upon it himself. The context and its conventions are presented to B in such a way that the routine doxastic processes, through which all of us non-skeptically observe and metabolize information about how things stand in the world, cause B to regard Q&A tantrums as descriptively normal, and hence *ersatz* legitimate – the kind of thing he himself would be permitted to do, and certainly to tolerate – irrespective of the background normative standards that are in play. (Standard on which *of course* it isn't acceptable to treat one's colleagues in a university like this.) To say that this conduct is legitimated for B isn't a tendentious way of blaming others for attitudes that B himself has originated. It is, rather, an illuminating way of characterizing the sense in which B's stance on the *de facto* permissibility of this conduct has been handed down to him, independently of his own take on matters.

5. Conclusion

We started with a *prima facie* perplexing question: how do we understand the meaning of claims that have the form “A legitimates x”, in cases where x stands for something that is recognized as formally as illegitimate in the relevant context? Among other things, we wanted to address the worry that claims of this form might merely be a misleadingly embellished way of saying “A tacitly endorses x”. One type of phenomenon that legitimation-talk may be used to refer to is the one where an actor without any recognized authority manages to acquire a kind of transient, circumstantial, *de facto* leadership in a particular context, and to use that to lend support to some formally proscribed act. Another type of phenomenon that legitimation-talk may be used to refer to is the one where an actor – or more often, some group of actors – succeeds in approvingly representing x as being an ordinary practice, notwithstanding its formal proscription. I have identified some comparative advantages in an account of “A legitimates x” which is formulated with reference to the latter phenomenon. We needn't be misappropriating the notion of legitimacy, in using the term “legitimation” to refer to normalization in the sense that I have characterized it. And that's because the type of displacement of people's own reasoning about their conduct which occurs when things are normalized bears a meaningful and informative resemblance to the displacement which occurs in an exercise of *bona fide* authority.

While the account that I have presented here can be used to address a certain sort of skeptical stance, which regards legitimation-talk as nothing but a rhetorical tool for denouncing speech that one opposes, my purpose in formulating this account isn't to vindicate every claim about the bad legitimating effects of speech. My aim is to put us in a better position to assess such claims. When we find people making claims about legitimation, and when it looks like they are meaning to

deploy the term in our target sense, we should assess the plausibility of their claims, to a first approximation, by considering whether and how the alleged ‘legitimizers’ are able to have their representations of what goes on in the relevant domain taken up as an informative guide by some audience. The underlying ethos here is about preserving a certain level of discipline in our normative political vocabulary. If someone says that a speaker is legitimizing an oppressive practice – and if this claim is used to argue for a controversial program of political action – then we need a way of evaluating the initial charge. Evaluation becomes easier if and to the extent that the meaning of the pivotal term is specified with reference to some identifiable phenomenon, such that we can then say how events and states of affairs in the world need to be in order for a statement that “A legitimates x” to be true. Percy Bysshe Shelley famously said “poets are the unacknowledged legislators of the world”.⁴⁵ It is a stirring sentiment, but it doesn’t look like something we could verify or falsify. And notice how some claims about ‘legitimation’ seem similar at first blush. Like Shelley’s remark, the idea that hate speech legitimates discrimination, or that pornography legitimates violence, attribute a transformative power to certain actors – a power that involves determining what others may do. Given the further implications of such claims, we should make sure that they aren’t confined to the realm of the purely rhetorical or poetic. Explicating the meaning of the concept of legitimation in reference to the phenomenon of normalization is a step in that direction.⁴⁶

⁴⁵ Percy Bysshe Shelley, “A Defence of Poetry” in *Selected Prose Works of Shelley* (London: Watts & Co, 1915 [1840]), at 118ff.

⁴⁶ This paper benefited from feedback by audiences at the University of Warwick, the University of Sydney, Kansas State University, the University of Massachusetts Boston, the University of Auckland, Victoria University Wellington, and Monash University, as well as comments from Nilanjan Das, Josh DiPaolo, Toby Handfield, Genevieve Lakier, Elliot Michaelson, Ethan Nowak, Sam Shpall, Heather Whitney, and Maxime Lepoutre. Mark Huba provided some immensely helpful research assistance work that fed into this paper. Many thanks to Quinn White and the editors of this volume for substantive critical feedback and editorial insight in the later redrafting stages.