

## Group assertion and group silencing<sup>1</sup>

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### Introduction

What is going on when one person speaks for others, in their collective name or on their behalf? We see this in a variety of contexts, involving both formal and informal groups. The Trump administration has a press secretary whose responsibilities include making announcements, declarations, and other claims in the name of the administration. Large companies like Amazon have designated company spokespersons, who issue statements on behalf of the company to the press. In many schools, one parent from each class is appointed to raise questions, make proposals, make requests, and so on, on behalf of the larger parent body in meetings with the school management. Even in very informal collectives like a set of stranded travellers whose luggage has been lost, it is common for one person to take up the role of complaining to the airline or demanding compensation for all of them.

There are a number of interesting questions that can be asked about these kinds of cases—questions that, until recently, have been largely neglected by philosophers.<sup>2</sup> One important question is, when a spokesperson speaks in the name of a group, should the speech act be attributed to the spokesperson or to the group that they represent? If it is the latter, then this raises another question: given that standard speech act theory is deeply individualistic in focus, how exactly should these kinds of group speech acts be accounted for?

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<sup>1</sup> Many of the central ideas in this paper have been developed as part of my ongoing joint research with Dina Townsend, including a separate paper (in preparation) in which we identify several further varieties of group silencing in the context of community consultation. I am also grateful to audiences in Cologne, Vienna, Boston and Trieste for discussions that have helped to improve the paper. My research is financially supported by the Austrian Research Council, FWF project ‘Inferentialism and Collective Intentionality’ (I 3068).

<sup>2</sup> Two notable exceptions are Hughes (1984) and Meijers (2007), both of whom analyse group speech acts generally. The more recent literature on group speech is dominated by discussions of the epistemology of group testimony (Tollefsen 2007, 2009, 2011; Fricker 2012; Lackey 2014; Faulkner 2018). Beyond this, Ludwig (2014) gives an account of spokesperson speech, while the specific speech act of group assertion is discussed by Tollefsen (forthcoming) and Lackey (2018, ms).

In recent work, Jennifer Lackey has developed an answer to both of these questions, at least for those cases in which a spokesperson *asserts* in the name of a group.<sup>3</sup> In answer to the first question, she gives a compelling argument that these cases should be counted as genuine group assertions, in the sense it is the group itself, rather than the spokesperson, to whom the act of assertion should be attributed. In answer to the second, she offers an account of this form of group assertion, according to which groups assert just when a suitably authorized spokesperson, with the right set of intentions, speaks in virtue of their authority as the group's spokesperson. In this paper, I accept the *case* Lackey makes for group assertion, but I attempt to pose a challenge for the *account* she gives of it.

My argument, in short, is that there is a genuine phenomenon—the phenomenon of ‘group silencing’<sup>4</sup>—that Lackey's account of group assertion struggles to properly accommodate. This is by no means a knockdown argument, but I think it puts pressure on an account like Lackey's, especially since there are a variety of alternative frameworks available that would have no similar trouble accommodating and explaining group silencing. To illustrate my argument, I present a real-world example taken from international environmental law. The example involves an ‘indigenous community’ being thwarted in their attempts to make assertions about their natural environment, because these attempts are not given the uptake they deserve. This poses a challenge for Lackey's account, because she holds that speakers, whether individuals or groups, can successfully make assertions regardless of how their utterances are taken up by the audience. What reflection on group silencing shows us, I argue, is that an adequate account of group assertion needs to find a place for audience uptake.<sup>5</sup>

### 1. Lackey's case for group assertion

Only those with the capacity for speech can be silenced, so let us begin by considering whether groups can speak, and, in particular, whether they can assert. I take ‘assertion’ to refer to *flat-out claiming that p*, as opposed to various other speech acts such as

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<sup>3</sup> Lackey (2018, ms.)

<sup>4</sup> I use the term ‘silencing’ in a broad sense, encompassing all the species of what I later call ‘linguistic injustice’.

<sup>5</sup> Though my focus is specifically on group assertion and group silencing, I do think the more general conclusion also holds—that what reflection on the phenomenon of silencing shows us is that an adequate framework for speech acts needs to find a place for audience uptake. Silencing arguments have been made before with respect to individual speech acts, and so I see my primary contribution in this paper as illustrating that the same applies in the realm of group speech.

conjectures, guesses and suppositions that are sometimes classified in the broader category of ‘assertives’. Assertion understood in this way (as claiming that *p*) includes stating, telling, announcing, declaring, and reporting—all acts which it appears that groups are able to perform. The weather bureau *reports* on the flooding; Pussy Riot *issues a statement* on Twitter; the University management *tells* its employees when the main building will be closed for renovations; a scientific research team *announces* its key findings, and so on. In all these cases it appears that an assertion is performed and the speaker is the group.

Lackey divides cases such as these into two broad categories: ‘co-ordinated group assertion’, which involves a number of people working together to produce a meaningful utterance, and ‘authority-based group assertion’, which involves a suitably authorized individual speaking for the group (Lackey 2018: 22-23). She devotes most of her attention to the authority-based variety, which she thinks is the primary form of group assertion and which, she suggests, has not been well understood. Paradigmatic examples of this form of group assertion include the pronouncements made by the official spokespersons who speak for formal organisations such as governmental agencies and private companies, but also smaller, informal groups in which an individual acquires the authority to speak for others simply by accommodation or non-objection.

One of the particular misconceptions about authority-based group assertion that Lackey wants to address is the idea that it is not really *group* assertion: that the group itself is not actually the speaker in these cases, since whatever assertion is ascribed to the group can always be reduced to the assertion of the spokesperson. Against this kind of reductivist (or ‘deflationary’) understanding, Lackey identifies several speaker-related features of assertion, and shows that when a spokesperson speaks in the name of a group, these features do not apply to the spokesperson but rather to the whole group. This means that, contra the reductivist (or deflationist), ‘spokespersons are not asserting anything in cases of authority based group assertion; they are simply the means by which groups offer assertions’ (Lackey 2018: 39).

One of the speaker-related features that Lackey identifies is the norm of assertion.

Many philosophers accept that assertion is governed by some kind of epistemic norm, such as the rule that the speaker should only assert what she knows, or what she has warrant for.<sup>6</sup> Such norms are commonly held to explain why speakers are criticisable when they assert things that they do not know, or at least possess warrant for. But if assertion is governed by this kind of speaker-related epistemic norm, then this allows us to ask, *who* exactly is bound by this norm in spokesperson cases, and *who* exactly is criticisable when the assertion in such cases manifestly flouts the norm? As Lackey suggests, it seems strange to think that the spokesperson herself must satisfy the relevant epistemic standard—that when she says that *p* in the name of the group, she herself must know that *p* or possess warrant for *p*. Rather, the main responsibility of the spokesperson is to say what they have been told to say, or at least what they take the view of the group to be. A spokesperson can therefore perform her duties impeccably without knowing, believing, or possessing warrant for, what she says in the name of a group.

Closely related to the norm of assertion, it is sometimes claimed that assertion involves the speaker representing herself as knowing, or possessing warrant for, what she asserts.<sup>7</sup> Here too we may ask: *who* exactly is being represented in these ways when a spokesperson speaks in the name of a group? It would be odd to think that the spokesperson herself purports to know or to possess warrant for what she asserts. Think of such cases as a spokesperson reporting the findings of a commission of inquiry, or a representative of a pharmaceutical company stating the health benefits of a new product. In these cases, it seems to be understood, both by the spokesperson and the audience, that it is the group itself (the commission of inquiry, or the pharmaceutical company), rather than the spokesperson, that is being depicted as possessing the relevant epistemic credentials.

Similarly, a number of philosophers have suggested that by asserting the speaker gives the audience certain entitlements, such as the entitlement to ‘pass the epistemic buck’

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<sup>6</sup> Proponents of the knowledge norm include Williamson (2000), De Rose (2002) and Hawthorne (2004). Lackey (2007) herself defends an alternative norm that she calls the ‘reasonable to believe norm’.

<sup>7</sup> Goldberg (2015: 7) calls this the ‘conveyed self-representation implicit in assertion’ and suggests that it explains why ‘an appropriate reaction to an assertion is to query how the speakers knows or has proper evidence’.

back to the original speaker if she (the audience) is challenged.<sup>8</sup> So, *to whom* are we entitled to defer challenges when we re-assert what a group asserts through its spokesperson? Again, it seems clear that we would not target the particular spokesperson but rather the group itself. This is evident from that fact we may still defer challenges to a group even after the original spokesperson—the one from whom some assertion was heard—has been replaced. This suggests that it is the group itself, not the spokesperson, that undertakes epistemic responsibility when a spokesperson asserts in its name.

There is one final speaker-related feature of assertion that is not explicitly noted by Lackey but which I think can also help to establish the irreducibility of group assertion. This is the feature of *retractability*: when a speaker changes her mind or for some other reason comes to regret having asserted something, she is typically in a position to ‘take back’ her assertion by means of the speech act of retraction.<sup>9</sup> Crucially, this is something that *no-one but the speaker* can do. No matter how much I would like to, I cannot retract my sister’s assertions. In spokesperson cases, however, it is clear that a retraction can be made by someone other than the original spokesperson. Indeed, this is often what happens, since the original spokesperson may have been replaced precisely because of their role in the original assertion. As with the other speaker-related features of assertion noted by Lackey, what this suggests is that the original assertion should not be attributed to the spokesperson but rather to the whole group.

## 2. Lackey’s account of group assertion

So let us accept with Lackey that groups themselves assert when a spokesperson speaks in their name. How then should this sort of group assertion be accounted for? Lackey gives the following account of such ‘authority-based group assertion’ (ABGA):

‘A group *G* asserts that *p* in the authority-based way if and only if that *p* belongs to a domain *d*, and a spokesperson(s) *S* (i) reasonably intends to convey the information that *p* in virtue of the communicable content of an individual act (or individual acts) of communication, (ii) has the authority to convey the information in *d*, and (iii) acts in this way in virtue of *S*’s authority as a representative of *G*’ (Lackey 2018: 30-31)

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<sup>8</sup> See e.g., Goldberg (2007), McMyler (2011)

<sup>9</sup> See e.g., MacFarlane (2011), and Goldberg (2015)

Let us break this down into its component parts, starting with (i), which is in fact Lackey's account of the speech act of individual testimony.<sup>10</sup> (Note that Lackey treats 'testimony' and 'assertion' as interchangeable in this context; setting various qualms aside, I follow her in doing this here.) Lackey here goes in for a very minimal *intentionalist* account of the speech act of testimony / assertion—'intentionalist' in the sense that what makes some communicative act count as assertion are the intentions of the speaker. Specifically, the speaker must intend to convey the information that p in virtue of the communicable content of her act(s) of communication.

One of the striking things about Lackey's account of individual testimony / assertion is that, unlike classic intentionalist approaches, such as Gricean accounts (Grice 1989; Recanati 1987), the speaker need not intend to communicate with or indeed produce any effect on an audience. This becomes clear when we see how Lackey unpacks the notions of 'acts of communication' and 'conveying information'. According to Lackey, an 'act of communication [...] does not require that the speaker intend to communicate to others; instead, it requires merely that the speaker intend to express communicable content' (Lackey 2006: 187). This means that someone who writes in a private diary, or who gives a soliloquy, is still performing an 'act of communication' on her account, even though they are obviously not communicating, or even attempting to communicate. In a similar vein, it is no part of Lackey's notion of 'conveying information' that information get conveyed or transmitted from one person to another, or that the speaker attempt to convey information *to* somebody else. Rather, for an act of communication to 'convey information' is, roughly speaking, for it to carry a certain meaning. For example, when someone utters a declarative sentence that expresses the proposition p, this act of communication 'conveys the information that p', regardless of whether there was anyone to whom the sentence was uttered. Lackey's account of individual testimony / assertion is thus deeply individualistic: speakers can make assertions without any help from their audience, indeed without intending to have any effect on an audience at all.

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<sup>10</sup> Although Lackey insists that her primary interest is epistemological rather than speech act theoretic—that she is not 'specifically interested in characterizing the speech act of testifying, but, rather, in carving out the domain of testimony as a source of belief' (2006: 178)—it is nonetheless reasonably clear that (i) provides her view of testimony as a speech act. This is suggested by the fact that she dubs it 'speaker testimony' and characterizes it as 'testimony as an intentional activity on the part of the speaker' (2006: 187).

The next two conditions in ABGA, (ii) and (iii), are introduced to cover some of the complexities not present in cases of individual assertion, because they have to do with the role of the spokesperson. Both conditions presuppose a notion of ‘having authority’ to speak for the group, and it is important to note that the notion of authority Lackey invokes here is pluralist and non-normative. This means that there are many different ways in which someone can come to possess the authority to speak for a group, ranging from tradition, to accommodation, even to bullying and oppression. The main point Lackey insists on here is a negative one. She wants to deny that a spokesperson must be recognised by others in order to have the proper authority to speak for the group. According to her, a spokesperson can have the authority to speak for the group even if she is not recognised as having that authority by the audience to whom she speaks, nor even by the group’s own members.<sup>11</sup>

Beyond the invocation of the notion of authority, condition (ii) helps to circumscribe the autonomy of the spokesperson. As Lackey points out, a spokesperson is not simply a ‘mouthpiece’ of the group, one who simply reads off a pre-prepared script. Instead, a spokesperson is often called upon to make pronouncements in the name of the group on matters that the group has not previously explicitly decided upon. However, although the spokesperson must have some discretion, she also does not have complete *carte blanche* to represent and commit the group in any way she likes. What condition (ii) does, then, is specify the proper limits of the spokesperson’s autonomy, by saying that she has discretion to represent the group but only within a circumscribed domain.

Condition (iii) suggests that for a group to assert via a spokesperson, the spokesperson must perform the act of communication in virtue of her authority as the spokesperson—or, to put it differently, she must be speaking in her capacity as spokesperson. This is included because spokespersons are also of course private individuals, i.e., people who sometimes speak in their own names rather than in the name of a group. Condition (iii) is needed so that we don’t end up counting the personal statements of spokespersons as group assertions.

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<sup>11</sup> Lackey develops this point largely in response to Kirk Ludwig’s ‘status function’ model of spokesperson speech (Ludwig 2014), according to which spokespersons must be collectively accepted as such by both the audience and the group’s members in order to properly count as spokespersons.

It should be clear, looking at the whole account, that everything that it takes for a group to assert—in the ‘authority-based’ way at least—is located on the group’s side of the exchange. So long as the group authorizes a spokesperson in one way or another, and so long as the spokesperson performs an ‘act of communication’ with the right intentions and in virtue of her authority as spokesperson, the group will succeed in asserting. There is no need for an audience to recognise the spokesperson’s authority, and no need for an audience to recognise the meaning and force of the speech act the group intends to perform. There is, in fact, no need for an audience at all, not even in the content of the spokesperson’s intentions. In the remainder of this paper I want to argue that this speaker-centric, individualistic approach to group assertion obscures the phenomenon of group silencing.

### **3. Alternative approaches: speech as social action**

Before I discuss a particular case of group silencing, I want to point out that Lackey’s individualistic approach to assertion is by no means the only approach available. On the contrary, there are a number of alternative approaches that view assertion—and speech acts in general—as distinctively social in character. I will briefly mention three such approaches here: the conventionalist approach associated with Austin, the intentionalist approach associated with Grice, and the normative functionalist approach associated with Kukla and Lance. Though they are very different from one another, all of these approaches stand in sharp contrast to Lackey’s account of assertion since they all make the success of assertion depend, in one way or another, on audience uptake.

Let us begin with Austin. Austin (1962) distinguished between three basic sorts of act that a speaker performs on any particular occasion when she speaks. The first is the *locutionary act*, which is roughly equivalent to the speaker’s performance of a meaningful utterance, such as ‘A bunch of us are meeting for drinks later’. The second is the *illocutionary act*, which is the act that the speaker performs *in* uttering those words. For example, she might be *inviting* her audience to join for drinks, or she might be *refusing* an invitation to go bowling, or she might simply be *telling* someone of her plans. These acts—telling, refusing, inviting—are all illocutionary acts. Finally, the third sort of thing people do with words are *perlocutionary acts*, things that they achieve by means of what they



say. For instance, someone who performs the illocution of inviting might *thereby* persuade her audience to come for drinks, or, if she is simply telling her audience of her plans, she might thereby get the audience to believe her. Persuading somebody to do something, or getting them to believe something, just like amusing, seducing, shocking, and so on, are all perlocutionary acts.

Austin's main focus was on illocutionary acts, which he thought were only fully successfully performed when they are *received* in the right way by the audience:

‘Unless a certain effect is achieved, the illocutionary act will not have been happily, successfully performed [...]. I cannot be said to have warned an audience unless it hears what I say and takes what I say in a certain sense [...]. So the performance of an illocutionary act involves the securing of uptake. (Austin 1962: 116-17).

Note that the sort of ‘effect’ or ‘uptake’ at issue here is not related to the fulfilment of any of the speaker's perlocutionary aims, such as getting one's audience to *heed* one's warning or *believe* what one has told them.<sup>12</sup> Rather, the uptake Austin is alluding to is simply the correct recognition by the audience of the speech act the speaker is attempting to perform. What uptake requires is that the audience both understand what the speaker means—attach the right content to the speaker's words—and correctly recognise what sort of illocutionary act she means to perform.<sup>13</sup> So if I try to tell you that there are toadstools in the forest, but you think I have told you there are toad's tools in the forest, then there is a lack of uptake because you didn't get my meaning. And if I try to tell you about the toadstools but you think I am making some kind of weird joke, then there is lack of uptake because you didn't recognise that my words were intended to have the force of telling, rather than joking. In both cases, because there is no uptake, my act of telling is not “happily, successfully performed”.

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<sup>12</sup> Lackey (2018: 24-25 footnote 4) herself seems to mistakenly attribute this perlocutionary sense of ‘uptake’ to Austin. This is clear when she claims that an Austinian approach to testimony would have the absurd consequence that ‘one does not testify [...] in a courtroom when one is not believed’ and that the ‘known liar [i.e., someone who is recognised by the audience as lying] cannot lie’ because ‘there is no uptake’. In fact neither of these consequences follow from the Austinian notion of uptake, since Austinian uptake simply means recognizing what the speaker is up to, rather than believing them in what they say.

<sup>13</sup> Some Austinian theorists (such as Hornsby and Langton) seem to focus almost exclusively on the second aspect here, i.e., the correct recognition by the audience of the sort of speech act the speaker is performing (e.g., warning, as opposed to joking). Nevertheless, as Andrew Peet has recently argued, correctly interpreting the content of the speaker's utterance is just as integral to Austinian uptake, since ‘if one misinterprets the content of an utterance then one fails to recognise the illocutionary act being performed’ (Peet 2017: 3425).

A very different sort of approach to speech acts appeals to Grice's notion of 'speaker meaning' (Grice 1989). According to Grice, for a speaker to mean something by her words, the speaker must not only intend to get her audience to respond in some way, she must also intend that the audience recognise that this effect is what she (the speaker) intends, and that the audience treat this as a reason to respond as intended. This bundle of speaker intentions is what makes for communicative speech, including, centrally, the speech act of assertion. So, for example, a Gricean approach to the speech act of assertion would run roughly as follows:

S asserts that p to A by uttering x, if and only if

- S intends that A forms the belief that p;
- S intends that A recognises that S intends that A form the belief that p;
- S intends that A forms the belief that p because of recognizing that S intends that A form the belief that p (adapted from Pagin 2007)

In contrast to the Austinian approach, here an assertion can be performed without audience uptake, since all that is needed is that the speaker perform an utterance with certain intentions—intentions that need not be fulfilled. However, it must be noted that the Gricean account still makes audience uptake a *constitutive goal* of speech, in the sense that the speaker necessarily aims at having her primary intention (the intention to inform, to warn, to invite, etc) recognised by the audience. What this suggests is that speech acts that are not given appropriate uptake, because the audience does not recognise the speaker's primary intention, will be *infelicitous* or not fully successful, even though they count as having been performed. More precisely, a speaker whose speech act is not recognized as it is intended has failed at the communicative level.

A third approach to speech acts that strongly emphasizes their social character has been developed by Kukla and Lance (Kukla & Lance 2009). Kukla and Lance individuate and characterize speech acts on the basis of their normative functional profiles—that is, the combination of their normative 'inputs' (the social conditions under which speakers are entitled to perform them) and their normative 'outputs' (the social conditions and

normative changes they produce) (Kukla & Lance 2009: 15). So, for example, the speech act of *naming* or *christening* an object may only be made in certain settings by a suitably positioned speaker, but, once made, it entitles all others in the speech community to refer to the named object by that name. By contrast, the speech act of *asserting* that *p* can be made by anyone who knows that *p* is true, and, once made, it licenses others to challenge the assertion, or to re-assert it themselves. These different normative functional profiles characterize what Kukla and Lance call the ‘performative force’ of the speech acts.

As Kukla has emphasized, the normative functionalist approach to speech acts ‘means that a speech act requires uptake in order to have any performative force at all [...] And *what* uptake it receives is partly constitutive of what speech act it turns out to be’ (Kukla 2014: 443). On this picture, the speaker is not a god-like authority on what speech act she performs, if any. On the contrary, she may, in certain circumstances, attempt to make a speech act of one kind, only to find (when she observes the uptake her act actually receives) that she has performed a different kind of act altogether. Speech is thus conceived as a profoundly social affair, with both speaker and audience playing a crucial part in constituting an act of speech as a speech act of one kind or another.

These three approaches all portray speech as *social action*, in the sense that the illocutionary, communicative, or performative success of speech acts is determined, at least in part, by the uptake those acts receive. Though I shall not develop or defend these approaches at any length here, I would like to point out that one important feature of them is that they allow us to recognise various forms of distinctively linguistic injustice—ways in which people can be wronged or harmed in their capacity as speakers. Before I move on to examine how groups might be the victims of such injustice, let me briefly rehearse how these approaches have been put to use in highlighting such injustice.

Perhaps the best known example of this is the work of Jennifer Hornsby and Rae Langton on illocutionary ‘silencing’ in the context of sexual refusal.<sup>14</sup> Hornsby and Langton use the Austinian framework for illocution to argue that certain social

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<sup>14</sup> See Langton (1993), Hornsby (1994), Hornsby & Langton (1998)

conditions can make the speech act of refusal ‘unspeakable’ for women, by systematically interfering with the audience’s ability to recognise what the speaker is attempting to do. It is not simply that a woman’s refusal goes *unheeded* by her audience—that would fall into the category of the perlocutionary, on Austin’s framework—but rather that it goes *unheard*: the woman is not even taken to be refusing. Since uptake is necessary for illocutionary success on the Austinian framework, this means that certain women are ‘silenced’ when it comes to sexual refusal: they are literally prevented from performing the illocutionary acts they mean to perform.

In a slightly different way, Ishani Maitra (2009) has used the Gricean intentionalist framework to highlight what she calls ‘communicative disablement’. Recall that on the Gricean framework the speaker not only intends to produce a response in her audience (get him, e.g., to believe her testimony or heed her warning) but also intends that the audience recognize that producing this response is what she (the speaker) intends. Maitra labels this latter intention the speaker’s ‘communicative intention’, and claims that when this goes unfulfilled—when the audience fails to recognize what response the speaker is intending to produce—the speaker is thereby prevented from communicating. This could happen because the audience systematically misconstrues the content or force of the speaker’s primary intention. Under the influence of a prejudicial stereotype about women, he might think, for example, that when she says ‘No’ she is simply playing coy, or inviting him to engage in role-play, rather than attempting to get him to stop his advances. When this happens, according to Maitra, the speaker is silenced—not in the sense that she is prevented from performing the act of refusal, but in the sense that she is prevented from communicating *by* her refusal.

Also somewhat similarly, Rebecca Kukla (2014) has employed her own normative functionalist approach to speech acts to shed light on what she calls ‘discursive injustice’. According to Kukla, a discursive injustice occurs when the performative force that should attach to a speaker’s words is not simply cancelled by a lack of appropriate uptake (as it is in cases of silencing), but is instead *distorted* because of the social uptake it does receive, in ways that track and entrench social disadvantage. For example, there are cases in which women’s reports of sexual harassment are given uptake as claims of an altogether different sort—namely, claims about their subjective experience. In this way, women’s would-be assertions are turned into mere ‘expressives’:

[a woman] is attempting to put forth a claim about an objective event in the external world, which seeks uptake in the form of agreement or rational challenge from others. But often [...] these sorts of speech acts [...] are taken as expressives rather than claims about the world [...] “My boss is inappropriately flirtatious with me” is received as some kind of expression of a feeling of discomfort’ (Kukla 2014: 452)

Seeing speech as social action thus allow us to identify distinctively linguistic injustices— ways in which speakers are wronged *in their capacity as speakers*. This can happen, for example, when they are prevented from performing certain illocutionary acts (Hornsby and Langton), when they are blocked from communicating (Maitra), or when they have the force of their words unfairly distorted (Kukla). And it is not just individual speakers who can be subjected to these kinds of injustices; groups can be too, as I will now try to illustrate.

#### **4. Group silencing in community consultation: the *Sarayaku* case**

My example comes from the domain of legally-required consultation with communities affected by activities such as mining and oil drilling.<sup>15</sup> In a number of regional and domestic legal jurisdictions, courts and legislators have recognized an obligation on the state to consult with what are known as ‘indigenous communities’ when making decisions or taking actions that will affect the community’s land and/or environment. For instance, when a mining company applies for a mining license any local communities that may be affected by the proposed activities have a right be consulted about how these activities may affect the environment and whether and how the activities should be allowed to proceed. A central purpose of consultation, then, is to give these affected groups a ‘say’.

One reason why legally-required community consultation is a particularly salient context in which to explore group assertion and group silencing is because the right to consultation has been recognized as one that belongs to the community itself, rather than only to the individual members of the community. So it is the community itself

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<sup>15</sup> In a separate paper (in preparation), Dina Townsend and I examine several other cases of group silencing that arise in this context.

that is called upon to voice concerns, to make demands, to refuse or give its consent, and (most importantly for the purposes of this paper) to make assertions, with respect to the proposed activities.

However, although the consultation process is meant to give indigenous groups a say, there are cases in which what these groups say is not given appropriate uptake. Specifically, in the cases I have in mind, these groups are prevented from successfully making assertions about the state of their environments. When they attempt to make such claims they are often heard as making claims of an altogether different sort—claims about their own cultural world view or ‘belief system’. And this is something that has inadvertently been perpetuated by the very courts that have sought to empower these communities’ speech by promoting and defending the right to community consultation.

To see this, consider the case of the *Kichwa People of Sarayaku vs the State of Ecuador*, a dispute that went to the Inter American Court of Human Rights.<sup>16</sup> The dispute was about the State of Ecuador awarding a permit to a private oil company to begin oil exploration activities on traditional Kichwa territory. The Kichwa people staunchly opposed the oil exploration activities and claimed that a number of their rights had been violated in the lead up to the awarding of the permit, including the right to be properly consulted. In its judgment, the court found in favour of the Kichwa people, in part because the methods of consultation that had been used—methods that included bribes, bullying and ad hoc surveys—did not properly respect the traditional decision-making structure of the community or its established ways of speaking for itself.

In environmental legal circles this judgment is often lauded as a victory for the right to consultation, since it ensures that indigenous groups must be consulted on their own terms. And indeed it is an important step towards meaningful consultation. But it does not take us all the way there, for although groups may be given a platform to speak this will not count for much if their speech is silenced, disabled or distorted for not being heard as it is intended. And what is especially striking about the judgment in the

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<sup>16</sup> *Kichwa Indigenous People of Sarayaku v Ecuador* (2012) Series C No 245 (Inter-American Court of Human Rights).

Sarayaku case is that the court itself seems to systematically misconstrue the testimony of the community with respect to its claims about the environment, thus stifling the community's speech.

This is evident from the way the court treats the assertions made by several leaders of the Kichwa people about the state and nature of the community's natural environment and the place of the community within it, as recorded in the court's judgment. In a public hearing conducted by the Court, the *yachak* of the Kichwa people,<sup>17</sup> Sabino Gualinga, stated that, 'Sarayaku is a living land, a living jungle; there are trees, medicinal plants and other types of beings there.' In previous testimony he also made a point of describing different 'pachas' of the world, including one at a subterranean level: 'Beneath the ground, *ucupacha*, there are people living as they do here. There are beautiful towns down there, and there are trees, lakes and mountains.' (Sarayaku v Ecuador: para. 150). In separate testimony, the president of the Sarayaku, Jose Gualinga, emphasized the importance of the forest to the community, claiming that '[the forest] gives us the power, potential and energy that is vital to our survival and life. And everything is interconnected with the lagoons, the mountains, the trees, the beings and also us as an exterior living being.' (*ibid.*, para. 152).

These claims are made by authorised spokespersons for the Kichwa people, who are being called upon by the Court to speak in the name of their community. And their claims are made in the context of explaining the Kichwa people's opposition to oil exploration activities that would involve drilling under the ground and destroying parts of the forest. Given this context, and the fact that these claims have all the surface structure of typical assertions, it seems natural to interpret them as the Kichwa people's assertions about the state and nature of the environment—about what is under the ground, about the richness of the forest, and about how the different elements of the environment are profoundly interdependent. Yet, strikingly, the court does not appear to interpret these assertions in this way, seeing them instead as the Kichwa's claims about their own culture, belief-system or worldview. This is especially clear in the way that it sums up the section of its judgment in which these claims are featured. Without evaluating the truth of those claims—without accepting or denying that there are

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<sup>17</sup> A *yachak* (literally 'one who knows') is a spiritual leader or shaman.

mountains and lakes under the ground, that everything in the forest is interconnected, etc.—it simply concludes that:

‘the Kichwa people have a profound and special relationship with their ancestral territory, which [...] encompasses their own worldview and cultural and spiritual identity’ (*ibid.*, para. 155)

Note that this way of receiving the claims of the Kichwa stands in sharp contrast to the way the court treats the statements of other parties called upon to give evidence, such as expert witnesses. For instance, the anthropologist Rodrigo Villagra Carrón stated at the public hearing that ‘the cultural identity of each cultural group is dependent on the special relationship it has with nature, expressed in the most varied practices of management, protection, use or primary extraction of natural resources, goods or services from the ecosystems’ (*ibid.*, para 154) In the court’s judgment, this is not treated as a claim about Villagra Carrón’s *beliefs* about what the cultural identity of cultural groups depends on, but simply as a claim about what the cultural identity of cultural groups depends on. Similarly, when an environmental engineering expert, William Powers, described in his expert report the likely impacts of a large oil project in the jungle, including the clearing of vegetation, impacts on water courses, soil erosion, etc, these claims were not taken by the court as expressive of William Powers’ ‘worldview’, but simply as straightforward assertions about the likely impacts of the proposed activities on the environment in question.<sup>18</sup> However, when the Kichwa attempt to make similarly straightforward assertions about their environment, they are heard as making claims about their belief-system or worldview.<sup>19</sup>

It seems that something has gone wrong here—or, to put it more boldly, that the Kichwa people have been wronged here, that they have been the victims of some kind

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<sup>18</sup> *Ibid.*, para 174 (footnote 230).

<sup>19</sup> I consider the declarative form of the community’s claims, together with salient aspects of the discursive context, to be good evidence that these claims are meant as straightforward assertions. But of course it is still defeasible evidence, and it should be acknowledged that the community *may* mean for their claims to be understood as (primarily) expressions of their belief-system rather than as straightforward assertions. In other words, the community could be engaging in ‘mythical discourse’ rather than fact-stating discourse, and indeed it may be that there is no clear distinction between these forms of discourse within their linguistic practice (cf. Tsosie 2017). In this connection it would be helpful to know more about what the community *takes itself* to be doing when it makes these claims, as well its reactions to the way its speech is received by the Court. Did the community feel it had not been properly heard? This is an empirical question, and one whose answer is not contained in the Court’s judgment. I thank Marina Sbisà and a reviewer for suggesting that I acknowledge this possibility.



of linguistic injustice. This is because the court fails to give their would-be assertions the uptake that they should, by rights, receive. The Kichwa community attempt to make straightforward assertions about the state of the environment, using the right words in the mouths of the right people, but they are heard as making claims of an altogether different sort—claims about their cultural and spiritual identity or ‘worldview’.<sup>20</sup> And this is not an isolated incident: the claims made by indigenous groups about environmental impacts are routinely interpreted by courts as claims about impacts on their culture or belief systems.<sup>21</sup>

Before I move on to consider how this sort of case might be accounted for, I want to forestall one particular concern about declaring it an ‘injustice’. The concern is that the court’s interpretation of the community’s assertions cannot be an injustice since it is made in the spirit of charity—that, far from wronging the Kichwa people, interpreting their words in this way is doing them some kind of favour. This is because, were those claims to be construed as claims about the natural environment, they would not be worth taking seriously. There simply are no beautiful towns, or trees, lakes and mountains under the ground, and so a principle of charity requires that the court hear this as a claim about culture or belief, rather than about the environment itself.

For what it is worth, I doubt that the court is engaging in this kind of interpretative practice in this case, or in others like it. But, even so, the line of thinking that would vindicate such interpretative practices is troublingly paternalistic and patronizing, and should be resisted. It is no act of charity to twist someone’s words so that their claims become, by one’s own lights, more epistemically plausible. Not only does this fail to respect their epistemic agency, by implicitly deeming them unworthy of rational criticism and debate, it also undermines the very thing that consultation is meant to empower—their linguistic agency. Putting words in someone else’s mouth is not ‘giving them a say’, and so even if this were what the court was doing in this sort of case, their

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<sup>20</sup> Perhaps the Court *does* hear the community’s claims as assertions about the environment but simply dismisses them as false, while still treating them as evidence of the community’s ‘worldview’. While I acknowledge that this could be what is going on, I do not think it is the most plausible interpretation, for two reasons. First, as mentioned, the court does not *accept or reject* the assertions of the community about the environment. Second, the way it frames its conclusion that ‘the Kichwa people have a profound and special relationship with their ancestral territory, which [...] encompasses their own worldview and cultural and spiritual identity’ seems very much *in the spirit of uptake*, as a kind of gloss or restatement of what (they think) the Kichwa themselves are saying. Thanks to a reviewer for encouraging me to address this point.

<sup>21</sup> See, e.g., Tsosie (2017: 361-362) for two further examples.

doing so would nonetheless qualify as perpetrating an injustice.

If we accept, then, that there is an injustice in this case, we may wonder how best to account for it. Views of speech as social action provide excellent resources for this task. One could, with Hornsby and Langton, diagnose the problem as one of illocutionary disablement. On this reading, we might say that assertions about certain things, such as the objective state of the natural environment, are rendered ‘unspeakable’ for groups like the Kichwa people. This may be because of a deep-seated stereotype that impugns the epistemic authority of these groups vis-à-vis that topic. The result is that they are never heard to be making such assertions, and so—given that uptake is necessary for illocution—they are illocutionarily ‘silenced’.

Another, alternative diagnosis of the injustice would follow Maitra in viewing this as a case of communicative disablement. On this reading we would allow that the Kichwa perform their assertion about the environment, but insist that they are silenced in the communicative sense. That is, by failing to recognise the community’s primary intention, to inform the court about the environment, the court subjects the Kichwa people to a form of communicative disablement.

Finally, and perhaps most plausibly, one could view this case through the lens of Kukla’s ‘discursive injustice’, where the uptake a speech act receives distorts its performative force, making it count as something quite different from what the speaker set out to do. Kukla’s example quoted earlier, in which women’s claims about (the objective reality of) sexual harassment are only given uptake as claims about their subjective experience, seems particularly apt in this context. In that example, because of how their claims are received, women find that their would-be assertions are rendered relatively innocuous by being transformed into mere expressives; in this way their speech is disempowered. Similarly, it seems that the Kichwa people’s claims about the natural environment are somehow diminished when they are only heard as claims about their cultural or spiritual identity or ‘worldview’. Just as in Kukla’s example, this collective discursive injustice also tracks and entrenches a certain kind of social disadvantage—here a kind of social epistemic disadvantage. This is because the root of the injustice is the Kichwa’s perceived lack of epistemic authority to make assertions

about the objective state of the environment (only ‘independent’ scientific experts are accorded this authority), while the effect of the injustice is to ensure that the group is subject to a kind of epistemic marginalization. Since they are only heard as making claims about their own culture or belief system, the Kichwa are effectively excluded from the process of determining how their environment will be affected by the proposed activities.

### **5. Back to Lackey’s account**

The three approaches canvassed above, each of which conceives of speech as social action, thus offer rich resources for highlighting the intuitive injustice that takes place in the Sarayaku case. More specifically, each of these approaches allows us to see the injustice in distinctively linguistic terms: they allow us to say that the Kichwa people are wronged here in their capacity as a (group) speaker; that the uptake their attempted assertions receive serves to disempower their speech. By contrast, Lackey’s deeply individualistic approach has no comparable way of accommodating and explaining the injustice. On her account, the only way to silence or disempower a speaker would be by stopping her from uttering words, or perhaps by controlling her intentions. Since neither of these things are happening in the Kichwa case she cannot diagnose the injustice in terms of silencing or linguistic disempowerment.

To see this in more detail, note first that, given certain plausible assumptions, all of Lackey’s conditions for authority-based group assertion are met when the representatives of the Kichwa people give their testimony to the court. The first condition in her account requires that, for a group to assert that *p*, a spokesperson must ‘reasonably intend to convey the information that *p* in virtue of the communicable content of an individual act (or individual acts) of communication’. It seems clear that both the *yachak*—who describes the richness of the forest and the *pacha* under the ground—and the president, who stresses the profound interconnectedness of the forest environment, not only have such intentions, but that these intentions are reasonable, in the sense that their utterances are indeed apt vehicles for conveying the information they seek to convey. Moreover, in terms of their traditional political structure, both the *yachak* and the president are authorized to speak on behalf of the Kichwa community about matters that affect the communal life and livelihood of the whole community, such as the proposed oil exploration activities. And there is no reason to doubt that,

when they make their assertions to the court, they are speaking in virtue of that authority, that is, in their capacities as spokespersons for the community. This means that the second and third condition of Lackey's analysis are also met, and hence that, on Lackey's account, the Kichwa people succeed in making assertions via these spokespersons.

It is worth noting further that, not only are Lackey's conditions for group assertion met in this case, but the speaker's intentions are *actually fulfilled*. Unlike Gricean accounts of assertion, in which speakers' intentions make essential reference to audience uptake, Lackey's account only requires that the speaker reasonably intend to convey information via her act of communication. But, as we saw earlier, 'conveying information' can be done simply by uttering a declarative sentence that expresses a proposition, while an 'act of communication' need not involve somebody communicating, or even trying to communicate, with another person. This means that the complete lack of uptake on the part of the court in the Sarayaku case is no obstacle to the speaker's intentions being fulfilled. On the contrary, since these spokespersons did manage to perform 'acts of communication' that expressed certain propositions, their intentions were fulfilled and they succeeded in 'conveying the information' they sought to convey (even though this information was not conveyed *to* anyone). In short, not only were these group assertions successfully brought off, the speaker's intentions in performing them were wholly fulfilled: these were, to use an Austinian term, *entirely felicitous assertions*. This suggests that, however else she might wish to accommodate this sort of example, Lackey cannot claim that the Kichwa people have been wronged in their capacity as speakers—that they been silenced or been made the victims of some other kind of linguistic injustice.

How then might Lackey try to accommodate this kind of example? As I see it, there are, broadly speaking, two possible ways of responding. The first involves denying that there is really an *injustice* in the case: something goes wrong in the communicative exchange, of course, but it is not a case of anyone being wronged. The second response involves accepting that there is an injustice but suggesting that it is an *epistemic*, rather than a linguistic, injustice—that it is not a matter of the Kichwa people's assertions going unheard, but rather a matter of their assertions being dismissed. To end off let me briefly consider these two possible responses in turn.

I have already considered and rejected one form of denial that the Kichwa people suffer an injustice in this case—namely, the claim that the court is actually doing them a service by generously construing their assertions about the environment as claims about their cultural belief system. Another, less preposterous, way of denying the injustice would be to say that this is just an innocent misunderstanding, of the sort to which all communication is vulnerable. The court simply did not ‘get’ what the community was trying to say; that is unfortunate, but it happens. We cannot count all such miscommunication as injustice on pain of proliferating linguistic injustices beyond credibility.

In response to this, it should immediately be acknowledged that, indeed, not every misunderstanding or miscommunication amounts to a linguistic injustice. Audiences do not silence speakers simply when the traffic is too noisy for them to hear properly, for instance. But by the same token, not all misunderstandings are innocent, as philosophers who deploy notions such as silencing have been keen to stress. Some ‘misunderstandings’ are pernicious and systematic, they are rooted in prevalent social conditions or widely held prejudicial stereotypes concerning the social identity of the speaker, and they serve to further undermine or disempower the speaker in various ways. It is *these* misunderstandings that fall under the banner of silencing or linguistic injustice. And, given that the misunderstanding at issue in the Sarayaku case seems to fit this profile—it is (arguably) rooted in a prejudice, it serves to further marginalize the group, and it is not an isolated instance but rather a ‘practice’ of misconstrual—it cannot be so easily shrugged off as an innocent misunderstanding.

The second way that Lackey might wish to accommodate the Sarayaku case is by insisting that the injustice is epistemic, rather than linguistic, in character. In other words, the Kichwa people are not being wronged in their capacity as speakers, but rather in their capacity as knowers. More specifically, they are victims of what Fricker (2007) calls ‘testimonial injustice’: because they are accorded too little credibility or epistemic authority with respect to the state of the natural environment, their assertions about that topic are being unfairly dismissed or not taken sufficiently seriously. So it is not that they fail to assert (how could they, given that asserting is up to them alone?)

but that their assertions are routinely and unfairly prevented from achieving their perlocutionary aims, of getting the court to believe them.

In response to this reading, it should be acknowledged that the cause of the injustice suffered by the Kichwa people may well be a prejudicial stereotype about their epistemic authority in some domain. (Indeed, this is more or less what I have been suggesting all along.) But, crucially, this does not make the injustice they suffer an epistemic injustice. A standard case of epistemic injustice is one in which the speaker is heard to be asserting or testifying that *p*, but, because they are unfairly assigned low credibility by the audience, their assertion or testimony is not believed, though it deserves to be.<sup>22</sup> In contrast, a linguistic injustice is more basic than this, since it concerns something upon which testimonial injustice depends, namely the recognition by the audience of what the speaker is up to (asserting or testifying). And it is at this more basic point that the injustice seems to arise in the Kichwa case. It is not that their claims about the natural environment are *rejected* or deemed to be unworthy of belief by the court, but rather that the court does not even hear them as making claims for which a question of belief-worthiness might arise.<sup>23</sup>

### Conclusion

It thus seems to me that, in contrast to those views that see speech as social action, Lackey's account of group assertion cannot adequately explain the intuitive injustice we see in the Kichwa case. This is because Lackey's account has no place for audience recognition or uptake: so long as a group puts the right words in right mouths, it will fully succeed in asserting. But the intuition I have attempted to elicit, that the Kichwa community suffer a distinctively linguistic injustice, puts pressure on this account. Specifically, if we want to be able to say that the Kichwa community is wronged *in its*

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<sup>22</sup> Note that Fricker does discuss also a form of extreme testimonial injustice that could be counted as 'silencing', in the sense that the speaker's testimony is not so much dismissed as not even heard as testimony. She writes: 'there might be social climates in which women lack credibility so drastically for certain subject matters that their word fails altogether to register in male hearer' testimonial sensibility' (Fricker 2007: 141).

<sup>23</sup> As acknowledged earlier (footnote 20 above), it is possible that the Court does hear the Kichwa's claims as they are meant—as assertions about the environment—and simply dismisses them, and hence that this case may be best viewed through the lens of epistemic injustice rather than silencing. While I think that the silencing interpretation is actually the correct one in this case, it should be noted that this need not be established in order for the case to pose a challenge to Lackey's account. On the contrary, the mere possibility that this case could be a case of silencing is enough to challenge Lackey's account, since, on her account, no such phenomenon is even possible.

*capacity as a speaker*, then it seems that Lackey's deeply individualistic, speaker-centric approach to the speech act of group assertion stands in need of revision.

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