

Naming and Refusing:
Austinian approaches to MacKinnon on silencing

Nicole Wyatt

Feminist Philosophy and Pornography Symposium

Humboldt Universität zu Berlin

September 18-18 2013

Abstract

What constitutes illocutionary silencing? This is the key question underlying much recent work on Catherine MacKinnon's claim that pornography silences women. In what follows I argue that the focus of the literature on the notion of audience 'uptake' serves to mischaracterize the phenomena. I defend a broader interpretation of what it means for an illocutionary act to succeed, and show how this broader interpretation provides a better characterization of the kinds of silencing experienced by women.

1

"[P]ornography and its protection have deprived women *of* speech," writes Catherine MacKinnon, and this is not intended to be metaphorical [MacKinnon, 1993, 9-10]. Pornography neither constitutes a physical impediment to the speech of women, nor censors their words—the puzzle then is how to understand the claim. According to the

standard account, due to Rae Langton and Jennifer Hornsby,¹ MacKinnon is concerned with illocutionary silencing. It is not that women are prevented from uttering words. Rather, it is that those utterances are prevented from having the illocutionary force they are intended to have. Women are prevented from *doing* the full range of things that can be done with words. This then is a constraint on their freedom—there are things they cannot do in virtue of being women—and since those things are things we do with speech, it is in particular a constraint on their freedom of speech. The problem is not that women are not able to speak, but that their illocutionary acts fail despite their successful performance of the locutionary act.

The illocutionary silencing interpretation focuses on the Austinian notion of securing uptake, or recognition, of the intended illocutionary act, and in particular on the thesis that women are silenced when their illocutionary acts do not receive audience uptake. However critics of this strategy argue that uptake is not necessary for successful illocutionary performance, concluding that even if pornography does cause uptake failure women are not thereby silenced. In this paper I propose an alternative analysis of silencing based on the suggestion in Austin that successful performance of an illocutionary act requires not just recognition, but a normative change in the social realm.²

After developing this view I explore some apparent counter-examples to the claim that uptake is necessary for the performance of an illocutionary act. Close attention to these examples, I argue, shows that in the cases where the illocutionary act is successful it is because an appropriate change in the norms does occur, and that in the cases where the illocutionary act fails such a change does not occur.

Finally I show that my account of illocutionary silencing matches better than the

¹See [Langton, 1993, Hornsby, 1995, Hornsby and Langton, 1998, Hornsby and Langton, 2009, Langton, 2009].

²The question of whether the right to free speech, especially the version thereof encoded in the US constitution, should, or as a practical matter could, be extended to cover illocutionary acts is not one that I will address. Nor will I concern myself with the question of whether pornography is in fact a, or the, central cause of women's silencing in the sexual sphere.

uptake focused account with the sorts of examples that MacKinnon describes, and with the well known phenomena of victim blaming in cases of rape.

2

In Jennifer Hornsby’s words, uptake is when “one’s audience take[s] one’s words in some way that one intends” [Hornsby, 1995, 133]. If I utter the words ‘Look, a train’ with the intent of warning my companion against crossing the tracks, but she instead takes them as urging her to cross faster so as to not miss the train, my intended illocutionary act—warning—has not been recognized as such by my audience, that is, I have not achieved uptake. The idea that audience recognition plays a role in performances of illocutionary acts originates in J. L. Austin’s *How to do things with words*. Less attention has been paid to another aspect of Austin’s account, which focuses on the normative changes involved in an illocutionary act taking effect:

The illocutionary act ‘takes effect’ in certain ways, as distinguished from producing consequences in the sense of bringing about states of affairs in the ‘normal’ way, i.e. changes in the natural course of events. Thus ‘I name this ship the *Queen Elizabeth*’ has the effect of naming or christening the ship; then certain subsequent acts such as referring to it as the *Generalissimo Stalin* will be out of order [Austin, 1975, 117].

The point is this: acknowledging that Sarah named the ship the *Queen Elizabeth*, but persisting in calling it the *Generalissimo Stalin*, accepting that name from others, and perhaps further failing to recognize what is referred to by someone who does call the ship the *Queen Elizabeth*, suggests that despite the presence of uptake—despite explicit recognition of her act as an act of naming—Sarah’s illocutionary act has not taken effect. An attempt to name a ship the *Queen Elizabeth* that does not make referring to it as the *Generalissimo Stalin* out of order (and as the *Queen Elizabeth* in

order) is unhappy, but more precisely, naming is not achieved.

Austin's example is a case of legal naming, but similar considerations apply in the case of nicknames and private names. When my daughter was learning to speak she only said part of her name, which sounded like 'Weeze'. Her uncle continues to call her this. What makes this a successful case of (nick)naming is that she recognizes this as a name that applies to her, and so do the other members of the family, even though none of the rest of us call her that. If we didn't accept this reference as in order, to use Austin's phrase, the attempt at naming would have fallen flat even though we recognized his initial dubbing as an attempt to introduce a nickname.

Naming need not be all or nothing. In Calgary there is a stadium that when originally constructed was called the Olympic Saddledome. In the years since the building has been sponsored by a series of different entities, resulting in a series of names such as the Canadian Air Saddledome, the Pengrowth Saddledome, and currently the Scotiabank Saddledome. Official publications, tickets for events, etc. have all respected these series of double-barrelled names. But in ordinary conversation it would be remarkable—out of order even—for the venue to be called anything other than the Saddledome.

Marina Sbisà, discussing the ship naming passage in Austin, suggests that for any illocutionary act there is a set of changes within the realm of social conventions concomitant on successful performance of the act [Sbisà, 2009, 45]. This is in direct conflict with the commonly held view on which simple audience recognition of the illocutionary act as an act of its type constitutes illocutionary success. It is easy to see why audience uptake might normally be taken to be a *sine qua non* of illocutionary acts—without that recognition it is not obvious how this sort of normative change could come about. But mere uptake does not guarantee that a change at the level of social conventions actually occurs, and if there are cases where the change in norms does happen without immediate audience uptake, then it seems that the absence of uptake is not in itself an

obstacle to the act being performed.³

If illocutionary acts take effect just in case certain normative changes come about, then one form of illocutionary silencing occurs when an illocution is performed correctly but the concomitant effects do not take effect, that is, when it doesn't become out of order to do or say certain things. This suggests a reading of MacKinnon on which pornography prevents women's illocutionary acts from taking effect.

3

In their critiques of Hornsby and Langton's treatment of illocutionary silencing Daniel Jacobson and Alexander Bird argue that while the failure to achieve uptake may make a illocutionary act infelicitous, it does not in general block performance of the act. In what follows, I will argue that in each of the cases under discussion the question of whether the illocutionary act occurs depends on whether the requisite normative change occurs, not on whether the immediate audience gives the illocution uptake.

Jacobson's main argument against the necessity of uptake is based on the fact that a speaker may fail to receive uptake from a hearer for idiosyncratic reasons—because the hearer is incompetent, or even hostile [Jacobson, 1995, 73-76]. Imagine that Sally mails Bill a wedding invitation, and Bill, due to mental illness, takes her to be showing him the invitation to taunt him, rather than inviting him. Has she not nonetheless invited him?⁴ What does seem to be clear in this case is that it would not be out of order for Bill to attend the wedding, so that the invitation has indeed taken effect.

Bird develops Jacobson's critique further by providing a number of examples where he maintains uptake is not present but where his intuitions, and he hopes the readers,

³While I support the strong version of the view, on which all illocutionary acts when successful institute a change at the level of social conventions, it is probably sufficient for the analysis which follows that at least some illocutionary acts, particularly those of consent and refusal, do so.

⁴In Jacobson's description of this case he tells us that Bill believes that Sally "does not really want him to attend" [Jacobson, 1995, 73]. That is, he describes Bill not as not recognizing that he is being invited to Sally's wedding, but as believing that the invitation is insincere. As Jacobson presents it then we do not in fact have a case of uptake failure at all. I have modified the case to rectify this deficiency.

are that the illocutionary act has been pulled off nonetheless.

Bird's first example of a successful illocutionary act without uptake is in a legal setting. He writes,

When the judge passes sentence, his words may be addressed to the prisoner in the dock, but sentence is passed whether or not the prisoner realizes that this is what the judge is about. Nor does anyone else have to realize that, so long as the judge performs his duty in accordance with the law and established procedures (although someone had better realize it for the sentence to be carried out) [Bird, 2002, 7-8].

Legal examples like this one benefit from both more formal procedures and obvious normative changes. As Austin points out the law incorporates many special precautions in order to avoid infelicities in general [Austin, 1975, 22]. In the case of passing sentence the normative change is clear—it becomes appropriate to carry out the sentence passed, whether that be by imprisoning the convicted person, or accepting payment of a fine, etc. And clearly Bird is right that it is appropriate to do so even if the nominal addressee of the judge, the person sentenced, is not paying attention and does not recognize that sentence is being passed. However I am not convinced that sentence can be passed if *no one* in the court recognizes what the judge is doing.⁵

Let me fill out the example somewhat for plausibility. Suppose that our judge performed the appropriate locution, but due to the sudden simultaneous collapse of the building was not heard by anyone. Since the judge was killed in the collapse sentencing could not be resumed. What would happen? Almost certainly another judge would be assigned to pass sentence, and it is hard to imagine anyone protesting

⁵It is a inconvenient difficulty of English that there is not a natural phrase that captures what the judge is doing in this case. Saying that the judge is *attempting* to pass sentence suggests that he fails to produce the requisite locution (i.e., he is interrupted, or has a bad cough, etc). On the other hand, saying that he *is* passing sentence suggests exactly the kind of success that I am dubious occurs in Bird's case. Perhaps he might best be described as *passing sentence unsuccessfully*, despite the slight air of paradox attached to that phrase. Consider as an analogy a false start to a race. It is not that the competitors are trying, and failing, to get out of the blocks, but on the other hand, the race does not in fact start.

that the prisoner was being sentenced twice for the same crime. Nor does anyone at all hearing and recognizing the judge's intent suffice. If much later a recording made in the courtroom is discovered and the other sounds are removed to reveal the judge's words it does not become appropriate to carry out that "sentence". So here it does seem to be the case that someone in the court, albeit not necessarily the person sentenced, must recognize the speech act as an act of sentencing.⁶

What about something less formal, like Austin's example of 'warning' *sotto voce*? If Mark is about to walk across the tracks in front of an oncoming train, and I say "watch out for the train" under my breath, it seems unquestionable that I have not in fact warned him. If he notices the train and avoids mishap I cannot take credit, and if he is hit by the train I am blameable for failing to do all I could to prevent it. I could have warned him but I did not. However, it is easy enough to imagine a case where my warning is not recognized as such by the audience, but where I am still not blameworthy for failing to warn them. If I do my best to be heard, yelling and waving my arms to attract visual attention, but Mark is happily listening to Bach at a high volume and steps onto the track unawares, I have, as we say, done all I could. This is so even if no one else is present to hear my yells.⁷

⁶Another legal example from Bird concerns wills:

Dorothy writes a will. Her will is not found for some time after her death. When it is, it eventually secures uptake. Writing, in the appropriate circumstance, "I leave £1,000,000 to the cats' home" constitutes a written illocutionary act of leaving her money to the cats' home long before the lawyers get to read the will [Bird, 2002, 8].

Here again the normative change is quite clear—in virtue of Dorothy's will a million pounds from her estate should be given to the cats' home. And here I think we are inclined to say that even if the will never achieves uptake, the cats' home was entitled to that million pounds. If Dorothy's daughter, ignorant of the will, gives a million pounds of the estate to the home because she knows that is what her mother would have wanted, she fulfils her obligation, albeit accidentally.

The difference between the two cases is in the nature of the accepted procedures for passing sentence versus writing wills. The procedures surrounding passing sentence are designed in part to ensure and require simple uptake on the part of the prisoner and the officers of the court. If none of them provide such uptake then the procedures have not in fact been correctly followed. On the other hand, the procedures for preparing a will are focused largely on ensuring that the will can be authenticated if read, and those procedures can be correctly followed even in the absence of uptake.

⁷There is some question here as to whether we would say that I had warned Mark in this circumstance. The verbs associated with illocutionary acts notoriously often do double duty for the perlocutionary acts

The general picture is that when considering whether a given illocutionary act has taken effect the central question is whether the appropriate change to what is “out of order” or “in order” for that kind of illocutionary act has in fact occurred.⁸ If this is right, then the question we should be asking with respect to women’s sex-related speech acts is not whether they receive minimal uptake, but whether the appropriate normative changes in fact occur.

4

I am proposing that we understand MacKinnon’s silencing thesis in the following way: *pornography silences women by preventing their utterances from taking effect*. As I will argue in this section, the effect-based approach to illocutionary silencing is a better fit for what MacKinnon descriptions of the silencing of women than the traditional uptake based account. It also makes clear that objections to MacKinnon centred on the effects of pornography on rapists largely miss the point.⁹

MacKinnon claims that women are silenced in the sexual sphere, especially with respect to their ability to assert that they have been sexually harassed and abused and their ability to refuse sex, or particular sexual activities.

Having power means ... that when someone says “This is how it is,” it is taken as being that way. ... Powerlessness means that when you say “This is how it is,” it is *not* taken as being that way [MacKinnon, 1987, 164].

we usually aim at via those illocutionary acts, so that ‘warning’ is used both for uttering a warning and for successfully cautioning someone. What is clear is that I am not to blame for Mark being run over by the train—that is, that the appropriate normative effect has taken place.

⁸Searle gives for each type of illocutionary act he discusses an *essential condition*, which takes the form “counts as an ...”. For example, for promising he says it “counts as an undertaking of an obligation to ...”, where the ... is the content of the promise [Searle, 1969, 63]. Searle’s framework is somewhat different than Austin’s, but this strikes me as an attempt to get at a similar phenomena. The “counts as” formulation is a reference to Searle’s notion of institutional facts. If a locution counts as a particular illocutionary act, then this is a change in the institutional facts, and thus at least potentially in the norms.

⁹This is not, I want to be clear, to give a positive argument in favour of MacKinnon’s views on pornography, or for the claim that the sense in which women are silenced is in fact a sense relevant to the *legal* right to free speech, either in the US or in other liberal democracies.

When any one of them tries to tell what happened, she is told it did not happen, she imagined it, she wanted it. Her no meant yes [MacKinnon, 1993, 5].

To put it in the terms of this paper, when people say “this is how it is” that assertion takes effect in as far as it becomes in order to take it as being that way, and out of order to not take it as being that way. Of course there is no guarantee that my assertions will take effect in this way—that they will be accepted as fact. However in general, often enough to make saying “this is how it is” worthwhile, people take things to be the way I say they are. But when women attempt to make assertions regarding the sexual sphere, these assertions generally do not take effect in this way.

It is now agreed that there is something wrong with sexual harassment. But describe what happened to you, and it may be trivial or personal or paranoid, or maybe you should have worn a bra that day [MacKinnon, 1987, 190].

The result is a situation in which the speech of women fails to have its usual illocutionary force:

Your relation to speech is like shouting at a movie. Somebody stop that man, you scream. The audience acts as though nothing has been said, or turns slightly, embarrassed for you. The action on screen continues as if nothing has been said [MacKinnon, 1993, 6].

MacKinnon’s descriptions of silencing do not take the form of a failure of the audience to recognize the illocutionary act as the act that it is. It is not that your actions are unrecognized—rather, like shouting at a movie, they are futile. They are cases in which the speech has no impact on the realm of social convention—in which the normal changes in what is in order and out of order do not take place.

What does it mean for a refusal to take effect in this sense? Refusals generally have as their perlocutionary aim preventing certain events from taking place. If I refuse dessert I intend to prevent dessert from being served to me, and perhaps in particular cases I intend to prevent being charged for dessert, or to prevent dessert from being made and wasted, and so on. But of course these perlocutionary effects may not come about even in a perfectly successful case of refusing. One central—perhaps the central—illocutionary effect of refusing is the realm of blame. If I refuse cake, then it is not my fault if the cake is still brought, or if it is wasted, and I can not be properly blamed for these events. Similarly, charging me for the cake is improper. Blame, and charges, are out of order.

When it comes to rape however, blaming the victim is largely taken to be in order. MacKinnon herself writes:

If you talk about rape, it will be agreed that rape is awful. But rape is a conclusion. If a victim describes the facts of a rape, maybe she was asking for it or enjoyed it or at least consented to it, or the man might have thought she did, or maybe she had had sex before [MacKinnon, 1987, 190].

Victim-blaming in many cases looks very much like a situation where there is nominal uptake for a refusal from later observers, and indeed even from the rapist, but where the illocutionary act of refusal does not in fact take effect, in that it is not considered out of order to blame the victim of the rape for the events that followed.

Another advantage of the effect-based analysis is that it makes clear that the issue is not what the impact of pornography is or is not on the perpetrator of unwanted sexual activity. The important question is not whether the immediate audience recognizes a woman as refusing or not. Indeed, the question is not even whether we, as a broader audience, recognize the woman as refusing or not, if that recognition is limited to simple uptake. The question instead is whether, and to what degree, we hold her responsible for what happens. In as far as we, as a society, find remarks such as ‘you shouldn’t have

been there’, or ‘you shouldn’t have been drinking’, in order, in so far as MacKinnon is right that women are told “you wanted it, you enjoyed it” [MacKinnon, 1993, 3] then the woman’s attempt to refuse is not taking effect. If pornography could be shown to contribute to that failure then MacKinnon’s claim that pornography silences women would be vindicated. Questions about whether the use of pornography makes individuals more or less likely to rape are therefore simply irrelevant to the silencing claim.¹⁰

The situation contemplated here is one in which women, as a class, are unsuccessful in performing certain speech acts with respect to sexual activity. One might object however that the account given also falls afoul of Dworkin’s notorious objection that MacKinnon confuses the right to free speech with a right to be understood [Dworkin, 1991]. In saying that women’s assertions that “this is rape” don’t take effect because they are not accepted as fact, or that women’s refusals are not taken as ameliorating responsibility, am I not positing a right to be understood and, even more improbably, believed?

If the problem is understood solely as a problem of an individual woman—she was raped but her behaviour was foolhardy, she said she was harassed but she is just sensitive—then Dworkin’s response is telling. The right to free speech is not plausibly construed as a right of an individual to be believed or understood. But the interpretation of MacKinnon on offer places its emphasis not on the failure of individual women to be understood, but on the *systematic* failure of women’s sexual speech to function in the usual ways. As Ruth Millikan has pointed out, if no one ever complied with directives or believed assertions the directive and assertive forms of language would soon ceased to be used and understood [Millikan, 1998, 166, 174-75]. The same thing is true for refusals. Mill conceives of the right to free speech as including a right to be listened to. A systematic failure of women’s speech in the sexual sphere to take

¹⁰MacKinnon does in various places claim that pornography can play a causal role in the actions of rapists, and so the issue is relevant to assessing MacKinnon’s arguments against pornography as a whole.

effect suggests that we are failing to listen to women as a class, rather than failing to believe individual women. Or to put the point differently, we are failing to believe individual women *because they are women*.

5

The picture we have arrived at is this. When illocutionary acts take effect certain other actions become in order, or out of order, depending upon the act in question. Failure to achieve uptake from the audience of your illocutionary act may indicate that the act has not taken effect in this way, but it does not guarantee it. Nor does receiving minimal uptake—recognition of the act you were performing—guarantee that the act will effect changes in the social sphere. Illocutionary silencing occurs when your illocutionary act does not take effect.

Not any kind of illocutionary silencing counts as a violation of a right to free speech. But insofar as the illocutionary silencing of women is systematic, MacKinnon's claim that the free speech of women is at issue is comprehensible, and not, as Dworkin claims, absurd. Furthermore, this analysis makes clear that the issue of whether a particular rapist or sexual harrasser did or did not view pornography, and questions concerning the causal effects of pornography on rapists and harrassers, are largely besides the point with respect to the claim that pornography silences women.

References

- [Austin, 1975] Austin, J. L. (1975). *How to do things with words*. Harvard University Press, Cambridge, Mass., second edition.
- [Bird, 2002] Bird, A. (2002). Illocutionary Silencing. *Pacific Philosophical Quarterly*, 83(1):1–15.

- [Dworkin, 1991] Dworkin, R. (1991). Liberty and Pornography. *The New York Review of Books*, 38(14).
- [Hornsby, 1995] Hornsby, J. (1995). Disempowered Speech. *Philosophical Topics*, 23:127–147.
- [Hornsby and Langton, 1998] Hornsby, J. and Langton, R. (1998). Free Speech and Illocution. *Legal Theory*, 4(1):21–37.
- [Hornsby and Langton, 2009] Hornsby, J. and Langton, R. (2009). Freedom of Illocution? Response to Daniel Jacobson. In *Sexual Solipsism*. Oxford University Press, Oxford.
- [Jacobson, 1995] Jacobson, D. (1995). Freedom of Speech Acts? A Response to Langton. *Philosophy and Public Affairs*, 24:64–79.
- [Langton, 1993] Langton, R. (1993). Speech Acts and Unspeakable Acts. *Philosophy and Public Affairs*, 22(4):293–330.
- [Langton, 2009] Langton, R. (2009). *Sexual Solipsism*. Oxford University Press, Oxford.
- [MacKinnon, 1987] MacKinnon, C. A. (1987). Francis Biddle’s Sister. In *Feminism Unmodified*, pages 163–197. Harvard University Press, Cambridge, Mass.
- [MacKinnon, 1993] MacKinnon, C. A. (1993). *Only words*. Harvard University Press, Cambridge, Mass.
- [Millikan, 1998] Millikan, R. G. (1998). Language Conventions Made Simple. *The Journal of philosophy*, 95(4):161–180.
- [Sbisà, 2009] Sbisà, M. (2009). Uptake and Conventionality in Illocution. *Lodz Papers in Pragmatics*, 5(1):33–52.
- [Searle, 1969] Searle, J. R. (1969). *Speech Acts*. Cambridge University Press, Cambridge, UK.