FAILING TO DO THINGS WITH WORDS

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1. Speech, Pornography, and Silencing

> The free speech of men silences the free speech of women.
> It is the same social goal, just other *people*. (MacKinnon,
> 1987b)

It has become standard for feminist philosophers of language to analyze Catherine MacKinnon's claim in terms of speech act theory. Backed by the Austinian observation that speech can do things and the legal claim that pornography is speech, the claim is that the speech acts performed by means of pornography silence women. This turns upon the notion of illocutionary silencing, or disablement. It is not that the victims of illocutionary silencing cannot produce locutions; it is that they cannot achieve the normal illocutionary effects by means of those locutions. Jennifer Hornsby, Rae Langton, and Mary McGowan have all offered analyses and defences of MacKinnon of this form (Langton (1993); Hornsby and Langton (1998); Hornsby (2001); McGowan (2003)). Pornography, on these accounts, causes women to be illocutionarily silenced in the sexual domain—it prevents them from refusing sex or particular sexual acts and in general from expressing their sexual preferences and desires.

These analyses of MacKinnon have three components—first, they give an analysis of illocutionary silencing in speech act terms; second, they argue that this analysis provides a reasonable interpretation of MacKinnon's claims; and finally they argue that pornography, or at least some pornography, does indeed cause illocutionary silencing.[1] In what follows I am interested only in understanding the notion of illocutionary silencing.

2. Some Illocutionary Failures

Langton's earliest paper on this topic gives four examples of illocutionary silencing outside of the sexual sphere, one from Davidson, and three based on various laws governing speech acts. They are as follows:

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

Look at the smoke!' etc. (Davidson, 1984)

Marriage. To say 'I do' is, given the right circumstances, to marry, given that the felicity conditions of marriage are satisfied. Suppose now that both parties intending to marry are male. They sincerely intend to marry. The speaker uses the right locution. The priest is no mere actor. The ceremony is performed by the book. The speaker satisfies all the felicity conditions but one. Something about who he is, and who his partner is, prevents him from satisfying one crucial felicity condition. The act of marrying misfires. The felicity conditions for marriage are such that two male participants cannot succeed. The act of marriage is not speakable for homosexual couples. The power to marry, an important right available to other citizens, is not available to them. (Langton, 1993)

Voting. A white South African makes marks on a piece of paper in a polling booth. A black South African makes marks that look just the same, and in similar conditions. Their intentions, we can imagine, are just the same. But the former has succeeded in doing something significant. He has voted. The latter has not. Something about who he is prevents him from satisfying a crucial felicity condition. South African law prevents his utterance from counting as a vote: voting is not speakable for him. He too lacks an important political power available to other citizens. (Langton, 1993)

Divorce. To utter the words '*mutallaqa, mutallaqa, mutallaqa*' is to perform the illocutionary act of divorce in a country where Islamic law is in force, provided certain felicity conditions are met. Pronounced by a husband to his wife, it is an act of divorce. Not so if it is pronounced by the wife to the husband. No matter how hard she tries, a woman cannot succeed in divorcing her spouse by making that or any relevantly similar utterance. Divorce of that kind is an act which is unspeakable for women. (Langton, 1993)

Langton (1993) treats these four cases as on a par—she says, when discussing the case of the actor, that "something about the role he occupies prevents his utterance from counting as a warning," echoing the comments concerning who the speaker is in the description of the other cases. This is a mistake. There are important differences between the first case and the other three.

In the case of marriage, voting, and divorce there are relatively rigid fixed conventional procedures for performing the acts. Often the procedures are codified in law. These procedures specify who can marry, vote and divorce, how they must comport themselves during the procedure for it to count, and whether there must be other participants. In each of the three

cases described we might say that the persons and circumstances are not appropriate for invoking the conventional procedure. Or we might say that there is no convention for marrying two men, for a black South African voting, or for a wife to divorce her husband. Austin (1975) himself notes that there is overlap between these two ways of going wrong, and that the decision of which to say is somewhat arbitrary in some cases. But whichever we say, we will not say the same thing about the case of the actor.

First of all there are not in general rigid fixed conventional procedures for warning someone. I may warn you by yelling out 'Fire!' or 'Car!' or some other reference to the thing I am warning you about. I may place a sign reading 'Beware of the dog' on my house to warn you about my vicious attack poodle. I may say 'I should warn you that I am tired and may fall asleep during your paper.' I may in some instances simply wave my hands and point frantically, if for example I do not think you will hear my voice. I may write a formal letter to a student which contains the sentence 'If your GPA continues to be below 2.0 for another term you will placed on academic probation.'

All these locutions are suitable for warning. Some of them may well have warning as their default illocutionary purpose. Many of them may be used for other illocutionary purposes as well. None of them are part of a codified legal procedure.

Secondly, the kind and degree of illocutionary disablement seems different. In the actor case one can imagine that a sufficiently motivated actor could eventually get through to the audience. He might repeat himself to the point where someone in the audience turned and took up the cry. He might jump down into the audience. Of course, as Davidson himself points out, all of these acts could be interpreted as part of the play. There is nothing the actor can do to guarantee his audience recognizes his intention to warn them, but he may still succeed in doing so. In this the actor is not in a different in kind position to any other speaker—one cannot in general guarantee that the audience will recognize one's communicative intention. Rather it is more difficult for him than it generally is.

In contrast, the audience will not in general have any difficulty in recognizing the illocutionary intentions of the speakers in the other three examples. The problem is not an extreme case of the normal possibility of failing to have your communicative intentions recognized. Rather as noted above, the problem is that even if everyone recognizes the speakers' intentions they will still not succeed in marrying, voting, or divorcing. There is literally nothing they can do to achieve these acts because the conventional procedure does not allow them too.

3. Failures in the Sexual Context

Langton (1993) offers two examples of illocutionary silencing in the context of sex, one of refusal, and one of protest.

> *Refusal.* Consider the utterance 'no.' We all know how to do things with this word. We use it, typically, to disagree, to refuse, or to prohibit. In sexual contexts a woman sometimes uses it to refuse sex, to prohibit further sexual advances. However in sexual contexts something odd happens. Sometimes a woman uses sex to refuse sex, and it does not work. ...Saying 'no' sometimes doesn't work, but there are two ways in which it can fail to work. Sometimes the woman's hearer recognizes the action she performs... Sometimes though there is the different phenomenon of illocutionary disablement. Sometimes 'no' when spoken by a woman, does not *count* as an act of refusal. The hearer fails to recognize the utterance as a refusal; uptake is not secured. ...She is in the position of the actor in Davidson's story, silenced as surely as the actor is silenced.

The example of protest involves the book *Ordeal* by Linda Lovelace, which denounces the pornography industry and describes her experience as an unwilling participant. This book, despite its intended function as an act of protest against both the industry and her own treatment, appears in catalogues of erotic materials. Langton (1993) tells us:

> She intends to protest. But her speech misfires. Something about who she is, something about the role she occupies, prevents her from satisfying protest's felicity conditions, at least here. ...She too is in the plight of Davidson's actor. Warning was unspeakable for him. Protest is unspeakable for her. What he tries to say comes out as 'merely acted.' What she tries to say comes out as pornography.

Langton compares both these cases to the case of the actor, and I think that is the correct comparison, in that in neither case does there exist a rigid codified legalistic procedure for performing the relevant speech act, and in perhaps more importantly, that in both cases we can imagine the communicative goals in fact being met. The oblivious audience for the woman's refusals might come to recognize them as she continues to object, though of course he might not—he might instead continue to see them as simply ritual moves in a game much as the audience might continue to see the actor as acting. And in the case of *Ordeal*, some of the audience has in fact recognized that it is a work of protest not pornography, and one can imagine that even someone who initially took it for pornography could come to see this as a mistake.

4. Kinds of Silencing

What the four original cases have in common is that the speaker does not achieve uptake from the audience. When the actor yells 'Fire!' the theatre goers do not recognize that he intends to warn them, and so do not accept that utterance as a warning. When the two men attempt to marry in a community that allows only heterosexual marriage the audience may recognize their intent, but because there is no accepted procedure for two men to marry, they will not accept them as married. Langton, along with Hornsby and McGowan, focus on this lack of uptake and define illocutionary silencing in terms of being prevented from obtaining uptake for your illocutionary acts. On their analysis if you cannot achieve uptake for your intended illocutionary act you cannot perform it. Both the actor attempting to warn the audience of a fire and the woman attempting to refuse sex fail to achieve uptake, and so on this analysis fail to warn and fail to refuse sex. Elsewhere others have argued, following Strawson (1964, p. 448), that uptake is not in general necessary for illocutionary success (Bird (2002); Jacobson (2001; 1995). In addition, it seems contrary to normal intuition to say that the woman in Langton's example does not refuse sex. If the actor and the woman are silenced their failure to achieve uptake is a symptom of this silencing, not its cause.

Locutionary silencing itself falls into different classes. I may silence you by preventing you from producing any locution at all, say by gagging you, or denying you access to writing materials. Alternatively, I might silence you by playing loud music so that while you can produce a locution, your audience cannot hear it. This distinction is not perfectly precise – are letters in which part of the material is blocked out more like the former or the latter case? – but there is a clear analogy in the illocutionary case. The black South African prior to 1994 is denied access to a conventional procedure for voting. The actor is not denied access to a conventional procedure for warning people. However, it is hard for his audience to recognize that he is attempting to use that convention.

How is the actor silenced? There exists a set of conventions according to which the utterance of the words 'Fire! I mean it! Look at the smoke!' counts as a procedure for warning hearers of a fire, and these are usual conventions. On the other hand there is another convention on which the utterance of the words 'Fire! I mean it! Look at the smoke!' by an actor on stage does not count as warning anyone, but instead counts as portraying a character. This second convention is more salient, overriding in some sense. An important feature of the acting conventions, and of conventions of fiction in general, is that they both usurp and depend upon the normal conventions. The character portrayed by the actor is taken to be warning someone in the

play because the words spoken by the actor are according to the usual conventions a procedure for warning hearers of a fire. There are various features of the context that make the acting convention salient for the audience—the fact that the actor is on a stage and they are in a theatre, the fact that they have paid money in order to see a play, the fact that the actor is known by them to be an actor by profession (as opposed to another theatre employee), etc.

The difficulty faced by the actor is that he wishes to access one convention, but is drowned out by the other, much as I may be drowned out by loud music. The difference is that it is his illocution which is not recognized, rather than his locution.

5. Second Order Conventions

The homosexual couple wishing to marry, the black South African wishing to vote in 1993, and the woman in a country under Islamic law who wishes to divorce her husband are prevented from achieving those acts because of an absence of a suitable conventional procedure. In contrast, the actor, the woman attempting to refuse sex, and Linda Lovelace writing *Ordeal* are frustrated by the fact that their locution is suitable for performing too many illocutions, and circumstances make their locutions more likely to be interpreted as portraying a character, as conforming to a sexual role, or as a certain kind of violent pornography. As Davidson in his own discussion of the actor points out, there is no sign that can be added to the locution that will make it unambiguous. The word 'literally,' for example, is itself often used non-literally, as when I say 'The cockroach was literally as big as a cat.'

The communicative difficulty facing the actor is increased because the conventions of theatre depend upon other conventions—in order to portray a character as asserting I must produce a locution that would, under normal circumstances, count as asserting, and similarly for marrying, praying, questioning, etc…. I make as if to assert.

Consider one of MacKinnon's (1987a) descriptions of the kind of material she objects to:

> [Pornography] eroticises hierarchy, it sexualizes inequality. It makes dominance and submission into sex. Inequality is its central dynamic; the illusion of freedom coming together with the reality of force is central to its working. Perhaps because this is a bourgeois culture, the victim must look free, appear to be freely acting. Choice is how she got there. Willing is what she is when she is being equal. It seems equally important that then and there she actually be forced and that forcing be communicated on some level, even if

> only through still photos of her in postures of receptivity and access, available for penetration. Pornography in this view is a form of forced sex, a practice of sexual politics, an institution of gender inequality. ...To the extent that gender is sexual, pornography is part of constituting the meaning of that sexuality. ...Pornography is not imagery in some relation to a reality elsewhere constructed. It is not a distortion, reflection, projection, expression, fantasy, representation, or symbol either. It is a sexual reality.

Central to MacKinnon's reading of the material is the idea that the woman is portrayed as refusing, that conventional means of communicating that refusal be used, even though she is also portrayed as choosing to be there. The description Langton gives of the woman who says 'No' and 'Stop' and so on, but is not seen as by her companion as refusing sex, can also be understood in this way. Perhaps he takes her as conforming to a role, a sexual script on which women make as if to refuse, to be unwilling, a script on which 'good girls say no.' This script only makes sense because the locutions used are suitable for refusing, because participants make as if to say no, much as in the case of acting.

Illocutionary silencing of the sort MacKinnon is best understood as discussing depends on the presence not only of multiple interpretations of a locution—arguably all locutions have this property—but on the salient one of those interpretations being a second-order one which depends on the other one for its functioning. Unlike Langton's cases of marriage, voting, and divorce, it does not depend on the absence of a suitable convention. Like the case of being shouted down, it doesn't completely prevent one from being heard, it just makes it very difficult.

All of this leaves open the question of whether the kind of silencing described in Langton's refusal example and MacKinnon's text actually occurs, and whether pornography is correctly identified as a cause if in fact it does.

Notes

[1] As Daniel Jacobson (1995) points out, all of these analyses also rely on an unarticulated distinction between illocutionary acts one ought to be able to perform and ones that are optional. For example, I cannot by means of any locution enact laws in the state of Idaho, but this does not constitute any morally or legally improper restriction on my speech rights.

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