
ILLOCUTIONARY SILENCING

BY

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Abstract: Rae Langton and Jennifer Hornsby have argued that pornography might create a climate whereby a woman's ability to refuse sex is literally silenced or removed. Their central argument is that a failure of 'uptake' of the woman's intention means that the illocutionary speech act of refusal has not taken place. In this paper, I challenge the claims from the Austinian philosophy of language which feature in this argument. I argue that uptake is not in general required for illocution, nor is it required for refusal in particular. I conclude with remarks on the relationship between illocutionary and perlocutionary speech-acts.

Introduction

As the title of J.L. Austin's famous book¹ tells us, we do things with words. In speaking we not only utter words, which Austin calls *locution*, but we also perform other kinds of acts—*illocutionary* and *perlocutionary* acts. Perlocutionary acts are acts whose essence involves some fact caused by the utterance of words. If I amuse you with an anecdote, that act is a perlocutionary one—your being amused is the effect of my locution. Illocutionary acts are more subtle. Classic cases include the utterances of a priest, which in an appropriately conducted wedding ceremony will constitute the act of marrying the couple. Here the fact that the couple become married is not so much an effect of the priest's words. Rather, in those circumstances, that utterance *counts* as or constitutes marrying them.

If we wish to silence someone, and perhaps thereby infringe a right they may have to free speech, then preventing them from making locutions is the obvious way to do it. We may gag them, or we may threaten them with punishments. We can close down their newspapers or radio stations. These things prevent utterances or inscriptions from being made and disseminated. Given that locutionary acts are not the only kind of act performed by words, does the notion of silencing extend to

perlocutionary and illocutionary acts, even though locution may be permitted? That is, might we prevent, in some way, the locutions someone utters from being the perlocutionary or illocutionary acts they intend, and if we can, would this count as silencing, in particular silencing of free speech?

It seems clear that preventing someone from performing their intended perlocutionary acts is not in general silencing in the free speech sense. You may aim to *persuade* someone of the rightness of a political cause—and if you are successful such persuasion would be a perlocutionary act. But if my rhetorical skills convinced the same audience that you were mistaken, I would have prevented your perlocution but not silenced you.

May freedom of speech cover freedom of illocutionary acts? That is one of the questions to be discussed here. Rae Langton (and later Langton with Jennifer Hornsby) argues that pornography can, in a real sense, *silence* women—preventing them from saying things.² An important element in the argument is *uptake*. Uptake is the appreciation by an audience of the intended illocution of the speaker.³ Langton says that if (in certain circumstances) uptake for a certain locution cannot be secured, then the intended illocution will not occur. In an example from Davidson⁴ an actor on stage may intend to warn his audience of a real fire in the theatre, but since they fail to understand that he means it and is not acting, uptake of his intention is not secured and he *fails*, says Langton, to warn them. Langton argues that pornography can create a situation whereby the locutions of women do not secure the intended uptake by men and hence fail to be the illocutions intended by those women. Since they have not illocuted, they have not said what they wanted to—they have been silenced. The illocutionary silencing brought about by pornography can be seen as one way in which free speech may be infringed. For that reason, opponents of pornography may be able to reverse the free speech arguments usually thought to favour allowing pornography to be published unimpeded. The argument would be that pornography prevents the free speech of women, so that at the very least there is a conflict of freedoms of speech. Langton is careful to say that this argument is not yet conclusive as a reason to limit pornography. The argument needs to be developed and other considerations would be relevant to a public policy decision. The question is whether there is even a *prima facie* argument along these lines.

An important component of the claim of illocutionary silencing is that pornography prevents the locutions “No”, “I don’t want to” and other such utterances being illocutions of *refusal* by women when faced with the sexual advances of men. The idea is that in many cases of rape it may not be that the rapist has ignored a woman’s refusal of sex, but rather that the conditions created by pornography have prevented her from being able to perform the illocutionary act of refusal. Hence women’s (illocutionary) speech would have been silenced in an important area.

In this paper I want take issue with Langton's interesting and important proposals and arguments. In brief (i), there is a danger that were Langton's conclusions correct, they would have consequences which feminists should regard as disturbing, and even non-feminists should regard as counter-intuitive, (ii) it is not clear to me that even if the claims about silencing attempted refusal are correct, that silencing can be regarded as an infringement of a right to free speech, (iii) I do not think that refusal is silenced, and (iv) uptake is not necessary for illocution in general, nor (v) is it necessary for refusal in particular.

Undesirable Consequences of Langton's Argument

Let us take a case interpreted in accordance with Langton's conclusions. A woman is approached for sex. She does not want it and attempts to refuse it. She says "No" and so on. But because of illocutionary silencing, her attempt at refusal is unsuccessful—it is silenced. The man forces or takes sex.

As Jacobson⁵ has pointed out, the most important consequence of Langton's argument is that if a woman cannot illocute a refusal, no actual utterance of "No!" (etc.) can *be* a refusal. So in the case under consideration, there was no refusal of sex. We might imagine that in a trial for rape, counsel for the accused could claim that he did nothing that the woman had refused. If she did not refuse sex, why is he a rapist?

There is a question of legal definition here. For the lack of a refusal is not generally the same as giving consent. And so if rape is sex without consent, then a defendant might properly be found guilty despite the absence of a refusal if consent is absent too.⁶ Nonetheless, putting the legal issues on one side, one might still think there is something badly wrong with someone who takes sex in the absence of an invitation, encouragement and so on, even if a refusal is absent too. But it does seem less bad than ignoring a refusal.

A further concern is that in emphasizing uptake Langton's argument might be extended in the following way. She argues that uptake is necessary for the corresponding illocution. But imagine that it were sufficient also. We might have a situation so perverted by pornography that the male in question not only fails to understand "No" as a refusal but even takes it to be consent. If the 'uptake' is one of consent and that were sufficient for illocution, then the illocution is one of consent. On any definition of rape then, rape has not occurred. Is there any reason to think that the content of the uptake is sufficient to determine the content of an illocution? Below I shall suggest that uptake is neither necessary nor sufficient. However, we are currently discussing Langton's view that it is necessary. If she wishes to maintain that it is not sufficient, then

something else in addition to uptake must be required. The obvious additional component is the intention of the speaker. So necessary conditions for the illocution p would be both (a) the speaker intends to illocute p and (b) the hearer takes the speaker to be intending to illocute; and so (b) alone is not sufficient. Below I shall argue that (a) is in fact not in general necessary. Just as a foretaste, two quite different cases suggest this. First, someone may grumble, moan, or whinge without intending to do so. Secondly, a poor French speaker may say “merci” in order to accept an offer, but in France such an utterance will always be understood as a refusal. And, I suggest it would be a refusal, albeit unintended. The dialectic is this. Someone starting from Langton’s emphasis on uptake who then becomes persuaded that the intention, (a), is not necessary may thus come to take uptake, (b), to be sufficient and so allow the hearer’s understanding to determine that the victim consents, in a literal reversal of the “merci” case. This consequence of taking uptake as central to illocution starkly illustrates Jacobson’s concern that that position holds the performance of an illocutionary act hostage to the perversity of one’s audience.⁷

A Free Speech Argument Against Pornography?

Langton and Hornsby accept that not every silencing or prevention of an illocution is an infringement of free speech. Only the monarch can confer a knighthood, and the fact Joe Bloggs is not king means that he cannot perform the illocutionary act of knighting. Similarly only a judge may pass a sentence, and Joe Bloggs, not sitting on the bench, cannot do that either. In neither case is Joe Bloggs’ free speech curtailed—a fact which remains true whatever one thinks of the value of knighthoods or punishments. So the question is now open, are the illocutionary acts silenced or prevented by pornography ones which would come under the protection of free speech? Or are they more like the illocutionary acts of knighting and passing sentence, whose importance, if they have any, is not due to the importance of free speech?

The illocutionary act silenced by pornography which is at the centre of the discussion is that of refusing sex. It is clear that Langton and Hornsby do think that this is an act which, unlike passing judicial sentence, is one which has at least a *prima facie* protection under the freedom of speech. It is not clear why this should be, but it does seem to be suggested, in their reply to Jacobson, that Mill’s view of free-speech can be understood as supporting their case. They cite Mill’s argument for free speech, that “a general license to speak is conducive towards the spread of truth” (where they give reason to take Mill to mean illocutionary speech). So we may ask, does this general case for free speech encompass the particular

illocutionary acts under consideration here? Mill's argument clearly does not give any reason for extending the right to confer knighthoods or pass sentence, since neither of these are relevant to the spread of truth. In particular, neither illocutionary act involves propositional content. "Arise Sir Joe" does not express the opinion that Joe is a knight, nor does "Joe Bloggs, you will be taken from this place and hanged by the neck until you are dead" constitute a prediction—it is a judicial instruction.⁸ Since the special illocutionary acts here do not have assertoric content they cannot be true or false. Therefore they aren't players aiming at truth in the free market of ideas. Precisely the same, it would seem, may be said of a woman's refusal to have sex. In refusing sex a woman is not expressing a belief or putting forward an opinion; her refusal is not something whose existence or otherwise is conducive to the spread of truth.

It should be pointed out that in her original paper Langton does not focus on the 'free market of ideas' argument for free speech, but rather emphasizes that "Free speech is a good thing because it *enables people to act*, enables people to do things with words: argue, protest, question, answer. Speech that silences is bad, not because it restricts the ideas available on the shelves, but because it constrains people's actions."⁹ But now that free speech is justified as an instance of a liberty to do things in general, a liberty to act, it becomes unclear why free speech is an especially good thing (if it is). There are many things that people can and might do, some of which we want to encourage while others we wish to curtail. And to decide which there need to be arguments that focus on the nature of those acts. Quite clearly the ability to refuse sex is of crucial importance. But its importance is not so much that of a *speech* act. Rather, it lies in its being an act through which a woman asserts her autonomy in an area where a person's autonomy is of greatest value. Jacobson says, and Langton and Hornsby applaud his saying it, that "what is so terrible about a woman's being unable to refuse sex is the disablement of her autonomy, the resulting violation of her body, and the assault on her well-being."¹⁰ And so, if it is right that the illocutionary act of refusal is silenced, then that is not the basis of a *free-speech* argument against pornography—it is the starting point of an argument from the individual goods of autonomy and freedom from assault and degradation.

In the next section I shall argue that anyway refusal is not silenced. In which case the free speech argument would not have any bite. But in any case the following consideration is important. If our arguments are to be thought of as relevant to a public policy discussion, what in the final analysis is important is that women should not have sex forced upon them. We may disagree about the philosophy of language questions whether the locutions "No", "leave me alone" "I refuse" constitute refusals. But if we agree that pornography is responsible for women being

subjected to non-consensual sex, then we may also be in a position to agree on a policy to restrict it. No doubt it is helpful in an American context, where purveyors of pornography invoke the first amendment (which protects free speech) to protect their activities, to argue that refusal counts as free speech. But it may also be that *either* such freedom should not be extended to pornography, since in Millian terms it does not contribute to the market in *ideas*, or such freedom should not be in every case constitutionally supreme.

Is Refusal Silenced?

So far I have accepted the claim that pornography can silence refusal. In this section I will argue that the matter is not at all clear, and that the option is open of describing matters such that the refusal is not silenced, where such a description is more psychologically plausible.

Jacobson wants to argue that an illocution can be performed even without the appropriate uptake. So he describes a situation in which Bill receives a wedding invitation from Sally, who, he believes, has sent the invitation not with the intention that he attend but instead in order to gloat. Actually she does want him to attend. Jacobson argues that Bill does not take up Sally's true intention but nonetheless she does invite him. The response from Langton and Hornsby is instructive. They consider Uncle Harry who will behave boorishly, whom Sally invites out of duty while hoping he will not attend. Uncle Harry knows this. There is a difference, they say, between inviting someone and wanting them to attend. And so in both cases an invitation is given intentionally and the uptake (recognition of the intention) is secured. The fact that the issuer of the invitation may or may not want it accepted is immaterial.

I shall argue below that a variant on Jacobson's case proves his point. But for the present I want to focus on the fact that Langton and Hornsby have now introduced a distinction between sincere inviting and insincere inviting. This allows a reconstrual of what might be happening when a woman tries to refuse sex but fails to get the man to see that this is what she is trying to do.

Precisely how pornography might silence refusal is not clearly stated, but one of the possible routes might be this. Purveyors of pornography convince their readers that women always want sex; they enjoy violent, abusive sex, they fantasize about rape. Hence, according to the silencing story, the utterance of "No!" and similar locutions is not taken by the man to be a refusal but instead to be part of the game, rather as the words of an actor are not taken to express the actor's feelings but are understood to be part of the play. If the woman is thought always to want violent sex, she cannot be thought to be refusing it.

However, we can reconstrue this using the idea, thanks to Langton and Hornsby, of an insincere illocution. Contrary to Langton and Hornsby, we could say that the woman has indeed uttered a refusal and furthermore the refusal has been recognized as such by the man. But the man takes, mistakenly, that illocution to be insincere. He knows she refuses, but he thinks that she wants him to ignore the refusal—just as Bill and Uncle Harry know that Sally has invited them, but think that she has invited them insincerely, wanting them to ignore the invitation.

How are we to decide which construction fits the case better? The following consideration, I suggest, weighs on my side. Earlier I raised, as did Jacobson, the issue of the culpability of the rapist. If Langton is right, then the worst we could say of him was that he had sex without consent. Bad as that may be, we cannot say something worse, that he ignored a refusal. Notice that on my account, we can now say this. A refusal was issued and was understood. Of course, the rapist will say that he did not believe the refusal to be sincere. Nonetheless, the onus is now on the rapist to provide good justification for this belief. It may be that brainwashing by pornography provides him with what he takes to be a reason for this belief. But clearly that is unlikely to be a very good reason. And in particular it is going to be a very poor reason to ignore repeated refusals. If there is any doubt as to whether the woman's refusal is sincere or not, the only acceptable course of action is to behave as if it is. So on my construal the rapist has committed a cognitive error of a morally heavily loaded kind. But this can all be said only if there is a refusal. If there is none, as on the silencing story, there is no culpability of this sort.

Is Uptake Necessary for Illocution?

In the previous section I suggested that there is a natural understanding of things according to which refusal is not silenced. That discussion built upon Langton and Hornsby's response to Jacobson's claim that uptake is not necessary for refusal to occur. I went along with Langton and Hornsby in assuming that it is. In this section and the following one I want to consider in more detail whether Jacobson might not be right.

The first step is to see that uptake is not necessary for all illocutionary acts. In particular, those involved in institutionalized procedures do not require uptake. The following cases demonstrate this:

- (a) 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). Here the conditions for successful illocution do not include uptake or reciprocity.

- (b) 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.
- (c) Consider surrender on the field of battle. We may imagine a soldier being tried for the war-crime of shooting someone who had surrendered. As long as the individual had thrown down his weapons, held up his hands and cried out “I surrender!” he did indeed surrender. It does not require that the soldier on trial take him to be intending to surrender. It would be no defence that the soldier had not taken him to surrender—and therefore he had not in fact surrendered.¹¹

Langton and Hornsby do think that uptake is always required for at least some illocutions, those “whose conditions are not bound up with particular procedures and which require only the institution of language use itself.”¹² It is not clear where procedures and institutions leave off. It is true that most religious activity is institutionalised, but does someone have to be part of such an institution to be able to engage in prayer? And if not, must God exist for someone actually to be praying? (If God does not exist, there is no uptake of the prayer.) But even in the absence of a governing institution it is not clear why illocution should require uptake. Langton and Hornsby take the reciprocity of illocution to relate to the nature of language as communicative but, as the institutional cases (knighting, passing sentence) show, not every act one performs with words is an act or solely an act of communication—and that fact is not limited to the institutional cases. John may be grumbling and Lizzie may be rejoicing, but their doing so requires no uptake—indeed it requires no audience to perform these acts with words. And even where the act is intimately bound up with communication, the precise nature of the illocutionary acts being performed need not rest on the recognition of an intention. One may slander a person (in a non-legal sense of slander) without anyone’s taking one to have that intention. Alice and Richard may take themselves to be exchanging important information in the serious course of business, but in fact they are really just gossiping. I may forgive you your trespasses, and you are forgiven whether or not you know that I intend to forgive you.

The cases mentioned show that the following is true:

- (a) there are (non-institutional) illocutionary acts of ϕ ing where no-one recognizes the speaker’s intention to ϕ ;

- (b) there are (non-institutional) illocutionary acts of ϕ ing where no-one recognizes that the speaker is ϕ ing;
and for completeness, I think some of the cases (grumbling, gossiping) show that:
- (c) there are (non-institutional) illocutionary acts of ϕ ing where the speaker neither has an intention to ϕ nor knows that she is ϕ ing.

And the cases involved include those where the illocutionary act is performed in the course of communication.

One response to the foregoing might be to deny that my cases are cases of illocution—rather they are instances of perlocution. Austin says that illocutionary acts are performed *in* saying something, perlocutionary acts *by* saying something: “perlocution brings in consequences.” Langton and Hornsby admit that Austin’s characterization of the difference is unhelpful. But the distinction had better be clear enough for them to be able to make out that refusing is an illocutionary act not a perlocutionary one. For, as mentioned at the outset, it would be difficult to make out a case for *perlocutionary* free speech.

I shall say more on the difference between illocution and perlocution below. The cases cited are illocutions if any are. Whether I have performed the perlocutionary act of persuasion depends on my utterance having an effect on the hearer’s beliefs or intentions. But no effect is required to grumble, rejoice, pray, gossip, or slander. Consequences are not brought in here. In certain circumstances, all that is required is that I should utter “Bloggs is a bounder and a thief” to have slandered Bloggs—it does not require anyone to believe me—merely *in* saying that to an audience I have slandered him. The Shorter Oxford Dictionary allows (among others) this definition of slander “the utterance . . . of false statements or reports concerning a person . . . in order to defame or injure him.” Here the act performed depends on the falsity of the report and the intention of the speaker, but not on any effect of the utterance. This case is like Austin’s illocutionary *command* “Shoot her!” and unlike the perlocution of *persuading* the man to shoot. The perlocution corresponding to slander is *defamation*, which does require that the speech actually bring about false negative beliefs concerning a person; the Shorter Oxford Dictionary says of defaming that it is “to bring ill fame upon, to dishonour or disgrace in fact.” Defamation does bring in effects. So we have an illocutionary-perlocutionary pair—slander and defamation—where the perlocution is achieved when the illocution has the intended effect. Arguing and convincing form another such pair. Yet another illocutionary-perlocutionary pair is lying and deceiving. What is interesting about this last pair, like the slander-defamation pair, is that for the illocution to have its intended perlocutionary effect, that intention should be hidden. If I lie in order to deceive you, you had better not know that

I am lying in order to deceive. These are further cases where one can have an illocution without any uptake of the illocution being performed—indeed cases where successful illocution *precludes* uptake.

Is Uptake Necessary for Refusal?

In general, then, non-institutional illocution does not require uptake. And so Langton and Hornsby cannot argue that the failure of a man to take up a woman's intended refusal *therefore* entails that the illocution of refusal did not take place. Refusal might be like the illocutions of praying and rejoicing, among many others, that require no uptake. On the other hand might it be a special illocution, one that does require uptake, just as Langton argues that warning requires uptake (following the example from Davidson mentioned above)? Does the act of refusing specifically require uptake?

I doubt even that warning requires uptake, as the following case shows. A burglar enters a property at night. He has seen a clearly displayed sign: "Warning: premises patrolled by fierce dogs" but believes this is just a blind, intended to mislead people into thinking there are dogs. Believing that there are none, he later discovers his mistake when attacked by the patrolling dogs. The burglar has no right to claim that he was not in fact warned of the presence of dogs, just because he believed the sign was intended to deceive rather than genuinely warn. He was warned alright, but he failed to see that the warning was sincere. If Davidson's case does not look like warning, that may be because of factors that depend not merely on a simple failure of uptake.¹³

The burglar's position is analogous to that of Bill in a variant of Jacobson's example of the wedding invitation. In the original example there is an invitation that Bill takes to be insincere. Langton and Hornsby argued, plausibly, that as described Bill does take up the intention to invite (even if not he does not see the sincerity with which it was sent). In the variant case, we can imagine that Bill mistakenly believes that there is no wedding at all—he thinks that the invitation is a fake invitation, sent by Sally in order to make him feel regretful. There is now clearly no uptake, since he thinks there is no wedding to be invited to. Bill's error and consequent failure of uptake do not entail that he was not invited. If he later finds out that he missed a genuine wedding, he cannot claim that unlike the other recipients of the invitation letter, he was not invited.

If inviting does not require uptake, it would be odd if refusing an invitation did. Consider the example of Jacques the conceited chef. He believes that no-one can get enough of his wonderful cooking. When Jacques offers someone more of a dish they sometimes say "No, thank you" but, he thinks, they really want him to offer yet more delicious

food. His misapprehension that his mediocre fare is universally adored may be fed by his being part of a community of conceited and mutually congratulatory chefs, whose self-image is inflated by sycophantic restaurant critics and a greedy food industry. So when Sara says “No” intending to decline an offer of food, there is not even a flicker of uptake in Jacques. On the contrary, he takes this as a reason to give her yet more. Nothing she says can prevent him; every utterance of a protest is taken as an encouragement to pile her plate high with unwanted fodder. Langton and Hornsby’s interpretation must be that because Jacques failed to see that Sara was intending to refuse, nothing she said *was* a refusal. That is not, I believe, how most people would read this case. She refused all right—only Jacques’ arrogance and boorishness, and his being deceived by his colleagues into believing that his cuisine is irresistible, prevented him from seeing that she was refusing. Similarly, as I claimed above, if pornography does create a climate where certain men cannot recognize a woman’s intention of refusing, that cannot prevent her from refusing.¹⁴

This example shows that a failure of uptake—or even uptake opposite to the one intended—is not sufficient to prevent an act of refusal. Therefore Langton and Hornsby would have to argue that special features of the cases in which they are interested do after all mean that lack of uptake entails failure of the attempt to refuse. Since they think that failure of uptake is sufficient, they don’t make such a case. Perhaps, however, the food example might suggest such a case. It is true that sometimes refusal of food is insincere—we all know (or have been) the person who offered more food says “Oh no, I couldn’t possibly” but then gladly accepts once the invitation is repeated. Quite possibly this locution, in the appropriate circumstances, could standardly be interpreted as really saying “yes, please!” or “I will gladly accept, if you ask me again.” Once such a convention had crystallized, that sentence might no longer *be* a refusal of food. Does that support the contention that conditions might exist such that a woman’s “No!” is not a refusal? Might not the ‘milieu’, if one may call it that, of pornographers and their consumers create a sort of dialect in which, in the context of sex, the utterance “No” by a woman never means *no*, and hence in which is no room for the illocutionary act of refusal of sex by a woman?

I do not think that this supports Langton and Hornsby’s case—and certainly not in the way that they intend. In the last paragraph what would make the utterance of “Oh no, I couldn’t possibly” not a refusal is the coming into being of a linguistic convention. What drives Langton and Hornsby’s argument is not the matter of a convention but is instead their belief that it is the failure of uptake that prevents the utterance from being a refusal. That failure of uptake may be due to the man’s *believing* that there is a convention that a woman’s “No” means *yes*. But that belief is false; there is no such convention, and so long as there is no such

convention “No” is a refusal. Nonetheless, for sake of argument, let us imagine that there really were a dialect or the like where utterances by a woman of the sounds “No” or “I don’t want sex” and so forth never meant *no*. Then these utterances, because of the difference in meaning, would not be the same *locutions* in that dialect as they are in standard English. This should not satisfy Langton and Hornsby, since their story is that the locutions still mean *no* but fail to achieve an illocutionary refusal.

Illocution and Perlocution

I have been arguing that reciprocity (uptake) is not a necessary part of illocution in general, nor in the case of illocuting a refusal in particular. Before concluding I wish to make some more theoretical remarks on the nature of illocution and its difference from perlocution. The essence of perlocution includes some effect in the audience. We might be inclined to take this as a defining feature, one which distinguishes it from illocution. Thus the nature and existence of the illocution performed when someone utters *S* will not depend on the effects of the utterance while the nature and existence of the perlocution will so depend. Note, however, that Langton and Hornsby’s account of illocution would not obey this distinction, since they hold that the recognition by the hearer of the speaker’s illocuting (or intention to illocute) is essential to illocution, where that recognition is an *effect* of the locution. They are in Austin’s company here; he too explicitly regards uptake as an effect of speaking which is essential to the illocution.¹⁵ For Austin, Langton, and Hornsby, illocutions as well as perlocutions necessarily bring in effects. In which case we are owed an account of what really makes this distinction. And this is a significant debt, since without it we are unable to tell whether we should really regard the uptake of intended refusal as essential to the occurrence of a refusal. Austin’s distinction between ϕ -ing *in* saying that *p* and ϕ -ing *by* saying that *p* is not enough.

So far we have concentrated largely on spoken speech acts. This perhaps distorts the discussion since in spoken communication between individuals it is typically (though not always, as I suggested in the section before last) the case that the speaker does want to communicate his intentions to the hearer. But if we reflect on written ‘speech’ acts or utterances which are on radio, television or are recorded, then the audience becomes somewhat remote. On the Langton-Hornsby account of illocution that should make for difficulties, since the audience in whom uptake may or may not be secured may consist in millions of persons or none at all. A politician in a political broadcast may argue for some proposition. On whose uptake does this illocution depend? On all the audience? On just some of the

audience? On some sort of average? None of these seems right. The same politician may keep a secret diary, which is neither published nor read again by its writer or anyone else. Does the fact of there being no audience prevent her in her writing from being able to deplore the state of the nation, praise a colleague, or predict the outcome of an election?

It seems odd now that the *actual* uptake should determine the nature of the illocution—and I suggest that it does not. That it does not may be signaled by the fact that illocutionary verbs typically do not take the audience as a grammatical direct object. I argue my case with you. My case is the direct object of my arguing, while you are just the indirect object. Note that the position is reversed in perlocution. I convince you with my arguments. In the perlocution you the audience are now the direct object. It is not that effects on the audience are unconnected with the illocution performed. There may well be a counterfactual or subjunctive connection. It may well be that if the politician is arguing then a normal, competent language user, in the given context and so on, would realize that the politician is intending to argue. Although no-one reads the secret diary, it is true that if some normal person had read it they would have realized that the writer intended to deplore the state of the nation.

We tend to think that the truth of a counterfactual or subjunctive has an explanation. The cup would have fallen if knocked, because it was placed precariously on the edge of the table. What explains the fact that if someone had read the diary they would have understood the writer to have had certain intentions? That is one of the basic questions of linguistics; despite the complexity of answers in detail, we know the sort of factors which are relevant: primarily the words actually written, and their meanings; context, including institutional setting if relevant, is obviously important too, as indeed may be certain other background information including facts about human nature. These things, which include appropriate felicity conditions, fix the illocution performed. They do not *include* actual effects of the locution though they do determine what effects would typically occur. For that reason, failure of the effect to occur would be *evidence* that the conditions for illocution had not been fulfilled. But good evidence for failure is not the same as a sufficient condition for failure.

This way of looking at illocution and its relation to perlocution coheres with the cases discussed above. It does not require a distinction between institutional cases and non-institutional cases. It does not allow that an incompetent audience can prevent an illocution being made by failing in uptake; illocution may be effected by the words, their normal meaning and the context alone. An honest and clear sign may issue a warning, whether or not its reader thinks it is a fake. “No” not only means *no* but is a refusal, however blind to the speaker’s intention the

hearer may be. Langton and Hornsby's view that pornography silences, preventing illocution, by preventing uptake of the intention to refuse, is unsubstantiated. (Which, it must be emphasized, is not to draw any conclusion about the moral permissibility of pornography.) As the reference just made to context suggests, it may nonetheless be open for them to argue that independently of what is in the mind of an attacker, pornography creates a context such that the locutions which are intended to be a refusal fail to be such. But that would require an argument different from that presented hitherto.¹⁶

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NOTES

¹ Austin, J. *How to Do Things With Words* (Oxford: Clarendon Press 1962).

² Langton, R. "Speech Acts and Unspeakable Acts," *Philosophy and Public Affairs* 22, 1993 and Hornsby, J. and Langton, R. "Free Speech and Illocution," *Legal Theory* 4, 1998. The claim that pornography silences and thus infringes free speech originate with Catherine McKinnon, in for instance, *Feminism Unmodified* (Cambridge, Mass: Harvard University Press 1987), and *Only Words* (Cambridge, Mass: Harvard University Press 1993). They argue that this can be taken literally, when others have understood it as at best metaphorical. I shall not be considering McKinnon's work, only Langton and Hornsby's arguments on her behalf.

³ *Uptake* has been intended by some to be more general than this definition. Here I intend solely knowledge by the audience of the speaker's intended illocution. Langton and Hornsby make the characterization slightly differently, in terms of the audience taking the speaker to be actually performing the illocution. Nothing in the following discussion hangs on this difference.

⁴ Davidson, D. "Communication and Convention" in *Inquiries into Truth and Interpretation* (Oxford: Clarendon Press 1984) pp. 269–70.

⁵ Jacobson, D. "Freedom of Speech Acts? A Response to Langton," *Philosophy and Public Affairs* 24, 1995.

⁶ Relevant here is the vexed question of tacit consent. Famously, Sir Thomas More argued that his silence with respect to the Act of Supremacy must legally be taken to be consent, in the civil law maxim *Quie tacet, consentire videtur*. See Ackroyd, P. *The Life of Thomas More* (London: Vintage 1999) p. 383. Of course, silence could only ever be interpreted as consent if refusal is possible. But if Langton is right, refusal is not possible. So in this case it could not be thought that silence is consent.

⁷ Jacobson 1995; p. 74.

⁸ If there is an element of prediction, then this element is not exclusive to the judge. What is exclusive is the non-propositional element of judicial instruction.

⁹ Langton 1993; p. 328.

¹⁰ Jacobson 1995; p. 76.

¹¹ One of the most striking moments of Steven Spielberg's film *Saving Private Ryan* occurs when American troops, who having succeeded despite terrible losses in overrunning the German positions, gun down German soldiers who have surrendered. The explanation for the G.I.s actions might be that in their fear they did not realize that the Germans were

intending to surrender. That explanation is not inconsistent with the claim that the Germans had indeed surrendered.

¹² Hornsby and Langton 1998; pp. 24–25. It is unclear whether Hornsby and Langton think that uptake is a condition on *all* illocutionary acts, procedural or not. In the case of marriage, one of the cited conditions is “those present recognize the person to be marrying”. Later they write “By involving the hearer as well as the speaker, illocutionary acts reveal language as communicative. And it is in virtue of this that illocutionary acts are of special concern in an account of how language works.”

¹³ It is worth noting that Davidson’s use of the example does not concern warning nor the question of uptake but the rather different question of whether there are conventions governing assertion.

¹⁴ One might suspect, if there are cases at all like this, they will involve not only deception (by pornographers and the like) but also *self*-deception on the part of the man. And on some analyses of self-deception, that would involve the knowledge, albeit unconscious, that a refusal was intended. Which in turn means that, at some level of psychology, there was uptake after all.

¹⁵ Austin 1962; pp. 116–17.

¹⁶ I should like to thank Rae Langton, Michael Menlowe, and the referees for the *Pacific Philosophical Quarterly* for their kind and helpful comments.