

VI. HOW TO UNDO THINGS WITH WORDS

Rae Langton

1. *Reminder*. Speech acts accommodate injustice, when unjust social norms and patterns of authority (i) feed into illocutionary speech acts as *felicity conditions*, making some speech acts count as ‘correct play’, while others are silenced; and (ii) emerge as *outcome* of accommodation, springing into being when speech acts require them (if felicity conditions hold). Knowledge (attribution?) follows rules of accommodation, lost with shifting standards, stakes, and credibility, gained through self-verifying or social looping speech acts. Hearers change, acquiring attitudes (belief, desire, hate) they lacked before. Back-door speech acts (via e.g. presupposition) can disguise and ‘normalize’ unjust patterns, as common knowledge. Gloomy focus on injustice; so what resources are visible for its *undoing*?

2. *Reverse-engineer Brandeis*. How to unpack his conditional? Injunction: avoid ‘enforced silence’ of harmful speech *just in case* conditions hold. Problem: conditions do not hold. Conclusion: either *enforce* silence, or *create* the conditions. If remedy to be applied is not ‘enforced silence’, then *enable* the ‘exposure through discussion of falsehood and fallacies’, *enable* the ‘averting of evil by the processes of education’. Find other ways to combat unjust speech (e.g. norm-setting, authority-distributing, hatred-promoting) that cannot be so remedied.

2. *Doing things together with words*

2.1. *Speech*. Capacity to speak involves being able to do things with words: not just a power to make meaningful noises, mere locution, but a substantial capacity to perform speech acts, which takes concrete economic and educational resources, and contributions from parties other than the speaker (Hornsby, Langton, West).

2.2. *Hearers, bystanders, and others*. Speech acts are accommodated in part by the attitudes, acts and *omissions* of other parties, e.g. supplying felicity conditions of uptake, failure to block. Implications for responsibility of other parties—ordinary hearers and bystanders, institutions, and others—all of whom can be fellow actors in what speakers do with words. Responsibility of other speakers who undermine credibility in part by undermining hearers’ capacities (Nazi propaganda, Iago, pornography).

2.3. *Knowledge*. Asserting, or telling, as a particularly significant class of speech acts. Knowledge as a norm for such speech acts; and also for back-door testimony, implicit as well as explicit, fictional as well as factual: tell it only if you know it. (N.b. receptive knowledge, rather than constructive.) Knowledge a norm for free speech, giving special status to knowledge-oriented speech: protect only if knowledge promoting? Too strong (but cf. Mill, Shiffrin, Greenawalt, Maitra and McGowan). The role of knowledge of what justice requires (Waldron).

3. *Institutions*

3.1. *Responsibility for omissions*. Doing nothing, as a hearer or bystander, can be doing something. Possibility: state non-interference of unjust speech (hate speech, pornography) can be a failure to block that grants it additional force (Maitra); effectively a state *subsidy* of injustice. (‘Subsidy, *n.* Help, aid, assistance; *Obs.*’ From Latin *sub-* + *sedēre* to sit + *-ium* (*OED*). That omission could be ameliorated through state speech, via communication, if not legal constraint. (Cf. Maitra on subordinating speech, via derived and licensed authority.)

3.2. *Expand support for speech.* Speech as a *capability*, requiring concrete economic and educational resources, including literacy. Opportunities for ‘speaking back’ by victimized groups, a speech-enhancing policy of supplying institutional, educational and material resources to answer hate speakers (cf. Gelber, Nussbaum, Sen, Brison). Alter defaults while respecting autonomy: applications to e.g. hate speech and pornography to create an ‘opt in’ structure, rather than an ‘opt-out’ (Sunstein). Priority to knowledge-oriented speech (Mill), for individuals and institutions (e.g. media organizations, page 3 campaign). Institutional structures to guard against unjust distributions of authority (e.g. anonymity, re implicit bias). Opportunities for small-group deliberation and joint commitment, exposing ‘pluralistic ignorance’ about e.g. harmful social norms that are followed when endorsed by no-one (Bicchieri and Mercer).

3.3. *Invest in knowledge of what justice requires.* You don’t have justice unless you know what justice requires, and that others are committed to it; ‘everyone accepts and knows that the others accept the same principles of justice’ (Rawls). Hate speech, pornography, and wider media speech, not only attack civil standing (MacKinnon, Stanley); but also *knowledge* of civil standing (Waldron, cf. Lecture III). Suppose too that the law should *improve* morality (cf. Green on sexual norms). That reinforces a conclusion that state should speak, and combat the accommodation of injustice: not (or not only) exercising *practical* authority, issuing commands (civil and criminal law); but *epistemic* authority, promoting knowledge of justice itself. [e.g. plain English version of 2003 Sexual Offences Act; sex and relationship ed; ‘health warning’ labels on pornography (cf. Donnerstein, Linz and Penrod); adequate epistemic and practical resources for police and support (Dodd)]

4. *Individuals, as speakers, hearers and bystanders.*

4.1. *Responsibility for backdoor speech acts.* For backdoor speech acts enacting norms and authority patterns, under guise of e.g. assertion; and backdoor testimony (see 2.4. knowledge as a norm).

4.2. *Responsibility for omissions.* Again, doing nothing, as a hearer or bystander, can be doing something, failing to block assumptions that enact norms and authority patterns. Responsibility: of what sort? And how does it vary?

4.3. *Epistemic virtues.* (cf. Fricker, virtue of ‘testimonial justice’) For speakers, hearers and bystanders. Alertness and judgement. Cf. Mill: free speech requires attentive hearers. Applies because problem is partly epistemic, as with back-door speech acts of presupposition introduction (Fricker), generics and other masked and masking mechanisms.

4.4. *Practical virtues.* Capacities to intervene and block where one is able; or, where there is ambiguity in illocutionary force, offer uptake or response that defuses. Insist on disambiguation of e.g. generics, use meta-linguistic negation (Anderson, Langton and Haslanger). Harness power of backdoor speech acts, by presupposing widespread practices and shared commitments, rather than attempting overtly to enact new norms (cf. Cialdini, Bicchieri and Mercier).

4.5. *Virtues, epistemic and practical.* Kantian perspective: virtues as powers to fulfill an imperfect duty, to intervene sometimes, and to some extent, enabling disempowered speech, and helping block its antithesis. Relation to forward-looking responsibility, without blame (Pickard). Helping prevent, or undo, injustice—and perhaps becoming a source of *moral luck* for one’s fellow speakers.

Quotations

1. To courageous, self-reliant men, with confidence in the power of free and fearless reasoning applied through the processes of popular government, no danger flowing from speech can be deemed clear and present unless the incidence of the evil apprehended is so imminent that it may befall before there is opportunity for full discussion. If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence (1927).

2. We have now recognized the necessity to the mental well-being of mankind...of freedom of opinion, and freedom of the expression of opinion, on four distinct grounds...

First, if any opinion is compelled to silence, that opinion may, for aught we can certainly know, be true. To deny this is to assume our own infallibility.

Secondly, though the silenced opinion be an error, it may, and very commonly does, contain a portion of the truth; and since the general or prevailing opinion on any subject is rarely or never the whole truth, it is only by the collision of adverse opinions that the remainder of the truth has any chance of being supplied.

Thirdly, even if the received opinion be not only true, but the whole truth; unless it is suffered to be, and actually is, vigorously and earnestly contested, it will, by most of those who receive it, be held in the manner of a prejudice, with little comprehension or feeling of its rational grounds. And not only this, but fourthly, the meaning of the doctrine itself will be in danger of being lost or enfeebled, and deprived of its vital effect on the character and conduct; the dogma becoming a mere formal profession, inefficacious for good, but cumbering the ground and preventing the growth of any real and heartfelt conviction from reason or personal experience. (Mill)

3. *Waldron*. The visibly pornographic aspect of our society has a pedagogical function that dwarfs in its scale and intensity the attitudes that racist hate speech tries to inculcate. Not only does pornography present itself as undermining society's assurance to women of equal respect and equal citizenship, but it does so effectively by intimating that *this is how men are taught, around here*, on the streets and on the screen, if not in school, about how women are to be treated.

4. [T]ruth has no chance but in proportion as every side of it, every opinion which embodies even a fraction of the truth, not only finds advocates, but is so advocated as to be listened to. (Mill)

5. The First Amendment is concerned primarily with government regulation of texts—it limits the government's ability to limit what can be said. It is apparently not concerned with government regulation of contexts—it has nothing to say when government, through the tools of social meaning regulation, transforms the social meaning of some act. But in light of our sketch of the regulation of social meaning, this division may seem quite odd. For there is no reason in principle to believe that the orthodox is more easily regulated by regulating texts than regulating contexts. (Lessig)

6. There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or 'fighting words' those that by their very utterance inflict injury or tend to incite an immediate breach of the peace. [...] [S]uch utterances are ... of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality. *Chaplinsky v. New Hampshire, 1942*

References

- Anderson, Luvell, Sally Haslanger and Rae Langton. 2012. 'Language and Race', *Routledge Companion to the Philosophy of Language*, eds. Gillian Russell and Delia Graff Fara (Routledge 2012), 753-67
- Bicchieri, Cristina, and Hugo Mercier. 2014. 'Norms and Beliefs: How Change Occurs', *Iyyun: The Jerusalem Philosophical Quarterly* 63, 60-82.
- Brison, Susan. 1998. 'The Autonomy Defense of Free Speech', *Ethics*, 108, 312-339
- Cialdini, Robert. 2007. 'Descriptive social norms as underappreciated sources of social control', *Psychometrika* 72, 263-8.

- Dodd, Vikram. <http://www.theguardian.com/society/2015/jun/02/rape-victims-failed-under-resourced-metropolitan-police-cps-prosecutors-report>
- Donnerstein, Edward, Daniel Linz, Steven Penrod. 1987. *The Question of Pornography: Research Findings and Policy Implications* (Free Press)
- Fricke, Miranda. 2007. *Epistemic Injustice: Power and the Ethics of Knowing* (NY: Oxford University Press).
- Haslanger, Sally. 2011. 'Ideology, Generics, and Common Ground.' in Charlotte Witt, ed., *Feminist Metaphysics* (Dordrecht: Springer)
- Gelber, Katharine. 'Hate Speech and the Australian Legal and Political Landscape', in *Speech and Harm*, eds Maitra and McGowan.
- Greenawalt, Kent. 1989. *Speech, Crime, and the Uses of Language* (New York: Oxford University Press).
- Hornsby, Jennifer. 1994. 'Illocution and its Significance', in *Foundations of Speech Act Theory*, ed. S.L. Tsohatzidis (London: Routledge).
- Jones, Karen. 2013. 'Distrusting the Trustworthy', in *Reading Onora O'Neill*, eds. Archard, Deveaux, Manson, Weinstock (Routledge).
- Langton, Rae. 2014. 'Hate Speech and the Epistemology of Justice' (Review of Waldron, *The Harm in Hate Speech*), *Criminal Law and Philosophy*.
- _____. 'Esteem in the Moral Economy of Oppression', *Philosophical Perspectives* 23 (2010) *Ethics*, ed. John Hawthorne, 273-291.
- _____. 2009. *Sexual Solipsism: Philosophical Essays on Pornography and Objectification* (Oxford University Press).
- Lessig, Lawrence. 1995. 'The Regulation of Social Meaning', *University of Chicago Law Review* 62, 943-1045.
- Maitra, Ishani, and Mary Kate McGowan. 2007. 'Limits of Free Speech: Pornography and the Question of Coverage', *Legal Theory*, 13, 41-68.
- _____. 2012. 'Subordinating Speech', *Speech and Harm*, eds. Maitra and McGowan (Oxford University Press, 2012).
- Mill, J. S. 1859. *On Liberty* (1859), Ch. 2.
- Pickard, Hannah. 'Responsibility without Blame: Philosophical Reflections on Clinical Practice', *Oxford Handbook of Philosophy of Psychiatry* 2013.
- Rawls, John. 1971. *A Theory of Justice* (Belnap).
- Gordon-Smith, Eleanor. 2014. 'Speaking bigotry to power: sticks, stones and the bounds of free speech.' Wentworth Medal Prize Essay. <http://ses.library.usyd.edu.au/handle/2123/12735>
- Green, Leslie. 2013. 'Should the Law Improve Morality?', *Criminal Law and Philosophy* 7, 473-94.
- Maitra, 'Subordinating Speech', in *Speech and Harm*, *qv*.
- Mansbridge, J. 1999. 'Everyday Talk in the Deliberative System.' In *Deliberative Politics*, ed. S. Macedo, 211-240, (New York: Oxford University Press).
- Nussbaum, Martha, and Amartya Sen. 1993. *The Quality of Life* (Clarendon Press).
- Shiffrin, Seana. 2014. *Speech Matters: On Lying, Morality and the Law* (Princeton University Press).
- Saul, Jennifer. 2012. *Lying, Misleading and What is Said*. (Oxford University Press)
- Stanley, Jason. 2015. *How Propaganda Works*. (Princeton University Press).
- Stern, Tom. 'The Five Questions: An exercise in how to ask a good question'. UCL. (ms.)
- Sunstein and Thaler, Richard and Cass Sunstein. 2008. *Nudge* (Yale University Press).
- Waldron, Jeremy. 2012. *The Harm in Hate Speech* (Harvard University Press).