

## *Silencing Speech*

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### **I Introduction**

Pornography deserves special protections, it is often said, because it qualifies as speech. Therefore, no matter what we think of its content, we must afford it the protections that we extend to most speech, but don't extend to other actions.<sup>1</sup> In response, Jennifer Hornsby and Rae Langton have argued that the case is not so simple: one of the harms of pornography, they claim, is that it *silences* women's speech, thereby preventing women from deriving from speech the very benefits that warranted the special protections in the first place.<sup>2</sup> At first glance, it is hard to see how to make sense of this response. If the claim is that pornography prevents women from actually uttering words, then it just seems false; on the other hand, if that isn't the claim, then it isn't clear how

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1 In the United States, these protections take the form of a (legal) right to free speech, incorporated into the First Amendment of the U.S. Constitution. It is worth noting, however, that one can agree that speech deserves special protections without believing that those protections should take the particular form they do in the U.S.

2 For these arguments, see Langton (1993), Hornsby (1994), Hornsby (1995), Hornsby and Langton (1998), and Langton and West (1999). This line of argument picks up on and develops ideas due to Catharine MacKinnon, especially, MacKinnon (1993).

anyone can be said to be *silenced*. Faced with such worries, many have been inclined to dismiss these claims about silencing as confused.

In this paper, I offer a way of making sense of this notion of silencing, according to which it is coherent to claim that pornography silences women. On my view, the truth of this claim does not require that women be prevented from uttering words. Rather, I develop an account of silencing that, unlike the competing account, can help make clear why a speaker who is silenced is thereby unfairly deprived of (some of) the benefits that lead us to place a special value on speech in the first place. Moreover, on my account, silencing turns out to be a *distinctively* speech-related wrong, in the sense that a silenced speaker is deprived of benefits that speech, and only speech, can provide.

Much of the recent philosophical discussion of silencing has in fact focused on the nature of the special protections due to speech. In my view, not enough attention has been paid to the phenomenon of silencing itself, and in particular, to the kind of wrong it constitutes. This paper is an attempt to rectify this oversight. I argue that, given their own view about the form the special protections for speech should take, Hornsby and Langton should prefer my account of silencing to their own. But, further, even if their particular view about special protections were to be rejected, my account still shows why silenced speakers suffer a significant wrong with which feminists (and others) should be particularly concerned.

Though the current philosophical interest in silencing arises in the context of discussions of pornography and its harms, it is not my aim to establish that pornography in particular silences. For all I say here, sources other than pornography (e.g., racist hate speech) may silence as well. Moreover, while other discussions of silencing have concentrated on the silencing of women in particular, my view makes room for the possibility that other sorts of speakers can also be silenced. My aim here is to offer a general account of the phenomenon that makes clear what it is for a speaker to be silenced, and further, that lays bare the empirical commitments of claims about silencing, thus enabling us to see what evidence bears on their truth. These points will be developed further in the final sections of this paper.

## II The Silencing Argument

To motivate my account of silencing, I will begin by briefly presenting, and then criticizing, an alternate account of the phenomenon, due to Langton and Hornsby. As I understand it, they are committed to two theses. The first of these I dub the 'Silencing Thesis':

*Silencing Thesis*: Pornography systematically silences women.<sup>3</sup>

There may be more than one conception of silencing that makes the Silencing Thesis plausible. However, for Langton and Hornsby, there is a further constraint on acceptable conceptions of silence. They want a conception that also renders true their second thesis, which I label the 'Free Speech Thesis':

*Free Speech Thesis*: Speakers who are systematically silenced thereby suffer an infringement of their right to free speech.<sup>4</sup>

If both the Silencing Thesis and the Free Speech Thesis are true, then pornography infringes women's right to free speech. But that suggests that there may be a conflict within the speech right itself. If, as many have claimed, the right to free speech protects the production, distribution, and consumption of pornography, then the right of producers, distributors, and consumers of pornography (henceforth, 'pornographers') to produce, distribute, and consume pornography seems to be in direct conflict with women's right to speak. Given this conflict, the question of whether it is permissible to regulate pornography can only be settled by balancing the value of securing for one group the right to speak against the value of securing the same right for the other group. It may turn out that there is compelling reason to prefer the pornographers' right. But to admit that this balancing is necessary is to admit that, even if pornography qualifies as speech, it does not immediately follow that all attempts to regulate it are ruled out by the right to free speech.<sup>5</sup>

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3 Here and throughout this paper, the claim that pornography silences women should be understood as shorthand for the claim that the production, distribution, and consumption of pornography silences women.

4 The notion of systematicity that appears in both the Silencing Thesis and the Free Speech Thesis is not explicit in either Langton's or Hornsby's work. But I think it is necessary, because even on their interpretation of the right to free speech, only systematic silencing, not just any silencing, is an infringement of that right. I return to this notion of systematicity and its importance to the Silencing Argument in notes 12 and 15.

5 If MacKinnon is right about what pornography does, there is also reason to doubt that all pornography should qualify as speech in the sense relevant to a right to free speech. See Maitra and McGowan (2007) for an argument to this effect. For current purposes, however, I set such concerns aside.

Henceforth, I refer to the argument sketched above as the ‘Silencing Argument.’<sup>6</sup> In the remainder of this section, I elaborate on the argument, focusing especially on the account of silencing offered by Hornsby and Langton. Then, in the next two sections, I raise a pair of difficulties for this account.

Hornsby and Langton rely upon J.L. Austin’s theory of speech acts to spell out their conception of silencing (Austin 1975). It is easy to see why the Austinian theory is attractive in this context. The central insight of that theory is that speech *is* action: words are used to *do* things, to perform acts. But if speech is action, if speaking is doing things with one’s words, then perhaps silence can consist in being unable to do some of what one wants to do with one’s words.

Austin distinguishes several types of acts that a speaker can perform with her words. For the purposes of the Silencing Argument, however, his category of illocutionary acts is particularly crucial. Suppose that, as Ben is about to leave the house without a coat, Amy says, ‘It’s cold outside.’ In saying what she does, Amy *warns* Ben that it is cold outside. Warning is an illocutionary act. According to Austin, illocutionary acts are ones that a speaker performs merely in virtue of uttering the right words in the right contexts. In such contexts, the utterance simply *constitutes* the act in question. Besides warning, further examples of illocutionary acts include marrying, christening, betting, promising, urging, telling, protesting, and refusing, to name but a few.

On Austin’s view, illocutionary acts are to be distinguished from perlocutionary acts. In the example above, by saying what she does, Amy may *cause* Ben to do certain things: for instance, she may persuade him to put on a coat before he ventures out. Persuading is a perlocutionary act. Perlocutionary acts are ones that bring about certain effects, such as the effect of getting someone to believe something, or getting them to perform an action. Unlike illocutionary acts, perlocutionary ones are not simply constituted by the utterances used to perform the act. I say more about the differences between illocution and perlocution in the next section.

With this Austinian framework in hand, we are now in a position to understand the phenomenon that Hornsby and Langton label ‘silencing.’ To illustrate this phenomenon, consider the following scenario:

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6 Though both Langton and Hornsby are committed to this argument, there are some differences in how they defend its premises: see, for example, note 13. Because these differences don’t matter for my purposes, I largely gloss over them.

*Scenario 1:* A woman says 'No' to a man, intending to refuse sex. The man understands the conventional meaning of her utterance, and recognizes the content it expresses. Nevertheless, the utterance does not do what she wants it to do: it does not deter him from forcing sex on her.

In saying 'No' here, the woman intends to refuse sex (her intended illocutionary act), and by doing so, to deter the man from having sex with her (her intended perlocutionary act). Clearly, her perlocutionary act fails: her utterance doesn't have the effect she wants it to have. *One* possible explanation for this perlocutionary failure is that her intended illocutionary act has also failed. According to Austin, an illocutionary act succeeds only if its intended audience recognizes it as such, i.e., only if it secures *uptake*.<sup>7</sup> If the man fails to recognize the woman's intention to refuse, that's sufficient to explain why he isn't deterred from having sex with her.

But why should we suppose that the woman's utterance might fail to secure uptake? After all, the sentence she utters is simple enough, and one that is regularly used to perform refusals. Given the assumption that the man is a competent speaker of English, how could he fail to recognize her illocutionary intent? Here's one way in which this might happen.<sup>8</sup> Suppose that the man believes that women in sexual contexts are concerned to not appear promiscuous, or overly sexually forward.

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7 Austin writes: 'Unless a certain effect is achieved, the illocutionary act will not have been happily, successfully performed' (Austin 1975: 116-17). The effect he has in mind here is uptake, which he characterizes as 'the understanding of the meaning and of the [illocutionary] force of the locution' (Austin 1975: 116-17). I gloss this as follows: uptake requires both understanding of the content expressed by the utterance, and recognition of the speaker's illocutionary intention(s), that is, recognition of her intention to perform a given illocutionary act (or acts). What I am calling 'uptake' thus combines what are sometimes called 'locutionary uptake' and 'illocutionary uptake.'

In the passage quoted above, Austin seems to make uptake a necessary condition for successful performance of illocutionary acts. This is controversial. For one thing, it has the consequence, unattractive to some, that a speaker may fail to perform an illocutionary act merely because her audience is inattentive, or mishears what she says. Daniel Jacobson, for one, has written that this is to hold performance of illocutionary acts 'hostage to the perversity of one's audience' (Jacobson 1995: 74).

Be that as it may, let me note this: even if it is right, *contra* Austin, that an illocutionary act can be performed without uptake, there is clearly a sense in which that act is less than fully successful — or *happy*, to borrow an Austinian locution — in such a case. For the purposes of this paper, failure (or lack of full success) of an illocutionary act can be understood in this way, that is, as not implying that the act isn't performed at all.

8 I discuss some other ways in which this could happen in § VII.

He thinks that they say whatever is necessary to maintain that appearance. Accordingly, he takes women in such situations to be following a cultural script that specifies what they should say (in order to not appear too forward), rather than attempting to express their own beliefs and desires.<sup>9</sup> If he believes this, he may well regard the woman's 'No' as part of that script, rather than as a genuine attempt to refuse. And that would suffice to prevent her utterance from securing uptake.<sup>10</sup>

As described above, this is a case of *illocutionary disablement*: the woman's intended illocutionary act is not fully successful, because it fails to secure uptake. A speaker is illocutionarily disabled iff she is unable to successfully perform her intended illocutionary act.<sup>11</sup> It is this

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- 9 Compare Scenario 1 with another scenario that Langton also discusses, in which it may be intuitively clearer that the speaker's illocutionary act fails (Langton 1993: 321):

*Scenario 1a:* In a theatrical production, an actress acts out a scene in which there is a fire. Following the script, she yells, 'Fire! I mean it! Look at the smoke!' In the meantime, a real fire breaks out at the back of the theater. Noticing this, the actress attempts to warn the audience by shouting, 'Fire!' The audience doesn't respond.

Here, as in Scenario 1, the speaker's intended perlocutionary act fails: her utterance doesn't cause her audience to leave their seats. A plausible explanation for this failure is that the audience doesn't recognize her illocutionary intention: they don't realize that she is attempting to warn them. Rather, because they take the actress to be merely following the script of the play, they remain in their seats.

According to the explanation I am considering for what goes wrong in Scenario 1, the audience in that example regards the speaker in much the same way that the audience in Scenario 1a regards the actress, i.e., as playing a scripted role.

- 10 Let me stress again that this is *one* among several possible explanations for why the woman's 'No' fails to deter the man in Scenario 1. There are other available explanations as well: for instance, it could be that the man recognizes the woman's intention to refuse, but merely ignores it. If that's what happens, then her illocutionary act is fully successful, but her perlocutionary act fails.

In practice, it will be difficult to tell which of the available explanations is the correct one for a given instance of Scenario 1. But that is no reason to suppose that lack of uptake isn't the correct explanation for *some* such instances. At the end of the day, this is an empirical matter. All I can do here is show that there is nothing incoherent about this possibility.

- 11 Failure to secure uptake is one way in which an intended illocutionary act may be unsuccessful, but it is not the only way. Besides uptake, most (perhaps all) illocutionary acts have further felicity conditions, i.e., conditions that must be satisfied in order for these acts to be performed fully successfully. For instance, in most U.S. states, the illocutionary act of marrying includes all of the following as felicity conditions: that the speaker be unmarried, standing before the appropriate authority, with an unmarried person of the other sex, in the presence of appropriate

phenomenon — i.e., illocutionary disablement — that Langton and Hornsby label ‘silencing.’

So far, nothing has been said about pornography. Here Hornsby tells the following story. Pornography produces in its consumers beliefs that prevent them from recognizing women’s intentions to refuse sexual overtures. These might include beliefs that women are coy, that they don’t like to appear too sexually forward, and so on. In producing these beliefs, pornography causes the systematic illocutionary disablement of women.<sup>12</sup> On this view, then, the Silencing Thesis turns out to be a *causal* claim.<sup>13</sup> A complete defense of this claim thus requires empirical investigation.<sup>14</sup>

What about the Free Speech Thesis? Why should we suppose that systematic illocutionary disablement is an infringement of anyone’s right to free speech? To defend the Free Speech Thesis, Hornsby and Langton offer a (partial) account of what that right should be taken to protect. We value freedom of speech, they suggest, partly because we want to make it possible for voices unattractive to the majority, or to the powerful, to get a hearing. (This is not the only reason we value free speech, but it is one crucial reason.) Freedom of speech is supposed to allow those in the minority, and those who are powerless, to protest, criticize, and (verbally) resist the decisions, actions, and views of the majority and the powerful. But crucially, protesting, criticizing, and

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witnesses, etc. Preventing a speaker from satisfying these felicity conditions can result in illocutionary disablement as well.

- 12 To say that the illocutionary disablement is systematic is to say, at least, that it occurs in a wide range of contexts, and that it is hard to overcome (or escape) when it does occur. See Maitra (2004) for more on this notion of systematicity.

Whether the illocutionary disablement due to pornography is systematic in this sense is, of course, an empirical matter. But notice that disablement due to gender-based beliefs is more likely to happen in a wider range of contexts, and be harder to overcome, than disablement due to many other sorts of beliefs, since one’s gender is generally more visible and far more difficult to alter than one’s membership in many other social categories. I return to this point in § VIII.

- 13 On the question of the connection between pornography and illocutionary disablement, Hornsby and Langton part company. Whereas Hornsby suggests that pornography (merely) *causes* illocutionary disablement, Langton argues that it *constitutes* such disablement. I present (and will assume) Hornsby’s story rather than Langton’s because it is the simpler of the two. The difference between the two stories isn’t important for the purposes of this paper.

- 14 As Caroline West notes, much of the existing research into pornography fails to make the ‘fine-grained distinctions’ that are necessary to establish whether pornography silences in the sense at issue here (West 2003: 422). As such, current research doesn’t settle the question with respect to the truth of the Silencing Thesis.

(verbally) resisting are all illocutionary acts. If members of a particular group are systematically unable to secure uptake for their protests, criticisms, etc. — that is, if they suffer systematic illocutionary disablement with respect to these acts — their ideas don't get a hearing. They are then unable to derive from their speech (some of) the benefits that made speech valuable to us in the first place. So, if the right to free speech is supposed to secure for everyone these benefits, then systematic illocutionary disablement should count as an infringement of that right, as required by the Free Speech Thesis.<sup>15</sup>

This completes my sketch of the Silencing Argument. I shall not have much more to say about the role that pornography plays in silencing women: as mentioned already, my main focus in this paper is the phenomenon of silencing itself, not its source. Accordingly, I turn next to two difficulties for the conception of silencing described above.

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15 It is less plausible that non-systematic illocutionary disablement—that is, illocutionary disablement that is relatively easy to overcome, or that occurs in a limited range of contexts (note 12)—should count as an infringement of a right to free speech. For example, consider the illocutionary disablement in Scenario 1a (note 9). Although the actress in that example is also illocutionarily disabled, such disablement is likely to be restricted to a very limited range of contexts, namely, those in which she participates in a theatrical production. As such, her illocutionary disablement is non-systematic (in my sense), and need not be counted as an infringement of her right to free speech, according to the Free Speech Thesis. This seems like the right result.

This interpretation of the right to free speech has met with much resistance. Critics have worried that, on this account, the speech right imposes unacceptably heavy burdens on audiences, that it requires, for instance, that they not tune out speakers, and that they become polyglots. For criticisms along these lines, see Dworkin (1993), Jacobson (1995), and Green (1998); for a response, see West (2003).

A full exploration of these issues is beyond the scope of this paper. Therefore, one of the major conclusions of this paper has to be importantly conditional: *given* the interpretation of the right to free speech recommended by Hornsby and Langton, my account of silencing (to be presented in § VI) makes the Free Speech Thesis more plausible than their own account of the phenomenon. But a second major conclusion of this paper is not conditional in this manner: my account of silencing shows that speakers who are silenced thereby suffer a distinctively speech-related wrong, in that they are deprived of benefits that speech (and only speech) can secure. This last point will be developed in § VIII.

### III Illocution vs. Perlocution

As explained in the previous section, Hornsby and Langton understand silencing as illocutionary disablement. But why focus on illocutionary acts, rather than perlocutionary ones? Recall that, in Scenario 1, the speaker's perlocutionary act is also disabled, for her utterance fails to deter the man from forcing sex on her. So why not count perlocutionary disablement — in addition to, or even instead of, illocutionary disablement — as a kind of silencing for the purposes of the Silencing Argument?

To answer this question, it must be kept in mind that the Silencing Argument requires a conception of silencing that makes the Free Speech Thesis true. But it is implausible that perlocutionary disablement could count as an infringement of the right to free speech. Let's consider a paradigmatic perlocutionary act, namely, persuasion. If perlocutionary success were protected by the right to free speech, then every speaker would have the right to persuade her audience to believe whatever she wanted them to believe, and to do whatever she wanted them to do. But that is surely not a right we would want to secure for speakers, even if we could. The same goes, *mutatis mutandis*, for other perlocutionary acts. It is equally implausible that the speech right might guarantee to speakers the right to amuse their audiences, or to annoy them, or to deter them from doing something. Therefore, if silencing included perlocutionary disablement, the Free Speech Thesis would just be false. For the purposes of the Silencing Argument, then, silencing cannot be understood as perlocutionary disablement.

But if this is right, then the distinction between illocutionary and perlocutionary disablement — and therefore, the distinction between illocutionary and perlocutionary *acts* — is crucial to the Silencing Argument. That is to say, the defender of the Silencing Argument must be able to answer the following question:

*Question 1:* What distinguishes illocutionary acts from perlocutionary ones?

Unfortunately, this distinction is notoriously difficult to clarify. To see this, let us briefly consider some proposals for distinguishing between acts of the two types.

First, Austin hypothesized that the differences between 'by' and 'in' locutions might provide one way of marking this distinction. Here's one version of the test. If it is natural to say '*In* saying I would shoot him I was threatening him' (rather than '*By* saying I would shoot him I was threatening him'), threatening is an illocutionary act. On the other hand, if it is natural to say '*By* saying I would shoot him I alarmed him'

(rather than ‘*In* saying I would shoot him I alarmed him’), alarming is a perlocutionary act. However, it seems unlikely that our intuitions about the differences between these locutions are robust enough to do the necessary work. To my ear at least, ‘by’ and ‘in’ are equally appropriate in each of the sentences mentioned above.<sup>16</sup>

Next, it might be supposed that illocutionary acts are those that require uptake for their successful performance.<sup>17</sup> However, some *perlocutionary* acts require uptake as well. Consider again Amy’s saying to Ben, as he is about to leave the house without a coat, ‘It’s cold outside.’ Suppose that Ben fails to recognize the illocutionary force of Amy’s utterance: perhaps he hears her words, but thinks that she is merely practicing elocution. In that case, there is no uptake. If Ben nevertheless puts on a coat, even if his doing so is partly caused by Amy’s utterance, it does not seem that that utterance has persuaded him to do so.

Even if both illocutionary and perlocutionary acts require uptake, it might be supposed that illocutionary acts require *no more* than uptake for their successful performance, whereas perlocutionary acts require something further. This proposal will be considered in § V, and also rejected. Other proposals for marking this distinction are, I think, similarly unsuccessful, though in the interest of brevity, I shall not attempt to rehash every such proposal here. Instead, I briefly mention in § V one reason to be pessimistic about the likelihood of constructing a successful proposal, i.e., of finding a criterion that successfully distinguishes illocutionary from perlocutionary acts. Given these difficulties, it seems clear that we have reason to prefer a conception of silencing that does not rely on the notion of illocution over one that does. I develop such a conception in § VI of this paper.

#### IV Illocution and Free Speech

As mentioned in § II, Hornsby and Langton argue that the right to free speech, properly understood, extends to illocutionary acts. But even if that’s right, should we suppose that the right to free speech extends to *all* illocutionary acts? Daniel Jacobson, for one, has argued that the speech right cannot extend that far, and further, that this is a fatal difficulty for the Silencing Argument.

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16 Austin himself acknowledged doubts about the utility of this test (Austin 1975: 121-32).

17 See note 7 for the relevant notion of uptake.

Jacobson's critique begins with the observation that Langton's discussion of illocutionary disablement has a 'potentially misleading feature': all the examples of illocutionary disablement she offers are such that any 'right-thinking person' would find them deplorable, and in need of remedy in the form of illocutionary *enablement* for the speakers (Jacobson 1995: 75). For instance, it is clear that women should always be able to refuse sex. Further, it is also clear that black South Africans should always have been permitted to vote, and homosexual couples to marry. (Voting and marrying are also illocutionary acts. So, black South Africans under apartheid, and homosexual couples in the U.S., were illocutionarily disabled with respect to these speech acts.) But this sequence of examples obscures the fact that there are just as many cases in which it is not morally problematic to illocutionarily disable speakers. Arguably, no wrong is done to convicted felons by systematically preventing them from voting while incarcerated, nor to twelve-year-olds and would-be bigamists by systematically precluding them from marrying.

From this, Jacobson concludes that disablement of some illocutionary acts — e.g., marrying and voting — needn't constitute a wrong, even when the disablement is systematic. *A fortiori*, systematic disablement of these acts needn't be an infringement of anyone's right to free speech. Accordingly, if silencing is understood as disablement of any illocutionary act whatsoever, the Free Speech Thesis is false. The right to free speech simply doesn't extend to all illocutionary acts.

But Jacobson also wants to draw a stronger conclusion here. He thinks that the right to free speech doesn't extend to *any* illocutionary acts. On his view, a woman who is unable to refuse sex does thereby suffer a moral wrong, but there is no need to appeal to the right to free speech to explain what that wrong is. Instead, Jacobson writes:

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 assault on her well-being. (Jacobson 1995: 76)

In other words, when a woman is unable to refuse sex, the wrong she suffers is constituted by the resulting injury to her autonomy and well-being, not by any infringement of her speech right.

Jacobson's discussion makes two important points. First, he is surely correct to point out that the right to free speech does not extend to all illocutionary acts. It is indeed implausible to suppose that systematically preventing twelve-year-olds from marrying infringes their speech right. But second, this is not to deny that some groups do suffer a wrong in being systematically prevented from marrying: homosexuals in the U.S. have been in this category. However, the wrong in this case is

constituted by the exclusion of the group in question from an important social institution. It isn't a distinctively speech-related wrong, in the sense that it isn't a wrong constituted by deprivation of benefits that speech, and only speech, can offer. To see this, consider the following thought experiment. Imagine a society that is similar to the U.S. in all respects (including with respect to the social importance of marriage), except that the wedding ceremony in this society doesn't require any speech act on the part of either party to the marriage. If homosexuals are prevented from marrying in this imaginary society, they are wronged in much the same way that they have been wronged in the U.S., but they are not thereby illocutionarily disabled. In fact, in being prevented from marrying, homosexuals in this imaginary society wouldn't have their speech acts disabled in any way.

Unfortunately, Jacobson moves too quickly from the conclusion that the right to free speech doesn't protect all illocutionary acts to the stronger one that the right doesn't extend to illocutionary acts *at all*. He ignores the possibility that there is something special about *some* illocutionary acts — perhaps including refusal — that marks them as part of what is protected by the speech right.

The defender of the Silencing Argument should concede to Jacobson that silencing should not be understood as disablement of any illocutionary act whatsoever, but resist the stronger conclusion he wants to draw. To take this position, the defender must be able to answer the following question:

*Question 2:* What distinguishes the illocutionary acts protected by the right to free speech from other illocutionary acts?

An adequate answer to this question will specify not only which illocutionary acts are special in this way, but also what it is about them that makes them special. Whether Jacobson's stronger conclusion is warranted depends on whether an adequate answer can be given to this question. In the next section, I offer such an answer.

## V Communicative Acts

To approach Question 2, it will be useful to begin with Hornsby's account of illocution. Like the accounts considered previously (§ III), this one also fails at drawing the line between illocutionary and perlocutionary acts. Unlike the other accounts, its failure is instructive, at least with respect to what the defender of the Silencing Argument should say regarding Question 2.

Consider again Amy's saying to Ben, 'It's cold outside,' as he is about to leave the house without a coat. In so doing, she both warns him that it is cold outside, and persuades him to put on a coat before venturing out. Both acts aim at certain characteristic effects, namely, that the intended audience be warned, and that he be persuaded, respectively.<sup>18</sup> But the characteristic effects in the two cases differ in the following way: whereas it is (typically) sufficient for Ben being warned that he recognize Amy's intention to warn him, it is *not* sufficient for his being persuaded that he recognize either Amy's intention to warn or her intention to persuade.<sup>19</sup> Warning achieves its characteristic effect if there is uptake. By contrast, uptake may be necessary, but is never sufficient, for persuasion to achieve its characteristic effect.

Hornsby stresses that the publication and recognition of speakers' intentions are aspects of 'normal linguistic exchange' (Hornsby 1994: 192). Communication, she thinks, involves more than the production and interpretation of strings of noises or marks; it also characteristically involves the publication and recognition of a speaker's intention to, for instance, tell her audience something, or ask him something, or warn him about something. A *communicative act*, on her view, is one that is successful if the speaker's intention to perform the act is recognized by her intended audience.

Thus, Hornsby suggests, illocutionary acts and communicative acts aim at the same characteristic effects, namely, uptake of the speaker's intention to perform the act. This idea is the centerpiece of Hornsby's account of illocution, summarized in what I label the 'Illocution Thesis':

*Illocution Thesis*: The illocutionary features of an act are the ones that constitute it as a communicative act.<sup>20</sup>

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18 By a *characteristic effect* of an act, I mean an effect that must be achieved as a result of that act in order for it to be fully successful.

19 Though it is *typically* sufficient for someone's being warned that he recognize the speaker's intention to warn him, there are some atypical cases in which that is not the case. These atypical cases will be discussed in § VI: see especially note 27. However, because these cases are not relevant to my argument here, I suppress the 'typically' qualifier for the remainder of this section.

20 By the *illocutionary features* of an act, I have in mind those features that constitute it as an illocutionary act.

Hornsby formulates the central claim of her account in several ways. At different points, she writes that her aim is to 'provide an account of an idea of *illocution* which reveals the use of words to be *communicative action*'; that 'some features of speech actions flow from something in the nature of linguistic communication itself, and those features, which are illocutionary ones, constitute the actions as of

The Illocution Thesis captures some of what is distinctive about illocutionary acts. Nevertheless, as will emerge shortly, it is false.

A remarkable feature of Hornsby's discussion is that it hardly mentions the illocutionary acts with which Jacobson was primarily concerned, such as marrying and voting, and also knighting, exonerating, canonizing, and so on. Acts such as warning, telling, and asking are importantly different from the ones on which Jacobson focused: unlike warning, an act of marrying might not achieve its characteristic effect — namely, that the speaker be married — even if uptake is achieved. If, for instance, the speaker is known to be already married, her utterance of 'I do' will not count as marrying, *even if* her intended audience recognizes her intention to marry.

Marrying is thus not a communicative act, in Hornsby's sense. Though successful performance of this act does require the publication and recognition of the speaker's intentions, it also requires more. Consequently, whatever the illocutionary features of the act of marrying are, they do not constitute it as a communicative act. So the Illocution Thesis is false. And let me emphasize that it would be very odd to try to save the Illocution Thesis by excluding marrying from the category of illocutionary acts: Austin, for one, took the conventionalized illocutionary acts, such as marrying, to be paradigmatic of the entire category.

The trouble with the Illocution Thesis is that it mistakenly identifies what is in fact a sub-class of illocutionary acts — namely, the communicative acts — with the entire class. Nevertheless, note the following: the illocutionary act at issue in Scenario 1, namely, refusal, is a communicative act. All that is needed for a successful performance of refusal is that the audience recognize the speaker's intention to refuse.<sup>21</sup> This makes refusal, like warning, a communicative act.

The same goes for the other illocutionary acts that are of particular interest to the Silencing Argument, such as criticizing, protesting, and so on: all of these also belong in the category of communicative acts. Recall that these were the acts that Hornsby and Langton used to motivate the claim that the right to free speech extends to illocutionary acts. They suggested that we value freedom of speech partly because we want to secure for the minority and the powerless the ability to success-

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certain specifically communicative acts'; and also, that illocution is 'the crux of all those actions which are communicative uses of language' (Hornsby 1994: 187-95).

21 Again, this is only typically true. As in the case of warning (note 19), there are some atypical cases in which recognition of the speaker's intention is not sufficient for a refusal to be fully successful. In fact, the same goes (*mutatis mutandis*) for other communicative acts as well. I will ignore this complication for the remainder of this section, but return to it in § VI.

fully perform these acts. Given Hornsby's account of communication, we have another way of putting the same thought: we value freedom of speech in part because we want the minority and the powerless to be able to successfully communicate their ideas, regardless of whether those ideas prove to be persuasive.

If this is right, then Hornsby's discussion of illocution suggests an answer to the second of the two outstanding questions raised earlier:

*Question 2:* What distinguishes illocutionary acts protected by the right to free speech from other illocutionary acts?

Given their own interpretation of this right, Hornsby and Langton are only committed to the view that it protects the class of communicative acts, rather than the larger class of illocutionary acts. This conclusion accommodates Jacobson's point that, whatever the wrong suffered by homosexuals in being systematically prevented from marrying, it isn't an infringement of their speech right. To rescue the Free Speech Thesis from Jacobson's criticisms, silencing should be understood not as *illocutionary* disablement, but rather as *communicative* disablement, or disablement of communicative acts.

The important differences between communicative acts and other illocutionary acts (such as marrying and voting) suggests that the class of illocutionary acts is deeply heterogeneous. That heterogeneity gives us reason to doubt that the acts that Austin identified as illocutionary have anything substantive in common. And that, in turn, may be an important part of the explanation for why Question 1 has proven so hard to answer.<sup>22</sup>

In sum: I began this section with two outstanding questions regarding the Silencing Argument. I've answered one of these questions (Question 2), and suggested a new conception of silencing, as disablement of communicative acts. But this still leaves the other question:

*Question 1:* What distinguishes illocutionary acts from perlocutionary ones?

Since communicative acts have thus far been identified as a *sub-class* of illocutionary acts, this question is still pressing. Unfortunately, as I have

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22 It would be consistent with this heterogeneity that there is some deeply disjunctive answer to Question 1, that is, that there are some features  $F_1, \dots, F_n$ , such that an illocutionary act is any act that possesses all (or sufficiently many) of these features. The worry about such an answer, as with other deeply disjunctive criteria, is that it won't be particularly illuminating about what it is for an act to be illocutionary.

argued in § III and in this section, we do not have a good answer to this question. Accordingly, as long as we identify communicative acts in this manner, it seems that the Silencing Argument is still in some trouble.

But in fact, there is another way of identifying these acts, due to H.P. Grice, that makes no mention of illocution at all. In the next section, I show that, given this alternative characterization of communicative acts, Question 1 becomes irrelevant.

## VI Silencing Reconceived

Grice proposed an account of what it is for a speaker to mean something on a particular occasion by producing an utterance.<sup>23</sup> This notion of speaker's meaning is intended to capture those uses of 'mean' that are 'specially connected with communication' (Grice 1989b: 88). That is, on the Gricean account, what a speaker means on a particular occasion is supposed to be closely related to what she is trying to communicate on that occasion. In this section, I use this Gricean framework to develop my account of silencing as communicative disablement.

Let's begin with a brief introduction to the Gricean framework, using a slightly elaborated version of one of Grice's own examples. Suppose that I want to convey to Mr. X that Mr. Y has been displaying 'undue familiarity' towards Mrs. X (Grice 1989a: 218). I might try to do this by pursuing either of the following strategies:

*Strategy 1:* I present Mr. X with a photograph of Mr. Y and Mrs. X in a compromising position.

*Strategy 2:* I sketch a picture of Mr. Y and Mrs. X in such a situation, and show that to Mr. X.

Consider Strategy 1 first: in giving Mr. X the photograph, I attempt to convey information about Mr. Y's behavior by providing evidence of that behavior.<sup>24</sup> If, upon viewing the photograph, Mr. X perceives what is happening in it, I will have fulfilled my *informative intention*, i.e., my

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23 Grice uses the term 'utterance' in 'an artificially wide sense, to cover any case of doing *x* or producing *x* by the performance of which [an utterer] *U* meant that so-and-so. The performance in question need not be a linguistic or even a conventionalized performance' (Grice 1989c: 118).

24 This example is complicated by the availability of computer software that permits digital alterations of photographs. To keep things simple, assume that no such software is available.

intention to inform Mr. X that Mr. Y has been unduly familiar with his wife.

In general, however, it is not possible for a speaker to satisfy an intention to convey information about someone's behavior by supplying a convenient photograph of that behavior. Fortunately, this is also not usually necessary. In fact, Grice's central insight was that to satisfy such an informative intention, it generally suffices for the speaker to provide evidence, not merely of what she intends to convey, but of her intention to convey this. This is precisely what I do when I draw a sketch for Mr. X: I provide evidence of my informative intention.<sup>25</sup> If Mr. X recognizes this intention, I may succeed in informing him about Mr. Y's behavior. If, instead, he regards my sketch as idle doodling, I won't succeed in conveying to him anything about Mr. Y.

In this respect, this second strategy is importantly different from the first: Mr. X's coming to recognize that I have an informative intention is crucial to the success of the second strategy, but not of the first. (In the first case, Mr. X could come to be informed about Mr. Y's behavior without recognizing any informative intention on my part, merely by studying the photograph.) According to Grice, it is this difference that makes my drawing the sketch, but not my producing the photograph, an instance of speaker's meaning.

This Gricean account of speaker's meaning is summarized in the following set of necessary and sufficient conditions:

A speaker *S* means something by uttering *x* iff, for some audience *A*, *S* utters *x* intending:

- (i) *A* to produce a response *r*;
- (ii) *A* to think (recognize) that *S* intends (i); and,
- (iii) *A*'s fulfillment of (ii) to give him a reason to fulfill (i) (Grice 1989b: 92).

Intention (i) is what I have called the speaker's 'informative intention.' Intention (ii) I label her 'communicative intention.' Intention (iii) should be understood as requiring that the fulfillment of the speaker's communicative intention give her audience some reason, though typically not

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25 The sketch, like the photograph, also constitutes evidence of Mr. Y's behavior. Unlike the photograph, however, the sketch is evidence of that behavior *because* it is evidence of my intention to convey information about that behavior. As Grice puts it, the sketch, unlike the photo, is not 'direct evidence' of Mr. Y's behavior (Grice 1989a: 218).

a sufficient one, for fulfilling the speaker's informative intention. What a speaker means, on any particular occasion, is given by the content of the response mentioned in (i).<sup>26</sup>

Before the Gricean framework can be applied to Scenario 1, the illocutionary act at issue there — namely, refusal — requires some further attention. My strategy is to understand refusal as an instance of a speaker's meaning something by her words. For that strategy to work, there must be some characteristic response that speakers typically intend to produce by performing that act. What might that response be?

Suppose Ben offers Amy a cup of coffee, and she wishes to refuse it. Part of what she wants to do, in refusing, is to let Ben know that she does not want that coffee. So perhaps we should say: in refusing, the response that a speaker typically intends to produce is a belief about her own desires, a belief to the effect that she does not want what is being offered. Unfortunately, this isn't quite right, for Amy may refuse the coffee because it is bad for her heart, even though she very much wants the jolt of caffeine to wake herself up. (It is unattractive to say here that, in refusing, Amy misrepresents her desires.) Still, this complication can be accommodated. Given that Amy refuses, it is plausible to suppose that her desire for the coffee is outweighed by her desire to do what is good for her heart. Then, we should say: in refusing, a speaker typically intends to produce in her audience the belief that she does not want what is being offered, *all things considered*.

If this is right, then refusal can straightforwardly be treated as an instance of speaker's meaning. Applying the Gricean account to Scenario 1 yields that, in order to count as refusing, the speaker there must have a triad of intentions: she must intend that,

- (i) her audience come to believe that (all things considered) she does not want to have sex with him;
- (ii) her audience come to think (recognize) that she has the informative intention mentioned in (i); and,
- (iii) her audience's fulfillment of (ii) give him a reason to fulfill (i).

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26 Several philosophers, including Grice himself, have thought that the details of this account of speaker's meaning have to be modified in order to cope with certain unusual cases: see, for example, Grice (1989b) and Schiffer (1972). For my purposes, however, the details of the correct account of speaker's meaning do not matter, as long as that account (i) makes no mention of illocution, and (ii) makes it possible to distinguish different ways a speaker may be silenced, as illustrated in § VII. Since nearly all the proposed revisions satisfy both (i) and (ii), I will ignore these complications, and use Grice's original account to make my main points.

A similar treatment can be given of all the other acts, such as warning, criticism, and protest, that were labeled 'communicative acts' in the previous section. In each case, by characterizing the typical response that a speaker intends to produce when performing that act, it is possible to give a Gricean account of the act.

It remains to be asked: what is required for a communicative act to be (fully) successful? As a first pass, we might say that a communicative act is successful iff the speaker has the intentions required by the Gricean account, and the intended audience satisfies those intentions. But in fact, this requires too much. Consider again Amy's refusing Ben's offer of coffee. Suppose that Ben thinks Amy is a habitual liar. Then, even upon hearing her refusal, he may not come to believe that she doesn't want the cup of coffee, all things considered. So, Amy's informative intention isn't satisfied. Nevertheless, intuitively Amy has succeeded in *communicating* her refusal. That is to say, her communicative act has succeeded. Accordingly, satisfaction of the first intention, i.e., the informative intention, is not necessary for successful communication. Satisfaction of the other two intentions is both necessary and sufficient for full success of a communicative act.<sup>27</sup>

It is worth pausing here to stress how *little* is required for successful communication, on this view. A speaker's communicative act can succeed even if she isn't believed, even if she is judged a liar, as above. Communicative success does not require that the audience respect what the speaker is trying to say, nor that he be sympathetic towards the speaker. We regularly recognize others' communicative intentions even when we have neither respect nor sympathy for them. To this extent, communicative success comes cheaply.

All of this provides the resources for an account of silencing, understood as communicative disablement, that makes no mention of illocution whatsoever. On my view, a speaker is communicatively disabled iff she is unable to fully successfully perform her intended communicative act, because her intended audience fails to satisfy either the second or

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27 On the Gricean account, then, more is required for success of a communicative act than the audience's recognition of the speaker's intention to perform that act, i.e., satisfaction of the speaker's communicative intention. In addition, this recognition must give the audience some reason to produce the response the speaker intends him to produce. Nevertheless, typically, recognizing that the speaker intends that a particular response be produced will be enough to give the audience *some* reason (though perhaps not a sufficient one) to produce that response. So, typically, satisfaction of the speaker's communication intention will be enough to secure satisfaction of intention (iii) as well. In other words, typically, recognition of the speaker's intention to perform a communicative act is sufficient for successful performance of that act.

the third of her (Gricean) intentions.<sup>28</sup> Since this account makes no mention of illocution, it does not require that we find a way to distinguish between illocutionary and perlocutionary acts. Thus, the account renders Question 1 irrelevant for the purposes of the Silencing Argument.

In sum: I argued in the previous sections that the right to free speech, as interpreted by Hornsby and Langton, is only committed to protecting communicative acts, not all illocutionary acts. Given their own interpretation of the speech right, then, Hornsby and Langton should prefer an account of silencing as communicative disablement to their own account. Here, I have provided just such an account. In the next section, I show that this account can capture the way(s) in which the speaker in Scenario 1 may be silenced.

## VII Silencing and Sexual Desire

One major advantage of the Gricean framework is that it makes it possible to distinguish some different ways in which a speaker may be silenced. On my view, a speaker is silenced if she is unable to satisfy either the second or third of her Gricean intentions; but each of these possibilities may itself be realized in several ways. In this section, I illustrate two of these possibilities, again using Scenario 1.

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28 The modal in this account of silencing, like the one in the account preferred by Hornsby and Langton, is needed to rule out accidental failures of communication. For example, a speaker's communicative intention might not be satisfied merely because a passing lorry drowns out her words. In that case, there is a sense in which she is still *able* to have her communicative intention satisfied, insofar as she is able to repeat herself after the lorry has passed. So, she isn't silenced.

It may be objected that the sort of ability at issue in this account is unacceptably unclear. To allay this concern, we can substitute the following account, which avoids the modal claim:

A speaker is silenced *if*:

- (i) She performs a communicative act, in which she makes her communicative intention 'plain' to her intended audience in the sense that she literally says what she means in a normal tone of voice;
- (ii) Her intended audience hears and pays attention to the words she utters;
- (iii) Her intended audience knows the conventional meanings of the words she utters; and,
- (iv) Her communicative act is unsuccessful.

This account is partial in that it only offers a sufficient condition for silencing. Nevertheless, it captures all the examples of silencing considered in this paper, and (like the account mentioned in the main text) makes no mention of illocutionary acts.

In the interest of brevity, I focus on the speaker's communicative intention. That is, I will suppose that the speaker is silenced because:

*Possibility 1:* She is unable to satisfy her communicative intention, i.e., her intention to get her intended audience to recognize her informative intention.

In Scenario 1, the speaker's informative intention is to get her audience to believe that she doesn't want to have sex with him. Here are two ways in which Possibility 1 can be realized:

*Possibility 1a:* Her audience fails to recognize that she has an informative intention at all.

*Possibility 1b:* Her audience recognizes that she has some informative intention or other, but mistakes the content of her informative intention, i.e., the nature of the response she wants him to produce.

I consider each sub-possibility in turn.

Regarding Possibility 1a: given that the woman says 'No,' and that the man is a competent speaker of English, how could he fail to notice that she has an informative intention? Here's one way: the woman in this scenario is an object of sexual desire for the man. On one view of sexual desire, to be an object of someone's sexual desire is to be regarded by that person *as* an object, suited, by virtue of its 'nature,' for use by him for sexual gratification.<sup>29</sup> (This is not to suggest that all sexual desire is objectifying in this manner.) Unlike persons, objects may be put to use without being consulted about their needs and desires. For some, this is because they have no needs and desires. Consider, for instance, the absurdity of trying to ascertain the desires of a table, before using it as a writing desk. For others — including entities that may, for certain purposes, be regarded as objects — their needs and desires can be ignored when they are used for the purposes for which they are suited by their objecthood. On some views, animals may be regarded as objects in the latter sense.

If one way to regard a woman as an object of sexual desire is to regard her as an object — i.e., either as having no needs and desires, or as having needs and desires that can be disregarded in sexual contexts — then someone who thus desires her will not seek her consent to inter-

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29 For an interpretation of Catharine MacKinnon according to which she holds such a view of sexual desire, see Haslanger (1993).

course. He may not think that her consent is necessary, or even relevant, since she is suited by her objecthood for his use. Therefore, though he hears her utter words, he doesn't take her to have anything to say that is relevant to the situation. Accordingly, he fails to recognize that she has an informative intention. Possibility 1a is realized.

Next, regarding Possibility 1b: above, I discussed a kind of sexual desire that discounts the needs and desires of its object. To be distinguished from that is another kind of sexual desire that *projects* onto its object needs and desires the subject wants (or takes) her to have.<sup>30</sup> The object of this projective desire is recognized as having needs and desires, and these are even understood to be relevant to the situation. So, it is not supposed that she is suited by her 'nature' for use for sexual gratification, regardless of her wants. The mistake here is of a different kind: the man takes the object of his desire to have a desire she doesn't in fact have, namely, the desire to engage in sexual intercourse with him.

How could he make such a mistake? Here's one way: the man might have certain beliefs and expectations about women generally, for instance, that they always want sex, but that they try not to appear overly sexually forward. As a result of these attitudes, he projects onto the woman a desire to have sex with him. So, he regards her 'No' as something other than a refusal. Perhaps he thinks it is an invitation to engage in a bit of role-playing, in which she gets to pretend to be reluctant, and he gets to 'convince' her. Perhaps he takes her 'No' to be a way of signaling her willingness to play this game. Accordingly, though he recognizes that she has an informative intention, he is mistaken about the content of that intention. Possibility 1b is realized.

At the end of the day, the soundness of the Silencing Argument, and in particular, the truth of the Silencing Thesis, are empirical matters. But, as illustrated in this section, the Gricean framework allows us to notice different ways in which the silencing might happen. In so doing, the framework draws attention to different kinds of evidence that have a bearing on the soundness of the argument.

## VIII Silencing as a Moral Wrong

A further advantage of my account of silencing is that it allows us to see silencing as a moral wrong. As mentioned earlier (§ IV), not every instance of illocutionary disablement is wrong, morally or otherwise:

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30 For a conception of sexual desire along these lines, see Langton (1997). Again, I am not supposing that all sexual desire is deviant in this manner.

for example, no wrong is done by systematically preventing twelve-year-olds from marrying. Thus, on the view of silencing as illocutionary disablement, not every instance of silencing is morally wrong. In this section, I argue that there is a moral wrong that is common to all instances of silencing understood as communicative disablement, though some such instances (but not all) will result in additional wrongs as well.

Speech has, at the very least, great instrumental value. It enables us to get what we want and need, for ourselves and for others. It constitutes our first line of defense against a variety of injuries, from unwanted sexual overtures to tyrannical governmental action. And it is essential both to the propagation of knowledge, and to the proper functioning of a democratic society. When a speaker is communicatively disabled, she is thereby deprived of these (and other) benefits that speech can offer.<sup>31</sup>

Further, the deprivation of benefits involved in communicative disablement is unfair to the speaker thus deprived. Consider again the woman in Scenario 1. She makes her communicative intention as plain as she possibly can. She says what she means. She uses a locution that is commonly used to perform precisely the communicative act that she intends to perform. Her behavior is thus entirely reasonable. Her intended audience even hears what she says. If, in spite of all this, her communicative act is unsuccessful, she is prevented from doing with her words what (most) others are able to do with theirs. She is disabled through no fault of her own, because of her audience's beliefs about women in general. (Note that the problem with these attitudes is not merely that they are *false*, but rather, that they are so robust that their possessor is unable to recognize evidence to the contrary.) Because she is thus unfairly deprived of the benefits of speech, her disablement constitutes a wrong.<sup>32</sup>

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31 Being deprived of the benefits enumerated above may not be the only costs of being communicatively disabled. As an anonymous referee has pointed out, a speaker may be silenced because her audience doesn't take her to be an authority regarding her own desires. That may be a further way in which the silenced speaker is injured, and there may be other ways as well.

32 There are, of course, many ways of being deprived of the benefits of speech, but not all of these are unfair. For example, suppose that a captured thief protests being deprived of his stolen bounty by the police. His communicative act — namely, protest — may be successful, even though the police are not at all moved by his plea. In that case, the thief's speech fails to secure for him (some of) the benefits he intends it to secure, such as returning to him possession of what he stole. Nevertheless, he is not wronged. This way of being deprived of the benefits of speech is to be contrasted with what happens in a case of communicative disablement. My claim is just that the latter is unfair.

Of course, being deprived of a benefit is not always unfair, and so, does not always constitute a wrong. Sometimes, such deprivation can be justified because it is necessary for the achievement of some greater good. For example, it is generally thought that (some) taxation is justified because it is necessary to secure some essential public goods. Relatedly, deprivation of benefits can sometimes be justified because it would be too costly to secure the benefits in question. For example, excluding people from the grassy areas in a public park can be justified by the high cost of repairing damage to the grass. Additionally, deprivation of benefits can sometimes be justified because the person deprived is not entitled to the benefits in question. For example, depriving a thief of stolen bounty is justified by the fact that he is not entitled to those goods. And finally, deprivation of benefits can sometimes be justified because those being deprived have consented to the deprivation.

The deprivation that results from communicative disablement cannot be justified in any of the ways just mentioned. First, it is hard to see what greater good is served by communicatively disabling speakers. But even if there were some such good, it would be unfair to secure it by selectively imposing the burden of communicative disablement on some speakers, but not others. (Compare: raising funds for public goods by taxing women only.) Second, as emphasized in § VI, communicative success comes cheaply. It does not, for example, require that the audience have sympathy for what the speaker is trying to say, or respect for the speaker herself. Our communicative acts are routinely successful even when our intended audiences strongly disagree with their contents. Accordingly, communicative disablement cannot be justified by reference to the great cost of communicative success. Third, it is also difficult to see why a silenced speaker would not be entitled to communicative success. It may be objected here that audiences are entitled to the beliefs and other attitudes that result in communicative disablement. But it does not follow from this that speakers are not also entitled to communicative success. Moreover, one can be entitled to have particular beliefs and other attitudes without being entitled to act on them. (For example, a person may be entitled to believe that the Earth is a common treasury for all to share, but not be entitled to act on that belief by breaking into others' property.) Fourth, and finally, communicatively disabled speakers have not consented to their disablement.

Thus far, I have been arguing that silencing understood as communicative disablement is a moral wrong, because it unfairly deprives speakers of the benefits that speech can offer. In addition, it is worth noting that some of the benefits of which a speaker is deprived in virtue of being silenced are ones that *only* speech can provide. For example, as already mentioned, speech can serve as a defense against a variety of possible injuries. But it is unlike any other defense available to us

in some crucial respects. In some cases, speech (in the form of protest, or criticism) is the only defense available. But even when non-speech defenses are also available, speech will be a relatively low-cost defense, in the sense that it requires nothing more than ordinary communicative capacities. Other defenses (for example, running away, or fighting back) typically require additional physical skills, which are not shared to the same degree. Therefore, when a speaker is silenced, she is thereby deprived of benefits that speech, and *only* speech, can provide. Silencing is thus a *distinctively speech-related wrong*. (As such, it should be contrasted with other wrongs that sometimes accompany illocutionary disablement, such as those suffered by homosexuals prevented from marrying. As I argued in § IV, though those are also substantial wrongs, they are not wrongs that consist in being deprived of benefits that speech, and only speech, can provide.)

Finally, though silencing in my sense is always a wrong, not every silenced speaker is wronged in the same way, or to the same extent, as a result of being silenced. To see this, consider some instances of silencing that are quite different from Scenario 1:

*Scenario 2:* At a dinner party, the hostess presses a guest to help himself to more food. The guest is already full, and does not want any more. So he refuses the further helping. His hostess understands the conventional meaning of his utterance. But she also supposes that he is simply being polite, not wanting to appear too greedy. She supposes that good guests always say something similar when offered more food. As a result, she disregards his protests, and continues to press food on him, until he finally feels that he must give in.

*Scenario 3:* In a philosophy class, an African-American student offers a counter-example to a proposal the class is considering. The teacher understands the conventional meaning of his utterance. But given her beliefs about African-American students in general, she has low expectations of this student. In particular, she thinks that African-American students tend not to understand how philosophical arguments work. Accordingly, she fails to recognize his intention to offer a counter-example, and instead, re-explains the proposal to him. Later in the class, a white student re-states the same counter-example, and the teacher recognizes that it devastates the proposal.

In each of these scenarios, a speaker's communicative act misfires. In the first case, the hostess doesn't recognize the guest's intention to refuse, while in the second, the teacher doesn't recognize the student's

intention to offer a counter-example. Within the Gricean framework, each failure can be rendered as a failure to recognize the content of the speaker's communicative intention.

As these examples illustrate, not every instance of silencing is equally dire. The silencing in Scenario 1 results in the woman being raped, while the silencing in Scenario 3 results in the student failing to secure the respect of the teacher. By contrast, the silencing in Scenario 2 results only in the guest being put in a situation in which he must either over-eat, or risk insulting his hostess. Clearly, the guest is not wronged in the same way (or to the same extent) as the speakers in the other two cases. Further, insofar as women and African-Americans are already relatively disadvantaged, the speakers in Scenarios 1 and 3 may suffer more as a result of having their speech disabled than speakers who are not already disadvantaged. Thus, how (and to what extent) a speaker is wronged as a result of being silenced depends, in part, on what she loses as a result of the communicative misfire, and on how well positioned she is to bear those losses.

There are further differences between the cases as well. In Scenarios 1 and 3, the silencing happens due to beliefs about women and African-American students, while in Scenario 2, it is due to attitudes towards dinner-party guests. Since a person's gender and race are fixed across (most) contexts, silencing that is due to membership in a gender or racial category is likely to happen in a greater range of contexts than silencing due to membership in more temporary social categories, including the category of dinner-party guest. Other things equal, the more frequently a speaker is silenced, the greater the wrong she suffers as a result. Further, because it is more difficult to alter one's gender and race than one's membership in some other categories (again including the category of dinner-party guest), silencing of the former sort is also likely to be harder to escape. Other things equal, the more difficult it is to overcome the silencing, the greater the wrong a speaker suffers as a result of being silenced.<sup>33</sup>

In sum: on my view, any speaker who is silenced — i.e., communicatively disabled — is thereby wronged. More specifically, every such speaker suffers a distinctively speech-related wrong. But as a result of suffering this wrong, some silenced speakers (but not all) suffer additional wrongs as well. In some of these cases, these additional wrongs (e.g., the rape in Scenario 1) are more grievous than the wrong consti-

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33 Recalling the notion of systematicity introduced earlier (note 12), we can say that the more systematic the communicative disablement is, the greater the wrong the speaker suffers as a result.

tuted by the silencing itself. It is important not to lose track of this fact. But acknowledging it is compatible with holding (*contra* Jacobson) that these additional wrongs are not the only wrongs that a silenced speaker suffers. Rather, there is a wrong — in fact, a distinctively speech-related wrong — that is common to all instances of silencing. Failure to notice this constitutes a failure to notice (another) way in which certain speakers are disadvantaged.

## IX Conclusion

In this paper, I have offered an account of silencing that allows us to make sense of the claim that pornography silences women. Though I have focused mostly on one example (Scenario 1), I have shown that my account generalizes: as illustrated by Scenarios 2 and 3, speakers other than women may be silenced, and silencing can happen in contexts quite different from Scenario 1. I have argued that my account (silencing as communicative disablement) has several advantages over the alternate account (silencing as illocutionary disablement), due to Hornsby and Langton. First, some systematic silencing in their sense — for example, systematically preventing twelve-year-olds from marrying — does not constitute an infringement of anyone's right to free speech, *contra* what is required by the Free Speech Thesis. By contrast, on their interpretation of the right to free speech, all systematic silencing in my sense does infringe that right, since the speech right (on their view) extends to communicative acts. Therefore, given their own interpretation of the right to free speech, they should prefer my account of silencing to their own. Second, their account of silencing runs into trouble because it requires that we be able to distinguish between illocutionary and perlocutionary acts. By contrast, my account, which relies on the Gricean framework, requires no such distinction. Third, my account, unlike theirs, helps us distinguish different ways in which a speaker may be silenced, and so, notice different sorts of evidence that can have a bearing on claims about silencing. Fourth, and finally, silencing in their sense does not even always result in a wrong: for example, preventing twelve-year-olds from marrying does not constitute any sort of wrong. By contrast, there is a wrong — in fact, a distinctively speech-related wrong — that is common to all instances of silencing in my sense. (I return to this point at the very end of this section.) Together, these advantages give us decisive reason to prefer my account of the phenomenon.

But there is more to be said here. Much of the resistance to the Silencing Argument has in fact been directed against the interpretation of the right to free speech preferred by Hornsby and Langton. But at

least some of this resistance is also rooted in confusion about the phenomenon of silencing itself. Critics have worried that any interpretation of the right to free speech that counts silencing as an infringement of that right would require too much of audiences. For instance, Ronald Dworkin has written that, for the Free Speech Thesis to be true, the speech right must include ‘a right that others grasp and respect what one means to say,’ as well as ‘a guarantee of a sympathetic or even competent understanding for what one says’ (Dworkin 1993: 38).

My account of silencing shows these remarks to be misguided. Communicative success, on my view, does not require either sympathy or respect on the audience’s part for what the speaker wants to say. Communicative acts are regularly performed successfully even when the audience is hostile to the speaker’s position. It may be that sympathy is necessary to grasp every nuance and implication of what a speaker says. But generally, no particular affinity between the speaker and her intended audience is required for her communicative acts to be successful. Our warnings, refusals, and protests are typically successful (communicatively) even when they aren’t respected.<sup>34</sup> So, *contra* Dworkin, if the right to free speech encompasses communicative acts, it does not follow that the right demands that audiences ‘respect what one means to say.’ Accordingly, a proper grasp of the phenomenon of silencing should defuse part of the resistance to an interpretation of the right to free speech that makes the Free Speech Thesis true.

But now putting aside the question of the correct interpretation of the speech right, it is worth emphasizing another feature of my account, namely, that it makes clear the nature of the wrong suffered by speakers who are silenced. If we significantly value the speech-related benefits of which silencing deprives speakers, then, given that silencing is a distinctively speech-related wrong in my sense, we should conclude that it is a wrong that requires remedy. But this conclusion does not depend upon any particular interpretation of the right to free speech. It only requires acceptance of certain (plausible) views about what makes speech valuable in the first place. Therefore, even if the interpretation of the speech right preferred by Hornsby and Langton is rejected, there is still good reason to be concerned with the phenomenon of silencing. Moreover, if (as I also think is plausible) women are particularly liable to be silenced, then it is also a phenomenon that is of particular concern for feminists. If so, it is a phenomenon that deserves attention

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34 Part of this confusion about the phenomenon of silencing is rooted in confusion about the difference between illocutionary and perlocutionary acts. Perlocutionary acts like persuasion *do* typically require respect for what the speaker is trying to say; illocutionary acts do not.

regardless of the prospects of establishing its connections to pornography and the right to free speech.<sup>35</sup>

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