

COMMUNICATIVE INJUSTICE

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PhD Thesis
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October 2011

ACKNOWLEDGEMENTS

I have had a lot of help with this project, and I'd like to take a brief moment to thank some of the groups, people, and funding bodies who have contributed along the way. Thank you to the Arts and Humanities Research Council for funding my efforts and making this project possible. Jenny Saul and Chris Hookway both supported my fumbblings and challenged me to be clear while remaining two of the kindest people you ever will meet. In my opinion, they are the best of all possible supervisors. Miranda Fricker's work on epistemic injustice has been an inspiration. Sally Haslanger, Rae Langton, and the members of MIT's WOGAP helped me with my working definition. Sally also challenged me to think hard about my critique of Fricker, and commiserated when this took longer than expected. From start to finish, the members of the Sheffield Feminist Philosophy Reading Group have been the most amazing friends and helpers that a girl could ever ask for. This community has seen me hone my skills, has helped with works in progress, and has been a consistent support network throughout my doctoral work. Heather, Angie, Lina, Esa, Jules, Lindsey, Jenny, and Kate, thank you. Likewise, the Sheffield Post-grad Seminars have (literally) helped me find my voice and use it, too. I have been privileged to be a part of your community. Thanks to the staff and students at the University of Sheffield for a friendly and rigorous learning environment. Thanks to my proofreaders: Angie, Jules, Kate, Krista, Lindsey, and Andrew. Any mistakes that remain are my own. Thanks to my friends and family for their support and encouragement. Finally, thanks to Andrew, who has lived and breathed this thesis with me and understands that I need books and time to read them.

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INTRODUCTION

SOME THOUGHTS ON COMMUNICATION AND JUSTICE

In this thesis I explore the idea of communicative injustice. That is, I consider the thought that some of our communicative practices are so vital to our flourishing existence as human persons that we suffer an injustice in certain circumstances when these practices fail. For instance, sometimes the ability to successfully communicate consent or refusal means the difference between maintaining authority over our bodies and becoming victims of rape and assault. Sometimes the ability to communicate successfully about an experience like sexual harassment means the difference between vulnerability to confusion, self-doubt, and further injustice and the ability to understand and combat that injustice from a situation of relative epistemic security. I argue that there are conditions under which we should be able to communicate certain things, and that sometimes an inability to communicate constitutes an injustice. That is, under my account, a person may become a victim of injustice when certain kinds of communication become impossible for her.

I begin in **Chapter One** with an introduction to an important debate about justice and communication: Catherine MacKinnon and Rae Langton's work on silencing. I investigate some of Catherine MacKinnon's claims about pornography and its relationship with speech. I then introduce some basic parts of Austinian speech act theory. With these background materials in place, I go on to outline Rae Langton's silencing claim, and I offer some reasons why this claim might be reasonable and useful. Langton's work on silencing is particularly interesting for my purposes in this thesis because the woman in Langton's paradigmatic refusal example finds herself unable to communicate in a way that seems unjust and not simply unfortunate.

In **Chapter Two** I look at several critiques of Langton's silencing claim. I outline arguments based in speech act theory made by Jacobson and Bird. I also look at critiques based in notions of authority and responsibility, including Nellie Weiland's arguments about convention and linguist Deborah Cameron's work on gendered communication and gendered communication failure. Finally, I consider Ishani Maitra's Gricean alternative formulation. With each critique I

consider the advantages and disadvantages of Langton's silencing framework. I use this chapter to discover the contours of some current debates about communication and justice.

In **Chapter Three** I delve more deeply into the ideas behind Langton's silencing claim and begin to develop a broader understanding of communicative injustice. I ask how the man in the paradigmatic refusal example could have taken the woman to be consenting to sex in the face of all the evidence that she was not. I consider Lewis-style convention as one possible explanation. I also look at Miranda Fricker's idea of a hermeneutical resource as a model for another kind of explanation. In this chapter I develop the idea that our communicative resources may be affected by prejudice and social inequality. With Fricker, I argue that marginalized groups may struggle with interpretive resources that are inadequate, or at least less adequate than those of more socially powerful groups.

In **Chapter Four** I examine Miranda Fricker's work on hermeneutical injustice in more detail. I argue that Fricker's insistence that there is a particular kind of asymmetry between the victim of this injustice and her surrounding social colleagues is problematic. I offer several different lines of argument that all combine to provide a critique of this asymmetry claim. In particular, I consider the significance of background social conditions for Fricker's argument, and suggest that an epistemic injustice should not rely on other forms of disadvantage to achieve its status as an injustice.

In **Chapter Five** I finally begin to give an account of what I call 'resource-based communicative injustice', or 'RCI'. I set out each part of my working definition: the resource deficit, the communicative attempt, and the vital need condition. I then put all three parts together in the form of a working definition. I also work through two potential counterexamples that give me an opportunity to explain communicative injustice in more detail.

Finally, in **Chapter Six** I revisit each of the main examples that I consider in this thesis and add one final contemporary illustration of politically significant communication failure. I work through each case as a potential instance of resource-based communicative injustice. I use this review of RCI to further illustrate the strengths and advantages of the resource-based communicative injustice framework.

My goal here is to provide a working definition of resource-based communicative injustice. It is my hope that this definition and its accompanying conceptual framework can help us to gain a better understanding of some important kinds of communication failure. These failures include Langton's silencing examples and Fricker's sexual harassment case, but they also include other cases involving words and concepts like 'rape', 'sexism', and 'feminism'. The RCI framework also has a certain practical appeal. It captures communication failure from a broad and inclusive perspective instead of focusing only on those who are most obviously harmed by such failure. The practical advantage of this broad focus lies in its inclusiveness: those people who can understand themselves as part of a community-wide failure (as opposed to an individual error or instance of bad behavior) are less likely to feel alienated and hostile to considerations of social justice and movements toward change.

CHAPTER ONE

SILENCING

In this chapter I look at the origins of 'silencing'. I begin by investigating some of Catherine MacKinnon's claims about pornography and its relationship with speech. I then introduce some basic parts of Austinian speech act theory. With these background materials in place, I go on to outline Rae Langton's silencing claim, and I offer some reasons why this claim might be reasonable and useful.

1.1 MACKINNON AND PORNOGRAPHY

Catherine MacKinnon has been involved in the legal and political debate about pornography and free speech for more than three decades. She, in company with Andrea Dworkin, is one of the principle authors of anti-pornography legislation that was passed in Indianapolis and then struck down in 1984.¹ Various versions of this legislation were proposed in American cities throughout the 1980s, with varying degrees of success. The United States Supreme Court has upheld all lower court rulings that the Dworkin-MacKinnon Anti-pornography Civil Rights Ordinance violates the right to freedom of speech protected by the First Amendment, and the legislation has never been successfully implemented. In spite of this ruling, MacKinnon continues to argue that pornography is harmful to women, and she bases an important part of her argument on the relationship between pornography and speech. Incidentally, MacKinnon's definition of pornography is often used as a point of reference in the philosophical literature on this subject.²

MacKinnon's exact position on the putative wrong done to women by pornography is complicated and often misunderstood. This misunderstanding has led to a great deal of criticism, both philosophical and legal, and it is this misguided criticism that has inspired some

¹ See *American Booksellers, Inc. v. Hudnut*, 598 F Supp. 1327 (S. D. Ind. 1984). The ordinance made it actionable to traffic in pornography, but did not prohibit pornography itself.

² See Vadas (2005), Langton (1993), Eaton (2007) to name just a few.

philosophers to clarify and defend MacKinnon.³ I will outline two of MacKinnon's claims about pornography here. Before I do however, let me be clear that MacKinnon is not making an argument against pornography that is based on any kind of prohibition of obscenity. She is not claiming that pornography ought to be illegal because it is shocking to public morals. Rather, she makes her argument based on the ways that pornography can be seen to circumscribe, limit, or deny women's rights. This distinction is important because it helps us to see MacKinnon's goal more clearly. She does not want to stop pornography because it depicts things that might be considered lewd or shocking and thereby harmful to the public good. Instead, she wants to stop pornography because it limits women's rights, such as the right to bodily integrity or the right to equality under the law. MacKinnon aims to protect women, not public morals. An awareness of this goal might help readers to understand why she makes her particular kind of argument against pornography.

The rights and freedoms that MacKinnon is interested in defending are integrally related to speech, but they are not limited only to speech. She notes that the boundaries between speech and action can be difficult to draw. Pornography can count as both speech and action at the same time, MacKinnon argues, and this double label need not confuse or deter us.

...[E]xpression is not just talk. Pornography not only teaches the reality of male dominance. It is one way its reality is imposed as well as experienced. It is a way of seeing and using women. Male power makes authoritative a way of seeing and treating women, so that when a man looks at a pornographic picture - pornographic meaning that the woman is defined as to be acted upon, a sexual object, a sexual thing - the viewing is an act, an act of male supremacy.⁴

In other words, pornography is not just, say, the filmmaker's expression of a particular point of view or the provision of an entertainment. It is also the authorization of a particular belief about women, namely that a woman is "to be acted upon, a sexual object, a sexual thing". When someone views pornography, MacKinnon claims, this viewing *is* the act of authorization. It is therefore an act of "male supremacy".

³ Rae Langton provides an excellent summary of some of these criticisms in *Speech Acts and Unspeakable Acts*, pp. 294-7.

⁴ Mackinnon (1987), p. 130.

This is an interesting and distinctive part of MacKinnon's view. Other advocates of anti-pornography legislation have argued, with varying degrees of success, that pornography contributes to many injustices suffered by women, including sexual assault, domestic violence, and workplace inequalities like lower rates of pay.⁵ MacKinnon, however, is not simply saying that pornography causes or may cause these effects on women's lives, or may contribute to male supremacy. Over and above these things, she is stating that pornography *is* male supremacy. To be precise, though pornography is classed as speech, it is also an *act* of male supremacy. As MacKinnon and Dworkin say in their definition of pornography in the Anti-pornography Civil Rights Ordinance, "We define pornography as the graphic sexually explicit subordination of women in pictures or words."⁶ This definition is the first of two claims by MacKinnon that I will examine in this thesis. This claim has proved itself to be challenging, and has led to the charge that MacKinnon must be speaking metaphorically, thereby exaggerating her claim and distorting the issue. However, an examination of a second claim suggests that she intends neither to exaggerate nor to employ metaphor.

Consider the following quotation from "Linda's Life and Andrea's Work":

An additional assumption underlying the First Amendment is that free speech is necessary to discern truth, that the partiality produced by suppression distorts truth. ...[In opposition to this assumption, consider that] pornography hides and distorts truth while at the same time enforcing itself, imprinting itself on the world, making itself real. That's another way in which pornography is a kind of act.⁷

Here, MacKinnon builds upon her claim that pornography is an act of male supremacy by further elaborating the actions that constitute making and viewing pornography. In making a pornographic film or image, you commit the act of hiding and distorting the truth (presumably the truth at issue here is about women's sexuality and the harms of sexual objectification and abuse). By allowing (mostly male) pornographers to make pornographic films (and indulging in

⁵ Judge Easterbrook stated that pornography does these things in *American Booksellers, Inc. v. Hudnut*, 771 F. 2d 329 (7th Cir. 1985). He, however, concluded that these things only served to demonstrate the power of pornography as speech. See Langton's commentary on this in *Speech Acts and Unspeakable Acts*, p. 25-27.

⁶ See MacKinnon (1987) p. 130.

⁷ *Ibid.*

this assumption about free speech), we allow men to hide and distort the truth about women's sexuality. In addition, MacKinnon says, "the free speech of men *silences* the free speech of women. It is the same goal, just other *people*."⁸ This is the second claim by MacKinnon that I will examine here. This second claim marks the beginning of the debate over what has come to be known as 'silencing'.

Taken together, these two claims make up what I will call the MacKinnon Claim. This claim can be stated as follows:

The MacKinnon Claim: Pornography subordinates and silences women.

This claim is bold and aggressive in its criticism of pornography, not least because it addresses itself directly to pornography, not just to the people who make and consume pornographic films and images. MacKinnon is not directly attacking pornographers or porn users by saying, for example, that they are abusing women. Instead, she targets pornography itself. It is pornography, not pornographers, that distorts the truth about women's sexuality.⁹ This move is the one most criticized or characterized as confusion by MacKinnon's critics. How could pictures or films distort truth or reify anything? They are inanimate objects, not intentional agents. Could MacKinnon have been simply using colorful rhetoric? In this chapter I will explore the idea that there is reason to believe the characterization of pornography in the above passages is not mere hyperbole or metaphor. I begin by exploring some philosophical precedents to the idea that we can commit acts with our words. In the next section I will introduce some of the work done by J.L. Austin on *speech acts* in the hope that it may provide further support for the MacKinnon Claim and the kind of move that MacKinnon is trying to make here.

1.2 THE AUSTINIAN BACKGROUND

As I stated in the previous section, MacKinnon's claims about the power wielded by pornography are not without precedent. Philosophers working on speech act theory have also

⁸ MacKinnon (1987), p. 156.

⁹ For a discussion of whether people or objects perform speech acts see Jennifer Saul, 'Pornography, Speech Acts, and Context' *Proceedings of the Aristotelian Society* 106:2, 61-80.

noted the many ways that speech can count as action, beginning with the work of J.L. Austin. Austin based his critique of what was then contemporary philosophy of language on what he described as the widespread philosophical prejudice that sentences or utterances always describe something and so are always truth-evaluable. There are, as Austin pointed out, several types of sentences that are neither true nor false, and these sentences were largely ignored by the philosophical establishment of Austin's day. Examples of these neglected sentences include nonsensical sentences, interrogatives, sentences expressing ethical claims, and what Austin called 'performatives'.¹⁰

Austin contrasts this latter example, the *performative*, with what he calls the *constative* utterance, or an utterance that is used to ascertain, verify, establish, or prove something, and so can itself be described as either true or false. He gives two conditions for performative utterances, namely that

1. "they do not 'describe' or 'report' or constate anything at all, are not 'true or false'; and
2. the uttering of the sentence is, or is a part of, the doing of an action, which again would not *normally* be described as, or as 'just', saying something."¹¹

This set of conditions is followed by a list of examples that help to make his point. I have adapted and expanded some of Austin's original examples for my own purposes here:

- The sentence uttered "in the course of the marriage ceremony", as in 'I, Beth, take you, Cindy, to be my lawfully wedded wife'.¹²
- The sentence uttered when christening a boat, as in 'I name this ship the *Queen Elizabeth*'.
- The sentence uttered in a legal will or testament, as in 'I bequeath all of my wealth to the Hershey's Chocolate Company'.

¹⁰ It is a matter of contention as to whether or not some of these examples really fail to be truth-evaluable. I am not going to enter that debate here.

¹¹ Austin (1962), p. 5.

¹² This particular example has resulted in some discussion because there are some places where the utterance of those words would *not* count as a performative utterance, or at least would not, in Austin's words, be a *felicitous* performative, due to legal restrictions.

- The sentence uttered when making a bet, as in ‘I bet that I will finish my thesis before the end of the war in Iraq’.¹³

Of course, not every sentence can count as one of the speech acts described above. A speaker must first utter the relevant words, certainly, but something more than the correct utterance is required in order that I successfully bequeath my wealth to the Hershey’s Chocolate Company. As Austin says, “[b]esides the uttering of the words of the so-called performative, a good many other things have as a general rule to be right and to go right if we are to be said to have happily brought off our action.”¹⁴ Austin describes such happy and successful speech acts as *felicitous*, and he states that they must meet the following set of necessary conditions:

1. A conventional procedure must exist that has a conventional effect. The procedure must include the uttering of certain words by certain persons in certain circumstances, and the persons and circumstances involved in the procedure must be appropriately conventional.
2. The procedure must be carried out correctly and completely by all participants.
3. If the procedure is designed for people with certain thoughts or feelings, then the participants must truly have those thoughts or feelings, and subsequently act as if they did as well.¹⁵

Any unhappy utterance that does not meet all of these conditions is *infelicitous*, and infelicities come in many forms. For example, if Beth were to stand in Utah or some other place where gay marriage is illegal and say the words of the marriage ceremony to Cindy, she would not succeed in marrying her. Her speech act would be infelicitous because the circumstances of her utterance were not in accord with the conventions of marriage in the state of Utah. Also, I can attempt to bequeath my wealth to as many chocolate companies as I like, but until I do so in a legal

¹³ Austin also lists the interesting example of what he calls “the American law of evidence”, in which “a report of what someone else said is admitted as evidence if what he said is an utterance of our performative kind: because this is regarded as a report not so much of something he said, as which it would be hear-say and not admissible as evidence, but rather as something he did, an action of his”. I assume that this kind of example has become highly pertinent in recent legal cases in the UK in which people have been convicted of terrorism on the basis that their speech incited terror or religious hatred. However, the First Amendment has historically insured the right of U.S. citizens to speak freely, even to advocate violence against the state. The kind of case that Austin has in mind (at least in the U.S.A.) will require some special argumentation to the effect that the speech in question was, say, more than mere advocacy and had crossed into the realm of an order or command. In this way, the speech is clearly part of the action that goes on to be, say, murder. See Austin (1962), p. 13.

¹⁴ Austin (1962), p. 14.

¹⁵ Summarized here from Austin’s own conditions. See Austin (1962), p. 14-15.

document and in the presence of witnesses, the chocolate companies are unlikely to inherit any of my wealth. To complicate matters, as we shall see in Chapter Two, there will always be borderline cases, cases that do not quite meet the felicity conditions, or cases that meet them but are still not clearly successful or felicitous.

It should now be clear that many kinds of utterances are performative, and that Austin has given us a good guide for identifying what does and does not count as a successful performative. However, making a clear distinction between performatives and constatives still proves to be difficult, in part because there is some disagreement as to whether performatives actually fail to be truth-evaluable and in part because Austin came to the conclusion that to state something is to perform a kind of act, thus making all constatives into performatives anyway.¹⁶ In light of this difficulty, Austin decided to move forward from the performative-constative dichotomy and into a new system of nomenclature. As Austin says, we ought to

...consider from the ground up how many senses there are in which to say something *is* to do something, or *in* saying something we do something, and even *by* saying something we do something. And we began by distinguishing a whole group of senses of 'doing something' which are all included together when we say, what is obvious, that to say something is in the full normal sense to do something.¹⁷

But these distinctions are still tricky, so Austin attempts to clarify things by distinguishing three new ways that speech can be action,

1. To perform a *locutionary act* is to utter a sentence that has a particular meaning. For example, by saying "Shoot her," you mean for me to pick up a gun and shoot the woman next to me.
2. The *perlocutionary act* is the effect of the words uttered. For example, by saying "Shoot her," you shocked me. You also persuaded me to shoot the woman next to me.

¹⁶ In the end, Austin is unclear about whether or not he wishes to uphold the distinction. He goes some way towards softening his claim that to state something is to do something in his discussion of *illocutionary force*, (see his (1962) pp.133-147), and he does note that some utterances ('Sarah won the race.') are truth-evaluable. Unfortunately, further investigation of this distinction is beyond the scope of this thesis.

¹⁷ Austin (1962), p. 94.

3. The *illocutionary act* is the act constituted by the utterance itself. It is what the utterance does. In saying “Shoot her,” you urged me to shoot a woman. Urging, warning, promising, and marrying are illocutionary acts.¹⁸

and each of these acts falls into the class of actions called ‘speech acts’.

Even with this new classificatory system in place, Austin notes, we may still have difficulty distinguishing between illocutions and locutions, and between illocutions and perlocutions. In order to help us with this task, he introduces the notion of *uptake*, a notion that will become important in Section 1.4. Regarding the relationship between illocution and perlocution, Austin writes:

[u]nless a certain effect is achieved, the illocutionary act will not have been happily, successfully performed. This not to say that the illocutionary act is the achieving of a certain effect. I cannot be said to have warned an audience unless it hears what I say and takes what I say in a certain sense. An effect must be achieved on the audience if the illocutionary act is to be carried out. How should we best put it here? And how can we limit it? Generally the effect amounts to bringing about the understanding of the meaning and of the force of the locution. So the performance of an illocutionary act involves the securing of uptake.¹⁹

In other words, we can make a fast-and-loose distinction as follows: illocutionary acts are bound up with effects, but are not limited to producing them, as are perlocutionary acts. A successful illocution requires of its audience that they grasp the content and force of the utterance, but this is not the same thing as being limited to producing an effect. Unfortunately, this way of making the illocution-perlocution distinction has proved to be inconclusive and has led to some confusion as to whether particular speech acts are illocutionary or perlocutionary.²⁰ This issue will become relevant during some discussion of these issues in Chapter Two.

Returning briefly to our discussion in Section 1.1, the MacKinnon Claim is therefore not controversial because she is claiming that speech can be action. As we have now established, such a claim is neither radical nor without substantial philosophical precedent. Common sense

¹⁸ Austin (1962), pp. 101-103.

¹⁹ Austin (1962), p. 116.

²⁰ See Alexander Bird’s discussion of the relationship between illocutionary and perlocutionary speech acts for a particularly relevant critique. Bird (2002). ‘Illocutionary Silencing’. *Pacific Philosophical Quarterly* 83:1, 1-15.

tells us that we perform speech acts all of the time, and some of MacKinnon's critics are very happy to agree that pornography might have perlocutionary effects such as arousal and entertainment.²¹ Instead, the MacKinnon Claim is controversial because of what MacKinnon claims that pornography does. Recall that the MacKinnon Claim states that pornography subordinates and silences women. What I take MacKinnon to be saying here is that subordinating and silencing are the acts constituted by utterances of pornography. These acts are not the effects of pornography. They are what pornography *does*. This claim is controversial, then, because critics have doubted that speech (like pornography) can do things like subordinate and silence.

In the next section I will set out a way of understanding this claim, based on the work of Rae Langton. Langton's work has been foundational to the debate about silencing, and she takes MacKinnon's work as her starting point.

1.3 LANGTON'S INNOVATION

Rae Langton notes that the ability to perform speech acts can be extremely important.

The ability to perform speech acts of certain kinds can be a mark of political power. To put the point crudely: powerful people can generally do more, say more, and have their speech count for more than can the powerless. If you are powerful, there are more things you can do with your words.²²

One very important thing that powerful people can do with their words is to silence the speech of the powerless, and it is in noting this that Langton brings Austin and MacKinnon together. Her innovative use of Austinian speech act theory to elucidate MacKinnon's controversial claim about pornography brings feminism and more traditional philosophy together in a way that is both interesting and useful.

²¹ I have already noted Judge Easterbrook's thoughts on the effects of pornography. Rae Langton gathers evidence that pornography has more harmful effects in footnote 33 on page 39 of *Sexual Solipsism*. There is also evidence supporting the claims that pornography has beneficial effects and that it does not have the negative effects found in other studies. For a good summary of this and of some concerns with empirical evidence regarding the effects of pornography, see Saul (2003).

²² Langton (1993), p. 298-99.

Langton initiated the philosophical debate about silencing with her influential paper entitled *Speech Acts and Unspeakable Acts*, in which she defends two claims about pornography made by Catherine MacKinnon. I presented one united version of these claims as the MacKinnon Claim in Section 1.1. Various forms of this claim were rejected by some of MacKinnon's critics on the grounds that it is incoherent, and Langton responds to these critics in her paper. Recall MacKinnon's Claims from Section 1.1:

1. We define pornography as the graphic sexually explicit subordination of women in pictures or words.
2. The free speech of men *silences* the free speech of women.

Langton summarizes these claims as follows:

1. Pornography *is the subordination* of women
2. Pornography *silences* women

I will focus here primarily on her defense of the second claim, which I will call the Langton Silencing Claim (LSC):

- **LSC:** Pornography silences women.

The word 'silencing' does not immediately call to mind the kind of phenomena that Langton and MacKinnon highlight. When I talk of silencing somebody, I might traditionally have meant preventing that person from speaking. When we speak of silencing women, we usually mean stopping them from giving voice to their (negative, unjust) experiences. Langton notes this traditional usage, but she draws our attention to a way in which the usage can be stretched.

This bears on the question about silence. If you are powerful, you sometimes have the ability to silence the speech of the powerless. One way might be to stop the powerless from speaking at all. Gag them, threaten them, condemn them to solitary confinement. But there is another, less dramatic but equally effective way. Let them speak. Let them say whatever they like to whomever they like, but stop that speech from counting as an action. More precisely, stop it from counting as the action it was intended to be. That is the kind of silencing I will consider, and it is a kind of silencing about which Austin has something to say, without commenting on its political significance... If it can be

shown that pornography contributes to this kind of silencing, then we will have a new way of understanding [MacKinnon's] claim.²³

In other words, Langton is interested in whether we can understand MacKinnon to be saying that pornography prevents women's speech from counting as action.

In pursuit of this new understanding, Langton uses the Austinian speech act framework to construct her argument that pornography silences women. She begins with the assertion that pornography silences by preventing some women's utterances of the word 'no' and other similar expressions of refusal from counting as actual refusals. "Some speech acts are *unspeakable* for women in some contexts: although the appropriate words can be uttered, those utterances fail to count as the actions they were intended to be."²⁴ One example that Langton has in mind goes something like this:

A man views pornography that depicts women as coy and sexually insatiable. Women in these films say 'no' to sexual advances when they mean 'yes'. In other words, they do not mean to refuse sex when they say 'no'; they mean to tease and titillate men. The implication is that this kind of refusal, refusal from a woman in a sexual context, does not count as a "real" refusal. Instead, it counts as foreplay. This pornography-viewing man subsequently finds himself in a sexual context with a woman. The woman says 'no' to his sexual advances, but he does not take her utterance to count as a refusal, and he rapes her.

Langton argues that pornography is responsible for this woman's *illocutionary silencing*. In other words, pornography makes it impossible for this woman to commit the act of refusing sex.

Recall Austin's definition of an illocutionary act: the illocutionary act is the act constituted by the utterance itself. It is what the utterance does. The woman in this example utters the word 'no', intending her utterance as a refusal of sexual consent to the man. If her refusal had been successful, the utterance of 'no' would have been an illocutionary act of refusal. However, the woman's refusal was not successful. Instead, her utterance of 'no' counted as a kind of foreplay and sexual consent. Because of this, the woman did not perform the illocutionary act of refusal. It is a matter of some controversy as to whether she instead performed an act of consent, but this

²³ Langton (1993), p. 299.

²⁴ *Ibid.*

additional claim is not strictly relevant to Langton's argument.²⁵ Langton argues that the woman is rendered unable to perform the illocutionary act of refusal. She concludes that pornography viewed by the man is responsible for the devastating communication failure in this example, and therefore that pornography *silences* women.

Langton also uses another example to illustrate her point about illocutionary silencing.

Linda Marchiano is a woman who has appeared in pornographic films. She wrote about her experiences during the filming of one particular piece, describing how she was beaten, tortured, drugged, coerced, and raped. Marchiano wrote about these experiences in explicit detail in order to protest against the treatment that she and other people endure in the making of pornographic films. She intended her account to shock and horrify her readers. Instead, Marchiano's book is sold in pornography catalogues alongside material of pornographic content; it is sold as pornography.²⁶

Langton argues that Marchiano's illocutionary act of protest was silenced by the porn industry, just like the woman in the previous example. Neither one was able to perform the speech act that she intended to perform.

The women in Langton's examples have been *illocutionarily disabled*. This means that their ability to perform a certain act, namely the act of refusing sex or the act of protest, has been damaged or taken away. Langton argues that their ability is taken away by pornographers: "The space for potential speech acts can be built by speakers, as can the limits on that space, the constraints responsible for the silence of illocutionary disablement."²⁷ In this case, the pornographers limit the space for potential speech acts. By (even inadvertently) inculcating certain beliefs in the minds of their audience, they prescribe the limits of women's speech and leave no space for the speech acts of refusal and protest. It is important to note that these examples are different from the case in which the man *ignores* the woman's refusal and rapes her. This kind of a case is an example of perlocutionary frustration; the woman was able to utter 'no' and the man understood her utterance as a refusal, but her refusal failed to have the *effect* that the woman intended it to have. *Illocutionary disablement* or silencing is different from

²⁵ See Jacobsen (1995) and Bird (2003).

²⁶ See Linda Lovelace and Mike McGrady (1980), *Ordeal*.

²⁷ Langton (1993) p. 320.

perlocutionary frustration (though both may be caused by pornography, according to Langton). In cases of perlocutionary frustration, the woman still manages to express her refusal of sex even if the man ignores that refusal, but in instances of illocutionary silencing, the woman is not even able to refuse when she says 'no'.

In the next section I will offer some reasons why the LSC might be reasonable and useful. I will do so by addressing some questions about Langton's examples and how she uses parts of Austin's work to make her case against pornography.

1.4 WHY SILENCING?

Though Langton and MacKinnon have both attracted criticism for their arguments, Langton set out to demonstrate that MacKinnon's claim was not confused, misguided, or impossible to defend. I think she has succeeded in this goal. The LSC provides a credible philosophical defense for some of MacKinnon's claims about pornography. Langton's innovative use of Austin provides both framework and precedent for her argument. By using Austin to defend MacKinnon, she not only makes an interesting argument, but also brings a challenging feminist claim into the mainstream of analytic philosophy.

The LSC is also useful in several other ways. First, let us consider the matter of uptake. Uptake, as we noted in Section 1.2, can be loosely defined as the audience's understanding of an illocutionary act. For example, if I say 'hello' to you, you might respond by saying 'hello' back, thus indicating your uptake of my greeting. In Langton's examples of refusal and protest, uptake of the women's illocutionary acts is not secured by their audiences. The man does not take the woman to be refusing sexual consent, and the browsers of the catalog of pornographic materials do not take Linda Marchiano to be protesting against her treatment by the pornography industry.

Uptake becomes a useful concept when we consider the nature of the communication failure taking place. You might object to the LSC by asking, "Doesn't each woman just fail to get her point across? How is pornography involved in these speech acts?". A defender of Langton might respond to these questions in two different ways. First, regarding uptake, she might point out that the women in Langton's examples did not do anything wrong. Each did everything that was in her power: the woman in the sexual context said 'no', which is the conventional way of communicating refusal across most conversational contexts. In publishing

her book, Marchiano recounted her experiences in language of protest and horror. There is a real sense in which these women cannot be said to have failed. Instead, there was something, as Langton might argue, that prevented audiences from securing uptake in these cases. The point here is that sometimes successful communication is not simply a matter of uttering the right words. Sometimes conventions, rules, and politically significant facts constrain a conversational context so that successful communication is impossible. Any communication failure is then due to such conventions, etc., and not to the individual speaker.

Another response to the above questions might be to make clear the connection between pornography and communication failure. Let us look at an example cited by Langton from Donald Davidson.

Imagine this: the actor is acting a scene in which there is supposed to be a fire. . . . It is his role to imitate as persuasively as he can a man who is trying to warn others of a fire. "Fire!" he screams. And perhaps he adds, at the behest of the author, "I mean it! Look at the smoke!" etc. And now a real fire breaks out, and the actor tries vainly to warn the real audience. "Fire!" he screams. "I mean it! Look at the smoke!" etc.²⁸

Langton uses this example to show how a person's *role* can prevent him from, in this case, performing the illocutionary act of warning the audience that there is a fire. In this case, the actor intends to warn the audience that there is a fire, he speaks the appropriate words, and yet uptake is still not secured. "Something," says Langton, "about the role he occupies prevents his utterance from counting as a warning. Something, perhaps, about the conventions of theatre constrains the speech acts he can make. The same words said with the same intentions by an audience member would count as a warning. The actor, though, has been silenced."²⁹ Langton is here asking us to consider whether or not there might be something about the role occupied by women or the conventions of a woman's life that constrain her speech. This is a useful question to ask while considering communication and communication failure; it takes the emphasis away from whether the speaker, the audience, or both have failed in their exchange and opens up

²⁸ Davidson (1984), p. 269.

²⁹ Langton (1993), p. 317.

discussion of other options. It also introduces the question of whether or not social forces might affect our communication, and invites us to take seriously the ways in which they do.

It is important to note that Langton is talking about a very particular kind of social force here. She is talking about how one speech act can silence another speech act, and how the speech and power of one person or group can affect the speech and power of another. Speech can do this, Langton and Austin both argue, by the power of convention. Langton notes Austin's use of the notion of convention in the establishment of *felicity conditions*. Recall from section 1.2 that felicity conditions are the necessary conditions that a speech act must fulfill in order to be successful and count as an instance of that act. In this case, Langton notes that the felicity conditions for many acts like marriage, voting, and divorce are spelled out in laws. In these cases, the speech acts are the utterances of the laws. These utterances demarcate the possible speech acts of, say, marriage, and so establish the conventions and felicity conditions of that act. However, felicity conditions are not always so carefully and precisely spelled out.

Felicity conditions for illocutions in general are rarely spelled out in the words of legal enactments. What then of the conventions that set conditions for other illocutions, warning, protesting, urging, and the rest? If it is hard to say just what the conditions are, it will be harder still to say what sets them. But again, the answer may be that, by analogy with the legal cases, they can be set by what is said, this time by informal practices of speech and communication that gradually establish precedents and informal rules about what counts as, for example, a warning.³⁰

With regard to pornography, the story goes something like this: by viewing and producing pornography, we establish "precedents and informal rules" about how a woman can speak in a sexual context. The speech act that is pornography, Langton argues, may be gradually establishing or may have already established a precedent that makes the speech acts of refusal and protest unspeakable for women.

How does Langton justify the expansion of her claim from one or two sets of circumstances to a vast general claim about pornography and women? Well, as Langton says, these examples "betray the presence of structural constraints on women's speech".³¹ It is not, the

³⁰ Langton (1993), p. 320.

³¹ Langton (1993), p. 323.

argument goes, simply one set of circumstances that has been adversely affected. There is a systematicity present here that is also present in other aspects of women's speech and life. There are structural constraints, present at the junction between language and society, that are limiting women's speech.

The rules fixing possible moves in the language games of sex are such that saying "no" can fail to count as making a refusal move, and telling the story of one's own subordination can fail to count as a move of protest. These are illocutions whose felicity conditions, it seems, cannot be satisfied by women, at least in these contexts.³²

In other words, the women in Langton's examples are trying to perform speech acts that have felicity conditions that that may not, and in some cases cannot, be satisfied by women.

Langton's arguments are strongly rooted in claims about authority. Pornography has a certain amount of authority over communication in sexual contexts. It also diminishes the authority that a woman has over her own body.

Refusal, here, is a kind of prohibition, and it is an exercitive illocution, in Austin's terms. To satisfy its felicity conditions, the speaker must have authority in a relevant domain. A government that prohibits has authority over a large domain; a parent who prohibits has authority within the smaller domain of the family; a patient who prohibits treatment has authority within the local domain of his own life, his own body. A woman who prohibits sexual advances also has authority within the local domain of her own life, her own body. If she cannot prohibit, cannot refuse, the authority is absent. If she is disabled from speaking refusal, it is a sign that her body is, in a sense, not her own. If pornography prevents her from refusing, then pornography destroys her authority as it twists her words.³³

In other words, pornography takes away a woman's authority to speak for herself and control her own sexuality.³⁴ This notion of authority is important for Langton, and it is useful to anyone interested in the relationship between language and power. Langton notes that every authority is

³² Langton (1993), pp. 323-324.

³³ Langton (1993), p. 325.

³⁴ Langton does not explain why pornography is the sole or most important defendant in these charges, and why other social forces do not share the blame shouldered by pornography. I go some way towards exploring this line of thought in this thesis.

matched to a specific domain: in this case, pornography is the authority, and the domain seems shockingly large. If Langton is correct, then pornography has authority over a women's sexuality, over her body, and over her ability to express herself and communicate effectively. This appraisal of the scope of pornography's authority may be surprising to some readers. Here is yet another way in which the LSC is useful: Readers may be inclined to consider pornography a relatively minor event without much influence in the public sphere. The LSC asks us to question this inclination and re-examine the scope of some politically significant speech acts.

Langton does not deny that there may be other explanations for silencing in addition to the LSC. Neither does she suggest that the scope of pornography's authority is a matter for armchair philosophy. What she does offer is the suggestion that pornography may be a part of the explanation for why some women experience some communication failures, and an argument supporting the conclusions of some anti-pornography feminists and legal scholars. That this suggestion and its supporting argument are neatly contained in an Austinian package only serves to make it that much more interesting. Later in this thesis I will go on to investigate how social forces more broad in scope than pornography might influence and impact upon our communication in other, less Austinian ways.

1.5 CONCLUSION

In this chapter I have set out some background, both political and philosophical, for the concept of silencing. I have suggested that Langton's innovative use of Austinian speech act theory may help us to understand Catherine MacKinnon's claims about pornography as reasonable and useful, if challenging, claims. I have also suggested that silencing is an interesting and useful concept in part because of its novel combination of political theory with the philosophy of language.

In the next chapter I will continue to examine the LSC and its merits. This time, I will take a more critical stance and consider the substantial body of criticism that has been directed against Langton.

CHAPTER TWO

A CRITIQUE OF SILENCING

In this chapter I examine several different critiques of Langton's silencing claim. I outline arguments based in speech act theory made by Jacobson and Bird. I also look at critiques based in notions of authority and responsibility, including Nellie Weiland's arguments about convention and linguist Deborah Cameron's work on gendered communication and gendered communication failure. Finally, I consider Ishani Maitra's Gricean alternative formulation. With each critique I consider the advantages and disadvantages of using Langton's silencing framework as a way of understanding politically significant communication failure.

2.1 CRITIQUES BASED IN SPEECH ACT THEORY

The first set of critiques that I will examine is based on Langton's understanding and interpretation of certain aspects of Austinian speech act theory. Langton follows Austin's lead in determining (or attempting to determine) what counts as a felicitous illocution and what distinguishes such acts from their perlocutionary cousins. Alexander Bird and Daniel Jacobson question Langton's classification of refusal as an illocutionary act. They argue that the LSC, tied as it is to illocutionary disablement, will not do the work that Langton needs it to do.

Alexander Bird begins his critique of Langton with the observation that the LSC has some undesirable consequences. For instance, in the paradigmatic refusal case, Bird argues that the silenced woman is not really raped if she is not capable of the speech act of refusal.³⁵

... [T]he most important consequence of Langton's argument is that if a woman cannot illocute a refusal, no actual utterance of "No!" (etc.) can *be* a refusal. So in the case under consideration, there was not refusal of sex. We might imagine that in a trial for rape, counsel for the accused could claim that he did nothing that the woman had refused. If she did not refuse sex, why is he a rapist?³⁶

³⁵ This criticism was first introduced in Jacobson (1995). Bird cites his agreement with Jacobson's argument in Bird (2002), p. 3.

³⁶ Bird (2002), p. 3.

It is worth drawing attention to the fact that Bird is asking us to imagine that there is an easy bridge between a lack of refusal and the presence of consent. Perhaps this easy bridge is in place in many courtrooms and more private places of judgement; I will discuss some problems associated with these kinds of judgements in Chapter Three. In this case, Bird does point out that a lack of refusal does not necessarily imply the presence of consent.³⁷ However, the possibility that a lack of refusal *may* imply consent in some courtrooms should encourage us to take Bird's critique seriously. It is certainly undesirable that any person in any context should be able to use Langton's argument in defense of rapists. Bird and Jacobson both conclude that this potential consequence is unacceptable and presents a serious problem for the LSC.

Bird, however, has a further objection to the LSC. Recall Langton's paradigmatic example of silencing, in which a woman's refusal of sex misfires because a pornography-viewing man fails to understand that her utterances of 'no' are meant as a refusal of sex. Bird asks us to extend and strengthen this example in the following way. Suppose that pornography has such a strong influence on the context in which the refusal takes place that the man not only fails to understand that the woman is refusing when she says "No!", but he also takes her utterance to be an indication of consent.³⁸ Strengthened in this way, the example draws our attention to the role played by *uptake* in Langton's argument.

We might have a situation so perverted by pornography that the male in question not only fails to understand "No" as a refusal but even takes it to be consent. If the 'uptake' is one of consent and that were sufficient for illocution, then the

³⁷ Bird says, "There is a question of legal definition here. For the lack of a refusal is not generally the same as giving consent. And so if rape is sex without consent, then a defendant might properly be found guilty despite the absence of a refusal if consent is absent too. Nonetheless, putting the legal issues to one side, one might still think there is something badly wrong with someone who takes sex in the absence of an invitation, encouragement and so on, even if a refusal is absent too. But it does seem less bad than ignoring a refusal." This passage raises the interesting issues of legal interpretation of consent and moral responsibility. Unfortunately, these issues, though worth exploring, are beyond the scope of this thesis.

Also, it is worth noting that Jacobson seems less careful than Bird about this issue. See Jacobson (1995) p. 77.

³⁸ This influence would (I assume) take the form of a widespread acceptance of pornography's authority in sexual matters and the presence of films that use sexual refusal and utterances of 'no' as a form of titillation and consent. In other words, pornography would have enough authority to exert influence over the conventions in the language game of sexual refusal. I discuss this idea in section 2.2.

illocution is one of consent. On any definition of rape then, rape has not occurred.³⁹

In this passage, Bird is adding force to his claim that Langton believes that uptake is necessary for successful illocution. If uptake is both necessary and sufficient, Bird contends, then this example demonstrates an even more dangerous consequence of the LSC. Legal questions about the absence of refusal will now be brushed aside. No-one can plausibly argue that rape has occurred if the woman's illocution was one of sexual consent.

With this strengthened example, Bird is asking us to consider whether there is any reason to think that the content of the uptake is sufficient to determine the content of the illocution. In other words, does what your audience takes you to be saying determine what you are actually saying? This question is worth exploring. In Langton's refusal example, the woman is not able to communicate refusal because her audience takes her to be saying something else; this example seems to support an affirmative answer to Bird's question, and should give us cause to worry. If the content of our utterances is determined, even in part, by our audiences, then we may have much less control over what it is that we are able to say. Under such circumstances, the LSC might seem particularly relevant and disturbing.

However, it is not yet clear which conditions Langton believes to be necessary and sufficient for a successful illocution. This may be because Langton follows Austin's lead in saying that conventions set felicity conditions while noting that Austin himself is not very clear about what this means.⁴⁰ Let us examine some passages from *Speech Acts and Unspeakable Acts* in an attempt to be more clear about this. Langton seems quite sure that uptake is necessary for a successful illocution:

... [I]n determining what illocution is performed...the speaker will also need to secure "uptake": that is to say, the hearer must recognize that an illocution of a certain kind is being performed.⁴¹

³⁹ Bird 2002, p. 3.

⁴⁰ Langton (1993), p. 319.

⁴¹ Langton (1993), p. 301.

It is also clear that there is more than just uptake involved:

The intention to perform an illocution of a certain kind is not always a necessary felicity condition for that illocution. [Sometimes] the context determines the uptake secured, which in turn determines the illocution performed.⁴²

In this passage, Langton seems to be saying that the context in which an illocution occurs may be more important than the intentions of the speaker. If context can determine uptake, then the speaker may not have much control over what they illocute at all. Many of Langton's critics, including Bird and Jacobson, are less than pleased with this position. We will explore this tension further in what follows.

In addition to intention, uptake, and the influence of context, Langton also discusses cases where there is disagreement about which speech act is performed. In these cases, it is unclear what is being said and done. For the purposes of our inquiry here, let us consider pornography to be a speech act. Among people who categorize pornography in this way, there is much disagreement over what it is that pornography actually *says* (and therefore does).⁴³ What is it that pornography is saying about women? Does it, in fact, lend authority to the claim that women mean *yes* when they say 'no'? Or is it just entertainment? Or something else? Here we find vivid disagreement among audiences about which speech act is performed. Austin attempts some resolution by suggesting that in such cases utterances are liable to have "a construction put upon them by judges"; Langton responds by asking who is in a position to judge.⁴⁴

This question introduces a further element to the discussion. In addition to the felicity conditions listed above, there is also the possibility that a judge of some sort has the authority to determine which speech acts are performed when certain words are uttered in certain contexts. However, finding an answer to Langton's question about who this judge might be proves difficult. In some cases, a judge is appointed by an institutional body, and as such has the authority to determine what is said and done in certain contexts. One example of such a case is

⁴² *Ibid.*

⁴³ For a good summary of the various views about pornography and its message, see Saul (2003) p. 74-107.

⁴⁴ Langton (1993), p. 108, Austin (1965), p. 114.

an actual judge presiding over a court of law. This judge has the authority to decide if an utterance was an order or a suggestion, an act of murder or a bad joke.⁴⁵ However, most instances of language use are much less institutionalized. A judge cannot determine which act the woman in Langton's refusal example performs when she says "No!". This partially due to the fact that most of us do not think that the meaning of private conversations is a matter for judges to decide, but mostly because we have no conventions or established rules that assign judges authority over our communication. There are no official institutional arbiters of meaning in our culture.⁴⁶

It seems that in answering Bird's question about who and what determines the content of an illocution, there is a growing tension between the speaker, the audience, the conversational context, and the possibility of an external judge. If there is to be no clear judge in our refusal example, then we are left with the possibility that either the speaker, the audience, or the context determines the content of the illocution. In order to see how this works, we turn again to the refusal scenario.

Sometimes "no," when spoken by a woman, does not count as the act of refusal. The hearer fails to recognise the utterance as a refusal; uptake is not secured. In saying "no" she may well intend to refuse. By saying "no" she intends to prevent sex, but she is far from doing as she intends. Since illocutionary force depends, in part, on uptake being secured, the woman fails to refuse... She says "no." She performs the appropriate locutionary act. She means what she says. She intends to refuse. She tries to refuse. But what she says misfires.⁴⁷

So the speaker does everything right, but still fails to refuse. (One might argue that the audience has failed in some way as well, though Langton provides no account of what the man should have been doing in order to succeed or whether he tried to do these things.) In this example there is no external judge, and there is no mention of the context except our understanding that the

⁴⁵ And even this judge is guided and restrained by conventions like legal precedent and norms of conduct among judges.

⁴⁶ This is not to say that some institutions don't play a role in standardizing, recording, and assigning meaning. Dictionaries record "correct" conventional meanings. Laws and scientific bodies sometimes assign meanings to certain technical terms. However, there is no institutional "language tribunal", etc.

⁴⁷ Langton (1993), p. 321

audience has been influenced by pornography. However, in this passage, Langton makes reference to the notion of *illocutionary force*. A speech act cannot have its intended illocutionary force unless uptake is secured. If uptake were secured, then the woman would have successfully refused, and her utterance would have the force of refusal.

This last condition is particularly important in understanding the sticking point between Bird and Langton. For Austin, illocutionary force is just “what illocutionary act it is that we are performing in issuing that utterance”.⁴⁸ Austin intended the concept of illocutionary force as a device to help us to see the difference between performatives and constatives, i.e. that when we say things, we utter words but we also perform acts. The meaning of these utterances, abstracted from their conversational context, may be different from but will bear a resemblance to the meaning of the illocutionary act done when making the utterance. This is where illocutionary force comes in. A sentence may have only one literal meaning, but it will probably have several different possible illocutionary forces. The force of the illocution will be determined by how the words are used in conversation. For example, if I say “It’s getting hot in here,” to my sister, I could mean any number of things. I could be informing her of the rising temperature in the room, or scolding her about her wasteful use of energy to heat the room, or commenting on the tensions between our parents at the dinner table. In order to know what the illocutionary force of my utterance actually is, you need to know a lot of things about the conversational context in which the utterance took place. Due to considerations about uptake in Langton’s refusal example, the audience may play a role in deciding which speech act is actually performed, and it is this possibility that Bird wants us to consider.

Illocutionary force is not the only Austinian sticking-point between Bird and Langton. Bird also objects to Langton’s reliance on Austin’s notoriously unclear distinction between illocutions and perlocutions. The fact that Langton is in line with Austin here is not necessarily helpful for those hoping to make clear the language-related issues surrounding the silencing claim. Austin himself notes that it is very difficult to effectively distinguish illocutions from perlocutions, when he writes that “[i]t is the distinction between illocutions and perlocutions

⁴⁸ Austin (1965), p. 150.

which seems likeliest to give trouble”.⁴⁹ He devotes an entire chapter of *How to Do Things With Words* to the making of this distinction, and then another to how his favorite heuristic for making the distinction is to be understood. Clearly, then, the illocution/perlocution distinction is, at the very least, complicated. Let’s look at how Austin makes the distinction and where the difficulty lies in the hope that such an examination will make Langton’s intentions in using the Austinian model more clear.

Austin first states that an illocutionary act is distinct from a perlocutionary act because perlocutionary acts produce consequences. However, things quickly become more complicated. Austin goes on to note that the illocutionary act is “connected with the production of effects in certain senses”.⁵⁰ To begin,

1. Unless a certain effect is achieved, the illocutionary act will not have been successfully performed.

Now, Austin is careful to state, this is not to say that illocutionary acts are just the achievement of certain effects. Rather, this is to say that some effects amount to the bringing about of an understanding of “the meaning and of the force of the locution” in the mind of the audience. In other words, “the performance of an illocutionary act involves the securing of *uptake*.” For example, in Davidson’s example about a fire in a theatre, the actor cannot be said to have warned his audience unless they have heard his shouts of “Fire!” *and* have taken those shouts to mean that there really is a fire in the building and that they should exit as quickly as possible.

Austin continues,

2. The illocutionary act ‘takes effect’ in certain ways, as distinguished from producing consequences in the sense of bringing about states of affairs in the ‘normal’ way, i.e. changes in the natural course of events.

For example, if my utterance ‘I name this ship the *Queen Elizabeth*’ has the effect of christening the ship, then you can’t go on to call it the *Generalissimo Stalin* (Austin’s example). Also,

3. Many illocutionary acts conventionally invite a response or a sequel.

⁴⁹ Austin (1962), p. 110.

⁵⁰ Austin (1962) pp. 116-117.

For example, an order invites obedience, an offer invites acceptance or rejection, etc. This third case becomes tricky, as Austin introduces a device to help us to make the distinction between a perlocutionary order and an illocutionary order. I could say 'I ordered him and he obeyed', and my order would be an illocution. However, if I were to say, as we often do, that 'I got him to obey', then Austin argues that my act is perlocutionary. With this list, Austin means to show that there are certain way in which illocutions are connected to, or "bound up with", effects, but that these ways are all distinct from the kind of production of effects that is characteristic of the perlocutionary act.⁵¹

Another important difference between illocutions and perlocutions is that illocutions are usually "utterances which have a certain (conventional) force".⁵² One way to understand this is that some illocutions are marked out as illocutions by the way that we use language. There are certain conventional performative formulas, like 'I argue that', or 'I warn you that'. Note that these formulas do not exist for perlocutions. For example, we don't say 'I alarm you that', or 'I convince you that'.⁵³ The force of the illocutionary utterance, or what the utterance *does*, is determined in part by the conventional rules for that utterance. So when I say 'I argue that *el jefe* ought to be overthrown', convention dictates that what I am doing is putting forward an argument for the conclusion that a certain dictator should be overthrown. It is interesting to note that Austin concludes his discussion of the conventionality of illocutions and of this kind of example in particular by saying that "we may entirely clear up whether someone was arguing or not without touching on the question of whether he was convincing anyone or not". Though my audience does need to secure uptake that I am making an argument, they do not need to be swayed by my argument or agree with my conclusions. Taking this back to Langton's refusal case, the man needs to realize that the woman is refusing in order for her to successfully refuse, but he does not need to respect her decision or desist in making sexual advances. (Though readers may think that the dictates of morality are more relevant than those of speech act theory here.)

⁵¹ *Ibid.*

⁵² Austin (1962), p. 109.

⁵³ These examples are all Austin's, from his (1962), pp. 103-4.

This matter of how we use language, or that we can use language to distinguish illocutions from perlocutions, is behind the heuristic device that Austin gives us to help with making the distinction. The heuristic goes as follows:

1. 'In saying x I was doing y ' or 'I did y '
2. 'By saying x I did y ' or 'I was doing y '⁵⁴

For example, in Austin's own words, "In saying I would shoot him I was threatening him," and "by saying I would shoot him I alarmed him." So (1) serves to illustrate illocutions and (2) perlocutions. However, Austin is careful to note that these formula will *not* provide us with a test for distinguishing illocutions from perlocutions. For one thing, both formulas will work for some illocutions,⁵⁵ and for another, there are several examples of illocutions that work through (2) and perlocutions that work through (1). In other words, the heuristic is useful in some cases, as it helps to illustrate what is different about the two kinds of act, however, it does not make the distinction any more clear or tractable. This result allows me to say with some certainty that the distinction between illocution and perlocution is both difficult and likely to be the source of some confusion.

As Bird notes, "Austin's distinction between p-ing *in* saying that p and p-ing *by* saying that p is not enough."⁵⁶ The most commonly cited difference between the two types of speech act, Bird claims, is that a perlocutionary act includes some effect on its speaker's audience.

We might be inclined to take this as a defining feature, one which distinguishes it from illocution. Thus the nature and existence of the illocution performed when someone utters S will not depend on the effects of the utterance while the nature and existence of the perlocution will so depend.⁵⁷

However, Bird argues that Langton's account of illocution will not obey this distinction because Langton places such a premium on uptake. The hearer's recognition of the speaker's illocution or intention to illocute is essential to Langton's account, and Bird argues that this recognition can

⁵⁴ Austin (1962), p. 122.

⁵⁵ Consider 'In saying 'no' I was refusing sex' versus 'By saying 'no' I refused sex'.

⁵⁶ Bird (2002), p. 12.

⁵⁷ *Ibid.*

reasonably be considered to be a perlocutionary effect. Unfortunately for Langton, Austin agrees with Bird here. Uptake, according to the passages from Austin cited above, is an effect of speaking that is essential to the illocution. Therefore, for Langton as well as for Austin, illocutions and perlocutions both necessarily encompass effects. Unfortunately for Bird, and as we noted earlier, the effect of securing uptake is not a perlocutionary effect for Austin. Langton would argue that refusal is only connected to uptake in that the woman cannot refuse unless the man takes her to mean that she does not want sex. Bird argues that Langton owes us a better account of this distinction before we must accept that the silencing in question is illocutionary and not perlocutionary, or “whether we should really regard the uptake of intended refusal as essential to the occurrence of refusal.”⁵⁸ Langton’s dependence upon Austin’s authority in this matter is not necessarily helpful, as we have seen, since he himself has such trouble making the distinction clear.

Jacobson argues that both Austin and Langton are mistaken, and that illocution can be performed without uptake, using the following example: Bill receives a wedding invitation from Sally. However, Bill believes that Sally has only sent him the invitation in order to gloat, and not because she actually wants him to come to the wedding. Sally really does intend to invite Bill to her wedding. She succeeds, Jacobson claims, in inviting Bill, even if he willfully misunderstands the invitation.⁵⁹ It seems that Sally can illocute invitation without relying on Bill’s uptake of her act.⁶⁰ Bird makes this kind of example even more forceful by asking us to consider the following case. Suppose that Bill mistakenly believes that there is no wedding, and that Sally is only sending the invitation to make him feel regretful about their chances as a couple. In this case, there is clearly no uptake, since Bill does not believe that there is a wedding to which he could be invited. However, Bill’s error and his failure to secure uptake do not imply

⁵⁸ *Ibid.*

⁵⁹ Jacobson (1995), p. 73.

⁶⁰ Langton and Hornsby have published a good critique of this example using Austin’s notion of an abused illocution rather than an illocution that misfires. They say that there may be a sense in which Sally invites Bill insincerely, but she still invites him. This is a grey area for Austin, thus not a good example. See Langton and Hornsby (1998), p. 30.

that he was not invited. For example, when he finds out that there really was a wedding, and that he missed it, he can't then claim that he wasn't invited.⁶¹

This is just the first example of an illocution that does not require uptake. There are many more. Even Langton and Austin admit that some institutional illocutions do not require uptake. For example, when a judge sentences a prisoner, he still succeeds in sentencing the prisoner even if the prisoner does not realize what is going on, though someone had better realize what has happened if the sentence is to be carried out. However, there are other examples of illocutions that do not come with the trappings of institutional authority and still do not require uptake. As Bird says, "John may grumble and Lizzie may be rejoicing, but their doing so requires no uptake."⁶² Indeed, these illocutions don't require an audience of any kind. But what of illocutions that are intrinsically communicative in nature? Bird writes,

And even when the act is intimately bound up with communication, the precise nature of the illocutionary act being performed need not rest on the recognition of an intention. One may slander a person (in the non-legal sense of slander) without any one's taking one to have that intention. Alice and Richard may take themselves to be exchanging important information in the serious course of business, but in fact they are really just gossiping. I may forgive you your trespasses, and you are forgiven whether or not you know that I intend to forgive you.⁶³

Thus neither Bird nor Jacobson believe that uptake is necessary for the success of an illocution. Bird's belief is informed by Jacobson's suggestion that such a position on uptake "holds the performance of an illocutionary act hostage to the perversity of one's audience."⁶⁴ In other words, the peculiarities of one's audience do not, or perhaps *should not*, have the power to determine the speech act that one performs. Going even further, Jacobson claims that the relevant audience in the refusal case is not the hearer, but us. No competent user of language would say that the woman failed to refuse, he argues. It is clear that the hearer is in error, and it

⁶¹ Bird (2002), p. 10

⁶² Bird (2002), p. 8.

⁶³ *Ibid.*

⁶⁴ Bird (2002), p. 4. Jacobson (1995), p. 74.

is not his judgement about the case that is relevant, either morally or linguistically. It is our judgement that matters.⁶⁵

Jacobson may be right that our broader judgement as competent language users is what counts in deciding what the woman who attempts to refuse means by uttering 'no', but in making this argument, Jacobson obscures what I believe to be the most compelling part of Langton's claim. Langton is trying to draw our attention to a particular kind of communication failure, and she is asking us to consider what might cause such failures, if we can accept that they do occur. By drawing our attention away from the context of our refusal case and towards the existence of a broader community of language users, Jacobson may take our attention away from the fact that the woman in our example could not communicate effectively with the man. As far as the two people in the example are concerned, the woman could not get the man to understand her to be refusing. There is an interesting connection between the small context of the refusal example and the larger context of the community of language users that Jacobson cites as appropriate judges. I explore this connection in the next section.

In this section I have surveyed some of the issues involved in Bird and Jacobson's critique of Langton. I have noted the importance of uptake to Langton's account of what felicitous illocution requires, and have discussed some of the problems associated with this view. I have also demonstrated some of the complexity present in Langton's refusal example, and noted that Langton has borrowed some of these complications from Austin. In the next section I will continue to unpack Langton's argument, this time under scrutiny from a very different angle.

2.2 CRITIQUES BASED IN NOTIONS OF AUTHORITY AND RESPONSIBILITY

I now turn to some critiques of the LSC that do not directly address problems with speech act-related notions like uptake. However, we will see that the critiques explored in this section are connected to the previous discussion of uptake in an important way. In my discussion of uptake and whether or not uptake is required for a successful illocution, I made use of the idea that linguistic convention and conversational context are also important components of illocution. In this section, convention and context will continue to be relevant to our discussion of communication failure and the LSC.

⁶⁵ Jacobson (1995), p.77-78.

In this section I examine critiques that address problems with what I am calling *authority* and *responsibility*. These two notions fit together. A crucial part of Langton's argument rests on her contention that pornographers have enough *authority* over the conventions of our speech, and particularly our speech about sexual refusal, that they are able to alter those conventions and cause illocutionary disablement. In other words, pornographers may be *responsible* for these convention shifts, and for any harm that comes about because of them. In what follows, I will consider how this might work, and whether we are right to think that authority comes with responsibility in this case. I will first look at what Langton says about authority and pornography, so that we can be clear about what the critiques in this section are responding to. I will then turn to Nellie Weiland's discussion of conventions and pornographers' authority to change them. Finally, I will turn to the work of linguist Deborah Cameron and to a discussion of the potential dangers of this convention-changing talk.

Langton suggests that the question of whether pornography has sufficient authority to affect what women can do with their words is central to the controversy over pornography. She asks us to consider whether or not we think it likely that pornographers have this authority.

This question is, I think, at the heart of the controversy. If you believe that pornographic utterances are made by a powerless minority, a fringe group especially vulnerable to moralistic persecution, then you will answer negatively. Not so if you believe, with MacKinnon, that pornography's voice is the voice of the ruling power ... Just as the speech of the umpire is authoritative within a certain domain - the game of tennis - so pornographic speech is authoritative within a certain domain - the game of sex. The authors of pornographic speech are not mere bystanders to the game; they are speakers whose verdict counts.⁶⁶

It is reasonable to take from this passage the conclusion that Langton comes down on the side of MacKinnon and the anti-pornography argument, though Langton is careful to avoid any direct condemnation of pornography in *Speech Acts and Unspeakable Acts*. Her argument defending this position involves a defense of the other claim that Langton takes MacKinnon to be making about pornography - that pornography subordinates women - and is beyond the scope of this discussion. However, she does offer a few independent reasons for why we should believe pornography to be authoritative in "the game of sex".

⁶⁶ Langton (1993), pp. 311-312.

First, she alludes to the growing body of empirical evidence which suggests that pornography does in fact change our beliefs.

Some, it seems have their attitudes and behavior altered by it in ways that ultimately hurt women: they can become more likely to view women as inferior, more disposed to accept rape myths (for example, that women enjoy rape), more likely to view rape victims as deserving of their treatment, and more likely to say that they themselves would rape if they could get away with it.⁶⁷

Were these studies to prove conclusive, this would provide a secure foundation for Langton's claim that pornography may be authoritative in the sexual domain. However, she does not rest with empirical evidence. Langton also relies on a theoretical argument that pornographers set the conditions for speech within the sexual domain.

Refusal, here, is a kind of prohibition, and it is an exercitive illocution, in Austin's terms. To satisfy its felicity conditions, the speaker must have authority in a relevant domain. A government that prohibits has authority over a large domain; a parent who prohibits has authority within the smaller domain of the family; a patient who prohibits treatment has authority within the local domain of his own life, his own body. A woman who prohibits sexual advances also has authority with the local domain of her own life, her own body. If she cannot prohibit, cannot refuse, the authority is absent. If she is disabled from speaking refusal, it is a sign that her body is, in a sense, not her own. If pornography prevents her from refusing, then pornography destroys her authority as it twists her words.⁶⁸

In other words, if a woman is unable to refuse sex, something has taken away her authority over her body and her sexuality. But how do we prove that pornography has taken this authority?

If felicity conditions for such illocutions constrain women in these contexts, we need to ask how those conditions came into being. This question was asked about the conditions that constrain illocutions of marriage, divorce, and the like, and the answer was that they were set by the speech of the legislator. How then are these other felicity conditions set? We know that felicity conditions for illocutions in

⁶⁷ Langton (1993), p. 306. Langton is here referring to Donnerstein, Linz, and Penrod, *The question of Pornography: Research Findings and Policy Implications*; the report from the Minneapolis hearings on pornography; other transcripts of hearings held on pornography, and the 1986 *Report on the Attorney General's Commission on Pornography*. There have been many more studies done since Langton (1993), and the general consensus is that there is empirical evidence for both sides of this argument. Therefore, we can say that the empirical evidence is largely inconclusive.

⁶⁸ Langton (1993), p. 325.

general can be set by other speech acts. MacKinnon's claim that pornography silences women can be interpreted in just this way. *The felicity conditions for women's speech acts are set by the speech acts of pornography.* The words of the pornographer, like the words of the legislator, are "words that set conditions." They are words that constrain, that make certain actions - refusal, protest - unspeakable for women in some contexts. This is speech that determines the kind of speech there can be.⁶⁹

So pornography does not take away a woman's authority over her body by force or hypnosis or simply implanting ideas about sex in people's heads. Langton is claiming that pornography's authority lies in a much more complex maneuver.

First, pornography is widely distributed as erotic and sexually pleasurable material. Then it teaches or informs men about how sexual language works. Women are depicted as wanting sex, regardless of the words that they use. "In pornography of this kind there would be all kinds of locutions the woman depicted could use to make the consent move. "Yes" is one such locution. "No" is just another."⁷⁰ In this way, the men watching the pornography learn the "rules" of the "sex game". They learn which speech acts are possible, and which are not. They learn which are legitimate, and which are not. If we continue one of Langton's previous analogies, pornography becomes the unofficial umpire of the sex game.

Missing from this analogy is any kind of story about how this pornographic umpire bridges the gap between normal, everyday uses of 'yes' and 'no', where 'yes' means affirmation or consent and 'no' means refusal or rejection, and the new pornography-trained uses of these words. How does pornography come to set the conditions for what kind of speech there can be in the sexual language game? How does condition-setting happen, and where does the authority come from?

Nellie Weiland notes that the success of Langton's argument hinges on whether or not we believe that pornographers really are umpires in this way, whether they have sufficient authority to set the conventions of sexual discourse. Does a pornographer, or even the entire pornography industry, have enough authority to establish conventions about how we are to interpret women's refusals of sex? Weiland, like MacKinnon, argues that they might. More than this, she claims

⁶⁹ Langton (1993), p. 324.

⁷⁰ *Ibid.*

that it is not difficult to effect conventional change in a particular context. She makes her argument by means of a discussion of convention.

As I will argue, pornographers' linguistic authority in sexual discourse is relatively easy to come by: making it the case that 'x' means p in a particular context only requires that speaker use 'x' to mean p in that context, and that the likelihood that 'x' means p is increased with each use of 'x' as meaning p.⁷¹

Here, Weiland is supplying us with a crucial missing piece from Langton's argument: how pornographers manage to change linguistic conventions. We are now to understand that when pornographers use 'no' to mean *yes* in a sexual context, they can make it the case that 'no' does in fact *mean yes* in that context. Also, the more often that pornographers use 'no' in this way, the more likely it is that they will have established a robust convention. In short, pornographers do not need any special authority. They are not doing something unbelievably difficult, something that just can't be done. All they are doing is talking about sex.

Conventions, Weiland claims, are relatively easy to establish in most classes of discourse. Following David Lewis, Weiland states that conventions "derive from regularities in intentional constructions between speakers and meanings", and as such, they happen fairly often.⁷² Crucially, a convention is only established (the regularity becomes conventionalized) if the following condition obtains:

Regularities are conventionalized only if there is trust and truthfulness between members of a given population *G* such that when 'x' is used by some speaker *S*, 'x' means *p*.⁷³

Weiland and Lewis both assert that this "trust and truthfulness" is usually present in a given population, but more work is required before we understand exactly what this means.

Weiland borrows from Lewis again in order to be more clear:

Returning to Lewis' analysis, conventions are solutions to co-ordination problems: in the case of language, the co-ordination problem speakers face is

⁷¹ Weiland (2007), p. 439.

⁷² Weiland (2007), p. 442

⁷³ Weiland (2007), p. 442.

how to communicate given that it is possible for each member of G to have a unique grammar. Lewis's solution to this co-ordination problem is for each member to trust that 'x' means p when used by any S in G .⁷⁴ (my emphasis)

In other words, trust and truthfulness come into the equation because without trust, each member of G will find herself unable to communicate with any other member of G . Unless they trust that everyone means p when they utter 'x', no member of G will ever be able to communicate successfully about p . Trust and truthfulness allow for coordination and communication.

Consider the following example from Stephen Schiffer.

Imagine that two prelinguistic but precocious speakers S_1 and S_2 are stranded on a desert island. S_1 hopes to convey to S_2 that he is angry and knows that S_2 both (i) recognizes 'grrrr' as a sound that dogs make when they are angry and (ii) knows that, due to circumstances, S_1 may in fact be angry. Capitalizing on these conditions of mutual knowledge, S_1 utters 'grrrr' and expects S_2 both to uptake the meaning *I am angry* and attribute it to S_1 - rather than, say, the meaning *there are rabid dogs approaching our campsite*. The reason there is a chance for S_2 to successfully uptake S_1 's intended meaning is the mutual knowledge between S_1 and S_2 of conditions (i) and (ii). Admittedly, this first context c_1 of S_1 's utterance is tenuous; it was quite likely that S_2 wouldn't have achieved uptake and S_1 's utterance would have misfired. However, at a later date in context c_2 , when S_1 is again angry, he can use 'grrrr' to mean *I am angry* with much greater confidence than he did in c_1 , and with even greater confidence later again in c_3 . S_2 's confidence in interpreting 'grrrr' as meaning *I am angry* also undergoes a proportionate increase from c_1 to c_2 to c_3 , and both S_1 and S_2 recognize that the other's confidence (in interpreting and intending respectively) is increasing from context to context. Thus, from c_1 to c_2 to c_3 the probability that 'grrrr' means *I am angry* increases proportionately.⁷⁵

In this example, the initial successful communication between S_1 and S_2 depends a great deal upon circumstances. For instance, S_1 will most probably need to be angry immediately while he utters 'grrrr' for the first several uses, so that S_2 can use the proximity of the anger-inducing event to help him understand S_1 's utterance. However, after multiple uses of 'grrrr' to mean *I am*

⁷⁴ *Ibid.*

⁷⁵ Schiffer (1972), p. 124.

angry, it is likely that S_1 can use the utterance whenever he pleases, even several days after an anger-inducing event. With every use, the mutual knowledge between S_1 and S_2 increases, and so does the probability that ‘grrrr’ means *I am angry*.

Weiland uses Schiffer’s example to demonstrate her point about pornographic speech acts.⁷⁶ Following along with the ‘grrrr’ example, she states that “the probability that ‘no’ means *yes* when uttered by a woman in the context of an unwanted sexual encounter increases with each instance of use with this intended meaning”. She goes on to say that “the analogy between ‘grrrr’ and pornographic representations should now be clear: each new use by S_1 of ‘no’ to mean *yes* in the context of pornography serves to perpetuate the convention that ‘no’ means *yes* when uttered in similar contexts”.⁷⁷ In Langton’s example, this means that a large number of pornographic films eroticising refusal in this way will serve to establish a robust convention that utterances of ‘no’ in a similar context mean *yes*. Supposing that these films exist, pornographers do have sufficient authority to be umpires in the sexual language game, and Weiland therefore finds the LSC to be defensible.

One problem posed by this analogy is that we might find it hard to extend the pornographic convention-setting example so far as to include the shared knowledge that exists between S_1 and S_2 in Schiffer’s example. Are we to suppose that the woman and her rapist share the knowledge that ‘no’ has come, increasingly, to mean *yes* in sexual contexts? Such a supposition makes it seem odd that the woman should utter ‘no’ to communicate refusal in the first place, given her knowledge about what her utterance might mean to her assailant. However, there may be a way of reconciling this seemingly odd behaviour. Perhaps the woman and man come from different subsets of G , and that these different subsets have different grammars. Does this supposition of competing grammars help? Apparently not, according to Weiland.

In [an unwanted sexual encounter] it is neither mutual nor is it knowledge that ‘no’ means *yes* for the very straightforward reason that the speaker indeed means *no*. It is nevertheless plausible that there is mutual knowledge in the

⁷⁶ I should note that Weiland makes a point of mentioning that she is defining ‘pornography’ in a very particular way. I am steering clear of all issues about the definition of the term here, as such debate is beyond the scope of my thesis.

⁷⁷ Weiland (2007), p. 443.

unwanted sexual encounter; what both speakers know is that there is mutual knowledge that 'no' means *yes* in most contexts relevantly similar to the unwanted sexual encounter - namely in those pornographic representations.⁷⁸

So the man and woman may share enough mutual knowledge to establish the convention, even if they do have different or competing grammars. Not only this, but if a woman were to provide additional signs of refusal, such as physical struggle, these signs might still fail to communicate refusal within this context of prior mutual knowledge because pornography eroticizes those signs as well.⁷⁹

Weiland's interpretation of Langton's example is challenged in Maitra and McGowan (2010). The authors argue first that Langton's example does not require a convention that utterances of 'no' in sexual contexts mean *yes*, and second that pornography's influence on the man in the example does not diminish *mens rea*. With regard to the first argument, Maitra and McGowan state that the Langton example would require a convention flexible enough to change the meaning of the many phrases and actions of refusal that a woman might utter to communicate sexual refusal, and Weiland does not provide a sufficient explanation for a translation on this scale. Also, this kind of convention is unnecessary in the first place, since Langton only requires that there is enough room in the context of utterance for subversive elements like sarcasm and other devices that disguise or complicate the speaker's intentions. In the Langton example, this device takes the form of a sexual script that the woman might be playing along with.

According to Langton and Hornsby, pornography causes its viewers to believe that women say 'No' even when they want sex, perhaps in order to play along with a sexual script that requires them to *pretend* to refuse. When confronted with an actual 'No', such a viewer assumes that the woman is just playing her role in that script, rather than really intending to refuse. He therefore fails to recognize her intention to refuse, even though there is no change in expression-meaning. Langton and Hornsby's conception thus does not require a meaning switch for silencing.⁸⁰

⁷⁸ Weiland (2007), p. 444.

⁷⁹ It is worth noting that it is hard to see how Lewis' trust and truthfulness requirement still holds between the man and the woman in this scenario. I address the issue of competing conventions in Chapter Three.

⁸⁰ Maitra and McGowan (2010), p. 168.

The script adds a layer of complexity to the conversational context that allows the man to recognize the woman's refusal as part of a script spoken by women in sexual contexts while still maintaining that the word 'no' usually conveys refusal. Just as someone might interpret my utterance of 'no' as sarcasm and treat it as an expression of assent, in this case the word 'no' does not need to undergo a change in meaning.

Maitra and McGowan are compelling here, but this line of argument ultimately misses the point. Whether pornography causes a conventional shift from one meaning to another or from one interpretation to another, it may still be the case that pornography plays a role in establishing which convention is salient. This, it seems to me, is the broader point, and the point that Maitra, McGowan, and Weiland are all trying to help Langton to establish.

Taking up another point, Weiland's argument that a convention can be established by sheer repetition is perhaps overly simplistic; the salience of a particular convention *can* be established by repetition, but repetition is not the only relevant factor.⁸¹ According to Maitra and McGowan, "salience is sensitive to a much wider range of information than mere instances of past occurrence,"⁸² making considerations about the salience of the particular convention more helpful than just a tally of past occurrences in solving co-ordination problems. In other words, we must ask if the 'no'-means-yes convention is the most salient solution to the relevant co-ordination problem, instead of just the one used most often. Maitra and McGowan believe that this convention is not most salient, since we should take the desires and expectations of the woman into account as well as those of the man. On this point, I think Maitra and McGowan depend upon a much more egalitarian understanding of convention than my own. Do we take information about the desires and expectations of the woman who says 'No' into account when solving this co-ordination problem? David Lewis might assume that we would, since he pays very little attention to considerations of social justice when developing his account of convention. However, the silencing debate is grounded in the idea that some people's words count for more than others. In an unjust world, we would not necessarily take the woman's desires and expectations into account in establishing a convention, and this is the point that

⁸¹ Lewis (1969), p. 52-64.

⁸² Maitra and McGowan (2010), p 170.

Weiland and Langton make in their exploration of silencing. I discuss this point and some further difficulties with Lewis-style convention in Chapter Three.

Weiland does not offer the only convincing explanation of the mechanics behind the LSC. Linguist Deborah Cameron investigates the idea that the silencing phenomenon is just a matter of communication failure, and therefore that men are not wholly to blame for what is, after all, a joint enterprise. She begins her investigation with what she calls the “Mars and Venus myth”, after the popular self-help book which proclaims that men and women are from different planets. This popular myth may lend support to the belief that men and women often misunderstand each other, and that this misunderstanding is due to the fact that they “speak different languages”.

At its most basic, what I am calling ‘the Myth of Mars and Venus’ is simply the proposition that men and women differ fundamentally in the way they use language to communicate.⁸³

All versions of the myth share this basic proposition, and most versions also make many of the following claims:

1. Language and communication matter more to women than to men; women talk more than men.
2. Women are more verbally skilled than men.
3. Men’s goals in using language tend to be instrumental - about getting things done - whereas women’s tend to be interpersonal or relational - about making connections to other people. Men talk more about things and facts, whereas women talk more about people, relationships, and feelings.
4. Men’s way of using language is competitive, reflecting their general interest in acquiring and maintaining status; women’s use of language is cooperative, reflecting their preference for equality and harmony. Because of this, men’s style of communicating also tends to be more direct and less polite than women’s.
5. These differences routinely lead to ‘miscommunication’ between the sexes, with each sex misinterpreting the other’s intentions. This causes problems in contexts where men and women regularly interact, and especially in heterosexual relationships.⁸⁴

⁸³ Cameron (2007), p. 7.

⁸⁴ *Ibid.*

This myth, if applied to the LSC, could explain and possibly even excuse the actions of the rapist: it's not just that he understood the woman to be accepting his advances when she was really refusing them. It's that he couldn't be expected to understand her in the first place, because men and women are fundamentally different and speak different languages.

In spite of the fact that this last statement may seem ridiculous or overly simplistic, there is a surprising body of research available in support of similar claims. Though most of this research is about inter-gender communication in general and not about communication during contexts of sexual force, it nonetheless appears to demonstrate support for the idea that men and women speak different languages and therefore are bound to experience communication failure. Cameron points to examples of the myth's pervasiveness throughout Western society and she examines the purportedly scientific basis for some of the claims that underpin our attachment to the myth.⁸⁵

The idea that men and women metaphorically 'speak different languages' is not, of course, new, but the myth of Mars and Venus has given it new currency and legitimacy. What was once just a metaphor has acquired the status of literal, scientific truth.⁸⁶

For instance, a study published in the scientific journal *NeuroImage* in 2005 was picked up by media all over the world. The study, conducted at the University of Sheffield, showed that men decipher female voices using the auditory part of the brain - the same part that processes music - while male voices engage a much simpler mechanism. The media widely reported that the University of Sheffield had discovered that men have trouble hearing women because women's voices are more difficult for men to listen to than their male counterparts.⁸⁷ As Cameron says,

The Sheffield study appears to confirm the truth of a well-worn stereotype (that men don't listen when women talk); it then goes on to supply the kind of explanation that many people expect and want (it's to do with the way men's brains work). This enables the study to be framed as settling an age-old dispute in

⁸⁵ Cameron notes a few examples that might suggest that this myth is cross-culturally pervasive as well. Cameron (2007), p. 30-36.

⁸⁶ Cameron, (2007), p. 80.

⁸⁷ Cameron (2007), p. 18. Cameron also notes that the researchers at Sheffield University were unhappy about how their study was reported. Unfortunately, they were not able to counter the media coverage.

the ongoing ‘battle of the sexes’. As the report I have quoted puts it, men ‘now have an excuse’. Contrary to what women think, men who appear not to be listening to them are not being inconsiderate, they have genuine difficulty hearing what women say.⁸⁸

In this way, the “myth” that Cameron writes about is given a scientific casing and is distributed to the general public in such a way as to seem to be explaining or confirming a previously-held supposition.

Cameron also cites studies about what is known as ‘crosstalk’, or systematic misunderstandings which neither group is conscious of. Crosstalk has had a documented effect on communication between ethnic groups, and many theorists have attempted to apply this research to communication between men and women.⁸⁹ Unfortunately, what seem to be the main causes of crosstalk between different ethnic groups - speaking different dialects of English, a lack of contact outside the workplace, being raised in different countries with different social traditions - simply do not apply to most examples of communication between men and women. Cameron notes that “[m]en and women from one community are not a parallel case. Even if they do use some linguistic forms differently, they have enough experience of interacting with each other to make the differences comprehensible”.⁹⁰

Perhaps most relevant to this thesis is Cameron’s analysis of a linguistic research project about sexual refusal.⁹¹ The project took place in the 1990s at a Canadian university where two women made complaints against the same man. Their complaints were heard by a university tribunal and were recorded for the research project. As you will see, there are striking parallels between this case and the example of sexual refusal used by Langton:

Like many rape and sexual assault cases, this one turned on whether or not the defendant could reasonably have believed that the complainants consented to sex. Both incidents had begun consensually, with the woman inviting the man into their rooms and engaging in activities such as kissing and touching; but they claimed he had gone on to force them into further sexual activity which they made

⁸⁸ *Ibid.*

⁸⁹ See Gumperz 1982, Maltz and Borker 1982, Reid-Thomas 1993, as cited by Cameron (2007).

⁹⁰ Cameron (2007), p. 83.

⁹¹ See Erlich (2002) and Cameron (2006).

clear they did not want. He maintained that they did want it - or at least, had said nothing to make him think that they did not.⁹²

The defendant's claim that the women said nothing "to make him think that they did not" want sex is similar to Langton's man failing to secure uptake of sexual refusal from the woman's utterance of 'no'. Only, in this case, the man's choice of words is particularly interesting. He claims that the woman said nothing that might make him *think* that she did not want sex. In other words, this man was operating under the assumption that it is the woman's job to make him think one thing or another. In fact, when he was questioned by the tribunal about why he "persisted in sexual activity" with one woman while she was either asleep or pretending to be asleep, he replied that "she said that she was tired, you know, she never said like "no", "stop", "don't", you know, "don't do this" uhm "get out of bed"."⁹³ Although the analogy between Langton's example and this case breaks down here in that there was explicit refusal by the woman in Langton's example, I will argue that there is still something happening in this case that is relevant to the LSC.

As Cameron says,

You don't have to be a rocket scientist to work out that someone who feigns unconsciousness while in bed with you probably doesn't want to have sex. But nobody criticizes the defendant for being so obtuse. In these proceedings, the assumption does seem to be that avoiding miscommunication is not a shared responsibility, but specifically a female one.⁹⁴

There are several things to take note of here. First although Cameron uses the word 'miscommunication' to describe the interaction between the man and his accuser(s), it remains to be seen whether or not this word is the most appropriate label for this event. Second, Cameron introduces the idea that someone, in this case the accuser, has a *responsibility* to communicate effectively. Up to this point, I have not explored any issues to do with responsibility and blame. To do so in a thorough and systematic manner is beyond the scope of this thesis, but Cameron reaches her conclusion about what is happening in this case by way of this issue of responsibility,

⁹² Cameron (2007), p. 90.

⁹³ Cameron (2007), p. 91.

⁹⁴ *Ibid.*

so I will touch on it briefly here. Though Langton does not introduce responsibility into her argument for the LSC, we will see that this omission can tell us something important about the context and conventions surrounding her example. Finally, Cameron draws our attention to the fact that communication can, and often does, take place through mediums other than speech. In this case, the accuser feigned unconsciousness to signal her refusal of sex. Cameron also explores other conventions of refusal in an attempt to show that no right-minded, socially competent individual could mistake feigned sleep for sexual consent. If she is right about refusal in this case, her argument may have something to tell us about refusal in Langton's.

In a focus group interview with fifty-eight women, linguists Kitzinger and Frith asked women how they communicated sexual refusal to men. Almost all of the women reported that they would use subtle, indirect tactics to refuse rather than the direct utterance of 'no'. Cameron reports on this study, saying that "[t]hey judged this (direct refusal) to be an unacceptable way of doing things, and likely to make matters worse by giving men an additional reason to feel aggrieved."⁹⁵ Instead, the women reported using tactics like offering reasons that reference a woman's inability, rather than unwillingness ('I have a headache', 'I'm really tired'). If this seems devious and unassertive on the part of these women, consider sexual refusal in the context of general refusal, as Cameron asks us to do here:

All the strategies the women reported using in this situation are also used, by both sexes, in every other situation where it is necessary to verbalize a refusal. Research on conversational patterns shows that in everyday contexts, refusing is never done by 'just saying no'. Most refusals do not even contain the word 'no'. Yet in non-sexual situations, no one seems to have trouble understanding them.⁹⁶

This seems right. Consider the example that Cameron offers of a colleague who asks me if I want to join him at the pub after work. If I wanted to refuse the invitation, I would not say 'no, I don't want to'. Instead, I would probably say something like 'I'd love to, but I have to catch the dry cleaners before they close / stop at the market / (some other excuse)'. Cameron argues that this kind of talk is part of the convention of refusal, and the Kitzinger and Frith study shows that

⁹⁵ Cameron (2007), p. 93

⁹⁶ Cameron (2007), p. 94.

this convention is so rigorous that people can immediately recognize when someone is issuing a refusal by identifying the features of the convention, which are:

1. A delay in responding, marked by a silent pause or an 'um' (whereas acceptances are usually delivered without hesitation).
2. A hedging expression, most commonly 'well'.
3. A 'softening' remark, like 'I'd love to, but...'
4. An acceptable reason for refusing.

Why is the convention so rigorous? Cameron argues that it must be so, because all refusals are tricky, risking the anger or upset of one's conversational partner.

Because refusing an invitation - even one that is much less sensitive than a sexual proposal - is a more delicate matter than accepting one. The act of inviting someone implies that you will say yes: if they say no, there is a risk that you will be offended, upset, or just disappointed. To show that they are aware of this, and do not want you to feel bad, people generally design refusals to convey reluctance and regret.⁹⁷

This kind of analysis, coupled with the evidence cited by Kitzinger and Frith, undermines the man's attempt to claim that he did not understand his accuser's less than direct refusal in the Canadian rape tribunal case. Men and women easily understand refusals that are much less direct than a verbal 'no' or 'stop'. We are also attuned to the contextual and conventional clues that we all use with our interlocutors to guide us through communication. In other words, the woman who feigned sleep to signal her refusal was communicating clearly. She refused sex in one of the many ways available to her.

In light of this finding, Cameron has little patience for the kind of talk that privileges some kinds of communication failure as an explanation for why a man ignored a woman's sexual refusal. The implication of Cameron's work is that it is almost impossible to imagine a scenario in which a person could not be aware of another person's sexual refusal. People who claim this kind of ignorance are leaning on the myth of Mars and Venus, and aiding the perpetuation of a dangerous set of beliefs.

⁹⁷ Cameron (2007), p. 94.

If 'ordinary' non-sexual refusals do not generally take the form of saying 'no', but are performed using conventional strategies like hesitating, hedging, and offering excuses, then sexual refusals which use exactly the same strategies should not present any special problem. 'For men to claim that they do not understand such refusals to be refusals', Kitzinger and Frith say, 'is to lay claim to an astounding and implausible ignorance.'⁹⁸

If Cameron is right, it does not seem appropriate to suggest that the woman in any of the rape cases we have discussed so far is responsible for ensuring that her communication with her assailant is successful. In fact, it seems misleading for Langton to have left out the fact that the normal conventions of refusal would be just as much a part of the context in her example as would the conventions of pornography. According to Cameron, the question we should be asking is not whether pornography introduces this allegedly powerful convention into the conversational context, but whether we should allow this man to get away with claiming to be ignorant of the illocutionary force of her refusal.

One might object to Cameron's claim on Langton's behalf and suggest that pornography creates a special context in which apparent refusals are not really refusals. Langton refers to the possibility of this kind of context in *Speech Acts*, saying that the violent sexual imagery that is prevalent throughout society may have raised a generation of young men and boys who are incapable of knowing that they are committing rape instead of having acceptable sexual intercourse.⁹⁹ However, this suggestion is a non-starter. For one thing, if conventional contexts are as easy to create as Weiland, Lewis, and Schiffer suggest, then there is no reason to suppose that there are not many different, competing conventions available for communicators to choose from. Langton would not have the right to claim a special, somehow superior convention without first showing how and why the pornography convention is stronger than any other. On the other hand, if Lewis and Schiffer (and Weiland) are wrong, and conventions do not come and go so easily, then pornography certainly does not have the power to create a special conventional context. If conventions are more rigid than Lewis, etc. allow for, then it will be a challenge to demonstrate how pornography overpowers a convention as rigid as the refusal convention documented by Kitzinger and Frith. For this objection on behalf of Langton to stand, one would

⁹⁸ Cameron (2007), p 95-6

⁹⁹ Langton (1993), p. 325.

need an argument that supports not only Weiland's account of convention, but also the choice of this particular pornographic set of conventions over all other competing (and robust) versions. The requirement presents considerable difficulties for any such objection.

Cameron concludes that this kind of talk about sexual refusal, talk that allows room for misunderstanding and miscommunication, is not only unhelpful and confusing, but also serves to perpetuate the "Mars and Venus" myth. This myth is dangerous for one very clear reason: it presupposes that men who persist in making unwanted sexual advances are genuinely confused, and are open to any clarification in the form of clear communication from a woman. "It does not," as Cameron says, "allow for the possibility that men who behave in this way are not so much confused about women's wishes as indifferent to them".¹⁰⁰ Claims that women and men have communication problems, and that these problems explain the scenarios discussed here, are responsible for perpetuating pernicious myths about communication between women and men, and are, in this respect, pernicious in and of themselves.

Why, then, does Langton fail to mention that there might be competing conventions at work in her sexual refusal example? She is certainly not trying to assert that women are responsible for effective communication. Indeed, her claim is that women are prevented from effective communication by pornography and its influence over the conventions governing sexual interaction. However, it does seem to be the case that, by Cameron's lights, Langton is letting the rapist from her example off the hook far too easily. By focusing her attention on the conventional context and on pornography's authority over that context, she thereby pays very little attention to the man and his responsibility and even capability as a competent language user. In a way, then, Langton is also too hard on the man. She assumes that he lacks a basic competence with language and conventional cues.¹⁰¹

In this section I have surveyed critiques of Langton's silencing claim that address issues of authority and responsibility. I have discussed the relative ease with which one might establish a convention in a conversational context, and the reasons Langton might have to expect that a

¹⁰⁰ Cameron (2007) p. 96-7.

¹⁰¹ In Chapters Five and Six I will explore the idea that men like Langton's rapist might be victims of communicative injustice. Even if he is such a victim, this (of course) does not change the fact that he is a rapist. However, it may help us to understand the nature of the relevant communication failure.

pornographic convention might be similarly easy to establish. I have also touched on the matter of responsibility, and I have suggested some reasons why it might be a good idea to hold people responsible for what they hear as well as what they say. In the next section, I will turn away from Austinian speech acts all together, and consider whether the silencing claim might be more effective in another medium.

2.3 A GRICEAN ALTERNATIVE?

Given these critiques of Langton's account of silencing, it is reasonable to wonder if there is an alternative formulation of the silencing claim, or one that might capture the phenomenon with more success. It seems clear from the energetic debate about silencing that Langton has touched on an interesting and potentially useful phenomenon; however, as we have seen in the previous two sections, it is not clear that illocutionary disablement is the most successful way of understanding this phenomenon. In this section I consider an alternative to Langton's Austinian model.

Ishani Maitra offers a competing account of silencing in her *Silencing Speech*, in which she offers a Gricean analysis of what happens when a woman is unable to communicate sexual refusal.

Maitra defines the silencing phenomenon as

1. A distinctly speech-related wrong, and
2. A deprivation of (some of) the benefits that lead us to place a special value on speech.¹⁰²

This definition is significant because it draws our attention not only to the fact that there are distinctly speech related wrongs (a fact that is often overlooked and that I wish to draw attention to in this thesis), but also to the fact that we *do* place a special value on speech. We use speech to persuade, to explain, to succeed, to convey knowledge, to consent and reject, and to explore and express our freedom, among many other things.

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

¹⁰² Maitra (2009), p. 310.

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.¹⁰³

Speech is very important to us because we do things with it; it *does* confer benefits, and this is why we value it so much. It only stands to reason that we should take an active interest in cases where we are denied those speech-related benefits.

Maitra chooses a Gricean framework for two reasons: to avoid the pitfalls of speech act theory and to take advantage of a theoretical framework already focused on communication. I will discuss each of these reasons in what follows, and then go on to lay out Maitra's account.

Maitra is certainly correct in her observation that Austinian speech act theory has some problematic components. To begin, and as I have already noted in this chapter, it is notoriously difficult to distinguish between perlocutionary and illocutionary acts. As I noted in my earlier discussion of Bird, Austin himself was never able to give a satisfactory account of the difference between the two kinds of speech act. He was only able to give some useful guidelines and associations (perlocutions - effects, illocutions - acts) and heuristics ('by' versus 'in'). There has been debate about which category various acts fall in to, and refusal is one of those acts. Is sexual refusal the effect of the woman's utterance of 'no' in a sexual context, or is it the act constituted by the utterance? There is no general consensus about this issue, and this lack of consensus is unfortunate because, as we noted in Section 2.1, Langton's argument depends on refusal's status as an illocutionary act that requires uptake. Although perlocutionary frustration is still a serious problem for theorists studying the language of sexual consent, the case against pornography will be substantially weakened if Langton cannot argue that pornography takes away a woman's ability to refuse.

According to Maitra, the Gricean account of what a speaker means on a particular occasion is supposed to be closely related to what she is trying to communicate on that occasion.¹⁰⁴ Communication becomes the focus of the analysis, and silencing is translated into terms of

¹⁰³ Maitra (2009), p. 331.

¹⁰⁴ Maitra (2009), p. 324.

“communicative disablement”. Under this new rubric, a speaker is *communicatively disabled* when her intended communicative act is unsuccessful.¹⁰⁵ The women in Langton’s refusal and protest examples are therefore communicatively disabled, as are the women in Cameron’s rape tribunal study.

Success and failure are, in this instance, cashed out in terms of Gricean *speaker meaning*:

A speaker *S* means something by uttering *x* if, 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 her a reason to fulfill (i).¹⁰⁶

For example, say that I utter the sentence ‘Let’s get takeout for dinner.’ to my partner. When I utter this, I intend that my partner either agree with me and discuss what kind of food he would like to order or disagree and offer to cook himself. Because he knows me well, my partner should be able to tell that I am looking for this response, and his ability to read me so well should prompt him to enter into a discussion of my proposition about dinner, thus ensuring successful communication and domestic accord. So far, so good. This is an example of a success story. But what happens when things don’t work out so well?

In order to answer this question and demonstrate the advantages of her Gricean framework, Maitra distinguishes between intention (i) and intention (ii) above. She calls intention (i) the ‘informative intention’ and intention (ii) the ‘communicative intention’, and illustrates the difference between the two in the following example.¹⁰⁷

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

¹⁰⁵ Maitra (2009), p. 327.

¹⁰⁶ Grice (1989), via Maitra (2009), p. 325-6.

¹⁰⁷ Maitra (2009), p. 325

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.

She continues,

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.¹⁰⁸

In other words, even if Ben thinks that Amy is a liar and that she really does want the coffee, his beliefs about the situation do not ultimately prevent a successful communicative act here. Amy still manages to refuse the coffee because Ben at least recognizes that she intends to refuse, even if he holds the misguided belief that she really wants coffee.

This example helps us to see that satisfaction of the informative intention is not, strictly speaking, necessary for successful communication. Also, with this distinction between informative and communicative intentions in mind, we can see how minimal the requirements for successful communication really are:

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.¹⁰⁹

What then, is required for communicative failure? Maitra argues that communicative disablement occurs when a speaker's intended audience fails to satisfy the second and the third

¹⁰⁸ Maitra (2009), p. 326.

¹⁰⁹ Maitra (2009), p. 327.

of her Gricean intentions.¹¹⁰ In the previous example about takeout, say that my partner is (for some reason) unable to tell that I am trying to have a discussion about dinner, and his inability to discover this important fact leads to the unhappy conclusion that he doesn't have any reason to respond with a suggestion of some takeout menus. I am frustrated by his lack of understanding, and things deteriorate rapidly from there. Of course, there are a range of communicative disablements, some more serious than others.

Silencing, Maitra argues, is one of the more serious cases of communicative disablement. For example, in the case of sexual refusal, the speaker 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).¹¹¹

Under this account, then, the speaker is communicatively disabled if she is unable to satisfy her communicative intention. That is, she is silenced if she cannot get her audience to recognize her informative intention. Recall that the informative intention is intention (i) and the communicative intention is intention (ii). So in this case, the woman is silenced if she can't get her audience to recognize that she intends him to believe that she doesn't want to have sex with him.

Maitra's account looks promising, not least because the broad category of communicative disablement may be useful for exploring other kinds of communication failures. While it is true that Maitra's account is not as dramatic as Langton's in that she is not arguing that pornography takes away a woman's ability to commit certain acts, the more moderate language of communicative disablement captures the silencing phenomenon in a more intuitive and less problematic way. However, let us test this Gricean account against some of the examples that proved difficult for the Langton account. Return for a moment to those examples (raised previously by Alexander Bird) in which a person's communication can be successful in spite of

¹¹⁰ Maitra (2009), p. 328.

¹¹¹ Maitra (2009), p. 326.

an audience's failure to recognize the speaker's intentions. For example, can I still issue a general invitation even if you do not recognize my intention to invite you?

This case could be understood in one of two ways. First, consider the invitation case as analogous to the Amy and Ben case. Amy still manages to refuse coffee from Ben even though he does not recognize Amy's belief that she really does not want coffee. He thinks she secretly does want coffee and has lied to him about it. However, in spite of his belief, she still manages to refuse the coffee because he recognizes her communicative intention as one of refusal. In this way, I might still issue a general invitation, which includes you, even if you think I am lying or don't mean to invite everyone in the room, etc. You might think that I did not really mean to include everyone in the invitation because (say) I secretly hate you, but that you are invited nonetheless because you were in the room when I spoke. I need only get you to recognize my communicative intention, even if you fail to completely recognize my informative one.

On the other hand, it seems disingenuous to say that the invitation case is analogous to Ben and Amy's coffee case because Ben recognizes and respects Amy's refusal in that he takes her at her word and does not get her coffee, but you might not recognize my invitation because you are shy or suffer from poor self-esteem, which in turn might cause you to fail to recognize my communicative intention. If you fail to believe that I am issuing you an invitation, then it seems unlikely that you will be able to recognize that I intend to invite you, or that I intend your recognition to inspire belief in my invitation. After all, Ben does not fail to believe that Amy is refusing coffee. He only fails to believe that this is what she really wants to be doing. He is able to question her secret desires without questioning her refusal. You, on the other hand, cannot question my secret desires and motivations without also doubting my invitation. Refusal and invitation seem less analogous here.

It seems, then, that Maitra's Gricean framework can avoid some of the pitfalls of Langton's Austinian speech act framework. In particular, it is not vulnerable to the difficulties caused by the problematic illocution/perlocution distinction. Also, because Maitra's framework is couched in terms of communicative acts, it avoids any debate about whether or not illocution requires uptake and whether the meaning of my words is, in the words of Jacobson, held hostage to the understanding of my audience. Under Maitra's framework, the audience can

misunderstand or disrespect your intentions, just as long as they recognize your communicative act. However, this account still has difficulty handling some difficult cases, like the second invitation scenario above. This difficulty is not necessarily a reason to abandon Maitra's account completely. It is, however, a reason to continue the search for an account that is able to capture the injustice of silencing-style cases while avoiding such difficulties.

2.4 CONCLUSION

In this chapter I have looked at several different critiques of the LSC. In Section 2.1 I considered critiques based in speech act theory. Though these critiques are rooted in the details of Austinian theory, I raised more general issues about the role played by a speaker's audience in a communicative context. In my discussion of the notion of uptake, I began to consider the power dynamics that might be present in that context. Who gets to decide what we are able to mean with our words? Is it us? Some external arbiter? Our audience? I continued my investigation into these questions in Section 2.2 when I considered critiques of the LSC based in notions of authority and responsibility. I looked at Weiland's work on convention and the ease with which conventions can be established. Weiland does not require pornographers to possess any great authority in order that they establish conventions in the sexual language game. Langton argues that pornographers do, nonetheless, have great authority in this domain. Deborah Cameron invites us to ask whether or not this authority matters - in the end, men and women are familiar with the conventions of refusal and are fully capable of identifying refusal and responding appropriately. In Section 2.3 I considered a Gricean alternative to the LSC's Austinian speech act theory. Though the Gricean framework does remove some difficulties from Langton's account, I argue that it is still does not satisfactorily capture what is going on in Langton's paradigmatic example of sexual refusal.

In the next chapter I continue to explore the notion of convention. I consider other possible candidates that might fill the role Langton assigns to convention in her silencing examples. I also begin to carve out space for a framework that might better capture the gist of Langton's example while still paying attention to the broader communicative context.

CHAPTER THREE

JUSTICE, CONVENTIONS, AND RESOURCES

In this chapter I delve more deeply into the ideas behind Langton's silencing claim. I ask how the man in Langton's paradigmatic refusal example could have taken the woman to be consenting to sex in the face of all the evidence that she was not. I consider Lewis-style convention as a model for one possible explanation and Miranda Fricker's idea of a communal interpretive resource as a model for another.

3.1 INTRODUCTION

Recall my summary of Langton's silencing example from section 1.3:

A man views pornography that depicts women as coy and sexually insatiable. Women in these films say 'no' to sexual advances when they mean 'yes'. In other words, they do not mean to refuse sex when they say 'no'; they mean to tease and titillate men. The implication is that this kind of refusal, refusal from a woman in a sexual context, does not *count* as a "real" refusal. Instead, it counts as foreplay. This pornography-viewing man subsequently finds himself in a sexual context with a woman. The woman says 'no' to his sexual advances, but he does not take her utterance to count as a refusal, and he rapes her.¹¹²

At some point, in between the pornography viewing and the sexual context, the man in this example forms the belief that at least some women are sexually insatiable, that they derive pleasure from rape and coercion, and that at least some utterances of 'no', when made in a sexual context, mean *yes*. How does this happen? How does this man overcome all the evidence that women often mean *no* when they say 'no' in sexual contexts? We are not asked to suppose that the man in this example is a bad person, or even that he is a misogynist. One could argue that some misogyny is implied in this example by the man's pornography habit, his beliefs about sexuality, or his actions in this example. Langton, however, does not make this claim. It is

¹¹² See Chapter 1.3.

important to note that this kind of claim is unnecessary for the success of Langton's argument. In fact, Langton's claims about pornography's authority are more compelling if we take the man to be influenced by pornography rather than his own misogynistic belief system. We are only asked to suppose that the man watches pornographic films, and that those films somehow bring about a scenario of communication failure and sexual violence.

In this chapter I will examine two possible answers to the question raised above: how does the man in Langton's refusal example come to believe that the woman's utterance of 'no' means *yes*? The first potential answer to this question involves the notion of convention as it is explored by David Lewis and Nellie Weiland. Langton briefly mentions convention in a discussion of the way that felicity conditions set the rules for certain kinds of speech acts. I will compare her discussion of felicity conditions with Lewis's work on convention, focusing on the idea that a language might contain two or more competing conventions. This might help us to understand how the man in Langton's refusal example takes the woman to mean *yes* when she utters 'no' but the woman takes herself to mean *no* when she makes that utterance. The second potential answer to the question of how this failure to communicate refusal might happen involves an examination of Miranda Fricker's idea that we all share a collective interpretive resource that helps us to understand our social experiences.¹¹³ Fricker argues that sometimes an understanding of the experiences of socially powerful groups dominates this shared resource, so that less powerful groups sometimes have difficulty understanding and communicating about their own social experiences. Though Fricker does not discuss Langton's refusal example in this context, I will do so here in an attempt to answer the question raised above.

I will argue that the answer based on Fricker's account is more fruitful than the answer based on Lewis-style convention, and conclude by raising a concern about our shared communicative resources. If inadequacies in our communicative resources can lead to such devastating communication failure, might these resources be a site of injustice in and of themselves?

¹¹³ Fricker (2007) p. 1.

3.2 LANGTON, LEWIS, AND CONVENTION

One story about how the man in Langton's refusal example comes to believe that 'no' means *yes* goes something like this: suppose that some individuals watch pornography that depicts women as desirous of rape. When women in these films say 'no', they mean *yes*. The viewers become convinced that pornography is authoritative in this matter, and they come to believe that women do want sex even when they say 'no' to sexual advances. With each viewing of a scene depicting a sexual context in which a woman says 'no' but means *yes*, a convention that women in scenarios of sexual force mean *yes* when they say 'no' is strengthened. Eventually, the convention becomes strong enough to override the "normal" conventions for sexual refusal.¹¹⁴ In this way, the conventions for what a woman is able to say in certain contexts can be established by (among other things) the speech patterns of other people, namely actors in pornographic films.

Though this particular story may sound improbable to skeptics, stories of this sort are not without precedent. For one thing, speech patterns from films, books, and plays often make their way into common parlance. Just think of the many one-liners from films like *Casablanca* that are now a part of our common language or the countless expressions bequeathed to the English language from Shakespeare. Though people probably held beliefs about the fickleness of women before Shakespeare wrote *Hamlet*, we can now quote Hamlet's criticism of his mother when he says 'Frailty, thy name is woman!' almost without knowing where the quote comes from. The quotation has made its way into relatively common language, and it lends Shakespeare's authority to a misogynistic convention about women. Langton's pornographic convention might work something like this, if we allow Langton's claim that pornographers have sufficient authority over sexual contexts. There is also another model for the way that the speech of powerful people can affect common language and what we can and cannot say. Laws are a kind of speech, and they set the conventions for all kinds of everyday illocutions like voting and marrying.¹¹⁵ The words of lawmakers are authoritative in establishing which words count as the dissolution of a marriage and which do not. Those aspiring to become citizens must say very

¹¹⁴ This scenario is outlined by Nellie Weiland and discussed in my Chapter Two, Section 2, pp. 12-16.

¹¹⁵ Langton (1995), p. 317.

specific words when they take the oath of citizenship, or else they will not succeed in taking the oath and becoming a citizen. In these legal cases, the conventions are easy to establish and to understand because they come from and are explicitly set out by a recognized authority. However, the cases that we are interested in here are different from cases involving legal conventions in one very important way: they are not cases of institutional speech. The conventions for how one speaks in situations not regulated by institutional authority are not as rigid or accessible as those regulated in this way. Langton notes this difficulty, and suggests a way forward:

Felicity conditions for illocutions in general are rarely spelled out in the words of legal enactments. What then of the conventions that set conditions for other illocutions, warning, protesting, urging, and the rest? If it is hard to say what the conditions are, it will be harder to say what sets them. But again, the answer may be that, by analogy with the legal cases, they can be set by what is said, this time by informal practices of speech and communication that gradually establish precedents and informal rules about what counts as, for example, a warning. As in the legal examples, felicity conditions can be set by words. The space for potential speech acts can be built by speakers, as can the limits on that space, the constraints responsible for the silence of illocutionary disablement. Let us at least take this as our working hypothesis.¹¹⁶

In other words, informal practices of speech and communication can become conventions that have authority over our everyday speech. The fact that the conditions for sexual refusal are not specified by an institutional authority should not deter us, then, from supposing that they might be specified by some other form of authority, in this case by pornographers.

Langton is interested in the role that speech plays in disabling speakers. She looks to Austin for an explanation of how her refusal scenario might work, and she finds an answer implicit in Austin's thoughts about felicity conditions.

Felicity conditions, he says, are fixed by conventions. ... Suppose we go with Austin and use "convention" as a loose label for whatever sets felicity conditions. How do these come into being? When we consider some of Austin's paradigm

¹¹⁶ Langton (1995), p. 320.

cases, we see that one way that conventions are brought into being, one way that felicity conditions are set, is indeed by means of other speech acts.¹¹⁷

So the speech acts of the pornographers, the scripts and screenplays containing dialogue in which women say ‘no’ but mean *yes* and the films made with those scripts, might bring Langton’s pornographic convention into being. These films might set felicity conditions for refusal that make refusal impossible for women in certain sexual contexts.

In what follows, I will consider Langton’s working hypothesis that constraints on the space for potential speech acts can be built by speakers. In other words, I will look at the idea that our speech is governed (at least in part) by conventions established by other people. I follow Langton in using ‘convention’ as a loose label for whatever sets felicity conditions. So conventions, among other things, serve to set the conditions and criteria that establish whether or not a speech act “counts” as a warning, refusal, etc. For example, we can say that it is a matter of convention that saying ‘no’ is sufficient for refusal. As we saw in Chapter Two, Nellie Weiland argues that it might also be a matter of convention that saying ‘no’ is sufficient for sexual consent in certain contexts.¹¹⁸ If both of these examples are plausible, and it seems that they are, then there is clearly some tension in our conventions about refusal.

In order to explore this tension, let us take a closer look at the notion of a convention. David Lewis gives the following definition of convention:

A regularity *R* in the behavior of members of a population *P* when they are agents in a recurrent situation *S* is a *convention* if and only if it is true that, and it is common knowledge¹¹⁹ in *P* that, in almost any instance of *S* among members of *P*,

- (1) everyone conforms to *R*;
- (2) everyone expects almost everyone else to conform to *R*;
- (3) everyone has approximately the same preferences regarding all possible combinations of actions;

¹¹⁷ Langton (1995), p. 319.

¹¹⁸ Although Weiland discusses meaning conventions, the point could be put in terms of felicity conditions.

¹¹⁹ The notion of common knowledge has proved controversial. I do not have sufficient space here to address this interesting debate. Instead, I am simply using a general understanding of common knowledge, so that two people have common knowledge about *x* if “both know that both know that both know” about *x*.

(4) everyone prefers that everyone conform to R , on condition that almost everyone conform to R ;

(5) everyone would prefer that everyone conform to R' , on condition that almost everyone conform to R' ,

where R' is some possible regularity in the behavior of members of P in S , such that almost no one in almost any instance of S among members of P could conform both to R' and to R .¹²⁰

In other words, conventions are regularities in the behavior of a group of people with certain expectations, preferences, and knowledge. For example, we can say that it is conventional to use knives, forks, and spoons as eating implements in Italian restaurants because, among patrons of such restaurants, it is true and common knowledge that

(1) everyone eats with knives, forks, and spoons at Italian restaurants;

(2) everyone expects almost everyone else to do so too;

(3) everyone has approximately the same preferences regarding all possible combinations of actions, i.e. knives are best for cutting, spoons for scooping, and forks for spearing, etc.;

(4) everyone prefers that everyone eat with knives, forks, and spoons at Italian restaurants, on condition that almost everyone does too; and

(5) everyone would prefer that everyone use some other kind of implement (think of the convention for chopstick use in China), on condition that almost everyone else does too.

Perhaps Lewis assumes that our expectations and preferences are somewhat more rational than they actually are,¹²¹ but his definition does capture the idea that a group of people follow one convention rather than another (R rather than R') on a more or less arbitrary basis. We conform to R , we expect others to conform to R , and we prefer that we all conform to R unless some other convention R' comes along. In that case, we prefer that we all conform to the new convention, if that is what everyone else is doing.

¹²⁰ Lewis (2002), p. 78. There are several other accounts of convention that diverge from the Lewisian account in interesting ways - most notably, Millikan's evolutionary account and Gilbert's group-based account - but Lewis's account is the one used in this literature and so I confine myself to an account of Lewisian convention here.

¹²¹ For a critique of Lewis along these lines see Millikan (2005).

Returning to Langton's refusal case, does the belief that women's utterances of 'no' in a sexual context actually mean *yes* count as a convention?¹²² Let us take male viewers of pornography as the members of population *P*. Let us assume that the regularity *R* in question is the expectation that all women in sexual contexts mean *yes* when they utter 'no'. Let us also assume that a situation *S* is any sexual context in which a man is attempting to have sex with a woman. In that case, *R* could only be called a convention if, at a minimum, all male viewers of pornography expect that all women in sexual contexts mean *yes* when they utter 'no', expect that all other viewers expect this, and prefer that this expectation holds among all viewers. This seems much too strong, even for the arguments that Langton makes in *Speech Acts and Unspeakable Acts*. Most salient among many objections to these requirements are the thoughts that Langton does not argue that all viewers of pornography adhere to the pornographic convention, or that the convention is so robust that it applies to every sexual context in which a man is attempting to have sex with a woman. We should not give up on the possibility of a pornographic convention yet, though. Consider what happens when we make some adjustments to both the account of convention and the values for some variables.

Lewis adapted his definition in the later *Languages and Language*, allowing for a less robust demand on the population *P*'s conformity to the convention. The new definition also accommodates regularities of both action and belief, since regularities between hearers and listeners - communication conventions - are usually regularities of belief rather than action. The definition is as follows:

A regularity *R*, in action or in action and belief, is a *convention* in a population *P* if and only if, within *P*, the following six conditions hold. (Or at least they almost hold. A few exceptions to the "everyone"s can be tolerated.)

1. Everyone conforms to *R*.
2. Everyone believes that the others conform to *R*.
3. This belief that the others conform to *R* gives everyone a good and decisive reason to conform to *R* himself. [...]

¹²² I am following Weiland in couching the question as one about meaning conventions. Her construal has been criticized by Maitra and McGowan (2010). The question can easily be recast as one about felicity conditions: Does the belief that an utterance of 'no' from a woman suffices for sexual consent count as a convention?

4. There is a general preference for general conformity to R rather than slightly-less-than-general-conformity - in particular, rather than the conformity by all but any one. [...]
5. R is not the only possible regularity meeting the last two conditions. There is at least one alternative R' such that the belief that others conformed to R' would give everyone a good and decisive practical or epistemic reason to conform to R' likewise; such that there is a general preference for general conformity to R' rather than slightly less-than-general conformity to R' ; and such that there is normally no way of conforming to R and R' both. [...]
6. Finally, the various facts listed in the conditions [1.] to [5.] are matters of *common* (or *mutual*) knowledge: they are known to everyone, it is known to everyone that they are known to everyone, and so on. The knowledge mentioned here may be merely potential: knowledge that would be available if one bothered to think hard enough. [...] ¹²³

Note that condition four now states that there is a general preference for general conformity to R , rather than the earlier requirement that everyone have approximately the same preferences regarding all possible combinations of actions. This new condition is significantly easier to meet. The new definition also leaves out any mention of situation S , so you can't narrow the scope of the convention based on the situation. Now Lewis's definition may seem to capture a Langton/Weiland style pornographic convention given two different specifications of population P : a general version and a more restricted version.

Under the more restricted version, let us specify that the members of population P are a subset of male viewers of pornography who are especially susceptible to pornography as a teaching manual about correct sexual practice. Let us also specify that the regularity R is something like the belief that women mean *yes* when they utter 'no' in sexual contexts. In this case, it is plausible that all members of P conform to this belief (condition one), that they all believe that all of the others do too (condition two), that everyone else's beliefs give each member of P a good reason to conform (condition three), and that there is a general preference among members of P for general conformity to the belief (condition four). Thus far, this seems relatively easy to accept. Condition six seems similarly easy to satisfy; it makes sense that this regularity would be common knowledge among the members of this population if they are all

¹²³ Lewis (1975), p. 5-6.

receiving instruction from similar films and are similarly susceptible to that instruction. Things get more interesting with condition five, which requires that there be another regularity, like the belief that women in sexual contexts mean *no* when they utter 'no', that cannot be conformed to at the same time as the original regularity *R*. This would mean that, if the pornographic convention really was a convention, there would be no way the man in Langton's refusal example could possibly take the woman to mean *no* when she uttered 'no', since he was conforming to the pornographic regularity, and he couldn't conform to both at the same time. This might support Langton's case for the existence of a pornographic convention in her example; given the presence of the pornographic regularity and the fact that the man could not conform to more than one regularity at a time, he would adhere to the pornographic regularity and take the woman to be consenting to sex. This also helps to explain why the man didn't have access to or make reference to the "normal", non-pornographic convention. If the pornographic regularity is like a Lewis-style convention, he simply could not do so because the presence of the pornographic regularity means that there could be no other convention.

Now consider a case in which we make the membership of population *P* more general. The only difference between this case and the case above is the membership of *P*; all other variables (like the content of *R*) remain the same. However, in this case, let us specify that the members of population *P* are most members of society in the United States. This specification is probably more like the kind of population that Langton intends in her refusal example. Now it seems more difficult to construe the pornography regularity as a convention. For instance, it is difficult to argue that almost everyone in the United States believes that women mean *yes* when they utter 'no' in sexual contexts, or that there is a general preference for conformity to such a belief, for the simple reason that many men and women in the United States do not subscribe to pornographic conventions or believe that pornography is a reliable teaching tool regarding good sexual practice. It doesn't seem that the pornographic regularity can be a convention for most of the population of the United States since more than a few people don't subscribe to it.

This seems both right and wrong. It seems right because some significant section of the general population of the United States does not conform to the pornographic regularity, so it is not conventional in the same sense that our use of knives, forks, and spoons in Italian restaurants

is conventional. However, it seems wrong if Langton is correct and some significant part of the population of the United States is heavily influenced by pornographic norms of behavior, and many of us have access to knowledge about those norms. This is why Lewis's sixth condition is crucial. Recall the sixth condition:

6. Finally, the various facts listed in the conditions [1.] to [5.] are matters of *common* (or *mutual*) knowledge: they are known to everyone, it is known to everyone that they are known to everyone, and so on. The knowledge mentioned here may be merely potential: knowledge that would be available if one bothered to think hard enough. [...]

If almost all of the members of population *P* can be said to have potential common knowledge about the pornographic regularity, then there is a kind of middle ground between the subset of people who subscribe to the pornographic regularity and the small subset of people who have no potential knowledge of the regularity. These people belonging to the middle ground do not conform to the regularity, i.e. they do not believe that a woman means *yes* when she utters 'no' in a sexual context, but they are aware that the regularity exists. And as we saw in Chapter Two, this knowledge might be enough to establish something *like* a convention anyway. (It is clearly not a full Lewisian convention, since other necessary conditions are not met.) Recall Nellie Weiland:

In [an unwanted sexual encounter] it is neither mutual nor is it knowledge that 'no' means *yes* for the very straightforward reason that the speaker indeed means *no*. It is nevertheless plausible that there is mutual knowledge in the unwanted sexual encounter; what both speakers know is that there is mutual knowledge that 'no' means *yes* in most contexts relevantly similar to the unwanted sexual encounter - namely in those pornographic representations.¹²⁴

In other words, the man and woman have mutual knowledge that the pornographic regularity exists in pornographic representations. Unfortunately, it is not yet clear what this mutual knowledge might mean, or what affect mutual knowledge might have on convention. Are non-conformists to the pornographic regularity subscribers to some form of the regularity anyway

¹²⁴ Weiland (2007), p. 444.

because of their mutual knowledge? What happens when two people subscribing to two different regularities governing the same situation interact?

Lewis intended his examination of convention to demonstrate a solution to coordination problems. For example, local phone calls in Oberlin, Ohio, used to be cut off by the switchboard after three minutes. This created a coordination problem, because conversationalists were unsure who should call whom in order to resume the call after it was disconnected. Residents of Oberlin needed a convention that would inform conversationalists about who should call back and who should wait for a call in order to avoid confusion and busy signals. It became conventional that the person who placed the call would call back. In this way, the coordination problem was solved and local calls went (more or less) smoothly. Langton's example is different from the Oberlin example in that the pornography viewers were not presented with a mutually confusing problem to overcome (each person is sure of what 'no' means according to their regularity, whereas the callers of Oberlin were not initially sure what to do when their calls were cut off), but conversational conventions do involve coordinating appropriate or correct responses with their various prompts. A conversational convention is relevantly similar to a coordination problem in this respect.

There is, however, an important disanalogy between the Oberlin and Langton cases. In Lewis-style coordination problems that result in conventions, each member of P is more or less equal. They all share common knowledge of P , they are all entitled to expect members of P to behave in certain ways, and they all want the same things. Lewis picks up on this sense of shared purpose immediately. He calls attention to it at the beginning of his account by using this quote from Hume's *Treatise of Human Nature* to summarize what convention means for him. Hume writes that convention is

a general sense of common interest; which sense all the members of the society express to one another, and which induces them to regulate their conduct by certain rules. I observe that it will be to my interest [e.g.] to leave another in the possession of his goods, provided he will act in the same manner with regard to me. When this common sense of interest is mutually expressed and is known to both, it produces a suitable resolution and behavior. And this may properly enough be called a convention or agreement betwixt us, though without the interposition of a promise; since the actions of each of us have a reference to those

of the other, and are performed upon the supposition that something is to be performed on the other part.¹²⁵

Members of a subgroup of pornography viewers may turn out to share a general sense of common interest. They may expect some kind of reciprocity of behavior among members of the group. They may expect that all men would behave as they do in sexual contexts, and that all women will always consent to sex. However, it is reasonable to suppose that many men and women would not consider themselves to be a part of this subgroup. They would not find that the norms imparted to conversational convention by pornography serve their ends, and they probably would not say that they share a sense of common interest with men who take women's utterances of refusal as tokens of consent. In other words, most women (and, hopefully, most men) do not subscribe to the pornography-affected regularity. They believe, and would prefer that everyone else believes, that women mean *no* when they say 'no' in sexual contexts. They do not, therefore, share any straightforward kind of common knowledge with the subgroup of pornography viewers. Moreover, it is simply not the case that most members of society in the United States are on an equal footing. They do not all have the same social position. They cannot all exercise the same degree of social power. They cannot, therefore, be equal parties to a convention about sexual refusal in the way that Lewis and Hume have in mind.

In addition to these disanalogies between a Langton-style pornographic regularity and Lewisian convention, there seems to be another problem. It seems that there might be two conventions at work in the Langton example, as opposed to the one successful convention at work amongst the callers of Oberlin. Langton asks us to suppose that pornography has helped to establish the convention adhered to by the man, but that the "normal" conventions of refusal and acceptance are still present enough to be available to the woman. Do the two conventions compete with each other for dominance? Can they co-exist? Is it even possible to have such a thing as a *normal* convention? I will consider these questions in what follows.

¹²⁵ Hume's *Treatise*, III.ii.2.

Lewis says very little about competing conventions.¹²⁶ Under his account, the members of the population *P* all (or almost all) agree; there is no room for competition. However, this absence is a source of criticism for Lewis. Under the Lewisian account, even after the modifications made in *Languages and Language*, convention requires an extremely high degree of conformity. Some critics point out that we have many conventions that are marked not by conformity but by breach of conformity. Margaret Gilbert suggests that it might be a convention to send thank-you notes after a dinner party, even though hardly any people send such notes any more.¹²⁷ Gilbert also points out that the Lewisian account of convention is devoid of any mention of normativity. Conventions are not just descriptions of regularities in people's behavior. They are also descriptions of how they *should* behave. If it is a convention that we send thank-you notes after a dinner party, we should feel suitably guilty for not doing so. (Unless, of course, the failure to send such notes has become more of a convention than the original note-sending convention.) The convention not only dictates that thank-you notes (or a lack of them) are something that we *do*. It also dictates what we *should* do. This normativity, says Gilbert, is part of what motivates us to maintain the convention. As a result of this, Gilbert concludes that Lewis's account does not provide sufficient conditions for a convention to prevail over other regularities.

¹²⁶ Lewis does allow that other regularities can exist in a language or a population, not only because it is apparent that they do exist, but also because a language must allow for flexibility and change. He suggests that languages may occur in a cluster, with our actual language existing alongside several possible languages.

The languages of the cluster have exactly the same sentences and give them corresponding sets of interpretations; but sometimes there are slight differences in corresponding truth conditions. These differences rarely affect worlds close enough to the actual world to be compatible with most of our ordinary beliefs. But as we go to more and more bizarre possible worlds, more and more of our sentences come out true in some languages of our cluster and false in others. Lewis (2002), p.201.

In this passage, Lewis is talking about a convention of truthfulness, but the point he makes is relevant to Langton's case. Consider the idea that the man in Langton's example speaks one language from the cluster (language A), and the woman speaks another (language B). Now, these languages are similar enough in most respects to allow for successful communication in most contexts. However, let us say that we live in the "bizarre possible world" described in Langton's refusal example. In this world, the sentence "no' means yes in a sexual context' is true in A, and "no' means yes in a sexual context' is false in B. On the understanding suggested here, the Langton example is not a case of competing conventions. Rather, it is a case of competing languages. In this way Lewis may be able to deal with Langton-refusal-style cases without sacrificing the conformity and dominance requirements of his account of convention. However, this is less than satisfactory for my purposes here, since it only serves to push the problem back a degree from the level of competing conventions to the level of competing languages.

¹²⁷ Gilbert (1992), pp. 349-355.

However, as is clear from the final part of Lewis' definition of convention, the *option* of an alternate regularity R' must be available. In other words, if the members of population P wanted to converge upon some other regularity instead of the current convention, then they must be able to do so. There may be other regularities, but a regularity is not a convention until almost all of the members of P prefer R to all other options. This is not an unusual move among the various accounts of convention. Most accounts want a convention to be a clearly dominant regularity. For example, Gilbert's own account, constructed (in response to Lewis) to allow for normativity, involves a community unit that adopts a convention, in contrast to Lewis' collection of individuals from P . Millikan's account, derived from the game-theoretic roots of convention, describes convention as a biological entity that evolves to repel the attack of hostile and competing conventions. Most theorists, then, consider dominance to be a minimal requirement for a regularity to count as a convention.¹²⁸

Recall that we undertook this examination of convention in order to answer the following question: How does the man in Langton's refusal example come to believe that the woman's utterance of 'no' means *yes*? The need for a dominant convention appears to be a significant setback to the convention-oriented answer to this question. How are we to understand Langton's claim that the man in her refusal example took the woman to mean *yes* when she uttered 'no' because pornographic conventions set the felicity conditions for refusal? A regularity is conventional if it is the dominant regularity, and there are at least two sets of regularities at work in the refusal example. Neither one is dominant. This leaves us in need of an account that can deal with regularities competing for dominance. In the next section I will suggest that Miranda Fricker may provide such an account with her notion of collective interpretive resources.

3.3 FRICKER AND THE DIVISION OF HERMENEUTICAL RESOURCES

Miranda Fricker has a different way of framing the Langton refusal example. Instead of saying that the woman in the example is rendered unable to perform the act of refusal, Fricker says that the climate created by pornography and other forms of sexual

¹²⁸ The idea is that there is one operative convention - the dominant one - that is the most salient solution to a coordination problem (like the callers of Oberlin). Saliency can be established by repetition as Weiland suggests, but this is not the only way to establish saliency, and this area of the convention literature is controversial. For a discussion of this, see Maitra and McGowan (2010), p. 170.

objectification might cause what she calls ‘fundamental communicative dysfunction’ .¹²⁹ According to Fricker, this causal chain between a climate of objectification and a communication failure is best explained by the presence of what she calls *testimonial injustice*. Testimonial injustice occurs when a speaker’s audience rates that speaker as not worth listening to or believing simply because of her position in society. Taking Fricker’s example, a woman who brings her car to a mechanic might find that the mechanic does not listen to her assessment of her car trouble because she is a woman, and women (supposedly) don’t know anything about cars. Such a woman would be a victim of testimonial injustice.

In the Langton example, Fricker suggests that

[i]n such a climate of sexual objectification, women’s extreme lack of credibility would give rise to an especially acute form of testimonial injustice. In such a situation, women’s testimony is not quite pre-empted (they do say things to men), but it might as well be, since it is not heard as genuine testimony at all.¹³⁰

In other words, Langton’s example is a paradigmatic case of a pre-existing and unfavorable credibility assessment that hangs over a conversational context and hampers communication. Fricker notes that this interpretation of Langton’s example relies upon the fact that the woman must have a pre-existing lack of credibility. In her words, “there might be social climates in which women lack credibility so drastically for certain subject matters that their word fails altogether to register in male hearers’ testimonial sensibility.”¹³¹ The woman in the refusal example has no chance to speak for herself and earn or demonstrate her credibility. She is denied credibility from the outset, and as such, her sexual refusal does not count as speech worth taking seriously.

Testimonial injustice is related to another kind of injustice brought to light by Fricker: *hermeneutical injustice*. Hermeneutical injustice “occurs ... when a gap in collective interpretive resources puts someone at an unfair disadvantage when it comes to making sense of their social

¹²⁹ Fricker (2007), p. 139.

¹³⁰ Fricker (2007), p 139.

¹³¹ Fricker (2007), p. 141.

experiences.”¹³² It is like testimonial injustice in that it is often the root cause of massive and systematic communication failures, but it is different in one important way. Testimonial injustice is often committed by one person and directed at another person; it is what Fricker calls *agential*. Hermeneutical injustice, on the other hand, is not perpetrated by any individual or group. Instead, it is a *purely structural* phenomenon. Fricker demonstrates what she means by the phrase ‘purely structural’ with the following example:

Consider, for instance, the case where a given social group is informally disenfranchised in the sense that, for whatever complex social reasons, they tend not to vote. No social agent or agency in particular is excluding them from the democratic process, yet they are excluded, and their exclusion marks an operation of social power. It seems in such a case that the power influencing their behaviour is so thoroughly dispersed through the social system that we should think of it as lacking a subject.¹³³

In other words, hermeneutical injustice occurs as a result of very real social forces, but those social forces are diffuse enough to prevent us from labeling any one person or group as the perpetrator of the injustice. Fricker’s account of complex and dispersed social power bears a striking similarity to most general accounts of convention; both are meant to be largely tacit forces that shape the way that groups of people behave, think, and communicate.

However, in contrast to convention, hermeneutical injustice is more of a lack of resources than a presence of a guiding force. Hermeneutical injustice:

stem[s] from a gap in our collective hermeneutical resources - a gap, that is, in our shared tools of social interpretation - where it is no accident that the cognitive disadvantage created by this gap impinges unequally on different social groups.¹³⁴

It is fairly uncontroversial to say, in a general sense, that some groups of people have more resources than others. What Fricker is saying here is that some groups of people have more of one very particular and important resource: tools of social interpretation. Just what these tools are and why they are important is best illustrated by the following example from Susan

¹³² Fricker (2007), p. 1.

¹³³ Fricker (2007), p. 10-11.

¹³⁴ Fricker (2007), p. 6.

Brownmiller's book about the early days of awareness about sexual harassment. Brownmiller relates the story of Carmita Wood, who quit her job because she could no longer cope with the repeated and unpleasant sexual advances of her boss. Carmita happened to tell her story to a seminar comprised of other women who had similar experiences.

'Lin's students have been talking in her seminar about the unwanted sexual advances they'd encountered on their summer jobs,' Sauvigne relates. 'And then Carmita Wood comes in and tells Lin *her* story. We realized that to a person, every one of us - the women on staff, Carmita, the students, - had had an experience like this at some point, you know? And none of us had ever told anyone before. It was one of those *click, aha!* moments, a profound revelation.'¹³⁵

This profound revelation was then given the name 'sexual harassment', and became the focus of a legal and social campaign that has fundamentally changed the way that women and men interact in the workplace. Knowledge about how people should be treated in the workplace is a resource. It is a tool that informs our conduct at work and helps people to feel reasonably secure while they perform their job, and it also gives people the wherewithal to seek justice if they are victims of harassment. Before these seminars in which the discovery of a shared experience took place, women did not have these resources, and it is important to note that men did not have them either. The fundamental thing that the label 'sexual harassment' did for a generation of men and women was that it enabled them to identify and understand a concept and a set of experiences that were previously obscured. In other words, there was a gap in our collective hermeneutical resources, and this gap was filled by our identification of sexual harassment as a widespread phenomenon and by labeling that phenomenon with a widely recognized name.

So what is a collective interpretive resource? Fricker says that our collective hermeneutical resources are "our shared tools of social interpretation".¹³⁶ What exactly are tools of social interpretation, and how do we share them? Social experiences can range from official participation in the mechanisms of the state, like voting, to everyday occurrences like interactions with waitresses or grocery clerks, and everything in between. Experiences with family, friends, enemies, neighbors, and co-workers all qualify. Some of these experiences will

¹³⁵ Fricker quotes from Brownmiller (1990), p. 280-1.

¹³⁶ Fricker (2007) p. 6.

be positive, some negative, some just, and some unjust. Presumably our tools of social interpretation are the things (knowledge, beliefs, words, concepts) that we need in order to understand and participate in those experiences. For example, Carmita Wood could not understand her experience of sexual harassment or protect herself from abuse without the concept *sexual harassment* and its attendant words and knowledge. Her harasser could not fully understand his bad behavior without them, either.

Fricker notes that the collective hermeneutical resource can affect us in the following way:

One way of taking the epistemological suggestion that social power has an unfair impact on collective forms of social understanding is to think of our shared understandings as reflecting the perspectives of different social groups, and to entertain the idea that relations of unequal power can skew shared hermeneutical resources so that the powerful tend to have appropriate understandings of their experiences ready to draw on as they make sense of their social experiences, whereas the powerless are more likely to find themselves having some social experiences through a glass darkly, with at best ill-fitting meanings to draw on in the effort to render them intelligible.¹³⁷

She uses an example about the women's movement to illustrate:

If we look at the history of the women's movement, we see that the method of consciousness raising through 'speak-outs' and the sharing of scantily understood, barely articulate experiences was a direct response to the fact that so much of women's experience was obscure, even unspeakable, for the isolated individual, whereas the process of sharing these half-formed understandings awakened hitherto dormant resources for social meaning that brought clarity, cognitive confidence, and increased communicative facility.¹³⁸

In other words, before the days of consciousness raising seminars like the one that Carmita Wood participated in, women (and men) had a limited understanding of many woman-dominated experiences like sexual harassment or postpartum depression. In some cases, understanding was so limited that women could not communicate about their experiences. This is particularly true in Carmita Wood's case, which will be discussed in detail in the next chapter. The point Fricker is making in the above quotations is that women have historically had less social power than

¹³⁷ Fricker (2007), p. 148.

¹³⁸ Fricker (2007), p. 148.

men, and this fact is demonstrated by the proportion of women's experiences that were not well-represented in the collective interpretive resource.

Fricker does not simply argue that words, knowledge, beliefs, and concepts that capture women's experiences did not exist in the collective resource. Her assessment of the situation is slightly more complicated, in that socially powerful groups and people can actually influence the resource with their own beliefs, etc. about the experiences of the less powerful.

... [W]hat is bad about this sort of hermeneutical marginalization is that it renders the collective hermeneutical resource *structurally prejudiced*, for it will tend to issue interpretations of that group's social experiences that are biased because insufficiently influenced by the subject group, and therefore unduly influenced by more hermeneutically powerful groups (thus, for instance, sexual harassment as flirting, rape in marriage as non-rape, post-natal depression as hysteria, reluctance to work family-unfriendly hours as unprofessionalism, and so on).¹³⁹

So less powerful groups like women often find that they are left to interpret their experiences of, say, post-natal depression through the lens of someone else's understanding. If a group with a degree of hermeneutical power perceives that some women become hysterical after giving birth, then that perception is what fills the collective interpretive resource, rather than an account given by mothers detailing what the aftermath of giving birth is actually like. In this way, women like Carmita Wood had some resources to work with before the advent of the term 'sexual harassment' - they understood that some bosses flirted, etc. - but their resources were structurally prejudiced and therefore inadequate and liable to become catalysts for communication failure and injustice.

3.4 COMPETING CONVENTIONS, COMPETING FOR RESOURCES

One of Fricker's claims is that women like Carmita Wood were *hermeneutically marginalized*. That is, they did not participate equally in the practices through which social meanings are generated.¹⁴⁰ They were not in positions of social power and authority, and so their understanding of experiences like childbirth or professional behavior were discounted or given less weight. Subsequently, their understandings made less of a contribution to the collective

¹³⁹ Fricker (2007), p. 155.

¹⁴⁰ Fricker (2007), p. 6.

hermeneutical resource. This marginalization sounds like the kind of thing that might explain the presence of competing conventions in Langton's refusal example, if such competition can be said to take place. If women are excluded from the generation of social meanings about the conventions of sexual refusal because the conventions are generated by mostly male pornographers, then it stands to reason that this exclusion might contribute to those women's unsuccessful attempts to refuse in sexual contexts. Of course, this kind of marginalization will not fully explain Langton's refusal case. We are not all full participants in every practice through which social meanings are generated; only consider the generation of most technical and legal vocabulary, and you can see that society accepts the dictation of certain kinds of conventions from persons and institutions of authority. We still manage to understand some things about terms like 'stem-cell research' and 'jet propulsion' even though we did not participate in their generation. However, what Langton and Fricker want to point out to us is the fact that there are cases in which we *ought* to be participating equally in the generation of social meanings, and we are not. This lack of participation can have dire consequences:

- This sort of marginalization can mean that our collective forms of understanding are rendered structurally prejudicial in respect of content and/or style: the social experiences of hermeneutically marginalized groups are left inadequately conceptualized and so ill-understood, perhaps even by the subjects themselves; and/or attempts at communication made by such groups, when they do have an adequate grip on the content of what they aim to convey, are not heard as rational owing to their expressive style being inadequately understood.¹⁴¹

In other words, there are some experiences (sexual harassment, sexual consent and refusal) that are valuable or important to women, and that they therefore have an interest in understanding. If the collective resource is structurally prejudiced, then women are vulnerable to misunderstanding and miscommunication, which, as we have seen in Langton's refusal case, can have devastating effects.

Let us run through some examples to see how this might work. In the case of Carmita Wood and the other women who were victim to sexual harassment before such experiences had a name with a negative connotation, it is clear that these women had an experience that was

¹⁴¹ Fricker (2007), p. 6-7.

inadequately conceptualized. There simply was no concept of sexual harassment. This inadequate conceptualization, in turn, meant not only that Carmita Wood could not understand that her experience was a systematic injustice. It also meant that her friends, parents, co-workers, and the government unemployment centre could not understand her experience or respond to it adequately.

[S]he applied for unemployment insurance. When the claims investigator asked why she had left her job after eight years, Wood was at a loss to describe the hateful episodes. She was ashamed and embarrassed. Under prodding - the blank on the form needed to be filled in - she answered that her reason had been personal. Her claim for unemployment benefits was denied.¹⁴²

Carmita Wood's experience was not well-understood by anyone, and she was largely unable to make attempts to communicate about it. We can assume that if she had attempted to do so, she would have been met with hostility, confusion, or indifference. She probably would not have been treated as entirely rational. And why should she have been? She was reporting on a scenario that nobody had the resources to understand.

It is clear that something was preventing Carmita Wood from making sense of her difficulties, and it is also clear that this something was not a particular person or group, though her boss was clearly responsible for the harassment itself. Fricker notes that

what women like Carmita Wood had to contend with at work was no plain epistemic bad luck, for it was no accident that their experience had been falling down the cracks. As they struggled to make sense of their various experiences of harassment, the whole engine of collective social meaning was effectively geared to keeping these obscured experiences out of sight. Her unequal participation is the deeper reason why Carmita Wood's cognitive disablement constitutes an injustice.¹⁴³

In this passage, Fricker points to another important aspect of hermeneutical injustice. Carmita Wood was a victim of marginalization because there was a gap in the collective hermeneutical resources where an understanding of sexual harassment should have been. However, this passage suggests that, in addition to the presence of this gap, the "engine of collective social

¹⁴² Fricker quotes from Brownmiller (1990), p. 280-1.

¹⁴³ Fricker (2007), p. 153.

meaning” was actively keeping the gap wide open. It was perpetuating the marginalization by keeping the experiences of women like Carmita Wood out of sight. Fricker’s use of active language to describe the “engine of collective social meaning” and its various maneuvers to ensure the continued marginalization of women may invite skepticism. However, consider the social collusion and shared preferences necessary to maintain a convention under Lewis’s (and most other) account. What Fricker is describing here is not so different from the tacit consensus-building that happens in the background when a convention is being established and maintained in a population. This need not be a deliberate conspiracy in order for us to take it seriously. The salient difference between these accounts (Fricker and Lewis) is that Fricker is suggesting that this social collusion is not always just, and that it sometimes results in the marginalization and exclusion of groups of people.

Hermeneutical marginalization might serve as an explanation for the presence of competing conventions in Langton’s refusal example. Recall Carmita Wood’s case as an example. Ms. Wood and her harasser both had access to an inadequate collective hermeneutical resource with regard to conventions about workplace gender relations. This resource governed Carmita’s experience in the unemployment insurance office when she was at a loss to describe her prior experience that led to unemployment. After she found the consciousness-raising group, she gained a new understanding of her experience and a new name to use in the campaign against sexual harassment. It seems reasonable to suppose that there were then two different conventions regarding appropriate workplace gender relations: one from the old, inadequate hermeneutical resource, and one new convention formed at the consciousness-raising group and slowly spread throughout the population via political and legal campaigns. If we apply this model to Langton’s refusal case, we are left with the following scenario: Langton’s man and woman both had access to a collective hermeneutical resource with regard to the conventions about sexual refusal and consent in certain situations. The resource contained, among other things, the belief that utterances of ‘no’ are used to communicate refusal in many situations, including sexual contexts. However, according to this story, as pornographers gained social and hermeneutical power, the resource changed and became structurally prejudiced by the input of pornographers and other hermeneutically powerful groups who objectify and subordinate

women. These groups introduced the pornographic regularity that utterances of 'no' mean *yes* in some sexual contexts, but they did not have the power or intent to get rid of the old convention. There are therefore two competing conventions about sexual refusal in the collective hermeneutical resource. The man was drawing on the pornographic convention and the woman was drawing on the earlier convention, with devastating results. The presence of two different conventions makes it more difficult to understand sexual experience, and makes the resource inadequate for the communicative and interpretive needs of both the man and the woman in Langton's example.

3.5 CONCLUSION

Fricker's model provides a reasonable answer to the question posed at the beginning of this chapter: how does the man in Langton's refusal example come to believe that the woman's utterance of 'no' means *yes*? It does so by providing the idea of a collective interpretive resource shared by all but vulnerable to structural prejudice. In this way, we can understand how there might be several conflicting interpretations of social experience available in the same resource. A pornographic regularity might exist alongside a more generally applicable refusal regularity. The pornographic regularity might gain strength and robustness in the resource if it was condoned by a hermeneutically powerful group like Langton's pornographers. We also avoid the problems posed by various accounts of convention, such as the need for a salient convention that is dominant over all other options. According to Fricker, multiple interpretations of the same social experience might all be contained in the collective resource.

Fricker's work draws our attention to the idea that marginalized groups may struggle with interpretive resources that are inadequate, or at least less adequate than those of more socially powerful groups. This idea presents us with a new kind of injustice: hermeneutical injustice. In the next chapter, I will investigate Fricker's account of hermeneutical injustice more thoroughly. I will offer a critique of Fricker's account and attempt to isolate the problem posed by structural prejudice in our collective hermeneutical resources.

CHAPTER FOUR

A CRITIQUE OF HERMENEUTICAL INJUSTICE

In this chapter I examine Miranda Fricker's work on hermeneutical injustice. In particular, I argue that Fricker's insistence that there is a particular kind of asymmetry between the victim of this injustice and her surrounding social colleagues is problematic. I offer several different lines of argument that combine to form a critique of this asymmetry claim.

4.1 FRICKER, SEXUAL HARRASSMENT, AND HERMENEUTICAL INJUSTICE

In *Epistemic Injustice* (2007), Miranda Fricker outlines and lays groundwork for a variety of claims supporting the idea that people can be wronged in their capacity as knowers. There are two basic kinds of injustice defined in the book. Both can interfere with effective communication. The first is *testimonial injustice*, or the injustice suffered by people whose testimony is not taken seriously because they suffer from what Fricker calls a *credibility deficit* and are therefore not taken to be reliable sources of knowledge. Second, and most relevant to my work here, is *hermeneutical injustice*. In Chapter Three I discussed the idea of a collective hermeneutical resource and the way that our collective resources can become structurally prejudiced in favor of socially powerful groups. I will give a more complete account of hermeneutical injustice here.

Hermeneutical injustice is perhaps best approached by way of an example, but before I discuss what Fricker calls "the central case of hermeneutical injustice", it is worth noting several things about Fricker's approach that may provide useful background information to her claims about injustice. First, Fricker is writing in the tradition of feminist theorists "concerned with the way in which relations of power can constrain women's ability to understand their own experience."¹⁴⁴ In other words, and according to this tradition, society is at least partially constituted by relations of power, and these relations of power can either constrain or enhance

¹⁴⁴ Fricker 2007, p. 147. For more on this idea, see Harding (1993) and Fricker (1999).

your life depending on where you are situated in the social order. If you have a lot of social power, or at least more of it than another group or person, then you can probably do more with your life than those people or groups with less power than you. This is one of the points developed by Rae Langton in her *Speech Acts and Unspeakable Acts*. According to Langton, “[t]he ability to perform speech acts of certain kinds can be a mark of political power. To put the point crudely: powerful people can generally do more, say more, and have their speech count for more than can the powerless. If you are powerful, there are more things that you can do with your words.”¹⁴⁵ To develop this idea and its connection to a body of feminist work, Fricker quotes standpoint theorist Nancy Hartsock: “The dominated live in a world structured by others for their purposes -- purposes that at the very least are not our own and that are in various degrees inimical to our development and even existence.”¹⁴⁶ The implication here is that women and other dominated or marginalized groups are socially situated in a less than advantageous manner, and that these disadvantageous social situations may have serious consequences for the marginalized group.¹⁴⁷

Fricker is interested in one particular disadvantage stemming from women’s situation within an unjustly structured society. This disadvantage has to do with something that Fricker calls ‘social power’ and its influence on what she calls ‘collective forms of social understanding’. I touched briefly on these notions in Chapter Three. Recall the following quotation:

One way of taking the epistemological suggestion that social power has an unfair impact on collective forms of social understanding is to think of our shared understandings as reflecting the perspectives of different social groups, and to entertain the idea that relations of unequal power can skew shared hermeneutical resources so that the powerful tend to have appropriate understandings of their experiences ready to draw on as they make sense of their social experiences, whereas the powerless are more likely to find themselves having some social

¹⁴⁵ Langton (2009), p. 30.

¹⁴⁶ Hartsock (1998), p. 241.

¹⁴⁷ This is not to imply that all women are in the same social position. Spellman (1990) offers a critique of the thought that all women share a sameness. She suggests that we should also pay attention to divisions of class, race, etc. In fact, some socially privileged women may have more social power than some less socially privileged men. However, the point stands that a woman and man who are otherwise equally socially privileged may still experience a difference in social power because of their difference in gender.

experiences through a glass darkly, with at best ill-fitting meanings to draw on in the effort to render them intelligible.¹⁴⁸

The precise meaning of phrases like ‘collective forms of social understanding’ and ‘shared hermeneutical resources’ is not yet clear. However, it seems reasonable to take Fricker as suggesting that different social groups each contribute their perspective on various topics such as gender roles, workplace conventions, racial stereotypes, and other socially constructed concepts to a communal resource, which is then used by society at large as a tool to understand and interpret various situations relevant to those concepts. Because some social groups have more power (social, economic, etc.) than others, these powerful groups will not only contribute more information to the communal resource, but they will also have more access to the resource when they need to understand some aspect of their role in society. This is presumably because powerful groups and individuals have more authority over social conventions and over which perspectives are the “right” perspectives, and therefore are also able to relate to the communal resource more easily since it contains familiar materials. Over time, the communal resource will come to reflect the perspective of powerful groups more than that of less powerful groups. Less powerful groups will have more and more difficulty understanding their own social experiences because they, and the community at large, lack the resources that are supposed to help them form such understandings. This is a rough sketch of the situation that Fricker suggests is both present in our society today and responsible for hermeneutical injustice.

Fricker cites the following story of sexual harassment and the circumstances of the women’s movement in the early eighties as the “central case of hermeneutical injustice”. This example comes from Susan Brownmiller’s memoir *In Our Time*:¹⁴⁹

One afternoon a former university employee sought out Lin Farley to ask for her help. Carmita Wood, age forty-four, born and raised in the apple orchard region of Lake Cayuga, and the sole support of two of her children, had worked for eight years in Cornell’s department of nuclear physics, advancing from lab assistant to a desk job handling administrative chores. Wood did not know why she had been singled out, or indeed if she had been singled out, but a distinguished professor seemed unable to keep his hands off her.

¹⁴⁸ Fricker (2007) p. 148.

¹⁴⁹ Brownmiller 1990, p. 180-1, as cited by Fricker (2007), p. 149-150.

As Wood told the story, the eminent man would jiggle his crotch when he stood near her desk and looked at his mail, or he'd deliberately brush against her breasts while reaching for some papers. One night as the lab workers were having their annual Christmas party, he cornered her in the elevator and planted some unwanted kisses on her mouth. Wood ... requested a transfer to another department, and when it didn't come through, she quit. When the [unemployment insurance] claims adjustor asked why she had left her job after eight years, Wood was at a loss to describe the hateful episodes. She was ashamed and embarrassed. Under prodding -- the blank on the form needed to be filled in -- she answered that her reasons had been personal. Her claim for unemployment benefits was denied.

'Lin's students had been talking in her seminar about the unwanted sexual advances they'd encountered on their summer jobs,' Sauvigne relates. 'And then Carmita Wood comes in and tells Lin *her* story. We realized that to a person, every one of us -- the women on staff, Carmita, the students -- had had an experience like this at some point, you know? And none of us had ever told anyone before. It was one of those *click, aha!* moments, a profound revelation.'

The women had their issue. Meyer located two feminist lawyers in Syracuse, Susan Horn and Maurie Heins, to take on Carmita Wood's unemployment insurance appeal. 'And then...' Sauvigne reports, 'we decided that we also had to hold a speak-out in order to break the silence about this.'

The 'this' they were going to break the silence about had no name. 'Eight of us were sitting in an office of Human Affairs,' Sauvigne remembers, 'brainstorming about what we were going to write on the posters for our speak-out. We were referring to it as "sexual intimidation," "sexual coercion," "sexual exploitation on the job." None of these names seemed quite right. We wanted something that embraced a whole range of subtle and unsubtle persistent behaviors. Somebody came up with "harassment." *Sexual harassment!* Instantly we agreed. That's what it was.'

Carmita's experiences as described here are made more egregious by the fact that she had no words to describe what had happened to her. Brownmiller notes that Wood "was at a loss to describe the hateful episodes." She "was ashamed and embarrassed" when she was questioned about them. Perhaps most telling is the fact that, when pressed to fill in the blank on the insurance claim form stating the reason she left her job, she did not know what to say. She eventually wrote 'personal'. The implication of such a statement is that she left the job for reasons of her own, reasons that had nothing to do with her place of work, the conditions under

which she was expected to work, or her co-workers. Wood did not come to see that her reason for leaving might have been something that was *not* “personal” until she spoke with the other women in Lin Farley’s seminar. Given the support and the perspectives of other women with similar experiences, women in the seminar came to see that this experience described by Carmita is something that they have all experienced. It is not a private, personal experience, but a public experience shared in common by many women in the workplace. They have their *aha!* moment, and they give the experience a name.

Before the *aha!* moment, there was no way for Carmita to make sense of her experience, either to herself or to anyone in her community. Because of the lack of what Fricker calls ‘shared hermeneutical resources’ regarding what was to become known as ‘sexual harassment’, Carmita could not do a whole list of things, including but not limited to understanding her experience and communicating it to others in an intelligible manner, standing up to her harasser, and claiming unemployment insurance. Her inability to claim unemployment insurance threatened her physical well-being and that of her dependent children. Her inability to stand up to her harasser threatened her sense that she was a reasonable person who belonged in the workplace and not a sexual object. Most important for our purposes here, her inability to understand her own experiences and make them intelligible to others in her community threatened her ability to communicate.

All of these inabilities stem from what Fricker describes as a gap in the collective hermeneutical resources, a hermeneutical lacuna in collective resources where information about a woman’s experience in the workplace ought to be. Fricker writes,

Here is a story about how extant collective hermeneutical resources can have a lacuna where the name of a distinctive social experience should be. So described, we can see that women such as Carmita Wood suffered (among other things) an acute cognitive disadvantage from a gap in the collective hermeneutical resource.¹⁵⁰

This gap creates some of the conditions for injustice, and when a woman like Carmita Wood experienced what she did, she suffered from an acute cognitive disadvantage in addition to the unpleasantness of what was to become known as ‘sexual harassment’.

¹⁵⁰ Fricker 2007, p. 150-151.

Now that we have a general sense of what Fricker means when she talks about hermeneutical injustice, I am in a better position to elaborate on the idea by giving an account of how it occurs. To begin, hermeneutical injustice does not come out of nowhere. Background social conditions set the scene.

Women's position at the time of second wave feminism was still one of marked powerlessness in relation to men; and, specifically, the unequal relations of power prevented women from participating on equal terms with men in those practices by which collective social meanings are generated. Most obvious among such practices are those sustained by professions such as journalism, politics, academia, and law ... Women's powerlessness meant that their social position was one of unequal hermeneutical participation, and something like this sort of inequality provides the crucial background condition for hermeneutical injustice.¹⁵¹

At the time when Carmita Wood was struggling to function in the workforce, men and women did not exist on anything close to a level playing field. Most men and women had limited expectations about what a woman might do in the workforce. Consequently, women were not able to join with men in the "practices by which social meanings are generated", either because they did not expect to, did not want to, or were prevented from doing so. Most doctors, lawyers, and lab technicians were men, and so popular understanding of what those jobs were like did not include much input from women. Women's relative social powerlessness meant that they did not contribute as much content as men to the collective hermeneutical resources with respect to the workplace.

Fricker further argues that some of these background expectations helped to conceal the fact that there were inequalities present in the hermeneutical climate.

Hermeneutical inequality is inevitably hard to detect. Our interpretive efforts are naturally geared to interests, as we try hardest to understand those things that it serves us to understand. Consequently, a group's unequal hermeneutical participation will tend to show up in a localized manner in hermeneutical hotspots -- locations in social life where the powerful have no interest in achieving a proper interpretation, perhaps indeed where they have a positive interest in sustaining the extant misinterpretation (such as that repeated sexual propositions in the

¹⁵¹ Fricker 2007, p. 152.

workplace are never anything more than a form of 'flirting', and their uneasy rejection by the recipient only ever a matter of her 'lacking a sense of humor').¹⁵²

If we have a vested interest in sustaining one particular understanding of a social event, other understandings (or the fact that there might be other understandings) might come as a surprise. For example, sexual harassment was especially difficult to detect because as it was an ongoing practice that was ignored or concealed by any number of glib glosses or attempts at misdirection. It was as if nobody *wanted* to see it, until Carmita Wood shared her experience with that small group of women.

As they struggled in isolation to make proper sense of their various experiences of harassment, the whole engine of collective social meaning was effectively geared to keeping these obscured experiences out of sight. Her unequal hermeneutical participation is the deeper reason why Carmita Wood's cognitive disablement constitutes an injustice.¹⁵³

In other words, society and the workplace were structured so that women had less social power than men. Our understanding of workplace gender relations reflected this structure. We didn't see women's struggle to understand their experiences of harassment because we didn't understand those experiences as instances of harassment. Instead, we understood them as failed jokes, etc., because that was the dominant perspective present in the collective hermeneutical resource. One reason why Wood's experience was an injustice is that the perspectives of women like her were discarded in favor of the perspectives of men who dominated the workplace. The background social conditions set Carmita Wood up for hermeneutical failure.

Against this background of social inequality and unequal hermeneutical participation, Fricker states that women were hermeneutically marginalized.

Let us say that when there is unequal hermeneutical participation with respect to some significant area(s) of social experience, members of the disadvantaged group are *hermeneutically marginalized*. The notion of marginalization is a moral-political one indicating subordination and exclusion from some practice that would have value for the participant.¹⁵⁴

¹⁵² Fricker 2007, p. 153.

¹⁵³ *Ibid.*

¹⁵⁴ *Ibid.*

Marginalization, then, stems from a fundamental inequality in background social conditions. It leads, in turn, to moments of hermeneutical injustice. The process goes something like this: women and men live in an unjust society. Women do not have equal access to the workplace and do not contribute to the generation of shared social meanings about the workplace. Women therefore exist in a state of hermeneutical marginalization. However, they do not become victims of hermeneutical injustice until they are confronted with their marginalization, as Carmita Wood was in the aftermath of her experience of sexual harassment. Ms. Wood was marginalized for the eight years that she worked for Cornell's nuclear physics department. She became a victim of hermeneutical injustice when she tried to understand and communicate about her experience and found that she was unable to do so.

It is clear, from our current perspective, that Carmita Wood's experiences were rife with injustice. But what is the mark of a *hermeneutical* injustice? Is any gap in our collective resources potential evidence of marginalization and injustice for those affected? This seems unlikely, as our collective resources must be rife with lacunae in response to a rapidly changing social world. Fricker argues that only a particular kind of knowledge gap brings about the kind of marginalization necessary for a hermeneutical injustice to occur. According to Fricker, the source of the injustice is at least partially to be found in background social conditions. If, she poses, a person suffers from a poorly understood medical condition that affects her social behavior, then that person may be at a hermeneutical *disadvantage*. She will not be able to understand her experiences or render them intelligible to others. However, that person is not a victim of injustice, but of circumstantial epistemic bad luck. The difference between the medical condition case and Carmita Wood's case, Fricker suggests, lies in the background social conditions. Carmita Wood's disadvantage was pushed into the realm of injustice by the background of sexism and gender-based social exclusion in which she lived and worked.¹⁵⁵ I will return to this distinction between disadvantage and injustice in Section Three.

Fricker ties hermeneutical injustice to pre-existing conditions of social inequality in at least one more way. According to Fricker, hermeneutical injustice can be either systematic or incidental. An injustice is systematic if it "tracks the individual through a range of different

¹⁵⁵ Fricker 2007, p. 152.

social activities besides the hermeneutical.”¹⁵⁶ For example, if a subject is hermeneutically marginalized, he or she will probably also be socio-economically marginalized, “since [hermeneutical marginalization] entails non-participation in professions that make for significant hermeneutical participation (journalism, politics, law, and so on).”¹⁵⁷ People who are systematically hermeneutically marginalized probably suffer from the effects of wide ranging social phenomena like racism and sexism, and therefore must simultaneously deal with injustice on many fronts. Incidental hermeneutical injustice is more of a “one-off”:

Whereas systematic cases will tend to involve persistent, wide-ranging hermeneutical marginalization, incidental cases will tend to involve hermeneutical marginalization only fleetingly and/or in respect of a highly localized patch of the subject’s experience. Incidental hermeneutical injustices, then, stem not from any structural inequality of power, but rather from a more one-off moment of powerlessness.¹⁵⁸

Fricker’s example of incidental hermeneutical injustice comes from Ian McEwan’s novel *Enduring Love*. Joe, the protagonist, is stalked by a religious fanatic. All sorts of harm comes to Joe because of this, and he is unable to communicate about his experiences. Fricker says that there is a lacuna preventing us all from understanding Joe’s experiences, and so Joe is hermeneutically marginalized. However, the marginalization occurs “not because of, but rather in spite of, the social type he is.”¹⁵⁹ Fricker’s point here is that systematic injustice is worse than incidental injustice because it is compounded by other social iniquities.

4.2 THE ASYMMETRY CLAIM

Thus far, I have understood Fricker to be describing a gap in our collective social knowledge and the effects that gap can have on individuals in certain social groups. In the case of knowledge about the term ‘sexual harassment’ and the behaviors and practices named by that term, this knowledge gap can prevent women who are affected by the gap from understanding

¹⁵⁶ Fricker 2007, p. 156.

¹⁵⁷ Fricker (2007), p. 155-156.

¹⁵⁸ Fricker 2007, p. 156.

¹⁵⁹ Fricker 2007, p. 158.

their own experience and acting on that understanding. Fricker states that Carmita Wood “suffered (among other things) an acute cognitive disadvantage from a gap in the collective hermeneutical resource.”¹⁶⁰ This description is interesting in (at least) two ways. First, Fricker describes the disadvantage suffered by Ms. Wood as a *cognitive* disadvantage. That is, she was disadvantaged by being somehow unable to process and understand her situation with respect to her experience of sexual harassment. This cognitive disadvantage is separate from the other subsequent disadvantages (denial of employment insurance, loss of job, etc.) she suffered. Second, at this stage Fricker characterizes Ms. Wood as suffering a disadvantage, not an injustice. In what follows I discuss the reasons for this characterization.

The cognitive disadvantage suffered by Carmita Wood also affects other members of society, including men. If Ms. Wood was at a loss to understand what happened to her and why she ought to have been able to claim unemployment benefits, then her other co-workers (including her harasser) were also likely at a loss to understand the situation. They may have had theories - Fricker’s suggestion that many people saw women who were unreceptive to harassment as lacking a sense of humor may be relevant here. However, ignorance and misinformation are relevantly similar to the resource gap-induced disadvantage suffered by Carmita Wood. It is clear that, under Fricker’s description of this hermeneutical lacuna, both men and women suffered from a similar cognitive disadvantage.

However, Fricker says,

...this description does not quite capture [hermeneutical injustice], for if the epistemic wrong done to Carmita Wood were construed simply as a matter of plain cognitive disadvantage, then it is unclear why the epistemic wrong is suffered only by her and not also by her harasser. For the lack of proper understanding of women’s experience of sexual harassment was a collective disadvantage more or less shared by all.¹⁶¹

The implication here is that, since the cognitive disadvantage is shared broadly by society, there must be something more that shows us why Carmita was a victim in this case and her harasser was not. Also,

¹⁶⁰ Fricker 2007, p. 151.

¹⁶¹ Fricker 2007 p. 151.

[d]ifferent groups can be hermeneutically disadvantaged for all sorts of reasons, as the changing social world frequently generates new sorts of experience of which our understanding may dawn only gradually; but only some of these experiences will strike one as unjust. For something to be an injustice, it must be harmful but also wrongful, whether because discriminatory or otherwise unfair.¹⁶²

We are to understand that Carmita suffered more than a disadvantage, that there is something special about the kind of disadvantage suffered by North American women (as opposed to men) in the early 1970s. This difference, according to Fricker, is as follows: The disadvantage suffered by Carmita and other women was harmful and wrongful, whereas the disadvantage suffered by Carmita's harasser and other men of that time was only harmful. This is the beginning of what I am calling Fricker's *Asymmetry Claim*:

Asymmetry Claim Men and women suffered an asymmetrical disadvantage as a result of the hermeneutical lacunae in the case of knowledge and understanding about the term 'sexual harassment' and the behaviors and practices so named.

Fricker defends the Asymmetry Claim in the following way. First, she claims that the man who harassed Carmita Wood did not suffer a significant disadvantage as a result of his cognitive impairment.

In the present example, harasser and harassee alike are cognitively disadvantaged by the hermeneutical lacuna - neither has a proper understanding of how he is treating her - but the harasser's cognitive disablement is not a significant disadvantage to him.¹⁶³

Second, she claims that the limited disadvantage suffered by the harasser may have advanced his cause.

Indeed, there is an obvious sense in which it suits his purposes. (Or at least it suits his immediate purpose, in that it leaves his conduct unchallenged. This is not to deny that if he is a decent person underneath, so that a better understanding of the seriousness of his bad behavior would have led him to refrain, then the hermeneutical lacuna is for him a source of epistemic and moral bad luck.)¹⁶⁴

¹⁶² *Ibid.*

¹⁶³ *Ibid.*

¹⁶⁴ *Ibid.*

Finally, she claims that Ms. Wood's cognitive impairment *was* a significant disadvantage to her.

By contrast, the harassee's cognitive disablement is seriously disadvantageous to her. The cognitive disablement prevents her from understanding a significant patch of her own experience: that is, a patch of experience which it is strongly in her interests to understand, for without that understanding she is left deeply troubled, confused, and isolated, not to mention vulnerable to continued harassment. Her hermeneutical disadvantage renders her unable to make sense of her ongoing mistreatment, and this in turn prevents her from protesting it, let alone securing effective measures to stop it.¹⁶⁵

In the following sections of this chapter I will argue that Fricker's first two claims are wrong and her third claim is misguided, and further that her entire asymmetry claim rests on the unclear and somewhat unstable notion of significant disadvantage. It is not clear what Fricker intends the necessary and sufficient conditions for a such a disadvantage to be, nor how the relationship between significant disadvantage and injustice is to function. It is my contention that Fricker's lack of clarity about such matters not only weakens her case for hermeneutical injustice, but that it also allows her to overlook an important and potentially helpful understanding of epistemic harm.

4.3 THE ASYMMETRY CRITIQUE, PART ONE: THE ARGUMENT

In order to see where Fricker goes wrong in making the asymmetry claim, we might begin by looking again at the claim itself. Fricker makes the asymmetry claim in the middle of her definition of hermeneutical injustice. The asymmetry between the harasser and the harassee in the sexual harassment case is just one aspect of the injustice, and the idea of asymmetry is introduced when we discover that men and women both suffer a cognitive disadvantage as a result of the hermeneutical lacuna. The asymmetry claim is about the extent of this disadvantage and how it applies to different parties. To review, the asymmetry claim is grounded in the following argument:

1. The man who harassed Carmita Wood did not suffer a significant disadvantage as a result of his cognitive impairment.
2. There is a sense in which the harasser's impairment suits his purposes.

¹⁶⁵ *Ibid.*

3. Ms. Wood's cognitive impairment *was* a significant disadvantage to her (and therefore did not suit her purposes).
4. Therefore, Carmita Wood and her harasser experienced an asymmetrical disadvantage as a result of their cognitive impairment about the term 'sexual harassment' and the behaviors so named.

We are to conclude that Carmita Wood suffered more than her harasser, that she suffered a serious or significant disadvantage, that her harasser's disadvantage was not significant to him and that it was not in his interest to understand the patch of experience occluded by the lacuna, and that this purported asymmetry is grounds for thinking that she was a victim of injustice while he was not.

As she outlines the asymmetry claim, Fricker runs together two different ways of characterizing her argument. Each characterization uses different language, and accordingly, each had different implications. The first way involves a discussion of the notion of hermeneutical injustice as a disadvantage and the claim that the disadvantage suffered by Carmita Wood was significant, whereas the disadvantage suffered by her harasser was not. The second way involves a discussion of the notion of hermeneutical injustice as consisting in some combination of harm and wrong. I will discuss both of these characterizations in what follows.

THE DISADVANTAGE VERSION

One way of understanding the asymmetry claim rests on the idea of significant or serious disadvantage. For example, Fricker states that both "harasser and harassee alike are cognitively handicapped by the hermeneutical lacuna ... but the harasser's disablement is not a significant disadvantage to him ... By contrast, the harassee's cognitive disablement is seriously disadvantageous to her."¹⁶⁶ But what is the nature of the significant disadvantage? What makes it significant? How do we know that Carmita Wood suffered a significant disadvantage but her harasser did not? Is there something particular about Carmita Wood that makes women like her, and not her male co-workers or any other group of people, a victim of this disadvantage?

¹⁶⁶ Fricker 2007, p. 151.

Fricker does not answer these questions directly. Instead, she makes a kind of tally, adding up the interests, experiences, and abilities of harasser and harassee and concluding that the heavier burden of unpleasantness falls upon Carmita Wood. Weighing down Wood's side of the scales are:

1. A cognitive disadvantage (i.e. the inability to process and understand sexual harassment);
2. A background of social powerlessness;
3. A lack of understanding of "a patch of experience which it is strongly in her interests to understand";
4. The resulting trouble, confusion, and isolation;
5. A vulnerability to continued harassment;
6. An inability to protest her harassment, and
7. An inability to secure effective measures to stop the harassment.

On her harasser's side we find:

1. A cognitive disadvantage (i.e. the inability to understand and process sexual harassment), and
2. The possibility (if "he is a decent person underneath") of being a victim of epistemic and moral bad luck.

According to this tally, Wood clearly suffers more than her harasser, at least in so far as she has more individual disadvantages in her tally. Fricker can now say that Wood's disadvantage is significant and her harasser's is not. However, we are still no closer to understanding the notion of significant disadvantage.

For example, at this point Fricker has given us no reason to suppose that the initial cognitive disadvantage shared by both Wood and her harasser is not a serious or significant disadvantage. This is due, at least in part, to the fact that she expects us to distinguish between a victim and a perpetrator of sexual harassment. Recall that, when describing the cognitive disadvantage resulting from hermeneutical lacunae, (and initiating the asymmetry claim), she writes:

But this description does not quite capture it, for if the epistemic wrong done to Carmita Wood were construed simply as a matter of plain cognitive disadvantage,

then it is unclear why the epistemic wrong is suffered only by her and not also by her harasser.¹⁶⁷

There is a sense here that there must be something additional, that the cognitive disadvantage described so far must not capture the entirety of the injustice. The intuition Fricker relies upon here is that the perpetrator of sexual harassment is not a victim. Evidence for the fact that she relies upon this intuition is laid out in her later claim that the harasser's cognitive disablement suits his purpose. The implication here is that the disablement is not a real disadvantage, at least not in comparison to the harassee, who is prevented from understanding a part of her experience which it is strongly in her interest to understand.¹⁶⁸

Now we appear to be making some progress. Let us assume that, by 'significant or serious disadvantage', Fricker means 'a disadvantage that prevents a person from understanding a part of their experience which it is strongly in their interest to understand'. This is a useful definition, but it only leads us into further trouble. Consider: we can easily understand that Carmita Wood suffered a significant disadvantage. She was clearly prevented from understanding her experience of sexual harassment, and it was clearly strongly in her interest to understand her experience. However, Wood's harasser was also prevented from understanding his experience (as well as hers). Who is to say that it was not strongly in his interest to understand that part of his experience? Indeed, it is plausible to suppose that, had he understood his experience as a perpetration of sexual harassment, he might not have subjected Ms. Wood to such a harrowing ordeal. He might have restrained himself out of professionalism, fear of litigation, or out of a respect for Ms. Wood. It seems plausible to suggest that it would have been in his interest to understand this area of his experience. Our new understanding of 'significant disadvantage' cannot help us here.

¹⁶⁷ Fricker 2007, p. 151.

¹⁶⁸ This is not to say that harasser and harassee are in the same epistemic position. For example, she is confronted by a struggle to understand, while he is not. She may, paradoxically, be more self-aware than he is as a result of this struggle. However, the relevant claim for our purposes here is that they are both epistemically disadvantaged by the hermeneutical lacuna regarding 'sexual harassment'. The claim Fricker must defend is that Carmita's epistemic disadvantage is somehow significant in a way that her harasser's is not.

At a later point, Fricker draws another contrast between hermeneutical disadvantage and injustice. This time, we are asked to imagine “similarly serious hermeneutical disadvantages that do not inflict any epistemic injustice.”¹⁶⁹

If, for instance, someone has a medical condition affecting their social behaviour at a historical moment at which that condition is still misunderstood and largely undiagnosed, then they may suffer a hermeneutical disadvantage that is, while collective, especially damaging to them in particular. They are unable to render their experience intelligible by reference to the idea that they have a disorder, and so they are personally in the dark, and may also suffer seriously negative consequences from others’ non-comprehension of their condition. But they are not subject to hermeneutical injustice; rather, theirs is a poignant case of circumstantial epistemic bad luck.¹⁷⁰

I assume that the bad luck in this case is related to the fact that the medical condition is as yet undiagnosed. However, I do not find this example, and therefore this distinction (between disadvantage and injustice) compelling for the following reason.

Suppose that the undiagnosed medical condition in Fricker’s example is a mental illness like depression, schizophrenia, or multiple personality disorder. All of these conditions affect social behavior and are still widely misunderstood by many people. Though we have made advances in awareness and diagnosis in recent years, campaigners for the rights of the mentally ill tell us that we still have a long way to go before we will be able to say that we treat mental illness with the respect and gravity that we lend to other kinds of illness. For example, imagine that a person suffering from schizophrenia in the early days of our understanding of that condition was denied care or told that he was possessed by demons. The resulting confusion and social alienation would have been a devastating blow to be endured in addition to the symptoms of his schizophrenia. There are a lot of parallels between this case and Carmita Wood’s experiences with sexual harassment. In both cases, background social conditions created climates in which the relevant person was likely to be hermeneutically marginalized. In both cases, the collective resource was rife with prejudice and a general lack of understanding about the relevant experience. In both cases a lacuna was present where knowledge about

¹⁶⁹ Fricker 2007, p 152.

¹⁷⁰ *Ibid.*

schizophrenia or the role of women in the workplace should have been. In both cases, the relevant individual lived in a climate of marginalization until the moment of unjust exclusion came along. Why, then, is schizophrenia a “poignant case of circumstantial epistemic bad luck” and sexual harassment a case of hermeneutical injustice?

Given Fricker’s framework, we are unable to answer this question. In spite of our lack of success with this distinction and with the notion of significant disadvantage more generally, one thing remains clear. Fricker needs the injustice that is already present in the background social conditions of the U.S.A. in the 1970s in order to get Carmita Wood’s case of hermeneutical injustice off the ground. A background of sexism and social exclusion is what makes Wood’s disadvantage different from her harasser’s disadvantage. It is what makes everything seem worse for Ms. Wood. It is the invisible presence that makes her list of disadvantages so much longer than his. It is the one salient feature that makes us intuitively think that there is an epistemic difference between a perpetrator and a victim of sexual harassment. One is an agent of sexism who is taking advantage of his position of power, the other is a victim of sexism who suffers because she lives in a position of relative powerlessness. After all, sexism is asymmetrical. Women suffer many more injuries and injustices than men do as a result of sexism.

In light of Fricker’s reliance upon background social conditions, it seems that one of the following two options might be the case. Either:

- a) there is no special epistemic quality to hermeneutical injustice, or
- b) the injustice applies to both Wood and her harasser.

Option a) might be the case if hermeneutical injustice consists of sexism plus the general cognitive disadvantage. In this scenario, Ms. Wood and her harasser both suffer the same cognitive disadvantage as a result of the lacuna, but she is a victim of sexism and he is not. Since there is no special epistemic difference between Wood’s experience and her harasser’s experience here, we must conclude that there is therefore no special epistemic quality to Wood’s experience of injustice. This option seems unlikely, given Fricker’s compelling account of epistemic injustice in general. More likely is option b), that there is a genuinely epistemic injustice present here, but that the injustice applies equally to Wood and her harasser. After all,

on an epistemic level, both are affected in equal epistemic measure by the gap in the collective hermeneutical resource.

I want to leave room for a possible third option here. It may be the case that:

c) Wood and her harasser both suffer from a disadvantage, but there is no injustice present.

In other words, it might be the case that there is no reason to believe that there is any epistemic injustice present in the Carmita Wood example if there is no epistemic asymmetry between harasser and harassee. This would leave us with an example of a situation in which both people suffer from an epistemic disadvantage as a result of the hermeneutical lacuna, but the disadvantage does not amount to an injustice. Fricker's account may be vulnerable to this scenario if the asymmetry claim proves unstable. However, I will suggest a way out of this difficulty in Chapter Five.

For now, let us focus on the idea that claim b) seems likely. If this is right, and both Wood and her harasser are victims of hermeneutical injustice, then Fricker's asymmetry claim is wrong.

THE HARM/WRONG VERSION

As we saw in the previous section, Fricker clearly intends the wrong at the root of hermeneutical injustice to encompass more than the cognitive disablement suffered by both Carmita Wood and her harasser. Recall that, according to Fricker, both men and women were *harmed* by the hermeneutical lacuna that existed over the experiences of women in the workplace in the early 1970s. Carmita Wood suffered an injustice because she was not only harmed by the lacuna but was also *wronged* in some way.¹⁷¹ Fricker argues that this additional wrong was suffered by women like Carmita Wood and not by her male co-workers (or harasser), and that this additional wrong is what allows us to characterize what Ms. Wood experienced as an injustice. There are at least three different kinds of wrong that Fricker might have in mind here. In this section I will examine each of these three wrongs and the roles they play in Fricker's account of hermeneutical injustice. I will offer a critique of each, suggesting that none of them are good candidates for the kind of wrong needed to make the asymmetry claim

¹⁷¹ Recall: "For something to be an injustice, it must be harmful but also wrongful, whether because discriminatory or because otherwise unfair." (Fricker 2007, p. 151.)

successful because none of them can explain why some people might be wronged and others merely harmed. I will conclude that without the right kind of wrong to move Wood's experience from the classification as a harm to the classification as an injustice, Fricker's argument for the asymmetry claim is unsuccessful.

First, the wrong could be somehow connected to the area of hermeneutical "gloom" that hovered over women like Carmita Wood before the discovery of the term 'sexual harassment' and the subsequent advances in understanding that took place. In writing about this kind of wrong, Fricker cites the case of Wendy Sandford, who had her own *aha!* moment at a consciousness-raising group about postpartum depression.¹⁷²

The guiding intuition here is that as these women groped for a proper understanding of what we may now so easily name as post-natal depression, the hermeneutical darkness that suddenly lifted from Wendy Sandford's mind had been wrongfully preventing her from understanding a significant area of her social experience, thus depriving her of an important patch of self-understanding. If we can substantiate this intuition, then we shall see that the area of hermeneutical gloom with which she had lived up until that life-changing forty-five minutes constituted a wrong done to her in her capacity as a knower, and was thus a specific sort of epistemic injustice -- a *hermeneutical injustice*.¹⁷³

So in Sandford's case, this hermeneutical darkness was wrongfully preventing her from understanding her experiences after the birth of her child, and it *constituted a wrong done to her*. Presumably, in this case, both Sandford and her husband and other members of her community were also harmed by the hermeneutical gloom. After all, none of them were able to understand the sense of alienation and loneliness that is sometimes experienced by new mothers who are "supposed" to be enjoying a special time with their new babies. Mr. Sandford's ability to relate to and understand his wife, his experience of being a new father and partner to a new mother, was made more difficult by this hermeneutical gloom. Although Wendy experienced the actual depression, many members of her community, including her husband, experienced and were affected by the hermeneutical gloom. In this case, we must be careful not to confuse Sandford's depression itself with the epistemic phenomena that surround her depression. Sandford did

¹⁷² Fricker 2007, p. 148-9.

¹⁷³ Fricker 2007, p. 149.

suffer something that her husband did not; she had postpartum depression. However, neither Wendy nor her husband knew about postpartum depression and the devastating effects that it can have on a new mother. Both of the Sandfords suffered from the hermeneutical gloom insofar as they lacked knowledge about something that they both shared an interest in understanding.

Perhaps Fricker might argue that Wendy's hermeneutical gloom was somehow darker and more difficult to deal with than her husband's because the experience obscured by the gloom was her own. Mr. Sandford was prevented from understanding his wife's experience; this may have been less of a trial than being prevented from understanding his own experience. All one need say in response to Fricker here is that Wendy may experience a darker gloom than her husband, but both Sandfords *may* experience gloom. Moreover, we could easily imagine a scenario in which Mr. Sandford's gloom was darker than his wife's. Suppose that he is an extremely attentive partner, and experiences severe anxiety, sadness, and frustration about his wife's growing depression and her alienation from him and their child. Fricker has not designated anything about the gloom that would explain why it might oppress one person more than another. So far, the claim that there is something fundamentally asymmetrical about hermeneutical injustice appears unfounded.

Another candidate for the wrong of hermeneutical injustice is the social position of unequal hermeneutical participation that many women like Sandford and Wood experienced.

In order to find the deeper source of the intuition that there is an epistemic injustice at stake in the examples from Brownmiller [like Carmita Wood and Wendy Sandford], we should focus on the background social conditions that were conducive to the relevant hermeneutical lacuna. Women's position at the time of second wave feminism was still one of marked social powerlessness in relation to men; and, specifically, the unequal relations of power prevented women from participating on equal terms with men in those practices by which collective social meanings are generated.¹⁷⁴

In this case, the background social conditions are the culprits. Unequal relations of power between women and men were responsible for the fact that women did not participate in "those practices by which collective social meanings are generated". These unequal power relations

¹⁷⁴ Fricker 2007, p. 152.

presumably (at least partially) make up the background social conditions, which, in turn, are responsible for the hermeneutical injustices suffered by Carmita Wood and Wendy Sandford.

If women like Carmita Wood and Wendy Sandford suffer due to the background social conditions of gender inequality, then Fricker may have a stronger case to make in defense of the claim that some people are wronged while others are just harmed. Gender inequalities in the early 1970s, and particularly gender inequalities in the workplace, were a significant hurdle for women attempting to pursue professional lives. These inequalities were important injustices, and Fricker is right to take special notice of them in her discussion of epistemic injustice. However, there are several reasons why the background conditions themselves cannot be the additional wrong that tips the balance from a harm done by cognitive disadvantage into the wrong of hermeneutical injustice.

If background social conditions are affecting gender roles in the workplace, they must be affecting both men and women. It may be the case that men are not harmed by these conditions while women suffer significant harm. It is certainly the case that some social conditions made it easier for men to succeed in the workplace at the expense of their female colleagues. Fricker notes that there is a sense in which the background social conditions serve the harasser's immediate purposes in that they allow him to get away with his behavior. However, it is not clear that the ability to sexually harass women does yield benefits for men. Is it to the advantage of a man that background social conditions allow him to get away with morally problematic behavior without providing him enough information to judge that he ought not to be doing what he does? I will return to this question in the next section. For now, it is enough to note that background social conditions are unlikely to tip Fricker's scale from harm to wrong in any clear and unproblematic way.

Finally, a third candidate for Fricker's wrong that brings the harm of cognitive disadvantage into the realm of hermeneutical injustice is the collection of material misfortunes that are effects of the lacuna. Carmita Wood lived under an umbrella of hermeneutical gloom and against a background of gender inequality, and these conditions contributed to her experience of what we now call 'sexual harassment'. She also lost her job and her ability to support herself and her children. She was unable to communicate about her experience to an

insurance claims adjuster, which in turn resulted in the denial of her unemployment insurance claim. These things happened to Carmita Wood. They did not happen to her harasser. All of these negative experiences might constitute the wrong that Fricker has in mind when she writes about hermeneutical injustice. Although these effects are devastating and certainly constitute an injustice of some sort, it is not clear that this wrong is epistemic in nature. This kind of wrong is not clearly a hermeneutical injustice; instead, it is a description of the results of one form of sexism. Perhaps Fricker might say that the epistemic harm was already done and exists in the form of the cognitive disadvantage suffered by both men and women. The further harm of hermeneutical injustice does not need to be a purely epistemic harm. We need only note that the initial disadvantage results in a collection of subsequent wrongs that together constitute the injustice.

In response to this claim, it is worth pointing out that what Fricker needs here is a demonstration that the collection of subsequent wrongs suffered by Carmita Wood is more problematic than any collection of subsequent wrongs suffered by her harasser or other men in her workplace. This would make it the case that Fricker could justifiably tip the scales from harm plus wrong to injustice. Setting aside issues that we have already raised in the previous section about tallying up disadvantages, harms, and wrongs, it is important to note that Fricker may not have presented a complete picture, if such a task is even possible, of the wrongs suffered by people affected by the 'sexual harassment' lacuna, particularly by men in the 1970s American workplace. Some effects of early sexism in the workplace are not as concrete as sexual harassment is now, and are, perhaps for that reason, poorly understood and largely undocumented. Arguably, these effects should count in any tally of the wrongs suffered as a result of poorly understood and stunted gender relations in the workplace.

For example, the basic structure of our companies and our workday was established during the 1950s and 1960s. The workday was designed around what was then understood as the traditional family unit, consisting of a man who worked a long day and a woman who stayed at home and took care of children and other domestic affairs. This structure may have led to circumstances that were less than hospitable for women in the workplace, but it also led to circumstances that made it difficult, and in some cases impossible, for men to care for their

children and attend to their own domestic affairs. Men are rarely able to secure paternity leave. They are not encouraged to allow any care-taking demands to interfere with a working day that pays no heed to school hours or childhood illnesses. The very fact that companies hesitate to hire women with plans to become pregnant or with young children implies that they are unwilling to accommodate men who want to assume those family responsibilities traditionally assigned to women.¹⁷⁵

As this example demonstrates, it is plausible to suggest that some men have been wronged by a social structure that holds us to rigid gender roles in the workplace, and this wrong goes largely unnoticed. The irony of this situation lies in the fact that men who want to have careers and also be caregivers now suffer from a hermeneutical lacuna similar to that experienced by women who were victims of sexual harassment in the early 1970s. Corporate culture, as well as society in general, is only beginning to find the words and ideas to express the problems presented to today's workforce by the structures left to us through antiquated gender roles. Flexible working hours and a decreased social dependence on "working men" may alleviate a gender imbalance in our workplace by allowing both men and women to achieve a work/life balance. In this case, both men and women are wronged by antiquated gender roles in the workplace. I think this example is a good demonstration of the difficulties present in the task of demonstrating that Carmita Wood's wrongs are somehow more problematic than any wrongs suffered by her harasser. Perhaps it is sufficient to say that everyone affected by the hermeneutical lacuna was wronged, and it is likely that everyone was wronged in a subtly or not-so-subtly different way. It may be the case that some of these wrongs constitute injustices and some do not, but I have found no guidance about how to make this distinction here.

Without this guidance, none of these candidates for the role of the injustice-making wrong can succeed. Neither hermeneutical gloom, background social conditions, or material misfortunes can provide Fricker with a way to distinguish between the experiences of victims of hermeneutical injustice and their social colleagues. Setting aside the difficulties already outlined

¹⁷⁵ For more information on some of these issues see the California Senate Office of Research report on paid family leave, *Balancing Work and Family*. The report can be found at: <http://www.paidfamilyleave.org/pdf/paidfamily07.pdf>. For a British perspective on these issues, see the Department for Business, Enterprise, and Regulatory Reform's *International Review of Leave Policies and Related Research*, available at <http://www.berr.gov.uk/files/file40677.pdf>.

in the Disadvantage Section, Fricker needs to provide a clearer explanation of exactly how victims are wronged in addition to the general epistemic harm in order to get her account of injustice off the ground.

At this point, my critique of Fricker's Asymmetry Claim follows two lines of argument. First, Fricker relies heavily on the notion of significant disadvantage while failing to provide us with a sufficient explanation of this term. Without such an explanation, it is difficult to decide which disadvantages are significant and which are not, who is a victim of injustice and who is not. Crucially, it may be the case that both people in Fricker's paradigm example are victims of hermeneutical injustice. Second, Fricker states that an injustice is harmful and wrongful while failing to give an account of how these two notions fit together or how we are to understand the idea of a wrong. In the sexual harassment example, both Carmita Wood and her harasser were harmed by the hermeneutical lacuna, but the exact nature of Wood's crucial additional wrong is not clear. Without this crucial understanding, or a way to argue that Wood was wronged and her harasser was not, the Asymmetry Claim is weak. At this stage, it seems that Fricker's Asymmetry Claim is under threat. In the next section I continue my critique of this claim, this time examining the conceptual approach to hermeneutical injustice.

4.4 THE ASYMMETRY CRITIQUE, PART TWO: THE CONCEPTUAL PROBLEM

Let us consider Fricker's asymmetry claim from another angle: Rather than looking at what she has done and how she has built her arguments, let's look instead at Fricker's starting point. Say that, loosely speaking, Fricker is trying to claim that people sharing (or lacking) common knowledge can have different epistemic experiences. In this section I will ask the following questions: What might this mean? Is such a thing even possible? Can a gap in collective hermeneutical resources be more of an epistemic disadvantage to one party than it is to another? Is it possible for a malfunction in what is essentially supposed to be common knowledge to be more of a disadvantage to one person than another person? Note that I am not asking if a gap in collective resources can harm only one party; Fricker has acknowledged that any such gap leads to a cognitive disadvantage that is harmful to all parties concerned. What I am asking is whether a gap in collective hermeneutical resources can result in different *epistemic*

disadvantages to different people, and whether it even makes sense to think about a shared epistemic resource in this way. The difficulty presented by these questions is a part of what I am calling the “conceptual problem” with Fricker’s asymmetry claim.

Any answer to the above questions will require us to consider the separation of the epistemic wrongs suffered by Carmita Wood from the other kinds of injustices she suffered as a victim of sexual harassment. Unfortunately, it is not clear that such a separation is possible. The concept of hermeneutical injustice is complicated by the fact that background social conditions of social injustice are a necessary pre-requisite for a climate of hermeneutical marginalization and thus for moments of hermeneutical injustice. Hermeneutical injustice does not arise unless conditions of social injustice are already present in the relevant context. It is therefore very difficult to separate an instance of hermeneutical injustice from any background social injustice. The former is dependent on the latter. This dependence upon social conditions was intentional on Fricker’s part and is essential to how she conceives of epistemic injustice.

It is only when the collective impoverishment is concretely situated in specific social situations that it comes to be especially and unjustly disadvantageous to some groups but not to others. Hermeneutical lacunas are like holes in the ozone - it’s the people under them that get burned.¹⁷⁶

There is a way to understand this passage that entails something close to a contradiction. People are “collectively impoverished”, but it is only the people “under” the lacunas that are harmed. In other words, hermeneutical lacunae deprive everyone in a community of knowledge about the relevant topic but are also somehow only “above” the groups that are especially and unjustly disadvantaged. I will investigate this tension in what follows.

According to Fricker, hermeneutical injustice involves no culprit. It is a purely structural notion, hence the importance of background social conditions as catalysts for moments of injustice. As such, we must keep in mind the fact that, in the case of sexual harassment, the harasser is not a perpetrator of hermeneutical injustice. Instead, the injustice “erupts” out from a background of inequality and marginalization.

¹⁷⁶ Fricker 2007, p. 161.

But the moment of hermeneutical injustice comes only when the background condition is realized in a more or less doomed attempt on the part of the subject to render an experience intelligible, either to herself or to an interlocutor. The hermeneutical inequality that exists, dormant, in a situation of hermeneutical marginalization erupts in injustice only when some actual attempt at intelligibility is handicapped by it.¹⁷⁷

It is this “attempt at intelligibility” that I would like to consider here, in the hopes that we can see just who is at a disadvantage, how they are disadvantaged, and whether these disadvantages differ in any way. In order to begin our consideration, let’s look at the following two cases:

CASE ONE: RENDERING AN EXPERIENCE INTELLIGIBLE TO ONESELF

In this case, Carmita Wood or someone like her has experienced sexual harassment but has not yet attended a consciousness-raising group or learned that other women have similar experiences. She is trying to explain to herself why she left her job, but she cannot. She can’t think of a good word to characterize her experiences. She is confused, ashamed, and embarrassed by the possibility that her harasser was just flirting. She has a suspicion that she ought to have been able to deal with such behaviour. In the end, she gives up and succumbs to frustration that she can’t entirely explain why she acted the way she did and guilt that she perhaps ought to have acted differently.

CASE TWO: RENDERING AN EXPERIENCE INTELLIGIBLE TO AN INTERLOCUTOR

In this case, our victim is in the same scenario as she was in Case One. However, instead of only trying to justify her actions to herself, she must also justify them to others. For example, she must tell the insurance claims adjuster why she left her job in order to claim unemployment benefits. She must tell her friends and family why she no longer has a source of income. She must tell her next employer why she left her old job. As Brownmiller noted in her description of Carmita Wood’s case, Ms. Wood was unable to answer any of these questions. After a difficult and embarrassing struggle with herself, she ends up saying that she left her job for “personal” reasons.

¹⁷⁷ Fricker 2007, p. 159.

If a person only ever had to deal with the scenario in Case One, and only had to render an experience intelligible to themselves, then we might be warranted in thinking that there is an asymmetrical quality to hermeneutical injustice, given the following additional condition: Carmita struggles to understand herself but her harasser does not. After all, if both Carmita and her harasser struggle in silence to understand their respective experiences of sexual harassment, then the asymmetry claim seems less warranted. They both struggle in silence. However, under our additional condition, Fricker could argue that Carmita Wood's harasser is unlikely to have struggled to express to himself his experiences as a harasser, and that therefore there is some fundamental asymmetry to the experience. In any event, instances of only Case One are highly unlikely. It is much more likely that a combination of Case One and Case Two will arise; a person will need to understand her own experiences in order to be able to tell other people about them.

In such cases we must keep in mind the fact that the injustice is perpetrated, if such a word is appropriate in this kind of case, by a structural force. In other words, no one person perpetrates hermeneutical injustice. Instead, hermeneutical injustice occurs because background social conditions have led to a situation in which our collective hermeneutical resources are structurally prejudiced. This situation affects resource-users in a broad sense. Everyone who might communicate about sexual harassment is vulnerable. In other words, Carmita Wood may have been unable to understand her own experiences or communicate them to others, but other people touched by sexual harassment will also be affected. Ms. Wood's harasser will be affected. Ms. Wood's office-mates will be affected. People who are unrelated to Ms. Wood in any way but are trying to make their way in society in the America of the early 1970s will be affected. All manner of resource-users will suffer the same cognitive disadvantage, will suffer from the same lack of knowledge and understanding.

In cases of structural inequality, it is difficult to see hermeneutical injustice as a structure-wide phenomenon precisely *because* the injustice manifests itself differently in different social groups. Often, one group is easy to cast as victimized while another group seems complicit in perpetrating and maintaining the unjust system. However, in this case, members from different social groups attempt to communicate with each other. Carmita tries to discourage her boss's

bad behavior. She struggles to communicate with the insurance agent. In any communicative scenario, both speaker and interlocutor will be affected by a gap or deficit in the collective hermeneutical resource. They will both be affected in spite of any other additional injustices or social advantages present. This is the nature of communication: it is a co-operative enterprise. If one party is afflicted, the other party will be affected by that affliction.

In this section I have made the point that there is something problematic about Fricker's claim that there is a fundamental asymmetry in hermeneutical injustice, that Ms. Wood's harasser was not as seriously affected by the injustice as Ms. Wood was. People who suffer from an impoverishment of their communal hermeneutical resources do so as a community. On an epistemic level, Ms. Wood's harasser suffered from an inability to understand his role in the harassment, and also from a potential inability to understand Ms. Wood as she tried to communicate with him about his problematic behavior. The insurance claims adjuster suffered from an inability to understand what Ms. Wood was trying to communicate when she filled out her unemployment insurance claim. Any number of other people in that community suffered from an inability to understand and communicate about sexual harassment. Some of these people are forced to contend with more serious consequences as a result of this inability than others, but as I noted earlier, those consequences are not epistemically relevant in any straightforward way. The idea that hermeneutical injustice rests on a fundamental asymmetry is therefore problematic in conceptual terms as well as argumentative terms.

4.5 CONCLUSION

In this chapter I have outlined Miranda Fricker's notion of hermeneutical injustice. I have also offered a critique of that notion based on difficulties with the asymmetry claim. How can we reframe hermeneutical injustice such that we still capture the gist of what Fricker has done but refine the account so that it avoids problems presented by the asymmetry claim? I suggest we move away from a reliance on background social conditions. Why lean on social conditions like sexism or racism, when the important thing is that individuals in scenarios of injustice do not understand their experiences? It does not seem like we can map hermeneutical injustice onto sexism in any clean, easy way. After all, Carmita is a victim of sexism while her harasser is not,

but both might be victims of hermeneutical injustice. I think a more promising avenue might be one where we place our epistemic requirements and capabilities at the centre of the account. The idea that we require certain epistemic goods in order to live a good life or that basic skills of self-understanding and communication are necessary parts of life in a just society is either commensurate with or a reasonable extension of most varieties of political liberalism.¹⁷⁸ It is my view that an account of epistemic injustice is both more interesting and more compelling if the loss or privation of epistemic goods and skills is at its heart.

If we reformulate hermeneutical injustice in this way, what are the consequences? We lose a tidy parallel with pre-existing conceptions of sexism and its attendant wrongs. However, we might gain a more nuanced field of debate. For example, we might come to think about the Carmita Wood story as evidence that sexual harassment was poorly understood by everyone – both men and women. This allows us to see the breadth of damage done by hermeneutical injustice: both powerful and less powerful people are epistemically compromised by distortions and deficits in the communal resource.

In the next chapter I will demonstrate my commitment to these ideas by developing my own account of the injustice experienced by people like Carmita Wood and her harasser. I use Fricker's account of hermeneutical injustice as a starting point, and go on to provide an account of what I call *Communicative Injustice*.

¹⁷⁸ For sympathetic accounts, see Nussbaum and Sen's work on the capabilities approach.

CHAPTER FIVE

TOWARDS A DEFINITION OF RESOURCE-BASED COMMUNICATIVE INJUSTICE

In this chapter I give an account of each of the three parts of my working definition of communicative injustice: the deficit in the communal communicative resource, the communicative attempt, and the vital need condition. I then put all three parts together in the form of a working definition. I also work through two potential counterexamples that give me an opportunity to explain communicative injustice in more detail.

5.1 TOWARDS A WORKING DEFINITION, PART ONE: RESOURCE DEFICIT

My account of communicative injustice involves three equally important elements. The first is a deficit in what I call the *communal communicative resource*.¹⁷⁹ In this section I will provide a basic sketch of both this resource and a resource deficit. I will give several examples of the kind of interaction between community and communicative resource that I am interested in. In particular, I will note that the relationship between a community and its language will change and adapt over time, and that a gap in the communal communicative resource, or the fact that the resource demonstrates room for growth and change, does not necessarily mean that the community or resource have been harmed. I will discuss several examples of community-resource interaction, and note the kind of interaction that might lay the groundwork for communicative injustice.

In Chapters Three and Four I outlined Miranda Fricker's idea of a *hermeneutical resource*. Fricker introduces us to the idea of such a resource by painting a picture of what happens when some members of the community are less able to understand and communicate about their social experiences than others.

¹⁷⁹ I use the term 'communicative' here instead of following Fricker's use of 'hermeneutical' because my project is about our communicative abilities rather than our hermeneutic abilities. This is not to say that there is no overlap between the two notions. However, I wish to focus here on resources that we may need for communication.

This sort of marginalization can mean that our collective forms of understanding are rendered structurally prejudicial in respect of content and/or style: the social experiences of hermeneutically marginalized groups are left inadequately conceptualized and so ill-understood, perhaps even by the subjects themselves; and/or attempts at communication made by such groups, when they do have an adequate grip on the content of what they aim to convey, are not heard as rational owing to their expressive style being inadequately understood.¹⁸⁰

Here, the resource is something like “our collective forms of understanding”. When those forms of understanding are compromised or arranged in such a way as to give one person or group an unfair advantage over another person or group, the resource might be conceived of as damaged or sub-optimal in some important way. This is not to imply that there is (or ought to be), some optimal or perfect version of the resource; I understand Fricker to be suggesting only that a compromised resource can lead to inadequate understanding of the social experiences of marginalized groups. That is, the fact that our resource has formed in a certain way means that some of us can’t understand ourselves and communicate that understanding as well as others.

I take Fricker to be saying something like this: the presence of these marginalized groups of people who struggle to understand their experiences draws our attention to the fact that there are other groups of people who do not struggle to understand, or who do not struggle as much as marginalized groups struggle. These groups who struggle less have (at least) two valuable skills that the marginalized groups lack: they can better understand their social experiences, and they can better communicate about their understanding. These skills of understanding and communication and the words, ideas, and concepts that facilitate such skills comprise a kind of resource that we all *should* have access to: our collective hermeneutical resource.

Fricker’s collective hermeneutical resource will serve as a basic model for my communal communicative resource. Say, roughly speaking, that our language is a resource. We all share this resource. We all use it to communicate with each other and to process, categorize, and understand the world around us. The reason I can talk to you about dogs, work, and weekends is that you and I share a communicative resource and we both have access to roughly the same *dog*, *work*, and *weekend* words and concepts. We may share certain beliefs about work and weekends. We may differ in our beliefs about dogs. We use the same terms to pick out roughly the same

¹⁸⁰ Fricker (2007), p. 6-7

objects. This set of terms, concepts, beliefs, and abilities is our *communal communicative resource*. I intend the term to be vague and elastic – a grouping loose enough to avoid controversy while still remaining intuitively plausible.

In what follows I will give several examples of interactions between members of our language community and our communal communicative resource. I begin with an example of an interaction that demonstrates the normal growth and flexibility of the resource, in which no one is harmed and no one suffers injustice. I move on to examples of interactions between people and our resource that are less harmonious. I hope that these later examples, and the contrast between this first case and the later cases, will help us to identify the features of a *communicative resource deficit*.

EXAMPLE ONE: THE PLUOT

My first example is about the kind of term that enters the communal linguistic resource through invention or necessity. We have a new thing, so we need a new word. Scientists and engineers often create things that need names, and this means that new words often enter our resource. This also means that old bits of technology often fall out of use or favor, and so their names become less used parts of our resource. Some terms may fall out of use all together, except for their cataloguing and preservation by historians and scholars.

The pluot is a cross between a plum and an apricot, created by orchardists and fruit growers who wanted to enjoy the tangy flavor of a plum while still tasting the floral notes of an apricot. As a fruit, it might be considered both old and new. Orchardists, amateur gardeners, and mother nature have been crossing plum and apricot trees for what must be a very long time. In this sense, a plum-apricot hybrid is no new thing. However, *the pluot* is a relatively new fruit. It was bred to a specific formula, and this formula was created and patented by Zeigar's Genetics in the late 20th century.¹⁸¹ Despite its relatively recent appearance, there are many pluot enthusiasts and you can find pluots at many North American farmer's markets.

¹⁸¹ For more information about the pluot, see Chip Brantley's *The Perfect Fruit: Good Breeding, Bad Seeds, and the hunt for the Elusive Pluot*, Bloomsbury: 2009.

Pluots are part of a growing group of hybrid fruits, including the plumcot and the aprium, which are fruits related to but importantly different from the pluot. All of these fruits are instances of the type of fruit called ‘interspecific plum’, and the genetics of each are carefully catalogued and patented. Before the late 20th century and the advent of genetic copyright, farmers and orchardists certainly crossed various fruit trees to produce new fruits. Usually, farmers crossed trees with a certain goal in mind. For example, one tree might have rootstock particularly suited to the soil in a certain region, and another might have a particularly tasty fruit. A cross between those two trees might yield a tree that can produce very tasty fruit and still flourish in difficult soil conditions. Alternately, people have crossed trees simply to pursue new and different flavor profiles for their fruit crops. It is likely that plums and apricots have been crossed to produce pluot-like fruit many times before. However, in the late 20th century, a special combination of circumstances occurred. Farmers and orchardists began to patent their produce (‘pluot’ is a registered trademark of Zeigar’s Genetics). At the same time, local food enthusiasts and food journalists wrote about new and tasty fruits on food blogs and in other media, using the word ‘pluot’ to describe this specific type of apricot/plum hybrid, thereby establishing a large pluot following. People now sell pluots, eat pluots, make foods and drinks from pluots, and talk about pluots. When they use the word ‘pluot’, they refer to a particular proprietary hybrid fruit produced to Zeigar’s Genetics specifications.

Before the advent of fruit patents and food blogs, some pluot-like fruit probably existed. Farmers and orchardists had probably bred a plum hybrid with pluot-like characteristics. However, before the Zeigar’s Genetics company copyrighted the name ‘pluot’ and patented the genes behind the hybrid, people could not talk about the fruit in the same ways they can today. First, there was no widely used and understood name for the fruit, and thus no way to identify exactly what the conversation was about (beyond a vague use of the words ‘plum’ and ‘apricot’, or some kind of indexical like ‘that fruit over there’).¹⁸² Second, there was no clear and identifiable plum-apricot hybrid that was a pluot, but only a range of interspecific plums with

¹⁸² I suppose there were farmers known for the flavor profile of their fruit. In this way, for example, a farmer called Jansen might be known for his plums, which come to be known themselves as Jansen’s Plums. Jansen’s Plums might eventually become a new type of plum in this way. This story is similar to the pluot story, but the distribution and broad use of the term ‘Jansen’s plums’ would have taken considerably longer without web-based media, and, one suspects, Zeigar’s marketing team.

varying characteristics. Now, when we use the word ‘pluot’, we know that we are talking about a particular kind of fruit with a particular (and predictable) flavor and texture profile. Pluots have been given a name. We can now use the term ‘pluot’ to pick out certain fruits and exclude others.

Before the copyright of ‘pluot’ and the corresponding popularization of the word (and the fruit that goes with it), we could not talk about this interspecific plum without using indexicals or referring to genetic terminology and orchardists’ notes and descriptions. As a result, we were unable to generalize easily from one plum-apricot hybrid to many other tokens of the same type. We didn’t distinguish between varieties of pluot-like fruits well enough to establish (on a broad scale, to a large group of people) which similarities were relevant to the concept of *pluot*. Now, thanks to Zeigar’s patent and the rapid distribution of the word ‘pluot’ on food blogs, we can talk about pluots with relative ease.¹⁸³ We can instruct our local market to stock pluots, and we can read, write, and dream about things to do with pluots. However, nobody in this scenario is a victim of communicative injustice, either before or after the Zeigar’s patent. Nobody suffered from the lack of terminology to describe a particular interspecific plum. There was no hole or gap in the resource before the advent of ‘pluot’. Our communal linguistic resource was not in deficit. It simply grew to accommodate the newly defined hybrid fruit. The fact that we have benefitted from the increased richness of our language that resulted from the addition of ‘pluot’ to our communal linguistic resource does not necessarily mean that we were at a disadvantage before.

EXAMPLE TWO: ‘SEXUAL HARASSMENT’

This now familiar example is about a word that we needed in a way that we didn’t need ‘pluot’. In some cases, we need certain words and the understanding that comes with them in order to do vitally important things like communicate, understand our experiences, and protest

¹⁸³ Imagine a conversation: ‘What’s a pluot?’ ‘It is a plum/apricot hybrid.’ ‘But so are plumcots and apriums. How is a pluot different?’ ‘Well, it is part of that family but has the following predictable, consistent characteristics that set it apart. Pluots are *x* while plumcots are *y* and apriums are *z*.’ ‘Ok, yes. I see the difference now.’

against injustice. The fact that we have this need for certain words may help us to see what a resource deficit – a situation in which we lack these words - is like.

In Chapter Four I recounted Carmita Wood's story about her experience of sexual harassment before she had the term 'sexual harassment' to describe her experience. Carmita Wood's story is Fricker's paradigmatic case of hermeneutical injustice. It is also a classic example of a success story for the correction of a particular kind of communicative injustice. Ms. Wood's story follows a very tidy format: a person struggles to understand and communicate about her experience because of a gap in the communal communicative resource; that person goes on to find a group of people with similar experiences; the members of this group use these similarities to identify with each other's experiences and come up with a common name for that experience; the group ensures that the new term is distributed widely throughout the communicative resource. This is an example of the kind of growth we might hope for in our communicative resources. It is an example of society correcting for an injustice and ensuring a greater likelihood of successful communication about a particular thing in the future.

To review, the details of the case are these: Carmita Wood worked for a North American university in the early 1970s, at a time when significant numbers of women had not been members of professions like politics, academia, and the law for long. We had no nuanced understanding of professional gender relations. At a time when we had no concept of what sexual harassment was, Carmita Wood's boss made unwanted sexual advances to her in their place of work. Carmita did everything she could to avoid or alleviate the situation before succumbing to stress and trauma and quitting her job. Her subsequent claim for unemployment insurance was denied because she could not name or describe to her (or anyone else's) satisfaction the reason for her unemployment. Carmita eventually found a women's group that fostered discussion of women's experiences in the workplace. She discovered that her experience was not uncommon. Members of this group chose to name their shared experience 'sexual harassment', and they used this name in a successful campaign to make sexual harassment illegal. Carmita Wood's story is also an account of the origins of the term 'sexual harassment'.

The final step in this process, and the reason that the term 'sexual harassment' is considered such a remarkable success story, is the popularization step. The members of Wood's women's group were not meeting to talk about their experiences in the workplace only for support. They were campaigning to change the way that women and men behaved in the workplace. The legal campaign waged by these women was remarkably successful. Sexual harassment in the workplace is now against the law - that is, many corporations prohibit sexual harassment amongst their employees as a kind of preventative move, in order to help the company avoid a vulnerability to costly and damaging sexual discrimination lawsuits. Also, there are now laws specifically against sexual harassment in several countries (including the EU).¹⁸⁴ Most of us have now heard the term 'sexual harassment', and we know roughly what it means, what we can protest, and what we are to avoid. This is a good example of positive growth in our communicative resource.

In this case, the gap in the resource is clearly a significant factor in Carmita Wood's communication difficulties. It is important to note that the difficulty that we want to focus on here is not the experience of sexual harassment, though this is certainly a problematic experience. Instead, the difficulty we want to focus on here is a *communicative* difficulty. It is the fact that Carmita Wood did not have the resources to understand and communicate about her experience. She needed to be able to communicate about her experience in order to do important things like claim unemployment insurance, protest against her treatment, press charges against her employer, and maintain a sense of dignity and self-worth. We might also say that the plout farmers needed to be able to communicate about plouts in order to do important things like make a living, introduce the world to plouts, and tell the world about their life's work. However important these abilities are, they are somehow different from the abilities that Carmita Wood lacked. For example, nobody's life or ability to flourish as a human person depended on the advent of the term 'plout', but we can imagine that contemporaries and predecessors of Carmita Wood who were victims of sexual harassment without access to women's groups or pioneering legal campaigns were less able to flourish. Their lives, their ability to pursue their own projects

¹⁸⁴ See Directive 2006/54/EC of the European Union, which came into force in 2006.

in an environment of justice and dignity, were significantly impacted by inadequate communicative resources.

The advent of the plout may have enriched lives, but the lack of a term to describe plouts before they came along did not harm anyone. For example, it is not the case that there are people who can only eat plouts, or could only live by growing plouts, and so need to be able to tell us about this and understand it themselves in order to survive. It is not the case that people who make livings from plouts could not have made any other kind of life for themselves. In contrast, Carmita Wood needed to be able to talk about sexual harassment in order to protect herself, both in terms of her physical security and bodily integrity and in terms of her dignity and understanding of herself as a human person with rights and intrinsic value. Her experience of sexual harassment was a threat to these things too, but people may live through experiences of injustice, or at least live through them more easily, if they have the tools to understand and defend themselves and can appeal to a society that understands in a clear way that they have been wronged. In this sense, our lack of the term 'sexual harassment' was damaging in a way that our lack of the term 'plout' was not.

EXAMPLE THREE: "RAPE"—RAPE AND GENERAL CONFUSION

My final example is somewhat less tidy and much less optimistic than the case of 'sexual harassment'. This is the case of a word that has been present in the communal linguistic resource for a very long time. Over the course of its long and varied life, this word has meant many different things. Due to these different meanings, or possibly due to the sensitive and taboo nature of the concept, nobody is very sure precisely what this word means. The word, of course, is 'rape'. 'Rape' once meant something akin to theft of property, when woman were understood as the property of some man. We now feel fairly confident that we can use it to refer to some kinds of non-consensual sex, but we cannot all agree about the correct extension of the word. Does it apply to married couples? Does it apply to consenting people under a certain age? Does it apply when the victim is drunk or dressed provocatively? Confusion abounds.

This kind of case will help us to see that resource deficits do not have to take the form of missing parts. They can also be old, vital parts of the resource that don't do what we need them

to do. In the case of the term ‘rape’, there is no broad consensus on the specifics of what rape actually is. It is not enough to say that there is a dominant paradigm that we all agree on. In this case, the dominant paradigm is the weapon-wielding stranger jumping out from behind a bush and forcing a woman to have genito-genital intercourse with him. Statistically speaking, this is not the most common kind of rape – you are more likely to be raped by a person you know.¹⁸⁵ The paradigm does not help us to understand and identify these kinds of cases. This is just one way in which the concept *rape* is impoverished, and therefore our resources for understanding and communicating about it are impoverished as well. The following is another example of a similar problem.

This example is taken from recent news, but I have replaced names with idealized titles in an attempt to remove some irrelevant complexities and allow us to focus on the use of the term ‘rape’ instead of any disputed facts about this case. Prosecutors from California have been trying to mount a case against Big Director, who fled the U.S.A after being convicted of rape charges more than 20 years ago. Allegedly, Big Director forced an underage woman to have sex with him. There has been a public outcry on both sides of this case. Some people feel that Big Director should be extradited from Switzerland (where he is currently being held) and sent to the U.S. to face charges. They feel that he should not be shown leniency simply because he is famous and makes good movies, or simply because time has passed, or simply because his victim has dropped the charges. On the other side, a large number of actors and public figures have come out in support of Big Director. These people feel that the charges should be dropped for a number of reasons. One well-publicized line of reasoning in support of Big Director appeals to the idea that he did not actually commit “real” rape. As Prominent Actress says, it was not “rape”-rape.

What does Prominent Actress mean by this statement? Let us assume that she knows the facts of the case. Presumably she intends to imply that Big Director’s charges should be dropped because he did not “really” rape his putative victim. Presumably she means that he did something else (possibly behaved badly) that does not count as rape. ‘Rape’ is a word used to describe a concept that most of us are very confused about. Prominent Actress’s assertion that

¹⁸⁵ See, for example, the U.S. Department of Justice’s *National Crime Victimization Study* from 2005.

Big Director's case was not a case of "rape"-rape is a testament to this widespread confusion. This confusion exists even when a putative instance of rape meets the criteria set out in criminal law. For example, Big Director confessed to the crime of rape. He was convicted (but not sentenced) in a court of law. His victim was under the legal age of consent. There is a clear, unambiguous, and uncontested description of the event on public record. However, as we can see, even this record has not been particularly helpful in this case.

The words that Prominent Actress uses here are a good illustration of the deep conceptual confusion. The term "'rape"-rape' implies that there are (at least) two kinds of rape: "rape"-rape and some other, possibly less serious kind of rape. How are we to tell the difference between the two kinds of rape? And why should Big Director be punished for one but not the other? That Prominent Actress and others should make such claims about this case in spite of the authority of evidence, a confession, and the legal system speaking for the extradition and sentencing of Big Director suggests that confusion abounds and public opinion is deeply divided. It also seems to suggest that there is at least one kind of rape that is not serious enough to warrant condemnation from Famous Actress.

The word 'rape' has existed in our collective linguistic resource for a long time. Its meaning has changed as our social rules and laws have changed. At the present time, the extension of the term 'rape' is so badly understood that our language community cannot use it any consistent way even when a case of rape meets all of the legally defined conditions. Communication using 'rape' is often futile, and, as in the Prominent Actress case, may do more harm than good. We cannot effectively generalize from one instance to many instances of the kind *rape*. We don't have a clear, widespread understanding about what does and does not count as rape. There are few good ways to communicate effectively about rape, and therefore few good ways to educate about, prevent, prohibit, and understand it.

In this case, the communal communicative resource clearly contains some resources for communication about rape, but these resources are inadequate, and this inadequacy harms victims, some potential perpetrators, and many other members of their communities (like judges, lawyers, and juries, to name just a few examples). Victims are harmed because they don't always have the resources to understand and communicate about their experiences. If we are not

clear about what counts as rape and what does not, then people who experience these disputed cases will have an even more difficult time understanding what has happened to them and reporting the crime. They will have an even more difficult time talking to anyone else about their experience, because they will lack Fricker's 'cognitive confidence' about whether theirs was a case of rape or not. Similarly, if we are not clear about what is rape and what is not rape, then we will find it more difficult to educate people about the boundaries of acceptable sexuality. A confused understanding about rape may mean that some people go on to commit rape when they might not otherwise have done so. Unlike the case of 'sexual harassment', we do have some terms and resources available to us as we try to communicate about rape. However, better understanding about rape would mean better communication about rape. Our lack of consensus is a sign that our communal communicative resource is inadequate. This inadequacy is another kind of resource deficit.

What do all of these cases have in common? They all describe a kind of interaction between a community and its linguistic resource: Orchardists and food bloggers spread the word about a new hybrid plum. Lawyers make the term 'sexual harassment' a part of our workplace lexicon. Public personalities, law enforcement personnel, and you and I struggle to decide if Big Director really raped someone, and if it matters that he did. Also, all of these cases focus on the importance of our ability to generalize: Zeigar Genetics made the pluot a specific, patented, replicable kind of organism. Those in the know can distinguish a pluot from an aprium, and they can tell us how to do it, too. Many corporations provide detailed descriptions of the kinds of behaviors that constitute sexual harassment so that employees can identify and avoid these behaviors in the workplace. In the case of 'rape', it is precisely this ability to generalize that we lack. We find it difficult to consistently generalize about what counts as rape with any kind of confidence or authority, and this difficulty has a serious impact on our communication about rape.

In these three examples I have tried to model some ways that communities and communicative resources grow and change together. In the first example, the resource grew to accommodate the new plum-apricot hybrid and our need for a word to describe it. However, the community did not struggle to communicate before the word 'pluot' came along. The resource

was not in deficit, but it did grow and change to accommodate talk of the new interspecific plum. In the second example, members of the community were harmed by the resource deficit. They needed the word 'sexual harassment' and its attendant concept in order to perform vital functions. In the third example, members of the community are still harmed by the resource deficit regarding 'rape'. We have a term and concept in place, but they do not foster effective communication. Successful communication about rape can be prohibitively difficult in some circumstances.

Throughout this section I have suggested a loose way of understanding the notion of a communal communicative resource. I will now suggest a similarly loose way of understanding what it means for such a resource to be in deficit:

If members of a community have a particular kind of need for words and/or concepts, and those words and/or concepts are not contained in the resource, then the resource is in deficit.

This particular kind of need will be explored more fully in the next section.

5.2 TOWARDS A WORKING DEFINITION, PART TWO: THE COMMUNICATIVE ATTEMPT

As we saw in the last section, a deficit in the communal communicative resource can contribute to many serious problems. Such deficits can take one of (at least) two forms:¹⁸⁶

1. a lack of a word, as in 'sexual harassment', or
2. a lack of clarity with respect to a word or concept, as in 'rape'.

However, by itself, a resource deficit is not yet a communicative injustice. We begin to see what communicative injustice might be when someone struggles to *use* the communal communicative resource and fails. Failure, in this case, means that the individual or conversational group in question is unable to successfully communicate. This might mean that a person like Langton's silenced woman is unable to communicate her refusal of sex. It might mean that the person in charge of helping Carmita Wood with her unemployment insurance form doesn't know what

¹⁸⁶ Recall that terms created as names for new technology (like 'laptop', 'iPod', or 'pluot') do not redress a deficit in the communal communicative resource under my account. The reason for this will become clear in the course of this chapter. For now, let me just say that our need for words like 'iPod' is importantly different from our need for words like 'rape' or 'sexual harassment'.

Carmita should write in the part of her claim that explains why she left her job. It might also mean that a person like Prominent Actress is unable to communicate effectively with her interlocutor when she uses the word 'rape'. In cases like these, a person struggles to find or use a word to communicate, either with themselves or with an interlocutor. The failure can be caused by a lack-of-words deficit or by a lack-of-clarity deficit.¹⁸⁷

These are all cases in which someone makes a failed attempt to communicate about some topic that has been obscured by a deficit in the communal communicative resource. These failed attempts are the second part of my definition of *communicative injustice*. I refer to this second component as the *communicative attempt*. In any communicative attempt, the following set of conditions must be met:

1. A person or group makes an attempt to communicate, where communication encompasses both speaking and responding to speech.
2. That person or group fails to communicate.
3. A term or concept obscured by or missing because of a resource deficit is necessary for the communication, and
4. The communication failure occurs because of the resource deficit, either because the resource is insufficiently clear (as in the case of rape) or because the resource lacks a necessary term (as in the case of sexual harassment).

For example, Carmita Wood attempts to explain her experience of sexual harassment to herself and the person in charge of her unemployment claim. She finds that she is unable to explain the circumstances to her satisfaction, though she cannot say why, and she leaves the relevant part of her claim blank. She is forced to leave this part of the claim blank because our communal communicative resource had no word or concept for sexual harassment. If Carmita did have access to adequate resources, she would have been much more likely to successfully submit a claim for unemployment insurance.

Thus far we have achieved some understanding of a communal communicative resource and how a deficit in such a resource can impact on some attempts to communicate. However, we are still unable to say that we have arrived at a satisfactory understanding of communicative

¹⁸⁷ There may be other causes as well as the two listed here.; these are the two I have explored in this thesis.

injustice because the harm described so far is not quite strong enough. At this point, I have given an account of a phenomenon that affects a very large number of people. We have been following a course that leads us from a focus on the entire language community to smaller and smaller groups of individuals. I started with a conception of a communal resource that suffered a deficit of some sort. At this stage, almost everyone might suffer from the same linguistic deficit. So far our case is analogous to Fricker's description of the cognitive deficit suffered by many members of a community if there is a gap in the collective hermeneutical resource. Next, I narrowed the number of people involved by stating that the individual or collection of individuals has to make a communicative attempt. They must be engaging with the linguistic resource in some way, and the resource user(s) must struggle and fail. However, though the scenario described at this point characterizes the experiences of Carmita Wood and the woman in Langton's silencing case, it also describes the experiences of Prominent Actress and the person handling Carmita Wood's insurance claim. At this stage it seems more intuitively plausible that some of these individuals (Carmita Wood, Langton's silenced woman) might be victims of communicative injustice than others (Prominent Actress, insurance claims adjuster).

Suppose that Carmita Wood actually spoke to an insurance claims adjuster instead of struggling alone with her paperwork. In this case, the claims adjuster would have been unable to translate the experience that Carmita struggled to describe to her into something appropriate for the 'reason for unemployment' line on the claims form. She may have had sympathy for Carmita, but she would not have been able to recognize her experiences as instances of sexual harassment. She would have been unable to help Carmita with her form. Though there may be a weak sense in which this woman is wronged, it does not seem right to classify this wrong as an injustice. She certainly fails to understand Carmita's communication. Perhaps she is a particularly diligent claims adjuster and so is particularly hard-hit by her inability to fully understand and assess the situation. There may be a way of interpreting the scenario such that the claims adjuster is also a victim of communicative injustice, but as things currently stand it doesn't seem like she is harmed enough by her experience of communication failure for that experience to qualify as an injustice. The struggle to communicate successfully while using frustratingly inadequate resources cannot be an injustice, or many of us would be victims of

communicative injustice distressingly often. Communication and self-expression do often come with frustration and struggle. A communicative injustice, therefore, cannot be the experience of struggling to communicate, even under conditions of resource inadequacy. It seems that we require some further condition.

What is distinctive about the more intuitively plausible cases of communicative injustice? Why classify their communication failures as injustices? I propose that the difference between Carmita Wood's communication failure and the claims adjuster's failure is that Carmita needs to be able to communicate about sexual harassment in a way that the claims adjuster does not. That is, it means a great deal more to Carmita, and for her life, that she be able to understand that she was sexually harassed and be able to use a word to talk about her experiences that has all of the normative force of 'sexual harassment' attached. Carmita needs to understand that she was treated badly. She needs to be able to rely on the fact that everyone else will understand that she was treated badly when her experience is classed as an instance of sexual harassment. She needs this information in order to take vital communicative action (potential prosecution, future verbal self-defense, unemployment insurance claim) and to understand and feel good about her place in the social world. On the other hand, it is conceivable that the claims adjuster simply needs to know what to put in the blank on the insurance form. She is much less invested in the scenario. Her job is not at stake, and nor is her self-respect or her place in the community. In light of this difference, I propose that a working definition of communicative injustice requires what I will call a *vital need condition*.

5.3 TOWARDS A WORKING DEFINITION, PART THREE: THE VITAL NEED CONDITION

Martha Nussbaum advocates for a kind of political theory based on what she calls *human capabilities*. She argues that governments across the world should establish constitutions that ensure that people live at a certain minimal social level -- "a bare minimum of what respect for human dignity requires".¹⁸⁸ Nussbaum describes her project in the following way:

¹⁸⁸ Nussbaum (2000), p 5.

I shall argue that the best approach to this idea of a basic social minimum is provided by an approach that focuses on *human capabilities*, that is, what people are actually able to do and to be - in a way informed by an intuitive idea of a life that is worthy of the dignity of a human being.¹⁸⁹

In other words, we should come up with a list of things that humans are characteristically capable of doing and being, and then we should arrange our laws and governments so that they protect those capabilities and ensure that people are able to do and to be the things on the list.

Nussbaum further states that

in certain core areas of human functioning a necessary condition of justice for a public political arrangement is that it deliver to citizens a certain basic level of capability. If people are systematically falling below the threshold in any of these core areas, this should be seen as a situation both unjust and tragic, in need of urgent attention - even if in other respects things are going well.¹⁹⁰

In other words, if a person falls below the minimum threshold of capability for any item on the list, he or she is a victim of injustice. Further, every item on the list of capabilities is important. Nussbaum's list includes obvious things like life, bodily health, and bodily integrity. However, it also includes things like practical reason and the ability to have "the social bases of self-respect and non-humiliation".¹⁹¹

There is some dispute over what ought to be on the list of central human functional capabilities. Nussbaum's list is as follows:

1. Life.
2. Bodily health.
3. Bodily integrity.
4. Senses, imagination, and thought.
5. Emotions.

¹⁸⁹ *Ibid.*

¹⁹⁰ Nussbaum (2000), p. 71.

¹⁹¹ Nussbaum (2000), pp. 78-80.

6. Practical reason.
7. Affiliation (A): the capacity for social affiliation.
8. Affiliation (B): protection against discrimination because of your affiliations.
9. Living with other species.
10. Play.
11. Control over one's environment (A): political.
12. Control over one's environment (B): material.¹⁹²

Amartya Sen argues for the capabilities approach differently, but both Sen and Nussbaum agree that there are central human capabilities vital for a good life in a just society, and that states are not governing justly if they do not protect and foster these capabilities.¹⁹³ Communication is an integral part of many of the items on Nussbaum's list. For example, some successful communication may require the freedom of speech. Free speech falls under item eleven, the control of one's political environment. Nussbaum elaborates this in terms of "[b]eing able to participate effectively in the political choices that govern one's life". Protest and political campaigning are also important kinds of communication that involve participation in the political system. Nussbaum's conception of practical reason is also relevant here. Having the capability for practical reason means "[b]eing able to form a conception of the good and to engage in critical reflection about the planning of one's life". Inadequate communicative resources might plausibly interfere with this. Finally, it is perhaps most easy to see the need for communication when it comes to bodily integrity. A person can't protect her bodily integrity if she can't communicate her consent to or refusal of physical intimacy, medical treatment, and demands of physical labor. Though Nussbaum does not single out communication as a central capability, communication seems fundamental to many of the capabilities on Nussbaum's list.

I would like to adopt something very similar to Nussbaum's capabilities approach in my working definition of communicative injustice. In the last section, I noted that not every person

¹⁹² Ibid.

¹⁹³ For more on Sen's approach, see Sen (2009).

who makes a communicative attempt seems to be a plausible victim of injustice. For example, employees handling Carmita Wood's unemployment insurance claim do not seem to be victims of injustice. In order to make it clear that communicative injustice is an injustice and not a misfortune or instance of bad luck, I need some way of distinguishing victims of injustice from other kinds of struggling communicators. In this section, I will argue that the feature that distinguishes victims of communicative injustice from people who merely struggle with the resource is the presence of something I will call the *vital need condition*. In my explanation of the vital need condition I have borrowed heavily from Nussbaum's capabilities approach.

Nussbaum says of her approach, “[w]hat this approach is after is a society in which persons are treated as each worthy of regard, and in which each has been put in a position to live really humanly.”¹⁹⁴ To understand why this approach is relevant to my concerns about justice and communication as they occur in this thesis, consider again Carmita Wood's story. Recall her humiliation and discomfort when she tried to complete her unemployment insurance form. Recall the further harms that accrued (loss of income, loss of future employment, loss of self-esteem and respect in her community) because of her inability to understand her experience and communicate her understanding to others. Consider the story of the woman in Langton's example about sexual refusal and silencing. One of the factors that contributed to that woman's sexual assault was a massive communication failure. Both of these examples are cases where successful communication might have shifted the balance from an unjust experience to a just one. This is what I mean when I say that both Carmita Wood and Langton's silenced woman meet the vital need condition. They have a vital need to communicate successfully, and less than successful communication, in these cases, resulted in both women living without some of the capabilities Nussbaum and Sen claim are vital to life in a just society.

Again, I borrow from Nussbaum to explain myself here. When speaking of a person as someone with “central human functional capabilities”, we speak of those capabilities as something of value, something we seem to hold dear across cultures and national boundaries.

¹⁹⁴ Nussbaum (2000), p. 74.

We see the person as having activity, goals, and projects - as somehow awe-inspiringly above the mechanical workings of nature, and yet in need of support for the fulfillment of many central projects.¹⁹⁵

Without this support, the person is less able or perhaps unable to have goals and projects. The person, Nussbaum argues, becomes more like the mechanical workings of nature and less like the awe-inspiring end-in-herself that she ought to be. It is interesting to note that mere subsistence is not enough to meet Nussbaum's requirements for a person to be fully human. Merely having enough food to stave off starvation is not enough. This conception of justice demands more for a person.¹⁹⁶ Under a capabilities-like framework, we might add communication to any list of central human capabilities that must be nurtured and protected by a just state.

If I adopt a capabilities-like approach to communication, then the following things about the vital need condition become clear. First, though communication is not explicitly present on Nussbaum's list of capabilities, it is clear that communication is at least a necessary component of many items on the list. Communication is necessary to the functioning of a flourishing person in a just society. Second, this means that an inability to communicate successfully about certain things is a mark of injustice, or at the very least that a government is unjust if it does not ensure its citizens' communicative capabilities in at least certain vital contexts.¹⁹⁷ Finally, it only remains to determine when a person's need to communicate is a *vital need*. Clearly, the ability to communicate is valuable in itself, but given that some communication is possible in most states, what kinds of communication can be described as vital? For the purposes of my working definition, let us say that

a need to communicate successfully is a *vital need* if failure to communicate successfully would interfere with a person's ability to flourish and pursue her own projects.

I leave a more precise explanation of what this claim entails for future projects. For now, consider the needs of Carmita Wood and Langton's silenced woman as core cases of individuals

¹⁹⁵ Nussbaum (2000), p. 71

¹⁹⁶ For a discussion of the capabilities approach, see Jaggar (2006) or Robeyns and Brighouse (2010)

¹⁹⁷ For the purposes of this thesis, I am forced to set aside the case of a severely disabled person. This kind of case would clearly pose a problem for this understanding of both justice and a flourishing human life.

who meet the vital need condition. In both cases, failure to communicate successfully interfered with the subject's ability to flourish and pursue her own projects. In Carmita Wood's case, this meant dealing with the material and emotional consequences of sexual harassment. In Langton's silenced woman's case, this meant enduring sexual assault. In both cases, the women's communication failures meant that they were less able to flourish. Both women, then, had a vital need to communicate successfully.

5.4 A WORKING DEFINITION

A resource-based communicative injustice consists, then, of three elements that must all be present in order for a particular communication failure to count as a resource-based communicative injustice. First, there must be a *deficit in the communal communicative resource*. This deficit can take one of two forms: either a lack of a term, concept, etc., or a debilitating confusion over a term or concept. Second, a person or group of people must make a *communicative attempt*. This means that (a), this person or group must fail to communicate, and (b) that their failure must be deeply involved with and made significantly more likely by a resource deficit. Finally, the person or group must have a *vital need* to communicate. In other words, the communication failure must interfere with the communicator's ability to flourish and pursue her own projects.

A very basic model of the definition might look something like this:

RCI = Resource Deficit + Communicative Attempt + Vital Need

In the next two sections I will consider two potential counterexamples to my model. In working through these counterexamples, I hope to avoid some misunderstandings and misinterpretations. I will also use these examples as an opportunity to elaborate and defend my working definition.

5.5 COUNTEREXAMPLE: HASLANGER, CONFLICT, AND RELATIVISM ABOUT SOCIAL TRUTH¹⁹⁸

I presented an early version of my working definition of communicative injustice to MIT's Workshop on Gender and Philosophy, and Sally Haslanger raised an objection along the following lines.

Suppose that two groups of people, in this case some parents and their pre-teen daughter, disagree about whether or not an item of clothing is to be considered "cute", and therefore appropriate attire for the daughter. One such item that Haslanger has written about is a "crop-top", or a tiny t-shirt that leaves a large portion of one's midriff bare. The parents hold one set of beliefs about the clothing, the daughter another. The parents believe that crop-tops are too revealing, that they over-sexualize young girls, and as such they are inappropriate attire for their daughter. The daughter believes that the "cool" girls at school wear them, that this makes the tops cute, and that crop-tops are therefore appropriate attire.

In this scenario, the parents and their daughter disagree about what constitutes a "cute" top. Haslanger writes about the nature of this disagreement in her *"But Mom, Crop Tops Are Cute!" Social Knowledge, Social Structure and Ideology Critique*. Borrowing from John MacFarlane's work on relativism and disagreement, she argues that both parents and daughter can be right about the cuteness of crop-tops.¹⁹⁹ Each may be right from within their own particular social milieu, which Haslanger defines in the following way:

For the purposes of this paper it will be useful to define an individual's (general) social milieu in terms of the social structures within which he or she operates, whether or not the public schemas in question have been internalized. Although we can choose some of the structures within which we live, it is not always a matter of choice, e.g., I am governed by the laws of the United States whether I choose to be or not. Of course, individuals do not live within only one milieu; and milieus overlap. One's workplace, place of worship, civic space, and home are structured spaces; each of these structures are inflected by race, gender, class, nationality, age, and sexuality to name a few relevant factors. So it will be important to specify an individual's milieu at a time and place and possibly in

¹⁹⁸ See Haslanger, "But Mom, Crop Tops Are Cute!" *Social Knowledge, Social Structure and Ideology Critique* *Philosophical Issues 17, the Metaphysics of Epistemology*, 2007.

¹⁹⁹ MacFarlane, J. 2007. Relativism and disagreement. *Philosophical Studies* 132:1 (January): 17–31.

relation to specified others. In this essay I will not be able to give precise conditions that specify what milieu is operative for an individual in a given context; we'll just have to rely on clear-enough cases for now.²⁰⁰

In the daughter's milieu, *cuteness* is determined by what the "cool" kids wear and do. In this sense, the daughter is right to say that crop tops are cute, since the cool kids wear crop tops and thereby make them cute. In the parents' milieu, *cuteness* is determined by some other set of criteria – one that emphatically does not involve the over-sexualization of young girls.

At this stage, we can see how the conversation will play out. The daughter is going to ask the parents for a crop-top. The parents will say no, because crop-tops are inappropriate for young girls. The daughter will then say, as in the title of Haslanger's paper, "But mom, crop-tops *are* cute!" The parents will disagree, and so on and so forth, in homes and families across much of the world. At this stage, we can also begin to see a potential problem for my account of communicative injustice. Is this kind of communication failure a communicative injustice? Haslanger suggested that it is. After all, the resource was potentially in deficit in that the parents and children disagree about what falls under the extension of *cute*. It is possible that the term 'cute' is insufficiently clear, that it does not allow for effective communication. Also, the parents and their daughter made a communicative effort: they both tried to explain why crop-tops either are or are not cute, to no avail. Finally, one might argue that the family has a vital need to communicate with each other about these things to ensure domestic harmony and justice in the family. No one person should get to decide what counts as cute for the entire family. Both sides have some claim to being right about cuteness. Haslanger argues that her example fits all three criteria for a resource-based communicative injustice.

However, it does not seem right to call this kind of everyday disagreement an injustice. No-one is wronged by the disagreement, at least at this stage. (We can all imagine subsequent actions leading to punishments that may seem like wrongs to one party or the other.) This scenario does not seem to be like other kinds of injustice. There is no systematic discrimination. There is, for example, no class of people who are wronged by either use of 'cute'. Users of the word 'cute' do not seem to suffer any deep harm. Though this case may seem to fit my criteria for a communicative injustice, it does not seem intuitively plausible that it *is* one. In what

²⁰⁰ Haslanger (2007), p. 80.

follows, I will try to respond to this objection. I will do so by working through my account part by part.

PART ONE: RESOURCE DEFICIT

In many ways, we can see Haslanger's idea of a social milieu as analogous to my own concept of a communal communicative resource. Haslanger's emphasis is on social structures and internalized norms. The communal communicative resource includes norms and social structures of work, worship, and home, but it also includes words and concepts that may not be related to these structures. The main difference between my approach to the communal communicative resource and Haslanger's social milieu is that Haslanger allows for the existence of more than one milieu. Recall: "Of course, individuals do not live within only one milieu; and milieus overlap. One's workplace, place of worship, civic space, and home are structured spaces; each of these structures are inflected by race, gender, class, nationality, age, and sexuality to name a few relevant factors. So it will be important to specify an individual's milieu at a time and place and possibly in relation to specified others." In contrast, the communal communicative resource is one unified resource shared by all members of society. All of the different parts of Haslanger's different milieus are included in the collective resource. Everyone's communal resource is the same, though different people and different sections of society may use certain parts more than others.

Under my definition, then, the parents and the daughter don't have different communicative resources. They share the same one. It may turn out to be the case that the resource is insufficiently precise about *cuteness*. In this sense, one might argue that the resource is in deficit. However, I think that this understanding of the function of evaluative terms like 'cute' is unhelpful. Different people are able to use evaluative terms differently. We can disagree about what falls under the extension of words like 'cute'. The resource is a tool used by the entire community, not an arbiter of taste. In fact, in the case of certain terms like 'art' and 'freedom', it is not clear that the imposition of one extension over all others is helpful in any attempt to grasp the meaning of the term. It might be the case that the resource users require a certain plasticity in some of their terms.

In Haslanger's example, the parents know what their daughter thinks and the daughter has some sense of what her parents think. Their disagreement actually allows this elucidation to take place, and this, in turn, allows for disagreement about whether something is or is not cute. Disagreements sometimes even serve to make each party's understanding of the issue more clear than it would normally be, as in this case. The daughter explains to her parents that *cuteness* is defined for her by what the "cool" kids wear. The parents explain to their daughter that *cuteness* is not defined in this way. In this case, both parties have more information than an average conversational group would have about the possible extension of a disputed term. Usually, we talk of something's being cute in passing, without waiting for the assent or dissent of the other party. The other party's agreement (or disagreement) is incidental, because we understand that 'cute' usually means something like *cute to me*. In Haslanger's example, the disagreement is a kind of communication. Disagreement is not necessarily a communication failure. It can be the case that both parties understand each other and still disagree.

It is important to note that words like 'rape' cannot include this kind of feature. If the concept *rape* means something like *rape as I understand it*, then people communicating about and trying to understand rape would lose the sense that other people understand what they mean by 'rape', the sense that we all mean the same thing. With this loss comes a loss of Fricker's notion of 'cognitive confidence', the sense that you are justified in your beliefs and have value as a giver of testimony. People could no longer be sure that they were talking, writing, or legislating about the same thing. We would have an even more difficult time identifying and prosecuting rape than we do now, because there would be very little widespread agreement about what falls under the extension of the term 'rape'. This does not happen with words like 'cute' because, again, we understand that different people will find different things to be cute. This element of individual interpretation and taste is part of the concept of *cuteness*.²⁰¹

There is also a sense that this element of individualization doesn't capture what we want to mean when we use a word like 'rape'. Like 'cute' the word 'rape' has an evaluative

²⁰¹ This is not to say that productive disagreement about the extension of the term 'rape' is impossible. Participants in such a dialogue would simply need to signal that this kind of discussion was taking place. This might happen in a formal debate about rape legislation, for example, where it would be understood that participants were putting forward their own views. The same effect might also be achieved just by prefacing statements with signposts like 'In my opinion...', etc.

component. That is, rape is broadly considered to be a bad thing. Rapists have done a bad thing, and rape victims have (at the very least) been harmed. If we disagree about what counts as rape, then we lose some of the force of this evaluative content. After all, your ideas about what counts as rape may well be different from someone else's. Opinions about what counts as rape do, in fact, differ widely. If we're not sure that something is rape then we're not sure that it has the negative valence that we want 'rape' to carry. Cases in which nobody is sure if an event counts as rape or not are the cases that weaken the evaluative content of *rape* as a whole. However, the same is not true for *cute*. Disagreement over whether crop-tops are cute does not weaken the sense that cute things are good, or make it more difficult for people to pick out the things that they think of as cute. In this sense, there is a fundamental disanalogy between 'cute' and 'rape'. It is therefore not clear that the resource is in deficit in the case of 'cute'. However, for the sake of argument I am willing to grant that Haslanger might argue that there is some difficulty with the resource. Let us move on to look at the communication that took place.

PART TWO: COMMUNICATIVE ATTEMPT

Recall the four conditions that must be met in order for a person or group to make a communicative attempt:

1. A person makes an attempt to communicate.
2. That person fails to communicate.
3. A term or concept obscured by or missing because of a resource deficit is necessary for the communication, and
4. the communication failure occurs because of the resource deficit, either because the resource is insufficiently clear (as in the case of rape) or because the resource lacks a necessary term (as in the case of sexual harassment).

Clearly the parents and daughter make an attempt to communicate, though I have already argued that there is no genuine trouble with the resource, making conditions three and four problematic for the Haslanger-style critic. However, I would like to think more about condition two. Are the parents and daughter really unable to communicate?

Both parties seem confident about what ‘cute’ means and how it applies or does not apply to crop-tops. Both parties have sufficient resources to express their position. I would even argue that both parties have sufficient resources to secure uptake – both parents and child are able to tell the opposing party what they think and why. What they cannot do is convince each other that they are right. Is this kind of problem a communication failure?

As I argued in the previous section, it is not clear that it is a communication failure. Both parents and daughter have been able to make their own interpretation of what counts as ‘cute’ and argue for their case. Again, disagreement is not the same thing as communication failure. Finally, let us move on to the vital need condition.

PART THREE: VITAL NEED

Do the parents have a vital need to communicate with their daughter about cuteness? Does the daughter have a vital need to express herself in this way to her parents? If we understand a vital need as a need that must be met in order for an individual to flourish as a human person, then the answer to these questions is no. This is not to say that parental authority and teenage self-expression are not important. Rather, it is to say two things. First, both parents and daughter have other communicative avenues available to them in this case. The parents can explain their decision to their daughter using other terms, such as ‘over-sexualized’ or ‘inappropriate’. The daughter can also explain her preferences to her parents using other terms, such as ‘popular’ or ‘worn by Cady and Sophie’. It does not seem like either side has a special need for the term ‘cute’. And second, an individual disagreement about *cuteness* does not seem to threaten either party’s ability to flourish as a human person. Perhaps if the parents systematically shut down all of their daughter’s opinions in an authoritarian manner then the daughter’s ability to flourish might be threatened. This is a particularly tricky case because the teenage and pre-teen years are a time when a child is learning how to engage with her own autonomy by testing her parents authority. This is bound to be a bit rocky, and it is therefore particularly difficult to define what flourishing means for teens and pre-teens. However, in this case, based on this one individual instance of communication, neither parents nor child cease to flourish because they disagree about what counts as cute.

Therefore, in response to Haslanger, I can say that this example is *not* a case of resource-based communicative injustice because it is not clear that there is either a resource deficit, a genuine communication failure, or a vital need to communicate. The next counterexample I consider is another case where it seems that all three of the conditions for resource-based communicative injustice are in place, but this time the case seems more like an example of misfortune or bad luck than genuine injustice.

5.6 COUNTEREXAMPLE: MISFORTUNE, BAD LUCK, AND OTHER RARE BREEDS

Fricker makes a distinction between epistemic injustice and epistemic misfortune or bad luck. One example she uses to make this distinction is the case of an undiagnosed illness. Suppose you have an undiagnosed illness, and that your behavior and lifestyle are therefore widely misunderstood by most people. For example, many kinds of mental illness (schizophrenia, depression, bipolar disorder) were not understood as illnesses until relatively recently, and rates of successful diagnosis and treatment may still be lower than they should be today. If you were to have suffered from schizophrenia at a time in history when we did not understand what schizophrenia was, then we would not have understood your behavior as the result of an illness. We might have invented alternate stories (devils, demonic possession, etc) to explain your behavior. 'Schizophrenia' and all of its attendant understanding and communicative resources would not have been available to you. You would have lacked the resources necessary to understand your own social experience, and your social peers would have lacked these resources as well. However, according to Fricker, this is just bad luck. You had the misfortune to be born at a time when we had not yet diagnosed schizophrenia. For Fricker, this is not an injustice, because there were no background social conditions that connect your resource deficit with a broader iniquitous social structure.

Setting aside the argument that prejudice about mental illness might be analogous to sexism, racism, or homophobia in terms of background social conditions, this kind of counterexample rests on the intuition that there will be all sorts of gaps in our collective *communicative resource* due to discoveries that we have yet to make or things that haven't yet caught enough of our collective attention. The intuition, shared by Fricker, is that these gaps and

any communicative attempts and vital needs that come along with them, ought not to count as injustices. Sometimes we just don't have a word or idea yet. As in the case of 'laptop' and 'pluot', this lack should not necessarily mean that a communicative injustice will follow.

A particularly good example of this intuition comes from a recent Radiolab podcast.²⁰² During an episode about navigation, the podcasters told the story of a woman who has a rare, recently diagnosed illness. This illness shares some features with the schizophrenia case, but it has some potentially challenging features of its own.

The example goes something like this. When she was about eleven, Mary was playing baseball in a field near her home. All of a sudden, she felt very strange and decided to go home. She looked around, but failed to recognize any of her surroundings. Since the baseball field was very near her home and very familiar to Mary, this strangeness was very frightening. She ran haphazardly down streets and into a yard, and randomly found her mother. She burst into tears of relief, threw herself into her mother's arms, and asked her mother what she was doing in this strange place. Her mother looked irritated and told Mary not to be silly. Mary was actually outside of her own home.

This kind of thing happened now and then throughout Mary's life. She eventually discovered that the strange feeling preceding these episodes meant that her axis, the way that she was oriented to the world, was rotating by ninety degrees. Her internal map effectively rotated by a quarter of a turn for no apparent reason at periodic intervals. Also, Mary discovered that she could sometimes correct this by spinning in circles in the opposite direction. This meant that Mary was often lost and often felt the need to find closets, restrooms, and small spaces in which to practice her spinning remedy. Mary's mother inexplicably advised her not to tell anyone about her condition because she might then be burned as a witch, so Mary never told anyone of her condition. She was afraid of the judgments of others, and she was afraid that she was crazy. She never sought help from doctors or friends. When she got married and started a family, her husband and children didn't know.

Due to a series of coincidences brought about by television and the internet, Mary found her way to a doctor who was studying a related set of syndromes, and he was able to diagnose

²⁰² Radiolab is a podcast produced by New York Public Radio. Each week the podcasters explore an idea or an issue through the stories of several different people. See "Lost and Found" podcast from www.radiolab.org.

Mary's condition. She and a very small number of people suffer from a rare disease that affects the way the brain maps its surrounding territory. Mary now has a name for her condition (let us call it 'rotation illness'), a doctor to help her, and access to a community of people who share her experiences. The analogy between Mary and Carmita Wood should be clear: both lacked an officially sanctioned and widely recognized term with which they might describe their experiences ('rotation illness', 'sexual harassment'). Both had other words with which they might describe their experiences, but these other words were inadequate ('office games', 'men being men'; 'witchcraft', 'craziness'). Both had an *aha!* moment when they met other people who shared their experiences and found words to describe them. However, it seems reasonably clear that Carmita Wood was a victim of communicative injustice. Was Mary? Or is Mary just a victim of misfortune or bad luck? Is it simply unfortunate that Mary was born with an as-yet undiagnosed condition that, when diagnosed, affected so few people that it would *never* be widely recognized or publicized?

To answer this question, let us run quickly through the three parts of the communicative injustice definition:

PART ONE: RESOURCE DEFICIT

Before doctors discovered rotation illness, the collective communicative resource lacked a term for Mary's rotation illness just as it has lacked terms for many of the things that we have gone on to discover and name. This seems relatively straightforward, and it tugs our intuitions towards placing Mary's condition in a pile with plutot-like cases – cases that demonstrate our communal linguistic resource growing and changing in time with our science and medicine. These cases do not seem like injustices. However, Mary's case presents an additional complication. Cases of rotation illness are so rare that they will never be common enough to make rotation illness easily recognizable. Like many other medical conditions, rotation illness is apparent only to specialists. The term 'rotation illness' will never be a commonly used part of the collective communicative resource. In this sense, it is like many other bits of technical terminology present throughout most branches of human knowledge.

There are two components to this potential resource deficit, then. First, there is the fact that we didn't have a term to describe rotation illness until doctors and scientists isolated the illness and named it. Unfortunately for Mary, this advance did not take place until she was an adult. Mary went through childhood and part of life as a grown woman without a term or concept to describe her experiences. Second, there is the fact that rotation illness is a rare condition. This means that most people will never hear or speak about it. Even though the term 'rotation illness' is now a part of the communal communicative resource, most of us will never use it. This means that Mary still won't be able to use 'rotation illness' by itself to describe and explain what she experiences. She will have to preface any explanation with words that explain the fact that she suffers from a rare neurological condition.

With regard to the first component, the 'rotation illness' case has more in common with the 'sexual harassment' case than the 'pluot' case. The advent of both 'rotation illness' and 'sexual harassment' meant that people like Carmita Wood and Mary were better able to understand their experiences. They had cognitive confidence and other skills that they previously lacked; Carmita Wood could recognize that she was wronged and respond accordingly, and Mary could recognize that she was not crazy or ill in some other worrying and unknown way and look after herself accordingly. The advent of 'pluot' did not have this kind of impact on the lives of farmers and geneticists. In this case, therefore, the resource was in deficit before the discovery and initial diagnosis of rotation illness. The second component is more difficult. Was the resource still in deficit after the diagnosis of rotation illness because Mary and other patients did not gain immediate or easy access to the term and concept? Does the fact that the term remains uncommon and hard to come by mean that the resource is in deficit? These are questions about our access to terms and concepts in the resource. The issue of access to communicative resources is too big to discuss with any thoroughness here. Let me just stipulate that in this case, since nothing prevented Mary from discovering the term 'rotation illness' except its scarcity and the fact that technical terms are usually relegated to the borders of the resource, this does not count as a resource deficit.

PART TWO: COMMUNICATIVE ATTEMPT

Mary certainly must have found herself in contexts where she tried to communicate about her condition but was unable to do so because she didn't have the necessary communicative resources. The podcast includes one such story. Mary was on her way to her brother's house - a place she visited often - when she had an episode. She called her brother in tears, only to be told that she was just streets away. What followed was a very difficult conversation between Mary and her brother in which she tried to explain her experience, the fact that she had always had similar experiences, and the fact that she was not crazy. She couldn't tell her brother exactly what was going on because she didn't have a diagnosis and all that comes with it. She couldn't convince her brother that she wasn't crazy because neither of them had the necessary words and concepts to understand what it means to have rotation illness.

This experience meets all of the criteria for a communicative attempt. Mary tried to communicate with her brother, but she failed. Her communicative attempt consisted in an attempt to explain what it was like to have rotation illness before she had the term 'rotation illness', and the conversation was a communication failure because of the resource deficit, i.e. the absence of the appropriate medical term and all the validation that a diagnosis brings with it.

PART THREE: VITAL NEED

It seems easier to make the case for Mary's having a vital need to communicate than it does for Haslanger's family disagreement. Mary needs to be able to communicate about her condition for two equally important reasons. The first reason is related to her physical health and safety. Mary needs to be able to communicate about her illness so that she can warn and educate the people in her life. She needs to be able to explain why she gets lost, and her friends and family need to be able to help her re-orient herself again. In order to do these things, she needs to be able to understand that she suffers from a diagnosed medical condition and be able to tell people about it. Second, Mary also needs to understand that she has a diagnosed medical condition rather than a dose of witchcraft or some other bad thing. She needs cognitive

confidence and self-respect and all of the other things that can come from gaining self-understanding. Both of these reasons make a good case for Mary's vital need.

With these three conditions in place, we can see that Mary's case is complicated. It seems clear that she made a communicative effort, and she had a vital need to communicate. It also seems plausible to say that the collective communicative resource was in deficit *before* the initial discovery and diagnosis of rotation illness because of rotation illness patients' communicative needs, but less plausible that it was in deficit afterwards, even though the term 'rotation illness' was hard to find. So we may argue that Mary was a victim of resource-based communicative injustice in her youth, but it becomes more difficult to make this argument successful once rotation illness has been discovered and its name entered into the communal communicative resource. This answer is somewhat unsatisfying, since Mary was not measurably better off in terms of her communicative needs after the discovery of her condition. The issue of access to specific (less accessible) parts of the resource is a difficult one, worthy of further thought and study.

5.7 CONCLUSION

In this chapter I have set out each of the three elements that make up a resource-based communicative injustice. I have put the elements together in a working definition, and I have used this definition to work through two potential counterexamples. In the next chapter I will revisit each of the major examples discussed in this thesis so far and introduce one new example as well. I will work through each of these examples with my definition of resource-based communicative injustice, using each case to demonstrate the strengths of the communicative injustice model.

CHAPTER SIX

REVISITING RESOURCE-BASED COMMUNICATIVE INJUSTICE

In this chapter I revisit each of the major examples I have considered thus far in this thesis and add one final contemporary illustration of politically significant communication failure. I work through each case as a potential example of resource-based communicative injustice. I use this review of RCI to illustrate the strengths and advantages of the resource-based communicative injustice framework.

6.1 INTRODUCTION

In the last chapter I presented each part of my working definition of communicative injustice: the resource deficit, the communicative attempt, and the vital need condition. Under my account, communication failures that meet each of these three conditions are instances of communicative injustice. Because these cases depend in part on a deficit in the communal communicative resource, I will now call this kind of injustice a *resource-based communicative injustice*. I do this to draw attention to the resource-based nature of the injustice and to differentiate this from future work on other kinds of communicative injustice.

In this final chapter I will bring together all of the major examples that I have considered in this thesis so far. I will apply my definition of a resource-based communicative injustice from Chapter Five to each example, thereby demonstrating the strengths of the RCI framework.

6.2 LANGTON'S REFUSAL EXAMPLE

The first example of communication failure in this thesis occurs in Chapter One. In that chapter I outline Langton's defense of MacKinnon's claim that pornography silences women.²⁰³ Langton uses the Austinian speech act framework to argue that pornography silences by

²⁰³ To review this claim, see sections 1.1 - 1.3 of this thesis.

preventing some women's utterances of the word 'no' and other similar expressions of refusal from counting as actual refusals. "Some speech acts are *unspeakable* for women in some contexts: although the appropriate words can be uttered, those utterances fail to count as the actions they were intended to be."²⁰⁴ Langton's paradigmatic example of silencing is as follows:

A man views pornography that depicts women as coy and sexually insatiable. Women in these films say 'no' to sexual advances when they mean 'yes'. In other words, they do not mean to refuse sex when they say 'no'; they mean to tease and titillate men. The implication is that this kind of refusal, refusal from a woman in a sexual context, does not *count* as a "real" refusal. Instead, it counts as foreplay. This pornography-viewing man subsequently finds himself in a sexual context with a woman. The woman says 'no' to his sexual advances, but he does not take her utterance to count as a refusal, and he rapes her.²⁰⁵

Langton argues that pornography is itself a speech act, and it both illocutionarily and perlocutionarily silences women's refusal of sex. In other words, in this example, pornography both prevents this woman's utterance from being taken as a refusal of sex and makes it impossible for this woman to perform the act of refusing sex.

Langton's refusal example is interesting for a number of reasons. First, it is an example of politically significant communication failure that has been taken seriously by the philosophical community. The number of responses to Langton that are detailed in Chapter Two of this thesis are evidence of that fact. The silencing debate continues to be innovative and lively nearly twenty years after the publication of *Speech Acts and Unspeakable Acts*. It is therefore safe to argue that politically significant communication failure is a topic of considerable philosophical interest, and one worth taking seriously. Second, with this example Langton focuses on a particular kind of communication failure. She notes that women can be silenced in a number of different ways. They can be physically restrained or gagged. They can be threatened. However, she is interested in a different kind of silencing. She is interested in the silencing that occurs because of a very specific interaction between language and power.

²⁰⁴ Langton (1993), p. 299.

²⁰⁵ This summary of Langton's example is taken from Section 1.3 of this thesis.

If you are powerful, you sometimes have the ability to silence the speech of the powerless. One way might be to stop the powerless from speaking at all. Gag them, threaten them, condemn them to solitary confinement. But there is another, less dramatic but equally effective way. Let them speak. Let them say whatever they like to whomever they like, but stop that speech from counting as an *action*. More precisely, stop it from counting as the action it was intended to be.²⁰⁶

In other words, with this example Langton draws our attention to the fact that language and socio-political forces interact in a complex and interesting way, and that this interaction might be the locus of an injustice. It might be the case that a speaker's audience or social situation has more control over what a speaker is able to communicate than the speaker does. Under certain circumstances, this lack of control seems troubling. Finally, although Langton does not discuss this example in these terms, it seems clear that the silencing case is an example of how communicative abilities can be distributed unequally among a population of language users. It is this inequality that gives us a sense that there might be a communication-based injustice here, and not just a power imbalance or a shocking instance of sexual violence.

In spite of the many interesting features of this case, Langton's silencing framework is subject to a number of difficulties. First and foremost, Langton's reliance on Austinian speech act theory leaves her argument vulnerable to many of the difficulties inherent in that theory. In particular, Langton must contend with the issue of uptake, and whether the content of the uptake is sufficient to determine the content of the illocution.²⁰⁷ I discuss some objections to the speech act theory behind silencing in Chapter Two. Second, Langton's argument rests on her assertion that pornographers have sufficient authority to set felicity conditions for sexual refusal. This assertion relies on inconclusive empirical evidence. While this is not necessarily an obstacle to her argument, it does serve to lessen its intuitive appeal for some. It certainly makes silencing-type phenomena seem plausible only under certain limited, rarefied circumstances. It does not seem likely that the silencing framework will easily generalize to cover more instances of politically significant communication failure. While it is true that Langton did not set out to achieve such broad coverage, this lack of generalizability is still a drawback for those of us hoping to understand the phenomenon of politically significant communication failure and locate

²⁰⁶ Langton (1993), p. 299.

²⁰⁷ See Bird (2002), Jacobson (1995).

it within a broader context of social injustice. Third, both Langton's example and her framework focus on the experience of the silenced woman. However, it seems clear that both people in this example were involved in a communication failure. To say this is not to make excuses for a rapist; the consequences of communication failure can be considered separately from the communication failure itself. To say that pornography silences women only seems to capture half of what happens in this example.

If we look at this example through the lens of my Resource-Based Communicative Injustice framework, some of these problems seem more tractable. However, before I demonstrate how helpful the RCI framework is here, let me first show that we can understand Langton's refusal example as a case of RCI.

Recall the definition of RCI. An attempt to communicate is a RCI if the following three conditions apply:

1. There must be a *deficit in the communal communicative resource*. This deficit can take one of two forms. Either
 - a. a lack of a term, concept, etc. as in the case of 'sexual harassment', or
 - b. a debilitating lack of clarity with respect to a term or concept, as in the case of 'rape'.
2. A person or group of people must make a *communicative attempt*. In any communicative attempt, the following conditions must be met:
 - a. A person or group makes an attempt to communicate.
 - b. That person or group is unable to communicate.
 - c. A term or concept obscured by or missing because of a resource deficit is necessary for successful communication, and
 - d. The communication failure occurs because of the resource deficit, either because the resource is insufficiently clear (as in the case of rape) or because the resource lacks a necessary term (as in the case of sexual harassment).
3. The person or group must have a *vital need* to communicate. In other words, the communication failure must interfere with the communicator's ability to flourish and pursue her own projects.

In this case, the debilitating lack of clarity with respect to the term 'no' signals that there is a clear deficit in the communal communicative resource. The woman and man in the example make an attempt to communicate. The notion of sexual refusal is necessary for their

communication. They are arguably unable to communicate because of their lack of clarity or consensus about what counts as sexual refusal. He takes her to be consenting when she utters 'no', while she takes herself to be refusing; their communication failure occurs because of the deficit. Finally, both people have a vital need to communicate here. The woman needs to be able to communicate her refusal in order to maintain her bodily integrity and control over her sexuality, among other things. The man needs to be able to understand sexual refusal in order to live a good life and avoid becoming a rapist. This example meets all of the conditions for a RCI.

There are several advantages to understanding the silencing example in this way. First, in so doing, we avoid all objections connected to speech act theory. We also avoid the need to make empirical claims about the authority of pornographers. All that is required to get this example off the ground as an instance of RCI is that we understand the exchange involving the utterance of 'no' as a communication failure. We do not need to construct arguments about the cause of the resource deficit, interesting though those claims may be. However, the main advantage of the RCI framework does not rely on overcoming the disadvantages of Langton's speech act framework. Instead, it is based on the merits of the RCI framework itself.

Namely, the RCI framework takes in a bigger picture than Langton's speech act framework does. Langton helps us to see that the woman in the refusal case is a victim of an injustice, or at least that she is silenced and that this is wrong. However, her framework does not help us to understand the role played by the man in this example. Under RCI, both conversationalists might be victims of an injustice. While we can easily understand that the silenced woman is a victim of an injustice, we may be tempted to conclude that the man in this story is not a victim of injustice because he goes on to rape the woman. Just as we separated her harasser's subsequent bad behavior from the communication failure in the Carmita Wood case, we can also separate confusion over the use of the word 'no' from the subsequent rape here.²⁰⁸ This separation means that we can understand that the resource deficit left both conversationalists equally vulnerable to communication failure, and that both might be victims of RCI. A broader focus like this may prove helpful when trying to understand and improve communication practices at the

²⁰⁸ See Chapter Four for more on this distinction.

community-wide level. This more comprehensive understanding of the example is a definite advantage of the RCI framework.

6.3 LANGTON'S PROTEST EXAMPLE

I also introduce another example of communication failure in Chapter One. Langton uses a second example to illustrate her silencing framework, this time focusing on the notion of illocutionary silencing. Recall the following summary:

Linda Marchiano is a woman who has appeared in pornographic films. She wrote about her experiences during the filming of one particular piece, describing how she was beaten, tortured, drugged, coerced, and raped. Marchiano wrote about these experiences in explicit detail in order to *protest* against the treatment that she and other people endure in the making of pornographic films. She intended her account to shock and horrify her readers. Instead, Marchiano's book is sold in pornography catalogues alongside material of pornographic content; it is sold as pornography. Langton argues that Marchiano's illocutionary act of protest was silenced by the porn industry just as was the woman in the [refusal] example. Neither one was able to perform the speech act that she intended to perform.²⁰⁹

It is important to note here that it is not the case that no-one *could* understand Marchiano's book as a protest against the pornography industry. It is only the case that some people *did not* or chose not to understand it in this way. It is not impossible that Marchiano's book be understood as a protest. Instead, Langton's claim is that Marchiano's book is sold as pornography, thus silencing her speech act of protest. She intended to protest, and some people took her to be producing pornography. This case is importantly different from the refusal case, and I will explain this distinction in what follows.

First however, I should note that Langton's protest example is not an example of resource-based communicative injustice. To see why this is so, consider the first criterion of my RCI definition:

1. There must be a *deficit in the communal communicative resource*. This deficit can take one of two forms. Either
 - a. a lack of a term, concept, etc. as in the case of 'sexual harassment', or

²⁰⁹ Chapter 1.3.

- b. a debilitating lack of clarity with respect to a term or concept, as in the case of 'rape'.

In this case, there is no resource deficit. Marchiano did not lack terms or concepts to describe her experience in the pornography industry. She did not suffer from a debilitating lack of clarity with respect to any of the terms or concepts that she employed to write her book. In this case, Marchiano had the communicative resources that she needed, but she was still unable to communicate. Although Marchiano's experience may be an example of a kind of communicative injustice, the injustice is not resource-based. This classification may seem strange, since there are obvious parallels between the refusal case and the protest case. Both cases involve a person struggling to communicate by using words (or performing acts) that fail to convey what they are intended to convey. Why, then, is the refusal case an example of RCI while the protest case is not?

To see the deeper dissimilarity between these two cases, consider the following explanation. In the refusal case, the woman says 'no' and means to refuse sex, while the man hears 'no' and takes her to be consenting to sex. In the protest case, say that Marchiano says something like 'I was bound and gagged,' and means that she was physically restrained, but a potential porn-using reader takes her to be telling a story about her experience of being imprisoned. The crucial distinction here is that the porn-user finds Marchiano's account of her experiences to be sexually arousing, while Marchiano intends it to be horrifying, etc. In the protest case, Marchiano fails to evoke the response that she intends to evoke. She does not fail to tell the story she intends to tell. When she says 'I was bound and gagged,' her reader takes her to mean that she was bound and gagged. This is not the case in the refusal example. The kind of communication failure is subtly different.

Langton is right to point out that there is something troubling and unjust about Marchiano's story. However, the problem seems to occur on the level of the audience's response to Marchiano, and not on the level of any failure to understand what is said. In the refusal case, we are to understand that the pornographic convention is so robust that the man could not have understood the woman's utterance as a refusal. In this case, Langton's argument is that some conventions make refusal impossible in some sexual contexts. In the protest case, the pornographic convention may influence the porn-user's response to Marchiano's words, but it

does not make it impossible for her to tell her story. Also, it is not clear that the communal communicative resource *should* make it the case that we respond one way or another to a person's utterances. In Davidson's example about the actor trying to warn his audience about a fire in the theatre, both the actor and the audience had access to the part of the communal communicative resource that contains the term 'fire'. The fact the audience failed to take his words as a warning is tragic, but this failure does not demonstrate a deficit in our communal communicative resources with regard to the term 'fire'. We also would not want every utterance of 'fire' to count as a warning, since this would restrict our communication and self-expression considerably. The fact that Marchiano's act of protest served to arouse some people is certainly an indication of a communication problem. This problem may be an indication of a communicative injustice, but as I have argued here, it is not a resource-based communicative injustice.

6.4 THE 'SEXUAL HARASSMENT' EXAMPLE

I have devoted considerable space in this thesis to Miranda Fricker's example about the origins of the term 'sexual harassment'.²¹⁰ Recall the example:

Carmita Wood worked for a North American university in the early 1970s, at a time when significant numbers of women had not been members of 'the professions' long enough for us to develop a nuanced understanding of professional gender relations. At a time when we had no concept of what sexual harassment was, Carmita Wood's boss made unwanted sexual advances to her in their place of work. Carmita did everything she could to avoid or alleviate the situation before succumbing to stress and trauma and quitting her job. Her subsequent claim for unemployment insurance was denied because she could not name or describe to her (or anyone else's) satisfaction the reason for her unemployment. Carmita eventually found a women's group that fostered discussion of women's experiences in the workplace. She discovered that her experience was not uncommon. Members of this group chose to name their shared experience 'sexual harassment', and they used this name in a successful campaign to make sexual harassment illegal. Carmita Wood's story is also an account of the origins of the term 'sexual harassment'.²¹¹

²¹⁰ See Chapters Three, Four, and Five.

²¹¹ Chapter Five p. 5-6.

Fricker uses this example as a paradigm case of hermeneutical injustice. Carmita is a victim of hermeneutical injustice because there is a gap in the collective hermeneutical resource where the term 'sexual harassment' should be and because women like her were denied the opportunity to prevent this gap from arising by participating equally in the generation of the resource. Because of these two things, Carmita is unable to understand her experience of sexual harassment and is therefore a victim of hermeneutical injustice.

However, Fricker's account of hermeneutical injustice includes the idea that such injustices occur when some significant area of one's social experience is obscured from collective understanding.²¹² This idea of *collective understanding* includes not only Carmita's understanding of her experience, but also her harasser's understanding. As I argue in Chapter Four, this notion of collectivity presents a problem for Fricker's account. Fricker's account of hermeneutical injustice relies on an asymmetry between Carmita and her harasser. Although both people suffer from and are harmed by the same lack of knowledge and understanding, only Carmita is a victim of hermeneutical injustice because she is wronged by this lack in a way that her harasser is not. However, as I have argued, this does not seem to fully capture what is going on in this case. Hermeneutical injustice is a form of epistemic injustice, and both parties in this case share a similar epistemic position with respect to an understanding of sexual harassment (or lack thereof). As I have argued, this makes it seem like the asymmetry between Carmita and her harasser rests on pre-existing social inequality and not on epistemic grounds. I argue that Fricker's way of understanding Carmita Wood's story is unsatisfying for this reason.

However, Carmita's story is also an example of resource-based communicative injustice. It meets each of the three conditions of my definition. First, there is a clear deficit in the communal communicative resource. This deficit involves the lack of a term, and was my paradigm example of this kind of resource deficit in Chapter Five. The second condition for a RCI is the communicative attempt. Recall the condition:

A person or group of people must make a *communicative attempt*. In any communicative attempt, the following set of conditions must be met:

- a. A person or group makes an attempt to communicate.

²¹² Fricker (2007), p. 155.

- b. That person or group is unable to communicate.
- c. A term or concept obscured by or missing because of a resource deficit is necessary for the communication, and
- d. The communication failure occurs because of the resource deficit, either because the resource is insufficiently clear (as in the case of rape) or because the resource lacks a necessary term (as in the case of sexual harassment).

Carmita makes a communicative attempt when she attempts to fill in the form at the unemployment insurance office. She tries to find a word to explain why she left her job, and she cannot do so. This takes care of sub-conditions a) and b). It is clear both that the term ‘sexual harassment’ was missing at that point and that this term was necessary during Carmita’s attempt to fill in the form, thus satisfying sub-condition c). It is also clear that Carmita’s failure to find a term that describes why she was unemployed occurred because of the resource deficit. If ‘sexual harassment’ had been a part of the resource, she would have both understood her experience as one of sexual harassment and used the term to explain why she left her job. This satisfies the final sub-condition. Under my definition, then, Carmita made a communicative attempt. Finally, I have argued in Chapter Five that Carmita had a vital need to communicate, thus meeting the third and final condition for RCI.²¹³ She needed to be able to communicate about sexual harassment in order to understand her experience, protest against further injustices, and generally pursue her own projects and flourish as a human person.

If we understand Carmita Wood’s story as an example of RCI, we gain the following advantages. First, under the RCI framework, both Carmita and her harasser might be victims of injustice. We already understand how Carmita is a victim, but her harasser may also be one, depending on how you tell his story. He suffers from the same resource deficit as Carmita, thus fulfilling the first condition of the definition. If he were to attempt to make a communicative attempt before or after harassing Carmita, he might potentially meet the other two conditions for RCI. His communicative attempt would probably fail for the same reasons that Carmita’s did, and one might argue that he has an interest in understanding and communicating about sexual harassment in order to flourish. For example, he might want to engage only in behavior that treats other people as worthy of human dignity, and the resource deficit in this case might mean

²¹³ See section 5.3.

that he lacks an understanding of his harassing behavior that would allow him to meet this goal.²¹⁴ It is possible that he and Carmita might both be victims of RCI. This is important because RCI allows us to understand a broader picture of communication failure. Because the definition is rooted in the shared resource, we immediately see the problem in terms of the entire conversational context. We do not limit our understanding to one party or another due to their role in other simultaneously-occurring kinds of injustice.

Another advantage of the RCI approach is that it focuses our attention on the communal communicative resource. This focus on the resource may in turn help us to find practical solutions to the problems presented by the injustice. For example, in the Carmita Wood case, it is clear that we lacked a term that described the experience of sexual harassment. Fortunately, Carmita and her colleagues did not need my account of RCI to see that they needed to come up with a term in order to raise awareness about sexual harassment and make it illegal in the workplace. However, in future cases, if we are aware that our communicative resources may be a source of injustice, we might be inclined to look to those resources to adapt, change, or fix problems that lead to injustices. The RCI definition and established success stories like that of 'sexual harassment' might serve as a model for future success stories. They provide us with a roadmap for practical solutions that address this kind of injustice.

6.5 THE "RAPE"-RAPE EXAMPLE

In Chapter Five I also considered an example of communication failure involving confusion about the term 'rape'. Recall the example:

Prosecutors from California have been trying to mount a case against Big Director, who fled the U.S.A after being convicted of rape charges more than 20 years ago. Allegedly, Big Director forced an underage model, who may or may not have been his employee, to have sex with him. There has been a public outcry on both sides of this case. Some people feel that Big Director should be extradited from Switzerland (where he is currently being held) and sent to the U.S. to face charges. They feel that he should not be shown leniency simply because he is famous and makes good movies, or simply because time has passed, or

²¹⁴ This interpretation is possible, even if this positive characterization seems unlikely in Brownmiller's original description.

simply because his victim has dropped the charges. On the other side, a large number of actors and public figures have come out in support of Big Director. These people feel that the charges should be dropped for a number of reasons. One well-publicized line of reasoning in support of Big Director appeals to the idea that he did not actually commit “real” rape. As Prominent Actress says, it was not “rape”-rape.

What does Prominent Actress mean by this statement? Let us assume that she knows the facts of the case. Presumably she intends to imply that Big Director’s charges should be dropped because he did not “really” rape his putative victim. Presumably she means that he did something else (possibly behaved badly) that does not count as rape. ‘Rape’ is a word used to describe a concept that most of us are very confused about. Prominent Actress’s assertion that Big Director’s case was not a case of “rape”-rape is a testament to this widespread confusion. This confusion exists even when a putative instance of rape meets the criteria set out in criminal law. For example, Big Director confessed to the crime of rape. He was convicted in a court of law. His victim was under the legal age of consent. There is a clear, unambiguous, and uncontested description of the event on public record. However, as we can see, this record has not been particularly helpful in this case.²¹⁵

This case is an example of resource-based communicative injustice. It meets all three conditions of the RCI definition. First, it involves one of my core examples of a resource deficit. In this case, the deficit takes the form of

- b. a debilitating lack of clarity with respect to a term or concept, as in the case of ‘rape’.

Prominent Actress is so affected by this lack of clarity about rape that she uses the term ‘rape’ in a kind of double-barreled neologism (“rape”-rape) in an attempt to distinguish Big Director’s rape from some other kind of act that is also rape. When she struggles to get her point across in this way, she makes a communicative attempt, thus satisfying the second condition of the RCI definition. Recall that a communicative attempt must include the following four things:

1. A person or group makes an attempt to communicate.
2. That person or group is unable to communicate.
3. A term or concept obscured by or missing because of a resource deficit is necessary for the communication, and

²¹⁵ See Chapter 5.1.

4. The communication failure occurs because of the resource deficit, either because the resource is insufficiently clear (as in the case of rape) or because the resource lacks a necessary term (as in the case of sexual harassment).

Prominent Actress makes an attempt to communicate with you or me (via a journalist) when she issues her statement in defense of Big Director about “rape”-rape. When taken together with a general lack of awareness and clarity about rape in her audience, the fact that she tried to use the same term to distinguish one act from another is an indication of her communication failure. The term ‘rape’ is clearly necessary for this communicative attempt, and Prominent Actress’s communication failure occurs because of this resource deficit.

This leaves only the vital need condition. In this case, it may seem strange to argue that Prominent Actress has a vital need to communicate about rape. Recall my outline of the vital need condition from Chapter Five:

For the purposes of my working definition, let us say that a need to communicate successfully is a *vital need* if failure to communicate successfully would interfere with a person’s ability to flourish and pursue her own projects.²¹⁶

Prominent Actress’s need may seem less vital than that of someone like Carmita Wood. After all, it may not seem like Prominent Actress needs a resource that includes a better, clearer version of our current term ‘rape’ in order to protect her own bodily integrity or come to understand her own experiences. However, this understanding of our communal need (or lack thereof) for effective communication about rape is limited and problematic. Even if it were the case that rape victims were the only people who had a vital need for the term ‘rape’, statistics tell us that victim of sexual assault make up a considerable section of society. As many as one in six women and one in thirty-three men will be sexually assaulted during the course of their lifetime.²¹⁷ This means that a considerable portion of the population has a vital need for clear, useful communication about the term ‘rape’. Chances are that Prominent Actress might be among them. However, victims are not the only people who need to communicate about rape. Friends,

²¹⁶ Chapter 5.3.

²¹⁷ See <http://www.ovw.usdoj.gov/sexual-violence-report-march.pdf> for the report produced in 2010 by the United States Department of Justice Office on Violence Against Women, the White House Council on Women and Girls, and the White House Advisor on Violence Against Women.

relatives, and other members of victims' communities have a vital need to understand these experiences in order to relate to victims and maintain interpersonal relationships. Everyone has a vital need to understand what is and is not rape in order to avoid confusion that may lead to sexual assault. If we are all clear about the boundaries of acceptable sexuality under the law, then we can all speak, act, and judge one another accordingly. Prominent Actress has a vital need to communicate about rape, as does anyone who wishes to live a good life in a just society.

If the "rape"-rape case is classed as an example of resource-based communicative injustice, we gain the following advantages. First, and like the other examples discussed thus far, the RCI framework allows us to focus on practical solutions to complicated problems. I have already demonstrated that the collective communicative resource can grow and adapt to our needs and changing circumstances. If there is a consensus that we are failing to communicate about rape on a broad scale, then there are steps we can take as a society to address this deficit in our resource. For example, legislators can work to clarify the legal definition of rape. Politicians and law enforcement personnel can engage in awareness campaigns to publicize this new definition. Given an acknowledgement of the scale of the problem and the political will to address it, the RCI model can help us to see the importance of effective communication about rape. Second, the RCI framework does not focus on victims, perpetrators, social norms, men, or women. Instead, it invites us to focus on the community as a whole. Resource deficits affect the entire community because they are deficits in the collective communicative resource. This broad impact might be more obvious in some cases than others. For example, most of us have been unaffected by the addition of the term 'rotation illness' to the collective resource, even though our communicative abilities have been enriched by that addition. However, in cases involving terms like 'rape', everyone can understand the need for effective communication and understanding. The RCI framework makes this communal involvement clearer. This, in turn, gives us a deeper understanding of the importance of communicative justice for a just and flourishing society.

6.6 THE NEWSWEEK EXAMPLE

This final example is new. It has not appeared in this thesis so far. I am including it here because it is a nice illustration of what might be the most common kind of resource-based communicative injustice. This example is similar to the ‘rape’ case and Langton’s refusal case in that it involves terms that already exist in our communal communicative resource. However, it is distinctive in that it involves terms and concepts that remain constant over time, even when associated facts and understandings change.

A recent *Newsweek* magazine article tells the story of the *Newsweek* “dollies” - bright young women who worked for the magazine in the 1960s as the women’s movement was gathering strength.²¹⁸ These women faced harassment, discrimination, and an explicit glass ceiling where advancement and promotion were concerned. Their frustrations with the job and the public momentum of the women’s movement reached a critical mass around the same time, and the “dollies” banded together to sue *Newsweek* for employment discrimination based on gender under Title VII of the Civil Rights Act. *Newsweek’s* women were the first media professionals to bring such a suit to the courts.

Susan Brownmiller is a former *Newsweek* researcher. She details some experiences of the “dollies” in her memoir entitled *In Our Time*. Current *Newsweek* employees Jessica Bennett, Jesse Ellison, and Sarah Ball found copies of *In Our Time* and began to compare the working conditions of the “dollies” with those of current *Newsweek* employees. Perhaps unsurprisingly, they found that many things have not changed. It may be the case that some things are undeniably better:

Forty years after NEWSWEEK's women rose up, there's no denying our cohort of young women is unlike even the half-generation before us. We are post-Title IX women, taught that the fight for equality was history; that we could do, or be, anything. The three of us were valedictorians and state-champion athletes; we got scholarships and were the first to raise our hands in class. As young professionals, we cheered the third female Supreme Court justice and, nearly, the first female president. We've watched as women became the majority of American workers,

²¹⁸ This example, along with all statistics in this paper, appears in Bennett, Jessica, Jesse Ellison and Sara Ball. “Are We There Yet?” *Newsweek* March 29, 2010.

prompting a Maria Shriver-backed survey on gender, released late last year, to proclaim that "the battle of the sexes is over."

However, some things are not:

The problem is, for women like us, the victory dance feels premature. Youthful impatience? Maybe. But consider this: U.S. Department of Education data shows that a year out of school, despite having earned higher college GPAs in every subject, young women will take home, on average across all professions, just 80 percent of what their male colleagues do. Even at the top end, female M.B.A.s make \$4,600 less per year in their first job out of business school, according to a new Catalyst study. Motherhood has long been the explanation for the persistent pay gap, yet a decade out of college, full-time working women who *haven't* had children still make 77 cents on the male dollar. As women increasingly become the breadwinners in this recession, bringing home 23 percent less bacon hurts families more deeply than ever before.

These statistics, and others like them, provide evidence for the claim that women have not come as far as we might have hoped in terms of gender equality in the workplace. Today's *Newsweek* women are not "dollies", but they have not yet broken down all of the barriers that the dollies fought against.

The interesting (and insidious) part of co-authors Bennett, Ellison, and Ball's reflection is yet to come. The authors go on to write,

In countless small ways, each of us has felt frustrated over the years, as if something was amiss. But as products of a system in which we learned that the fight for equality had been won, we didn't identify those feelings as gender-related. It seemed like a cop-out, a weakness, to suggest that the problem was anybody's fault but our own. It sounds naive—we know—especially since our own boss Ann McDaniel climbed the ranks to become NEWSWEEK's managing director, overseeing all aspects of the company. Compared with the NEWSWEEK dollies, what did we have to complain about? "If we judge by what we see in the media, it looks like women have it made," says author Susan Douglas. "And if women have it made, why would you be so ungrateful to point to something and call it sexism?"

In other words, on top of any difficulties with the gender pay gap and workplace sexism, Bennett, Ellison, and Ball also face an additional problem. In the face of progress made by the "dollies" and a society that has ostensibly embraced and moved past the women's movement,

how do they express the fact that all things are still not equal? Nobody in today's journalism industry would say that "women don't write here", as the "dollies" were told in the early 1960s. However, in 1970, 25% of *Newsweek's* editorial staff were female. Today that number is 39%. As Bennett, Ellison, and Ball point out, "better" is not equality. It is important to note that *Newsweek* is not unusual in this respect. Female bylines at major magazines are outnumbered seven to one. Across the professions, women are less than three percent of Fortune 500 CEOs and less than a quarter of law partners and politicians. In 1960, the four most common professions for women were secretary, domestic help, teacher, and cashier. Today, registered nurse takes the place of domestic help, but otherwise this list, like many aspects of gender equality in the workplace, remains unchanged.²¹⁹ And frustration with these facts can be surprisingly difficult to express to co-workers and colleagues.

This slow progress has placed women in what Bennett *et al* call "a bind". On the one hand, many people think that women's lib is over. Progress has been made. Women can go to college with men, enter professions alongside their male colleagues, and do what they want with their lives. On the other hand, they can't. Not if earning equal pay for equal work and having an equal shot at career advancement is what they want. And here is the bind: because limited progress *has* been made, women feel that they cannot protest these inequalities without seeming irrational, angry, and a host of other undesirable things. High profile success has masked persistent inequality. To quote Bennett *et al*, "We know what you're thinking: we're young and entitled, whiny and humorless - to use a single, dirty word, feminists!"

In addition to the other kinds of discrimination levied against them, some women like Bennett, Ellison, and Ball are also failing to communicate. They don't know how to express the realities of their work situation so that people will listen and understand them. They don't have the language tools -- words like 'feminism' and 'sexism' are no longer acceptable to use at work lest one be branded a troublemaker or complainer, and the situation is no better outside the office. And even if they could use these words, the meaning of the word 'sexism' has not changed at the same pace as our understanding of discrimination and other barriers to women. Bennett and her colleagues don't feel able to use words like 'sexism' to describe their situation

²¹⁹ According to Bennett et al, 43% of today's employed women work in these "pink collar" jobs.

because nobody has ever told them that they can't have the promotion, etc. because they are a woman.

Somewhere along the road to equality, young women like us lost their voices. So when we marched into the workforce and the fog of subtle gender discrimination, it was baffling and alien. Without a movement behind us, we had neither the language to describe it nor the confidence to call it what it was.

Not only have these women lost the tools that they need in order to communicate effectively, but this loss has been compounded by the further loss of self-confidence and assurance that words like 'sexism' generated for the "dolly" generation. This means that Bennett *et al* face a more complicated challenge than did their "dolly" predecessors. The "dollies" had to create and popularize the words and concepts they needed in order to communicate about and fight for workplace equalities. Bennett *et al* must now find new language and new ideas to replace those of previous generations, or find some way to reclaim old tools while at the same time distancing themselves from the complacency or negative backlash often experienced by contemporary communicators.

• One of the main obstacles to successful communication involving the word 'feminist' is the current confusion about the meaning of the term. There are (at least) two different meanings for the general term 'feminist' available in the communicative resource.

'feminist' meaning A : *man-hater, angry woman, irrational harpy*

'feminist' meaning B: *person who opposes gender-based inequality*

These two divergent meanings can lead to the following problems. First, a person who believes that 'feminist' means meaning A is simply incorrect. Most feminists are not man-haters, angry women, or irrational harpies. This list of descriptions does not capture the extension of the term. A person using meaning A is, at the very least, confused. Second, even if a person were to use meaning B, in any attempt to communicate, that person's audience may take them to be using meaning A. This is the problem that Bennett *et al* describe in their article. This confusion between meanings can lead to backlash, or a situation in which a person uses a term in order to pursue some communicative end but is unable to communicate successfully because the term is closely associated with something undesirable, unpopular, and contrary to the communicator's

intended meaning. Finally, this situation, in which two meanings are available for one term, can lead to widespread confusion about what the term does, in fact, mean.

A similar explanation is available for Bennett *et al*'s difficulties with the word 'sexism'. In this case, there are also at least two meanings available:

'sexism' meaning A: *deliberate discrimination against the clearly oppressed*

'sexism' meaning B: *something that includes meaning A but is more frequently manifested as implicit bias, stereotype threat, etc.*²²⁰

In this case, the following problems occur. First, many people think that 'sexism' means A, so therefore Bennett and her colleagues do not think that there is any sexism at *Newsweek* magazine. This scenario captures what Bennett meant when she wrote that

[i]n countless small ways, each of us has felt frustrated over the years, as if something was amiss. But as products of a system in which we learned that the fight for equality had been won, we didn't identify those feelings as gender-related.

She was coming up against the limits of the old understanding of 'sexism', or 'sexism' A. This frustration led to a subsequent problem. Given her frustrations with the limits of 'sexism' A, Bennett begins to be uncertain about what the term 'sexism' really means. She has some sense, gathered from statistics and from reading Brownmiller's book, that *Newsweek* has not achieved gender equality, and she understands that this lack of equality is importantly related to sexism. However, she is not certain that 'sexism' is a label that applies to her treatment in the office. She feels that there is a risk of misunderstanding and communication failure that may come with any use of the term 'sexist'. Because of this risk, she feels that she can't use the term.

Bennett *et al* give an account of communication failure about sexism and feminism. They have "lost their voices"; they no longer have "the language to describe" their thoughts about contemporary gender discrimination in the workplace. This situation is a resource-based communicative injustice. It meets the three conditions of my RCI definition. First, the confusion over the multiple meanings of 'sexism' and 'feminism' constitutes a resource deficit. Bennett and her colleagues require resources that will help them to communicate the fact that the

²²⁰ For more information on bias and stereotype threat see Saul (in progress), *Implicit Bias, Stereotype Threat, and Women in Philosophy*.

struggle for gender equality in the workplace is not finished. These tools are not present in the collective communicative resource, or if they are, they are not accessible to the people who need them. For the *Newsweek* “dollies”, the word ‘sexism’ meant overt gender discrimination and harassment. For many members of the public, this is what the word still means. For Bennett *et al*, ‘sexism’ may include this meaning, but it should not stop there. Bennett needs to be able to use ‘sexism’ to describe implicit judgements and practical states of affairs that may seem unconnected to any kind of explicit bias or prejudice. At the present time, Bennett cannot use ‘sexism’ to refer to the realities of gender inequality in the workplace because words like ‘sexism’ are not sufficiently clear or well enough understood. The resource has not evolved at the same speed as gender discrimination.

Second, Bennett describes her communicative attempt when she recounts her struggle to understand and describe her experiences in the workplace. She notes that she “had neither the language to describe [subtle gender discrimination] nor the confidence to call it what it was”. She was reaching for effective words and concepts to take the places formerly occupied by ‘sexism’ and ‘feminist’ and other such words, but she was not finding the resources that she needed. She makes an attempt to communicate, she fails in that attempt, the terms ‘sexism’ and ‘feminism’ are necessary for the communication, and her failure occurs because of the resource deficit.

Finally, Bennett had a vital need to understand her experiences and be able to communicate about them to herself and others. Without this ability, Bennett suffers from two distinct kinds of harm. First, she lacks the tools that she needs to communicate. She cannot tell the rest of the world that she is a victim of injustice. She cannot make her case to an increasingly skeptical public.⁴ Her work to remedy gender inequality may therefore be stilted and less effective. And second, as a result of this inability to communicate, Bennett and other young women are losing cognitive confidence. They are no longer sure that their lack of progress in the workplace is not their fault. They are no longer sure that the situation as it stands is unacceptable. In other words, they will be consistently undervalued and undermined while being unable to communicate about or protest such treatment. Such a situation is inconsistent with the kind of life in which a person

might flourish. Bennett *et al* are therefore in vital need of the ability to communicate about these things.

Given these three conditions, Bennett, Ellison, and Ball are victims of communicative injustice. If we understand this case as an instance of RCI, we gain advantages similar to the advantages already discussed in the other examples. Namely, the focus on the resource allows us to identify, isolate, and possibly rectify problems with the terms ‘sexism’ and ‘feminism’, and the RCI framework helps us to conceptualize and understand the communicative needs of the entire community rather than focusing only on Bennett and her colleagues.

6.7 CONCLUSION

In summary, the RCI approach offers the following advantages for understanding communication failure. First, it promotes a wider understanding of communication failure. RCI includes the entire conversational group rather than focusing only on one person’s struggle to communicate. This broad focus helps to avoid misunderstanding, alienation, and other barriers to understanding. As long as each person affected by a resource deficit makes a communicative attempt and has a vital need, then, under the RCI framework, their struggle is an injustice. Second, the RCI framework draws our attention to the ways that communication can be a locus of injustice. This is a fruitful way of thinking about communication and the relations that hold between language and justice, and as we have seen in this chapter, it can be a fruitful way of dealing with a wide range of communication failures. Even when an example does not meet the criteria for RCI, like Langton’s protest case, for example, its exclusion from the RCI framework tells us that the example is not about a resource deficit. This knowledge may encourage us to look elsewhere for a deeper understanding of the problem. Finally, under the RCI framework, the focus on the collective communicative resource may make some practical solutions (lawsuits for ‘sexual harassment’, awareness campaigns for ‘rape’) more apparent, or more apparently necessary. The RCI framework may help us to generate ideas about practical solutions to communication problems.

CONCLUSION

SOME FINAL THOUGHTS AND THE CONTINUING PROJECT

In this thesis I have begun an exploration of communicative injustice. I have considered the thought that some of our communicative practices are so vital to our flourishing existence as human persons that we may suffer an injustice when these practices fail. I have argued that there are certain contexts in which we should be able to communicate certain things, and that sometimes an inability to communicate constitutes an injustice.

I have worked through several different accounts of politically significant communication failures (most notably Langton's silencing and Fricker's hermeneutical injustice). My RCI model provides an alternate way of dealing with many of the examples raised in these accounts. It is my hope that it provides a way of working through these difficult cases that is fruitful and productive. These examples of communication failure present us with serious practical, moral, and political problems, and in order to address them we must begin to pay more attention to the broader context of communication failure. That is, resource-based communication failure is not (usually) something that happens only to one person. Often we may discover that both speaker and audience are adversely affected by a resource-based communication failure, and even if the failure happens because one party is a member of either a marginalized or an unfairly advantaged social group, both parties may benefit from attempts to address the resource deficit.

My definition of resource-based communicative injustice is only a working definition. I expect that it will change and evolve as I encounter further criticism and discussion. There is still work to be done on this project, both in terms of refining the definition of resource-based communicative injustice and in terms of expanding a general understanding of communicative injustice to include other varieties. I am particularly interested in developing an account of communicative injustice that focuses on our access to the collective communicative resource. I touch briefly on this issue in Chapter Five with discussion of the rotation illness case. If a vitally important term exists in the resource but is so seldom used that it becomes peripheral and therefore difficult for many people to access, is this a kind of injustice? This question bears

further consideration, and the example might work better under a different, non-resource-based framework. In addition to issues about access, I am also interested in future work on the idea of communicative competence. What counts as communicative competence? Who gets to decide this, and how do they make that decision? If a person cannot access the communal communicative resource because they do not have (or have not been taught) sufficient communicative skills, is this also a kind of injustice? If so, how are we to distinguish communicative injustice from communicative disability? These are just some of the questions I look forward to addressing in future work.

My goal here has been to provide a working definition of resource-based communicative injustice. This definition and its accompanying conceptual framework can help us to gain a better understanding of some important kinds of communication failure. An RCI is an injustice, and should be recognized as such.

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