

How to Silence Content with Porn, Context and Loaded Questions

Alex Davies

Abstract: Catharine MacKinnon claimed that pornography silences women's speech where this speech is protected by free speech legislation. MacKinnon's claim was attacked as confused because, so it seemed, pornography is not the kind of thing that can silence speech. Using ideas drawn from John Austin's account of speech acts, Rae Langton defended MacKinnon's claim against this attack by showing how speech can, in principle, be silenced by pornography. However, Langton's defence requires us to deviate from a widely held understanding of what kind of speech is protected; namely the expression of opinions, ideas, and thoughts. In this paper I provide an alternative defence of MacKinnon's claim which requires no such deviation. I argue that because the truth-conditions of sentences are context-sensitive it is possible for there to be contexts in which, when those in attendance believe rape myths, it is not possible to express certain opinions, ideas, or thoughts. Given that pornography is a significant contributor to rape myth acceptance, this argument addresses the accusation of confusion facing MacKinnon without the need for deviation. The cross-examination of a complainant in a rape trial is used as an illustration.

1. MacKinnon's Claim

Catharine MacKinnon has claimed that pornography silences women in a sense that would make that silence an infringement of free speech (MacKinnon 1987: 177, 181, 193). MacKinnon's claim has been criticised as confused: pornography is not the kind of thing that can stop women from speaking in the way that free speech legislation is supposed to protect (cf. Dworkin 1991b and Michelman 1989). Call an argument which has MacKinnon's claim as its conclusion 'a silencing argument'. To defend MacKinnon against the criticism, Langton (1993) provides a silencing argument using materials drawn from J. L. Austin's (1962a) study of speech.¹ Langton's aim in providing this argument is to defend MacKinnon against the accusation of confusion. The argument is intended to show how it is possible that pornography could, in principle, do such a thing as silence women's speech. Langton's silencing argument only applies to speech acts which require Austinian uptake for them to have been performed. Such acts plausibly include refusals of sexual advances and some forms of protest but they do not include expressions of ideas, opinions, and thoughts. Call speech protected by free speech legislation 'protected speech'. Unfortunately, on a view with substantial popularity, only expressions of thoughts (etc.) qualify as protected speech. In order, then, for Langton's silencing argument to be compelling,

it needs to be supplemented with a defence of a broadened conception of protected speech.² My aim in this paper is to construct a silencing argument which requires no broadening and hence no such supplementation. The argument will show how pornography can, in principle, convert certain contexts of utterance into places wherein sentences cannot have the truth-conditions that would make the production of such sentences a means for expressing the thoughts of the speaker. The courtroom cross-examination of a complainant in a rape trial will be used to illustrate this.

I will proceed as follows. In section 2 I introduce Langton's silencing argument and in section 3 I explain why it needs the supplementation in order to be compelling. In section 4 I describe a mistake, common to both Langton and her critics, concerning the content of Austin's speech act theory. Recognition of this mistake will allow us to explain how the context of a speaker can influence the truth-conditions of the sentences she utters therein and hence in principle how paradigms of protected speech can be silenced by modification of that context. In sections 5 and 6 I describe two linguistic phenomena: a variety of presupposition and yes/no-questions. In sections 7 and 8 I describe some features of the courtroom cross-examination of a complainant in a rape trial: namely, its interactional structure (as documented by Atkinson and Drew 1979) and the effect that the acceptance of rape myths has on a person's capacity to recognise that a yes/no-question makes a false presupposition. In section 9 I show how, when combined, these features constitute a context in which the complainant cannot make statements with the truth-conditions she wants them to have when participants to the exchange accept rape myths. In section 10 I use the existence of contexts of this kind as a premise in an alternative silencing argument which has the conclusion that pornography can silence expressions of thoughts insofar as pornography is a significant factor in the acceptance of rape myths. In section 11 I will respond to two new problems which the alternative silencing argument may face that Langton's original does not.

Before we start, notice that the conclusion of a silencing argument, as Langton (1993: 63) acknowledges, is *not* that pornography ought to be censored. That pornography plays a significant role in the silencing of women's speech, if it does, could be remedied in a variety of ways. One way would be to enable those who can show they were harmed by it to sue those who made it (as advocated by MacKinnon and Andrea Dworkin in the 1980s). Another way (though clearly not one consistent with MacKinnon's theory of sex) would be to produce *more* pornography which is specifically designed to counteract the effects of existing pornography.³ The role of pornography in women's silencing and the strategies available for removing that influence are two separate matters. I take no stand on the latter in this paper.

2. Langton's Silencing Argument

Langton introduces Austin's distinction between locutionary, illocutionary, and perlocutionary acts by examining the following scenario:

Two men stand beside a woman. The first man turns to the second, and says 'Shoot her'. The second man looks shocked, then raises a gun and shoots the woman. (Langton 1993: 27)

The *locution* is the uttering of 'shoot her' meaning by 'shoot' to shoot with a gun, and referring by 'her' to the woman nearby. The *perlocution* consists of the obtaining of consequences of the locution; in this case that the first man *persuaded* the second to shoot the woman by uttering 'shoot her'. The *illocution* is an act performed in uttering 'shoot her'. In this case, we might say the first man *urged* the second to shoot her. Langton argues that pornography can silence all three kinds of speech act. However, I am going to focus on the illocutionary case for two reasons. Firstly, free speech legislation more plausibly covers illocutions than perlocutions. Secondly, Langton (with co-author Hornsby and Langton) (1998: 75) eventually adopts this focus herself.

Two features of illocutionary acts are pertinent. Firstly, for them to obtain, further (felicity) conditions must be met beyond the performance of a locution. For instance, A and B did not become married when C said 'I now pronounce you husband and wife' if C is a myna bird. The person performing the act of marriage must meet certain conditions if marrying is to take place. Secondly, one such felicity condition is what Austin called 'uptake': one must be recognised as performing the act in question for one to have performed it (Langton 1993: 33). Langton proposes that pornography can silence illocutionary speech by undermining its uptake. For example, suppose a man makes a sexual advance toward a woman and that woman utters 'no', attempting to perform an illocutionary act of refusal. If the man does not recognise her 'no' as a refusal then there is no uptake, so there is no refusal. The woman has been silenced in the sense that she has been stopped from performing an illocutionary act. Why would a man not recognise the woman's saying 'no' as an act of refusal? Pornography includes depictions of women meaning 'yes' when they say 'no'. Men who watch that pornography may come to believe that this is a real trait of real women (*ibid.*: 58). So when they witness a woman say 'no' to a sexual advance, they do not recognise it as a rejection. If things were thus then pornography would cause illocutionary silencing.⁴

Langton makes the further assumption that illocutionary silencing silences protected speech. She justifies this claim by replacing a conception of protected speech which 'cast[s] ideas as the heroes of the story' (*ibid.*: 61) with one that focuses on what kind of speech is worth protecting:

The claim that pornography silences women is not about ideas, but about people. Free speech is a good thing because it *enables people to act*, enables people to do things with words: argue, protest, question, answer . . . The point is that women cannot *do things* with words, even when we think we know how. (Langton 1993: 61–2)

She thus justifies the inclusion of illocutionary acts within the scope of protected speech on the ground that the point of protecting speech is to protect

the capacity of speakers to do things with words (over and above the performance of locutions).

With this material Langton offers the following explication of MacKinnon's claim that pornography silences women's protected speech. Langton doesn't claim that all illocutionary acts are protected speech. So let a special illocutionary act (SIA) be a member of the subset of illocutionary acts which Langton claims are protected speech. Then:

- (1) SIAs are protected speech. (Assumption)
- (2) If uptake fails for an illocutionary act then there was no illocutionary act. (Assumption)
- (3) Pornography causes failed uptake for SIAs. (Assumption)
- (4) Pornography silences SIAs. ((2) and (3))
- (5) Pornography silences protected speech. ((1) and (4))

Even if pornography doesn't actually cause failure of uptake (so premise (3) is false), the argument, if otherwise sound, would nonetheless show that it is not a confusion to claim that pornography is a kind of thing that is capable of silencing women's speech, contrary to the objection against MacKinnon which Langton seeks to rebut.

3. Langton's Predicament

Even though Austin is famous for drawing our attention to the respects in which speech is action, he never denied the possibility of contrasting two mutually exclusive categories, viz. speech and action:

. . . we may contrast men of words with men of action, we may say they *did* nothing, only talked or *said* things . . . (Austin 1962a: 92)

There is a conception of protected speech which employs this contrast. On this conception, the right to free speech is the freedom to express opinions without restriction on their content but it does not incorporate a right to be understood nor does it incorporate a right to have one's words taken as bearing a particular force (e.g. assertion, invitation, suggestion, advice, refusal etc.).

Several of those who oppose either MacKinnon or Langton are amongst its advocates. We find commitment to this understanding of protected speech in (Dworkin 1991a), (Dworkin 1993), (Jacobson 1995), and (Green 1998). Those who discussed the relevance of speech act theory to free speech protections prior to Langton's engagement with that subject have also endorsed it (cf. Greenawalt 1990 and Haiman 1993). Even J. S. Mill (1859: 58) seems to have endorsed it. When he defended the freedom of expression of opinion, he was defending the right to express opinions in the sense that there ought to be no restriction on their expression based on their content. Nothing is said about actions done in or by expressing opinions. Call this the 'Millian conception' of protected speech.

The Millian conception is, in Langton's (1993: 61) words, 'not uncommon'. Braddon-Mitchell and West (2004: 437) go so far as to say that it is 'the standard approach to free speech'.

No one who upholds the Millian conception will be persuaded of MacKinnon's claim by Langton's silencing argument. Langton grants that one can successfully express one's opinion by performing a locutionary act successfully (Hornsby and Langton 1998: 78, and Langton 1999a: 70). So even if one is stopped from performing an illocutionary act by way of Langton's silencing mechanism, that doesn't mean one has had one's protected speech silenced on the Millian conception. Furthermore, expression of opinions, thoughts, or ideas plausibly doesn't require uptake in order to be successful. Why think so? Examples abound. For instance, in a lecture on Frege, a lecturer may express her own view about logicism while the students unreasonably confuse this for a presentation of Frege's view of logicism. Did she therefore fail to say what she thinks? Her capacity to give voice to her own thoughts is not *that* enslaved to the doziness of her audience. But then the way in which speech is supposed to be silenced by pornography, according to Langton's silencing argument, doesn't apply to protected speech on the Millian conception. So no one who accepts that conception will grant premise (1) and any locutionary substitute for that premise would render (an appropriately modified) premise (2) false.

Langton (with co-author Hornsby) responds to this objection by emphasising that she had no intention of operating with this conception. She intended to operate with an alternative conception of free speech that encompasses some illocutionary acts though not all (Hornsby and Langton 1998: 85). But then MacKinnon (2012: ix) should be cautious in accepting Langton's defence. That defence requires abandoning attempts to persuade those who adopt the Millian conception of protected speech that MacKinnon's claim is not confused. The Millian conception is a dominant one. So if one uses Langton's silencing argument alone to defend MacKinnon's claim, one can at best succeed in persuading a minority: viz. those who don't accept the Millian conception. To do better, one needs to supplement Langton's defence of MacKinnon with an argument against the Millian conception. This is Langton's predicament. A silencing argument founded upon an alternative silencing mechanism—one which silences the speech that is protected on the Millian conception—would avoid this predicament.

4. Locutionary Acts and Expressions of Thoughts

Langton and her critics make a false assumption about the content of Austin's speech act theory which hides the possibility I will exploit in later sections. They assume that locutions, the uttering of meaningful syntactically well formed strings of words, are expressions of thoughts (and so presumably opinions and ideas) (Jacobson 1995: 70–1, Hornsby and Langton 1998: 78, and Langton 1999a: 70). However, given that expressions of thoughts (etc.) are statements, Austin explicitly denies this:

The truth or falsity of a statement depends not merely on the meanings of words but on what act you were performing in what circumstances. (Austin 1962a: 144; see also Austin 1962b: 110–1)

Austin uses examples with the following structure to illustrate how words with fixed meanings (so locutions) under-determine what one states in using such words. Suppose an unambiguous sentence is used to make a statement on several occasions. If one counted the sentence employed as used to make a true statement on some occasions and not others, even though one speaks of one unchanged object throughout, then there is reason to think that the meanings of the words, syntactically combined, under-determine what statement is made. Here is one of Austin's examples, albeit embellished to sharpen the point.

Consider the sentence 'Lord Raglan won the battle of Alma' (*ibid.*: 142). The sentence as used to speak of a particular man and a particular battle can be used sometimes to say something true and sometimes to say something false. Given that the sentence is not ambiguous, this suggests that its truth-condition has shifted from use to use, despite no change in its meaning and thus that its meaning is not to be identified with a truth-condition. For example, suppose that Su is in an elementary school history class. The class has been learning of officials each of whom performed a single act that changed the direction of a battle thereby leading to victory for that official's side. Once a series of officials, their acts, and the battles in which they did theirs, have been taught for an hour, there is a pop quiz on the officials and their battles. Su is asked who won the battle of Alma. Su replies, 'Lord Raglan won the battle of Alma'. The teacher replies, 'Yes, that's right. Lord Raglan surreptitiously placed guns atop a hill overlooking the Russian army, and scared them away'. Seemingly, what Su said is true. Years later Su is in a tutorial as part of her history degree. She has been asked to analyse whether any one individual can be credited for winning the battle of Alma. Without quite thinking, she blurts out, 'Well yes, Lord Raglan won the battle of Alma'. The class laughs. The tutor reminds her that if it weren't for the French on the ground already fighting the Russians, Lord Raglan's manoeuvre would have been ineffective. What Su says with the sentence is false. *He* is not to be credited for winning the battle. Thus it seems, though used to speak of a particular man and battle, in different circumstances the sentence can require different things of the world for it to be true, despite no variation in its meaning.⁵

This is intended as an illustration of a phenomenon, not an argument for its pervasiveness. However, it has been shown to arise for a wide range of sentences (e.g. Travis 1975: chapter 3, and Travis 1985). Those who accept its existence have given it various analyses.⁶ But presently all that matters is that there is a respectable quantity of evidence that as far as the meaning of the words is concerned, a sentence can have an almost open ended range of truth-conditions. I say 'almost' because I do not mean to deny, for example, that it is an invariant feature of the English sentence, 'The glass is quaint', that it is true if and only if the glass is quaint. I do mean to deny that what counts as being the glass and being quaint is not settled by the meanings of the words in the sentence.

Nonetheless, there is far more truth to Langton's aside that locutionary acts are no more than 'noises that are recognizable as speech' than she recognises (Hornsby and Langton 1998: 87). Because of this it must be (some) illocutionary acts that receive protection from free speech legislation.

This fact alone makes no difference to Langton's predicament. Even granting that expressions of ideas (etc.) are illocutionary acts, there is still no reason to think they require uptake. So we still have no speech acts which are uncontroversially protected and to which Langton's silencing mechanism applies. However, the phenomena that support the claim that illocutions, not locutions, are what are true or false strongly suggest that the social context of the stating matters to the truth conditions of sentences uttered (Austin 1962a: 143, 145). It would follow that there are circumstances in which certain words cannot be used to say certain things. If there were contexts in which (practically) *no* words could be used to say what you might want to say, there would be a sense in which, in that place, so far as what you want to say goes, you have been silenced. The proposal I will now begin defending is that a plausible candidate for such a context is the cross examination of a complainant in a rape trial. The next two sections describe some linguistic phenomena and the subsequent two sections describe features of cross-examinations in rape trials. In section 9 I explain how these features combine to create a context in which the complainant cannot produce statements with the truth-conditions she wants them to have, insofar as rape myths are accepted by those present in that context.

5. Presuppositions

We employ numerous adjectives besides 'true' and 'false' to describe the relations between sentences (as used on some occasion) and the world, whilst steadfastly refusing to say such sentences are, without caveat, true or then again false:

We say for example, that a certain statement is exaggerated or vague or bald, a description somewhat rough or misleading or not very good, an account rather general or too concise. In cases like these it is pointless to insist on deciding in simple terms whether the statement is 'true or false'. (Austin 1950: 123–4; see also Austin 1962a: 141–2)

For example, suppose that Sid slams the door so hard that the door shatters into many pieces. There is no door in the doorway. Is the sentence, 'Sid shut the door' true or false in this case? (Travis 2008: 163) It's not entirely true. For it to be so, without subsequent elaboration, the door must stay in the door frame. But then it's not entirely false either. He did go through the motions of shutting the door and bringing the door to cover the doorway, though only for a fraction of a second. Here's another example. Suppose that Tea Company has decided it can expand its market by producing a coffee flavoured drink derived from a genetically modified tea plant that produces leaves which, when brewed,

produce a beverage that is (even chemically) indistinguishable from a midrange filter coffee. Frank has the job of perfecting the brew. At home with Moira (who knows nothing of Frank's research), he makes her a cup of the stuff to test his success. She looks at it quizzically. He says, 'It's coffee'. She drinks and notices nothing out of the ordinary. Is what Frank said true? Again, as we might say, 'it is and it isn't'. For it to be simply true, we'd expect the beverage to be in some way derived from coffee plants. But it isn't. Then again, for it to be simply false we'd expect the beverage to be somehow distinguishable from a cup of coffee. But it isn't.

Whether or not sentences are not entirely true and not entirely false is itself a context-sensitive matter. Suppose, for instance, that Sid was on a film set when he did what he did. He was interfering with a film-set for a scene wherein a character realises she has superhero strength. To do this the crew use a door made of a substance which fractures very easily. The director wants things to get started, 'OK, let's shoot the scene!' But then someone explains, 'we can't. About an hour ago, Sid shut the door and that was the only one we had', speaking of the doors that fracture very easily. In this case, no one who understood the situation would complain that what the stage-hand said is not entirely true and not entirely false because there is no door in the frame at the end of the closing. Similarly, suppose Tea Company's 'coffee' has become everyday; no one distinguishes between Tea Company's 'coffee' and filter coffee any more. In particular, Moira knows of the distinction but is completely uninterested in such a difference when she is told some beverage is coffee. Then when Frank explains, 'it's coffee', the uttered sentence could pass as simply true.

Thus, the phenomenon would appear to be a special case of context-sensitivity in that what would be required for what was said to be true changes with context. It is a special case only because, in the contexts described, the truth-conditions of the sentences require something to be present both when they are true and when they are false which is not in fact present: a general coincidence of a door's coming to a close and remaining in the door frame; a general coincidence of a history leading back to the coffee plant and the taste of a reasonable filter coffee. There is a handy locution for this phenomenon: presupposition. But two of the most popular definitions of presupposition are not descriptions of this phenomenon.⁷ Firstly, one might suppose that sentences (generally speaking) always make the same statements whenever employed. In which case what is a precondition for that statement's truth or falsity won't change with the context of the use of the sentence and is quite plausibly a feature of its meaning. So we can define presupposition simply for the sentence and not the statement made with it:

Semantic Presupposition

A sentence S presupposes that P if and only if:

- (1) If S is true then P
- (2) If S is false then P

For such a phenomenon to arise, there cannot be variation across occasions for using *S* in whether *P* is a precondition for the truth and the falsity of a statement made using *S*. But in our examples, that is what happens. So semantic presupposition is not the phenomenon in our two examples. Secondly, there is pragmatic presupposition. Pragmatic presuppositions do not influence the truth-conditions of a sentence or statement.⁸ They are what interlocutors take for granted for the purposes of a conversation:

Pragmatic Presupposition

A statement *St* made using a sentence *Se* presupposes that *P* if and only if:

- (1) If *St* is presented as true then interlocutors take for granted that *P*.
- (2) If *St* is presented as false then interlocutors take for granted that *P*.

This definition makes no connection between the failure of *P* to obtain and the failure of *St* either to be true or to be false. But that connection is what we witness in the phenomenon above. So pragmatic presupposition is not what we witnessed. The definition of presupposition that suits our phenomenon is this:

(Context-Sensitive Truth-Involving) Presupposition

A statement *St* made using sentence *Se* presupposes that *P* if and only if:

- (1) If *St* is true then *P*
- (2) If *St* is false then *P*

Such a thing, *P*, is a component of what needs to be so for what was said to be true which also needs to be so for what was said to be false. For brevity, let's call this simply 'presupposition'. So if *P* in (1) and (2) turns out to be false, then *St* is going to turn out neither true nor false but that won't mean that nothing whatsoever is as it needs to be for *St* to be true, or to be false. In this way *P* contrasts with something that's just not relevant to whether or not *St* is true or false—such as the colour of Frank's and Sid's hair.⁹

Presuppositions (of this kind) are not an exotic feature of language. A mother of a child complains to his father, 'you missed his play', when the father only managed to see a third of it—is the statement she makes with the sentence entirely true or entirely false? The father could rightly complain that it's not entirely true whilst conceding that it's not entirely false either (namely because it presupposes that the father either saw the entire thing or saw none of it). Such things don't provide us with irresolvable problems. Granted sufficient space to explain why we won't accept that a claim is, just as it stands, entirely true or entirely false, we can provide an alternative description which makes plain what one thinks *is* entirely true (or false).

Nonetheless, one might object because the claim that here we have examples of context-sensitive truth-involving presupposition resembles claims that were discredited by Paul Grice. The kind of silencing that I will argue can take place

in a courtroom cross-examination depends upon sentences exhibiting this feature. So before proceeding I will take a moment to respond to this objection.

Grice (1991: 3–9) attacked inferences from observations of the inappropriateness of a statement to its being not true. He was right to do so. It doesn't follow from a statement's being inappropriate that it is not true. One might think that we are doing the same thing. First off, let's be clear that we are not. We have been working from observations about the truth and falsity of the sentences discussed as employed in different contexts. We have not first made an observation about inappropriateness and then inferred something about truth. Insofar as the intuitions about truth are robust enough, this objection is wrongly conceived.

However, the objection could be developed as follows. Although the judgements elicited were about the truth of sentences as used in certain contexts, perhaps speakers were confused when they made these judgements. This worry is then filled out using Grice's distinction between the truth-conditions of what was said and the truth-conditions of what was implicated. By definition, things that are implicated by what one said are items whose truth-conditions are not the truth-conditions of what one said. The objection would then be that the truth-value judgements exhibited in the examples are confused: implicatures are being mistaken for what must be so for what was said to be true. I have no knock-down argument against this adapted objection. But I will present some problems that it faces which should cast sufficient doubt on it to make reliance on examples like those considered reasonable.

In order to use Grice's distinction to level such an objection, it needs to be shown that what were taken to be truth-values of a statement were in fact truth-values of implicated propositions. This is usually done by using criteria proposed by Grice for distinguishing between what one said and what one implicated. The trouble is that these criteria do not tell you whether something is relevant to the truth of a statement made with a sentence or not. Consider, for example, Grice's cancellability criterion. Suppose that one would understand to be so, that *P*, if someone uttered a sentence '*S*'. *P* is cancellable if on some occasions for uttering '*S*' one would not come to understand *P* to be so. If '*S*' is not context-sensitive then the cancellability of *P* would strongly suggest that *P* is no part of the truth-conditions of '*S*'. For if '*S*' is context-insensitive then its truth-conditions don't change with context. Hence, because whether one would understand *P* by '*S*' *does* change with context, it cannot figure in the truth-conditions of '*S*'. However, if '*S*' is context-sensitive, and *P* is cancellable, then *P* behaves just as one would expect a part of the truth-conditions of '*S*' to behave. So its cancellability is not then a reason to think that *P* is not a part of the truth-conditions of '*S*'. Similar points can be made for the other criteria Grice uses to draw the saying/implicating distinction. So Grice's criteria for distinguishing what one said and what one implicated cannot be used to draw such a distinction (cf. Travis 1985: 196–207).¹⁰ But without a clear idea of what distinguishes implicatures from sayings, we have no reason for thinking that the truth-values (and hence truth-conditions) of each really have been confused.

Not only this, but there is a relatively straightforward means of distinguishing sayings from implicatures which strongly disfavours the objection. When we study language we try to identify structures within it (those of grammar, meaning, truth etc.) and we do this in large part by documenting patterns in judgements about these things by informed, rational speakers. Here are two reasons for adopting this general methodology. Firstly, the comprehension of the truth-conditions of statements made with sentences is the bread and butter of linguistic exchange. So it seems reasonable to suppose that competent speakers would by and large make accurate judgements about the truth-conditions of their own statements—or else linguistic communication would not be as successful as it so often is. So their judgements of under what conditions a sentence would be true, false, or neither are generally good evidence of the conditions under which those sentences would be true, false, or neither. Secondly, the truth-conditions of a statement made with a sentence are conventional. They are what they are because a certain class of people treat them as being that way. So it is difficult to see how we could study what they are other than by documenting and (by and large) respecting judgements about truth-conditions as made by those who sustain and enact the conventions.

This general methodology could be used to distinguish the truth-values of sayings and implicatures. If (informed and rational) speakers judge that a statement isn't simply true or simply false then that is evidence that it isn't simply true or simply false. If on the other hand speakers judge the statement itself to be simply true but agree that it implies something else which is false or perhaps not entirely true (e.g. when I say to the woman at the bus stop that there are no buses today, I imply that I believe this (which I don't or don't simply) even though the claim is simply true), then that is evidence that the statement is simply true, but its utterance implies something that is false (or not simply true). Unlike Grice's own proposal, this criterion (the judgements of informed and rational speakers) allows us to distinguish between the truth-conditions of statements and the truth-conditions of merely implicated propositions even when sentences used to make the relevant statements exhibit extensive context-sensitivity. In this respect it is one-up on Grice's criteria for drawing the distinction. However, if it is our guide to the distinction then we have good reason to accept the phenomenon in the door and tea examples as context-sensitive truth-involving presupposition because the judgements elicited therein are directed toward the statements made (it is *they* that are called true, false, or not entirely true and so on) and not toward some alternative proposition.

Of course, this isn't the end of it. The Gricean could try to find evidence that (informed and rational) speakers are confused in their judgements on the examples under discussion. But we now have some reason to suspect that this won't be easy. In any case, henceforth I will take the examples discussed in this section at face value. The silencing mechanism to be described below depends for its plausibility on doing so. It is therefore hostage to the outcome of debates within the philosophy of language. In this respect it is no different from Langton's original silencing argument—though the issues upon which the two

arguments depend are not the same. But this is to be expected of any account of illocutionary silencing that is based on ideas and findings from the philosophy of language.

6. Presuppositions of Yes/No-Questions

Talking with others is a turn-taking activity. One person talks and the others wait for that person to finish their turn. Then someone else picks up their turn and the others stay quiet. And so on. Turns at talk are assigned to speakers in different ways in different circumstances (Sacks *et al.* 1974). One way of dividing up turns at talking is by posing a question to another speaker who then has the floor to answer it. One kind of question that can be used to do this is a yes/no-question. A yes/no-question, in a sense, asks for a 'yes' or a 'no' response, possibly with some sort of restatement of the statement whose truth the yes/no-question asks after. Nonetheless one can also provide an answer to the question (as opposed to ignoring it altogether) without providing such responses. Following Raymond (2003) and Ehrlich and Sidnell (2006), let's call the first kind of answer 'type-conforming' and the second kind 'non-type-conforming'. Notably:

Type-conforming responses, whether affirmative or negative, accept the terms and presuppositions of a yes/no question, whereas non-type-conforming responses treat them as problematic in some way. (Ehrlich and Sidnell 2006: 662; see also Raymond 2003: 949)

Consider a yes/no-question that includes a factive expression such as 'regret'; e.g. 'Do you regret not intervening?' Type-conforming answers to this question would entail that one didn't intervene. 'I regret not intervening' entails 'I did not intervene' and, setting aside the possibility of meta-linguistic negation, 'I do not regret not intervening' equally entails 'I did not intervene'. Presuppositions of yes/no-questions contaminate type-conforming answers to those questions.

Although Ehrlich and Sidnell focus on semantic presupposition, the same is so for context-sensitive truth-involving presupposition. Someone asks at the door, 'is Mrs Jones in?' Suppose Mrs Jones' corpse lies upstairs but you also know that the visitor's question presupposes that she is alive (Austin 1950: 122). How should you continue the exchange? Suppose you say 'yes, she is in' and that the visitor goes into the house and discovers Mrs Jones' corpse. Would the visitor count your claim as true? No—the corpse is not what is to be expected if things are as you said them to be. But if instead you said, 'no, she is not in', then if the visitor were to inspect the house and find Mrs Jones' corpse, would what you said be false? No—the corpse of Mrs Jones would not be part of what one should expect to find in the house were Mrs Jones simply 'out'. So if you answer this yes-no question with a type-conforming answer then you say something which is not entirely true. That's why evaluations of your claims by the visitor would properly include things like, 'that wasn't quite true now was

it?', 'well I suppose she is and she isn't', or 'what you said wasn't entirely true'. In effect, the type-conforming answers to a yes/no-question with a false presupposition constitute a false dichotomy. They present two options which do not exhaust the possible ways that things might be and as it happens neither is true under quite the conditions that would be required to describe what actually took place. Nonetheless things would be different if one provided an appropriate non-type-conforming answer. One could thereby identify the mistaken element of what one *would* say were one to give type-conforming answers and explicitly disavow it. If you said 'well, her *corpse* is inside', or 'she's dead I'm afraid, but her body is upstairs, in that sense she's in, I suppose', you would (in some cases) manage to say something which would deserve higher commendation than 'not entirely true'.

When a yes/no-question with a presupposition is posed to some individual, let's call it a loaded question:

Loaded Questions

A asks B a loaded yes/no-question if and only if type-conforming answers to the question presuppose that P.

Loaded questions needn't be loaded because their askers really believe that in order for a type-conforming answer to the question to be true (or false) the presupposition must obtain. They may equally use their words in this way because it serves their interests to do so.

7. The Interactional Structure of Courtroom Cross-Examinations

In a courtroom cross-examination there are four interlocutors: the judge, the cross-examining attorney, the other attorney, and the witness. The judge and the other attorney hardly speak but they can object to the actions of both the cross-examining attorney and the witness (Atkinson and Drew 1979: 64 and 69). The bulk of the exchange is between the cross-examining attorney and the witness. The exchange that takes place between these two interlocutors has two important normative features. The first is that the turns in the exchange are broken down into question and answer. Neither interlocutor can simply declare something. Any claim made has to be presented either as a question posed to the other interlocutor, or as an answer to a question posed by the other interlocutor. The second is that, at a certain level of abstraction, who gets to do what is fixed. It's the cross-examining attorney who gets to ask the questions. The witness is the one who has to answer those questions. Each participant to the exchange is open to sanction if she doesn't do what ought to be done given the role she plays in the exchange (Atkinson and Drew 1979: 61–2). These interactional facts give cross-examining attorneys significant power over cross-examined witnesses:

Because the sole right to ask questions belongs to the examiner, the techniques for allocating next turns are restricted in examination: they

are operated by one party only, who allocates next turns through the production of questions, and then self-selects following answers, until completion. (*ibid.*: 62)

In being able to allocate next turns with questions that have to be answered by the witness, the cross-examining attorney gets to design questions to control what the witness can do next because she has to answer those questions. Techniques for doing this are taught in training manuals for lawyers, 'which contain explicit instructions about how to design questions in such a way as to restrict what a complainant does in an answer, and thereby to control the production of information' (*ibid.*: 66). Such techniques will include the use of loaded yes/no-questions.

In being able to self-select himself for the next turn at talk, the cross-examining attorney can control what counts as an answer to the question he asks. It is possible for a cross-examining attorney to request that certain elements of the complainant's answer be 'stricken' before then asking the same question again until another kind of answer is given. The elements of an answer which may be objected to in this manner are precisely those which may be employed by a complainant to resist giving a type-conforming answer and hence the presupposition(s) of a loaded question ((Atkinson and Drew 1979: 72–3) (Ehrlich and Sidnell 2006: 662)).¹¹ So we have a situation in which the cross examiner can design the questions, where the complainant is obligated to answer those questions, and where furthermore, the cross examiner has the ability to force type-conforming answers to yes/no-questions by disregarding non-type-conforming answers and repeating a loaded question until a 'real' answer is given.

8. Rape Myths and False Presuppositions in Courtroom Cross-Examinations

There has been an immense growth in the number of reported rapes since the 1970s in England and Wales. But this has not coincided with a proportional increase in the number of convictions. For this reason the conviction rate has dropped from 32% in 1977 to 5.3% in 2004.¹² A major obstacle to conviction is the widespread acceptance of rape myths. Rape myths are a collection of principles which, when employed, lead one to 'deny, downplay or justify' male sexual aggression against women (Gerger *et al.* 2007: 425). For example, there are principles which concern what constitutes a rape (the real rape stereotype). The rapist is a psychotic stranger. The rape takes place outside in an isolated location. The rape itself is violent so the victim will have struggled leaving bruises and other marks and afterwards the victim will behave in a manner which is overtly upset. To the extent that a sexual encounter lacks these features, it is not classified as a rape by those who accept the real rape stereotype.¹³ Beyond these principles, there are further myths which concern the actions of the victim and her responsibility for the rape. These include that a woman who goes to a man's apartment on the first date implies she is willing to have sex and that a woman

who has engaged in heavy petting cannot complain if the man proceeds to have sex with her (cf. Burt 1980). Although there is variation across circumstances and social groups in their acceptance, these principles are widely believed (Temkin and Krahe 2008: chapter 2). They have been shown to influence judgements about the blameworthiness of a rape victim for her own rape (*ibid.*: 42ff). They have been shown to influence jury decisions (*ibid.*: chapter 3).

As with any substantial proposition, the truth of a rape myth would rule out the truth of other propositions. For example, suppose you believe that a woman who goes to a man's apartment after their first date implies consent to sex. If you believe this then you'll believe that the following isn't possible: a woman goes to her date's apartment after the first date, and doesn't imply consent to sex. Why is this important? Yes/no-questions posed by the defence attorney in a rape trial to the complainant can make false presuppositions. Recall from section 6 that, when they do so, type-conforming answers present the complainant with false dichotomies. I now want to add to that the following idea. It is possible to formulate yes/no-questions whose type-conforming answers constitute false dichotomies such that the possibilities which fall outside of those in the dichotomy are those which wouldn't actually be possible if certain rape myths were true. If that is so, then someone who believes those rape myths will fail to recognise that the dichotomy is indeed false. He would be blind to the options beyond those that would be described by the type-conforming answers. Here are two examples.¹⁴

Suppose that a man and a woman are in the man's apartment. The man tries to touch the woman on her breasts and her vagina. She pushes him away. But he overpowers her and pins her to the ground, takes off her underwear and forces his penis inside her vagina. He continues to do so repeatedly until he ejaculates. During this time the woman's arms were pinned down, and when she had attempted to push him away by throwing her hands into his face, the man hit the woman in the head. So she does not try this more than twice. She reports what happened to the police and there is a trial. During the cross-examination the defence attorney asks about what happened after her two attempts to dislodge the man from on top of her. He asks, 'you did not take advantage of subsequent opportunities to resist, is that correct?' But there were no subsequent opportunities to resist. She had already discovered that he could overpower her and she would suffer further violence if she made further attempts. However, both a 'yes' and a 'no' answer to the attorney's question would commit her to the existence of further opportunities to resist. In saying 'yes' she would be saying something whose truth would require that she did not make any further attempts to escape but also that she passed up opportunities to do so. In saying 'no' she would be saying something whose truth would require that she made no further attempt to escape and again that there were opportunities to do so that she could have taken. In neither case would her answer be entirely true or entirely false. However, if one believes the myth that if a woman struggles enough then she cannot be raped (cf. Burt 1980), then one will think that indeed there were subsequent opportunities to escape from this man and therefore that

the presupposition of the question is not false. So one will not think that type-conforming answers to the question exclude possible states of affairs which might be those that actually obtained.

Here's a second example. Suppose that a woman has consumed alcohol to the point where she cannot hold herself upright. She's very dizzy. The room spins. She can't concentrate on anything. But whilst in this state, a man places her mouth around his penis and moves her head up and down, and perhaps, without realising it, she occasionally moves her head to avoid his penis passing down into her throat which, when he's moving her head, it occasionally does. Again, the case is brought to trial. The defence attorney asks of this episode, 'and during this state, you performed fellatio on the defendant, is that correct?' The question presupposes that the vertical movement of a mouth around a penis coincides with a self-controlled action done by the owner of the mouth. But in the circumstances being described, the presupposition is false. A 'yes' answer is not quite right because although there were mechanical movements that occur during fellatio, to say truly, and without caveat, that she performed fellatio would require that she was in control of the act and that she had some understanding of what she was doing. Neither of which was so. On the other hand, to say simply 'no' without further caveat or explanation would require that not even the mechanical movements of an act of fellatio took place—yet that much did happen. So neither type-conforming answer is straightforwardly true. However, one rape myth has it that sex with a woman who is extremely drunk is still consensual sex and not an assault (perhaps, provided she was not beaten into doing it) (cf. Krahe *et al.* 2008). If one believes this then, once again, one will think there are just two options here. One will think that either she had her mouth around the defendant's penis without having been beaten into doing it and this was simply a sex act—fellatio—performed by her (albeit done whilst very drunk), or else, her mouth wasn't around the defendant's penis at all. There is no third option—call a spade 'a spade', one would be inclined to say.

As with the presuppositions of section 5, that the statement in each example makes the presupposition it does is a context-sensitive matter. Had the context been different the presupposition in each case could fall away. We can see this by considering an alternative context for each example. Firstly, suppose that a 'progressive' self-defence class is being taught which uses footage of real sexual assaults to teach ways of getting away from an attacker. Suppose that the class has been on a 10-week course in self-defence with special attention to the ways in which one can escape from positions from which a man can force his penis into a woman's vagina, anus, or mouth. At the end of the course, the instructor wants to test them. So they are shown some footage of what took place in the first example. Afterwards he asks the class what opportunities to resist that she took. They describe the two attempts that we know she took already as described in the example. The instructor then asks, 'she did not take advantage of subsequent opportunities to resist, is that correct?' Here, I don't think there's any false presupposition as there was in the original example. What counts as being an opportunity is not what was available to the woman given *her* abilities

(as in the original example) but rather what would be an opportunity to someone who had attended this 10-week course; and that is all that the instructor is asking after. So in this case, insofar as there were further opportunities to escape for someone who had attended the 10-week course, one could answer the question with a 'no', absent any caveats, and say something which is straightforwardly true.

Secondly, suppose the victim of the sexual assault in the second example discovers that there is footage that her attacker made of the attack. She watches it and for the first time discovers what happened—she being too drunk to remember. She is distraught and she redescribes what she saw on the video to a close friend as follows: 'I couldn't prop myself up. I was only up because he was holding me up. And then he held my head and he pushed it down towards his penis with my mouth open and he moved my head up and down so that I performed fellatio on him'. Unlike in the original example, the truth of the statement made with this last sentence in this context does not involve commitment to the act being one which she was in control of or to which she consented.

It seems then that a defence attorney can load his questions with false presuppositions so that type-conforming answers elide the state of affairs that actually obtained. However, the elided possibilities won't be recognisable as elided possibilities to someone who believes an appropriate rape myth. We have focused on only two rape myths: that women can fight off a rapist if they really want to; and that sex with a woman who is barely conscious owed to high alcohol consumption is not an assault. But there are many others. Their diversity provides ample resources with which to construct such strategically loaded questions.

9. Rape Trial Cross-Examination: An Inhospitable Illocutionary Context

With these observations about presupposition and turn-taking structure, we can piece together a kind of context in which someone would be stopped from making a statement with the truth-conditions she wants it to have. During the cross-examination of a rape victim in a rape trial by the defence attorney, the rape victim will occupy the role in court of the complainant and the defence attorney will occupy the role of cross-examiner. The exchange will consist of a sequence of yes/no-questions posed by the attorney to the complainant. The attorney can pose loaded questions. I am concerned in particular with loaded questions that have the following three features. Firstly, the question presupposes something false so that no type-conforming answer to the question is entirely true or entirely false. Furthermore, a possibility which cannot be described with a type-conforming answer is actual and hence is what the complainant will want to describe. Secondly, the following is so of the type-conforming answers. One type-conforming answer will be to deny that something happened which did and for which there is evidence that it did. The other

type-conforming answer will be to accept that something happened which supports the defendant's case. This is what we had in the examples described in section 8. Consider again the first example. If the complainant simply agrees that she didn't take any further opportunities to resist the defendant even though there were such, then it's possible that she wanted the defendant to continue doing what he was doing—something which, if she was (genuinely—no games being played) resisting throughout, would not be possible. Leaving open such a possibility—the jury is nudged a little further toward 'reasonable doubt' in the defendant's guilt. But if she calls the claim, without caveat, false, then she denies that something happened (that she stopped resisting at a certain point) when it did and for which we may suppose there is evidence that it did. Something similar can be said of the second example though I leave that to the reader. Thirdly, the loaded question must be such that the 'possibility' which cannot be described with a type-conforming answer to that question (but which is actual) would not in fact be possible if a rape myth were true. Again, this is what was illustrated in the two examples described in section 8. If the myth that any woman can resist a rape if she wants to were true then there would have been on-going opportunities to resist the defendant throughout the attack. So the presupposition would have been true.

Now, ordinarily, when one is asked a loaded question one can answer the question with a straightforwardly true answer by providing a non-type-conforming answer. One does this by ensuring that one's answer identifies and dislodges the false presupposition. In principle, the complainant could do the same. But she can't if she has been asked a loaded question with the three features just described while those in court accept the rape myth that figures in the third feature: the myth that hides the possibility that the presupposition of the loaded question is false. Firstly, the defence attorney will have a strong motivation to ask such questions and block non-type conforming answers because, as explained in the previous paragraph, doing so helps him to defend his client. This motive won't be undermined by a jury which recognises that the defence attorney is not allowing the complainant to make a statement that would actually describe what really happened because they won't be able to see that type-conforming answers form a false dichotomy. In fact, the attorney may even appear to them to be stopping the complainant from, as it is often put, 'dodging' the question. Secondly, the judge and the prosecuting attorney will not stop the defence attorney from forcing a type-conforming answer because they too won't be able to see that the question presents the complainant with a false dichotomy. But then the attorney is left free and motivated to block each attempt at a non-type-conforming answer. Thus when those present to the exchange accept rape myths, the ordinary workings of presupposition and the courtroom turn-taking structure are transformed into a context wherein the complainant cannot produce statements which are true under quite the conditions that would make them the statements she wants to make.

There are several ways that the complainant's situation could be better than I have made out. But they are not actual. Firstly, the introduction of expert

witnesses to do the explaining about rape myths on behalf of the complainant makes no difference to the acceptance of rape myths by juries once the defence attorney has cross-examined the expert. So the defence attorney's motive for asking the relevant loaded questions cannot be undermined in this way (Temkin and Krahe 2008: 63). Secondly, the prosecuting attorney is no saviour of the complainant. It is a common complaint of barristers and judges that prosecuting attorneys in rape cases are frequently inexperienced and slow to pick up on inappropriate lines of questioning by the defence attorney (*ibid.*: 130). Third, rape shield legislation is no help with the problem described. It precludes introduction of the sexual history of the complainant as evidence. It does not concern the circumstances surrounding the rape more generally (*ibid.*: chapter 7). Fourth, and finally, although judges can influence the jury in their summing up, and so may be able to counteract the defence attorney's line of questioning at that stage, the bearing this has will depend on the extent to which they themselves accept rape myths. No research has been done on this (*ibid.*: 64). However, if they really did think the relevant lines of questioning were out of order then one would expect them to stop those lines as they're pursued. Since they don't, it seems unlikely that they will make amends in their summing up.

10. An Alternative Silencing Argument

We can now use the possibility of contexts with the features described in the previous section to formulate a new silencing argument. Langton supposes that pornography perpetuates rape myths. I will do likewise. I assume that pornography encourages acceptance of rape myths by those present in the courtroom. The assumption that pornography perpetuates rape myths is not secure—not because there is evidence against it but because more research needs to be done to support it. It's plausibility is also likely to depend upon how we understand the causal relation between pornography and rape myth acceptance (for discussion of both points see (Eaton 2007)). Nonetheless, for current purposes, whether or not it is true is also beside the point. The accusation against MacKinnon which Langton and myself are attempting to rebut is one of confusion. So all we need is to show how it can make sense to say that pornography silences women in a sense relevant to free speech protection.

Let's say that a context is inhospitable for the making of certain statements if words cannot be used to make a statement with the truth-conditions one wants one's statement to have. Then we can formulate an alternative to Langton's silencing argument like so:

- (1) The silencing of someone looking to make statements is silencing of protected speech. (Assumption)
- (2) If a context of the making of the statement is inhospitable, then someone looking to make certain statements in that context is silenced. (Assumption)
- (3) There are contexts that are inhospitable for making certain statements in which someone is trying to make those statements. (Assumption)

- (4) Someone looking to make certain statements is silenced. (from (2) and (3)).
- (5) Pornography contributes toward the existence of inhospitable illocutionary contexts. (Assumption)
- (6) Pornography contributes toward the silencing of someone looking to make certain statements. (from (4) and (5)).
- (7) Pornography contributes toward the silencing of protected speech. (from (1) and (6)).

As mentioned, premise (5) does need more support but that is currently beside the point. Premise (1) will be acceptable to those who favour the Millian conception of protected speech. Premise (2) is only a means of translating claims of silence into claims about the making of statements: i.e. items with such and such truth-conditions. It is not a substantial premise. The discussion of sections 5–9 supports premise (3) by showing how a courtroom cross-examination of a complainant in a rape trial, when those in the courtroom accept rape myths, can constitute an inhospitable illocutionary context for the kinds of statement that she seeks to make therein. A silencing argument based on the existence of such contexts affords a defence of MacKinnon's claim against the charge of confusion that is consistent with the Millian conception and thereby avoids Langton's predicament.

11. New Predicaments?

There are two objections which this new silencing argument faces that Langton's original does not. I want to close this paper by addressing those objections. The first objection is that the context plays such a large role in the silencing that it can't be pornography which silences. It is the structure of the exchange in the courtroom which is really the cause and not pornography. So we don't in fact have a silencing argument as we defined that at the start of this paper.

All that's been claimed, however, is that pornography plays a substantial role in the silencing and in order for it to be true that pornography silences women it need not be true that pornography does so regardless of the circumstances of those attempting to speak—just as the need for oxygen and an absence of water may be required for the lit match to cause the fire without, for all that, it being false that the lit match caused the fire. True, the importance of context diversifies the options for alleviating the effects of pornography on speech. But that doesn't change the fact that if rape myths weren't accepted by those in the courtroom, attempts by the defence attorney to force type-conforming answers to questions loaded with false presuppositions would be readily recognisable to those present as attempts to stop the complainant from making statements which may well be the only accurate descriptions of what happened. Their acceptance is a game changer. It turns what would otherwise be a context in which the complainant could describe what happened to her into one in which she can't. Insofar as their acceptance is, and insofar as pornography plays a significant role in their acceptance, so is pornography.

The second objection is as follows. Langton's silencing argument rested upon the possibility of failed uptake. In principle, such failings could happen anywhere. So if pornography helps make them happen, the extent of the silence generated is automatically extensive. The interactional structure of a courtroom upon which the alternative silencing argument rests does not appear to be quite so easily replicated. But if the effects of pornography on speech are limited to very few situations, one might worry that the alternative silencing argument is far worse than Langton's because it describes a phenomenon that pales into insignificance. I have two responses to this objection.

The first is that even if pornography silenced women's speech solely when they find themselves in court testifying about the circumstances of their own rape, that effect should not be underestimated. The complainant in a trial should be able to use words to express her own knowledge of what took place. When a witness has been forced by thugs to abstain from making the statements she wants to make, she would be considered silenced. Things are no different for a witness who is silenced within the courtroom itself.

Secondly, I have focused on the context of a courtroom cross-examination because both the impact of rape myths, and the turn-taking structure of the talk, of this context have been documented. So I can support claims I make about constraints on the statements that speakers can make therein with empirical research. However, it is unlikely that the features of the courtroom context that make it possible for pornography to silence are not shared by any other contexts. Firstly, there are many other contexts in which yes/no questions play a central role in the way that turn-taking is organized:

... speakers in almost every setting or institutional context will be found to rely on [yes/no-questions] in some way: Survey researchers gathering data, doctors examining patients, supermarket cashiers chatting with customers, ethnographers probing informants, mothers quizzing their children, congressional committees pursuing the downfall of a president, instructors teaching students, journalists interviewing public figures. . . . (Raymond 2003: 940)

Secondly, the subject matters of sexual violence, its causes, the oughts and ought nots of attributing responsibility for it and recommendations on how to avoid it, will arise in many types of conversation wherein the turn-taking is structured around the asking of yes/no-questions: from official interactions in a courtroom to parental advice dispensed to children, from teachers' instructions on being safe about town to kids gossiping in a playground. Thirdly, in many such circumstances there can be a turn-taking structure which is, in relevant respects, equivalent to the cross-examination even if it arises without the official sanctions of the courtroom. For instance, consider trying to create a context (by offering appropriate explanations), whilst in relatively informal conversation, that will make a given sentence, when uttered therein, have the truth-conditions required for one to be able to make the statement one wishes to make with that sentence. All it takes for this to become impossible is for your interlocutors to

refuse to give you a large enough turn at talk for you to be able to create this context (whether this be by repeated interruption or by ending the conversation altogether). The formal sanctions of the courtroom are not necessary for their effect to be had in other ways.

Any circumstances with these three features will provide the enabling conditions for pornography to silence in the manner that is possible in a courtroom cross-examination. If your interlocutors pose yes/no-questions loaded with false presuppositions which are hidden to them because they accept rape myths, and, for this reason, they systematically cut off your turns in the conversation before you can produce a sentence with the truth-conditions of the statement you seek to make, then we have an illocutionary context which is, in relevant respects, equivalent to a cross-examination. It is true that more empirical research needs to be provided which confirms that there are more circumstances with these features (work like that of (Atkinson and Drew 1979) and (Temkin and Krahe 2008)). But there is nothing about them which requires anything to be in place that is unique to a courtroom cross-examination.¹⁵

Alex Davies
Department of Philosophy
University of Tartu
Tartu
Estonia
alex.stewart.davies@gmail.com

NOTES

¹ With the exception of (Langton 2012), page references for Langton's papers are to the reprints in (Langton 2009).

² The project of providing such a supplementation is pursued in (West 2003) and (Braddon-Mitchell and West 2004).

³ For an overview of this debate see (Fraiman 1995).

⁴ Langton (1999b, 2012) describes a different silencing mechanism based on Lewis' notion of presupposition accommodation. However, that mechanism, just as much as the 'uptake mechanism', does not apply to the content of women's speech. For that reason the predicament described in section 3 arises for Langton even though she has identified this alternative mechanism.

⁵ This reading of Austin is not entirely uncontentious. For discussion see (Crary 2002) and (Hansen, 2012). Langton's Austin is of a kind with the opposed but influential interpretation offered by (Searle 1968).

⁶ Not everyone does accept its existence; for example (Berg 2002). For analyses by those who do, see for example: (Rothschild and Segal 2009) and (Szabo 2001). For experimental evidence that the intuitions elicited from some of these thought experiments are not a philosopher's chimera see (Hansen and Chemla 2013).

⁷ For some discussion of the semantic and pragmatic forms of presupposition see (Levinson 1983: 167–225).

⁸ For discussion see (Stalnaker 1973) and (Stalnaker 1974).

⁹ Context-sensitive truth-involving presupposition is very similar to Strawson's (1952: 187) notion of presupposition.

¹⁰ This also precludes the application of Levinson's (1983: 199–204) criticisms of semantic presupposition to context-sensitive truth-involving presupposition.

¹¹ The importance of this can be seen by contrasting cross-examinations that take place with (trials) and without (public inquiries) the cross-examiner's right to object to answers in this way. The former are far more effective at forcing type-conforming answers (Ehrlich and Sidnell 2006).

¹² For the first figure see (Regan and Kelly 2003: 13). The second figure is derived from the total number of rapes of females in 2003/2004 recorded in (Home Office 2005a, Table 2.04) and the total number of convictions for rape of a female in (Home Office 2005b, Table 3.12). The definition of rape in the UK changed after 2004. So later figures are not comparable with the 1977 figure.

¹³ For discussion see (Temkin and Krahe 2008: 31–2).

¹⁴ For further discussion of the ways in which the language used to describe sexual violence is often inadequate for the description of sexual violence see (Coates *et al.* 1994).

¹⁵ The writing of this paper was supported by grant ERMOS92. I would like to thank the audience at the Gender, Race and Sexuality 2012 conference in Barcelona and the audience at the King's College London graduate seminar to whom older versions of the present paper were presented and from whom I received many helpful comments and criticisms.

REFERENCES

- Atkinson, J. and Drew, P. (1979), *Order in Court: The Organisation of Verbal Interaction in Judicial Settings*. London: The MacMillan Press.
- Austin, J. (1950), 'Truth', *Proceedings of the Aristotelian Society: Supplementary Volume*, 24: 76–116.
- (1962a), *How To Do Things With Words*. Cambridge, MA: Harvard University Press.
- (1962b), *Sense and Sensibilia*. Oxford: Oxford University Press.
- Berg, J. (2002), 'Is Semantics Still Possible?', *Journal of Pragmatics*, 34: 349–59.
- Braddon-Mitchell, D. and West, C. (2004), 'What is Free Speech?', *The Journal of Political Philosophy*, 12: 437–60.
- Burt, M. (1980), 'Cultural Myths and Supports for Rape', *Journal of Personality and Social Psychology*, 38: 217–30.
- Coates, L., Bavelas, J. and Gibson, J. (1994), 'Anomalous Language in Sexual Assault Trial Judgments', *Discourse and Society*, 5: 189–206.
- Crary, A. (2002), 'The Happy Truth: J. L. Austin's How To Do Things with Words', *Inquiry*, 45: 59–80.
- Dworkin, R. (1991a), 'Liberty and Pornography', *The New York Review of Books*, pp. 12–5.
- (1991b), 'Two Concepts of Liberty', in E. Margalit and A. Margalit (eds) *Isaiah Berlin: A Celebration*. London: Hogarth Press.
- (1993), 'Women and Pornography', *The New York Review of Books*, 10. Retrieved from <http://www.nybooks.com/articles/archives/1993/oct/21/women-and-pornography/>.
- Eaton, A. (2007), 'A Sensible Anti-Porn Feminism', *Ethics*, 117: 674–715.

- Ehrlich, S. and Sidnell, J. (2006), '“I think that's not an assumption you ought to make”': Challenging presuppositions in inquiry testimony', *Language in Society*, 35: 655–76.
- Fraiman, S. (1995), 'Catharine MacKinnon and the Feminist Porn Debates: Review of “Only Words” by Catharine A. MacKinnon', *American Quarterly*, 47: 743–9.
- Gerger, H., Bohner, G. and Siebler, F. (2007), 'The Acceptance of Modern Myths about Sexual Aggression (AMMSA) Scale: Development and validation in German and English', *Aggressive Behavior*, 33: 422–40.
- Green, L. (1998), 'Pornographizing, Subordinating and Silencing', in R. Post (ed.) *Censorship and Silencing: Practices of Cultural Regulation*. Los Angeles: The Getty Research Institute.
- Greenawalt, K. (1990), 'Insults and Epithets: Are They Protected Speech?', *Rutgers Law Review*, 42: 287–308.
- Grice, P. (1991), *Studies in the Way of Words*. Cambridge, MA: Harvard University Press.
- Haiman, F. (1993), *'Speech Acts' and the First Amendment*. Carbondale: Southern Illinois University Press.
- Hansen, N. (2012), 'J. L. Austin and Literal Meaning', *European Journal of Philosophy*. doi: 10.1111/j.1468-0378.2011.00510.x.
- and Chemla, E. (2013), 'Experimenting on Contextualism', *Mind and Language*, 28: 286–321.
- Home Office (2005a), *Crime in England and Wales 2004/2005. Home Office Statistical Bulletin*. London: Home Office.
- (2005b), *Crime Statistics, England and Wales 2004. Home Office Statistical Bulletin*. London: Home Office. Retrieved from <http://webarchive.nationalarchives.gov.uk/20110218135832/http://rds.homeoffice.gov.uk/rds/pdfs05/hosb1905.pdf>.
- Hornsby, J. and Langton, R. (1998), 'Free Speech and Illocution', *Legal Theory*, 4: 21–37. Reprinted in (Langton 2009).
- Jacobson, D. (1995), 'Freedom of Speech Acts? A Response to Langton', *Philosophy and Public Affairs*, 24: 64–79.
- Krahe, B., Temkin, J. and Berger, A. (2008), 'Prospective Lawyer's Rape Stereotypes and Schematic Decision Making about Rape Cases', *Psychology, Crime & Law*, 14: 461–79.
- Langton, R. (1993), 'Speech Acts and Unspeakable Acts', *Philosophy and Public Affairs*, 22: 305–30. Reprinted in (Langton 2009).
- (1999a), 'Pornography: A Liberal's Unfinished Business', *Canadian Journal of Law and Jurisprudence*, 12: 109–33. Reprinted in (Langton 2009).
- (1999b), 'Scorekeeping in a Pornographic Language Game', *Australasian Journal of Philosophy*, 77: 303–19. Reprinted in (Langton 2009).
- (2009), *Sexual Solipsism: Philosophical Essays on Pornography and Objectification*. Oxford: Oxford University Press.
- (2012), 'Beyond Belief: Pragmatics in Hate Speech and Pornography', in I. Maitra and K. McGowan (eds) *Speech and Harm: Controversies Over Free Speech*. Oxford: Oxford University Press.
- Levinson, S. (1983), *Pragmatics*. Cambridge: Cambridge University Press.
- MacKinnon, C. (1987), *Feminism Unmodified: Discourses on Life and Law*. Cambridge, MA: Harvard University Press.
- (2012), 'Forward', in I. Maitra and K. McGowan (eds) *Speech and Harm: Controversies Over Free Speech*. Oxford: Oxford University Press.

- Michelman, F. (1989), 'Conceptions of Democracy in American Constitutional Argument: The Case of Pornography Regulation', *Tennessee Law Review*, 56: 291–318.
- Mill, J. S. (1859), *On Liberty*. E. Alexander (ed.). Peterborough, Ontario: Broadview Press.
- Raymond, G. (2003), 'Grammar and Social Organization: Yes/No Interrogatives and the Structure of Responding', *American Sociological Review*, 68: 939–67.
- Regan, L. and Kelly, L. (2003), *Rape: Still a Forgotten Issue*. London: Child and Women Abuse Studies Unit. Retrieved from http://ec.europa.eu/justice_home/daphnetoolkit/files/projects/2001_020/rape_still_a_forgotten_issue.pdf.
- Rothschild, D. and Segal, G. (2009), 'Indexical Predicates', *Mind and Language*, 24: 467–93.
- Sacks, H., Schegloff, E. and Jefferson, G. (1974), 'A Simplest Systematics for the Organization of Turn-Taking for Conversation', *Language*, 50: 696–735.
- Searle, J. (1968), 'Austin on Locutionary and Illocutionary Acts', *The Philosophical Review*, 77: 405–24.
- Stalnaker, R. (1973), 'Presupposition', *Journal of Philosophical Logic*, 2: 447–57.
- (1974), 'Pragmatic Presuppositions', in M. Munitz and P. Unger (eds) *Semantics and Philosophy*. New York: New York University Press.
- Strawson, P. (1952), *Introduction to Logical Theory*. New York: John Wiley & Sons, Inc.
- Szabo, Z. (2001), 'Adjectives in Context', in I. Kenesei and R. Harnish (eds.) *Perspectives on Semantics, Pragmatics, and Discourse*. Amsterdam: John Benjamins.
- Temkin, J. and Krahe, B. (2008), *Sexual Assault and the Justice Gap: A Question of Attitude*. Oxford: Hart Publishing.
- Travis, C. (1975), *Saying and Understanding: A generative theory of illocutions*. Oxford: Blackwell.
- (1985), 'On What is Strictly Speaking True', *Canadian Journal of Philosophy*, 15: 187–299.
- (2008), 'Aristotle's Condition', *Occasion-Sensitivity: Selected Essays*. Oxford: Oxford University Press.
- West, C. (2003), 'The Free Speech Argument Against Pornography', *Canadian Journal of Philosophy*, 33: 391–422.