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How We Do Bad Things with Words:
A Multi-level Model of Oppressive Speech

A Dissertation submitted in partial satisfaction
of the requirements for the degree of

Doctor of Philosophy

in

Philosophy

by

John Michael Ramsey

June 2013

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The Dissertation of John Michael Ramsey is approved:

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I began this project nearly 4 years ago, shortly after Robin Jeshion, who was then at UCR, returned from the Pacific APA where she attended talks on the semantics of slurs and oppressive speech. Robin suggested that I explore this new burgeoning field. I did. My life was irrevocably changed. I owe her much thanks.

Over the three years I spent writing the dissertation, I've incurred a lot of intellectual debt. Unfortunately, the few words I offer here will not repay these debts. Peter Graham, my dissertation advisor, introduced me to social norms and the philosophy of social practices, which helpfully oriented me towards understanding how to address and resolve the inadequacies of the oppressive speech literature. The students in my Philosophical Issues of Race and Gender as well as those in my Free Speech, Hate Speech, and Political Expression class have taught me as much, if not more, about our social identities than I could have gleaned from abstract theory or my own experiences.

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I owe Sarah too much. She listened, over dinner, on the LAX shuttle, on our weekend constitutionals, and over the phone, to my often inarticulate musings about oppression, race, gender, and sexuality. She learned to do philosophy—though she won't admit it. I will repay her the only way I can...with sweet potato ravioli, Swiss chard enchiladas, and waffles.

To my parents and Sarah

ABSTRACT OF THE DISSERTATION

How We Do Bad Things with Words:
A Multi-level Model of Oppressive Speech

by

John Michael Ramsey

Doctor of Philosophy, Graduate Program in Philosophy
University of California, Riverside, June 2013
Dr. Peter Graham, Chairperson

We use words to communicate, enact laws, and make promises, but we also insult, discriminate, and subordinate gender, ethnic, and sexual minorities. Recently, Rae Langton and Mary Kate McGowan, appealing to speech act theory have argued for the “Constitutes Thesis”—our words do not merely cause the harms of oppression, but are in and of themselves acts of oppression. Opponents of the thesis criticize it as "philosophical sleight of hand," "metaphorical," and "strikingly implausible" because utterances are dissimilar to paradigmatic acts of oppression: words neither lynch or exploit, nor prevent the development of one's rational capacities. In *How We Do Bad Things with Words*, I address these concerns and advance my own account of the Constitutes Thesis, appealing to the interplay between speech acts, social norms, and institutions. Our words oppress by engaging the norms of oppressive social practices.

I begin by investigating whether exercitive models of oppressive speech are adequate for explaining how some speech constitutes oppression. I argue that exercitive models fail to characterize the full range of oppressive speech because these models focus on one speech act type as the source of oppressive speech and privilege the

enactment of oppressive policies (Chapter 1). Then, I argue for my account, the 3Cs model, which characterizes oppressive speech in terms of a wide range—ceremonious, communicative, and collateral—speech acts (Chapter 2). However, speech act theory alone is not sufficient for defending the Constitutes Thesis. The critics of the thesis are right in this regard, so I provide a framework, the Constitutes-Iteration analysis, that demonstrates which theoretical resources are required for explaining how speech constitutes oppression (Chapter 3). We need a theory of oppression and a theory of social practices. I then offer a sketch of such a theory, maintaining that an action is a contribution to a social practice when it either accords with the conventions or social norms of the practice, or legitimizes these conventions and norms (Chapter 4). Finally, I argue that some utterances oppress by engaging these norms and conventions, and defend my account against objections (Chapter 5).

TABLE OF CONTENTS

INTRODUCTION	
1. IS OPPRESSIVE SPEECH EXERCITIVE?	24
2. THE 3CS OF OPPRESSIVE SPEECH	54
APPENDIX TO CHAPTER 2	88
3. THE CONSTITUTES-ITERATION ANALYSIS OF OPPRESSIVE SPEECH	102
4. HOW TO MOVE WITHIN A SOCIAL PRACTICE	136
5. WE DO BAD THINGS WITH WORDS	191

INTRODUCTION

A legislator in Pretoria, South Africa, utters, “Blacks are not permitted to vote” in the right context and under the right conditions so that the legislator’s utterance constitutes a new law that underwrites South African apartheid. (Adapted from Langton (1993, 302).)

Susannah says to Rebecca, her daughter, “The idea of your kissing another woman is unimaginable and disgusting.”

Steve and John are co-workers at a factory with very few female employees. They are eating lunch in the lounge and John asks, “How’d it go last night?” Steve responds, “I banged the bitch.” John, smiling, asks, “She got a sister?” (Adapted from McGowan (2009, 399).)

Russell greets his straight cousin by saying, “Hey, faggot!”

Senator Rand Paul, addressing the Iowa Faith and Freedom Coalition, says, “The President recently weighed in on marriage. Call me cynical, but I wasn’t sure his views on marriage could get any gayer.”

An older white man says, “Fuckin’ terrorist, go home” to a fellow subway passenger who wears a burqa. (Adapted from Maitra (2012, 100).)

After an important department meeting, Heather says to her co-worker, Kyle, that she was ignored when she offered a suggestion. When Schmitt offered the same suggestion a few moments later, the manager discussed it at length. Kyle fails to see the problem and asserts, “You’re overreacting; don’t be hysterical.”

The above examples are all instances of racist, sexist, or homophobic speech. Such speech is a ubiquitous feature of our lives. And, as these examples suggest, what we say runs the gamut from obvious forms of racism, sexism, and homophobia, as happens to be the case in Senator Paul’s and the subway passenger’s utterances, to implicit and “civilized” discrimination and subordination, as are Susannah’s and Heather’s boss’s utterances. If we pause for a moment and reflect on our experiences, say, of the past week, chances are we can generate other examples gleaned from conversations we had,

from snippets from a nearby conversation, from a sound bite on the news, or perhaps directed at us. The students in my Philosophical Issues of Race and Gender class or in my Free Speech, Political Expression, and Hate Speech class have no difficulty in devising or reporting racist, sexist, and homophobic utterances they have heard or used.

Moreover, in those cases in which the speech is directed at someone, such as Susannah's daughter, the other subway passenger, or Heather, our words cause offense and insult. This too is a pervasive part of our everyday lives. However, not all of the above examples are in earshot of those marked by the utterance: Steve and John are the only participants of their *tête à tête*, and Russell addresses his straight cousin. We might even imagine a gay couple watching the news when they hear Senator Paul's sound bite and laugh off his comments as petty and immature. So, not all racist, sexist, or homophobic language necessarily offends or insults those to whom the language is directed or about.

These examples have another commonality: they are all instances of oppressive speech—speech that demeans, derogates, and subordinates. That is, it is speech that oppresses groups or members of the groups singled out by the utterance. Whether intentional (the legislator or the subway passenger) or not (the rest of the examples, in all likelihood), each speaker oppresses the group or a member of the group targeted by each utterance, and in short, the speech constitutes oppression.

But, how can some speech oppress? How does speech constitute oppression? When we think of paradigmatic instances of oppression, we think of lynching in the American South, a dictator rounding up his political opponents, a feudal lord squeezing

his serfs of their surplus crops and other goods. In short, we think of *physical* and *violent* acts. However, speech is not physical nor, in the cases mentioned above, necessarily violent. So, we need an explanation of how speech constitutes oppression.

In the rest of the dissertation, I argue that some speech constitutes oppression and offer a two-pronged explanation of this constitutes-relationship by appealing to a theory of speech acts and a theory of social practices. Speech act theory is required to explain how some speech constitutes an action. Speech act theory explains how our utterances—spoken or written—are actions. Saying to you, “What are you wearing?! You look like a tweaky raver who spent the night sleeping in an alley,” may cause you to feel insulted, but speech act theory explains how my words constitute an insult. However, we also need to appeal to social practices to explain how some speech is not only insulting or offensive but also an act of oppression. Suppose the unlikely—I get into a heated argument at a bar and we are about to come to blows. My future sparring partner yells at me, “You ignorant honky!” His utterance is racist, hateful, and insulting, but it is not oppressive. Why not? Simply: our society lacks the sort of social structures—in particular, social norms, social authority, and institutions—required for the oppression of white people or males. So, we must also appeal to social theory to explain how utterances engage the social background in which our words oppress.

However, I have run a bit ahead of myself. In the first section of the introduction, I motivate why speech act theory is needed to explain oppressive speech, contrast the question of whether speech constitutes oppression with the question of whether speech causes oppression, and examine criticism directed at early attempts of articulating how

speech oppresses. In the second section, I sketch my version of the Constitutes Thesis, which in addition to speech act theory appeals to a theory of oppression and social phenomena. Developing and defending my own account of oppression will take us too far from the tasks of the dissertation. So, in the third section, I briefly describe and endorse Sally Haslanger's account of oppression, which will be background for much of the later chapters of the dissertation. Finally, in the fourth section, I provide a sketch of each of the ensuing chapters.

1. Two Theses—Causal and Constitutes

Earlier, I pointed out that not all racist, sexist, or homophobic speech offends or insults the targets of such speech. However, regardless of one's subjective reactions to racist, sexist, and homophobic speech, many agree that such speech is harmful. Since the 1980s studies have shown that targets of racist speech often feel immediate anxiety and fear, while other harms are cumulative and manifest physically over the long term—high blood pressure, low self-esteem, and mental illness.¹ Stereotype threat—whether gender or racial stereotypes—leads the stereotyped to alter one's self-perception and interests, debilitate or enhance one's abilities, or trigger unintentional discrimination. Ultimately, oppressive speech leads to widespread social harms, such as violence, discrimination, and political disempowerment.

One might explain the relationship between oppressive speech and its harms in one of two ways. First, one might claim that such speech *causes* harm—the Causal

¹ For excellent surveys of empirical research see Matsuda et al. (1993), Lederer and Delgado (1995), and Fine (2010).

Thesis. If a woman hears frequently that she is irrational, she will think she is irrational; if a young child constantly sees television commercials of women vacuuming, the child will likely associate women and vacuuming. The Causal Thesis faces two problems. First, although the scientific and psychological literature shows a definite correlation between oppressive speech and harm, it cannot isolate the causal influence of oppressive speech from other factors. This is unsurprising: is one's low self-esteem caused by oppressive speech, low test scores, others' (possibly stereotyped) responses or behavior, genetic factors, or other environmental factors? It is just too hard to isolate the influence of oppressive speech from all the other causal influences we negotiate each day. Second, it is unclear through which causal mechanisms oppressive speech causes harm. Does oppressive speech harm by persuading hearers to believe things that cause harm? Or, perhaps, by affecting desires (and not their beliefs)? Or is it conditioning or imitating?² Likely, this too is a complex story.

Another thesis—the Constitutes Thesis—maintains that (often in addition to causing harm) some speech constitutes harm, in particular it constitutes the harm of oppression.³ A number of philosophers, especially Rae Langton (1993; 2012) and Mary Kate McGowan (2003; 2009; 2012), defend this more ambitious and contentious thesis.⁴

² See Langton (2012) for an in-depth analysis of each of these mechanisms.

³ In speech act terminology, which I will develop in Chapters 1 and 2, what is said is the *locutionary content*, what speech causes is the *perlocutionary effect* (or act), what speech constitutes is the *illocutionary act*.

⁴ Other authors who defend the Constitutes Thesis include Rebecca Kukla (2012), Catherine Mackinnon (1987; 1996), Ishani Maitra (2009 with McGowan; 2012), and Caroline West (with Langton) (1999). Initially the Constitutes Thesis was used to argue

Utilizing the insights of speech act theory, proponents of the Constitutes Thesis argue that sometimes our speech does not just contribute to or cause oppression, but is an act of oppression. Here is how McGowan introduces the thesis in a recent article:

Thus, rather than focus on what a certain category of speech *causes*, I am interested in what such speech actually *does, in and of itself*. This distinction...is unfamiliar to many, so a simple example might help. Consider apologies. An utterance may cause an apology. When I told Cindy that she hurt my feelings, for example, my utterance caused her to apologize. In addition to causing apologies, speech can also constitute an apology. Saying seriously and sincerely to someone you have hurt, ‘I apologize for being so insensitive’, actually *is* an apology. This utterance, in and of itself, *constitutes* the act of apologizing. (2009, 389–390, italics in the original)

Formally, the thesis is not an innovative or a controversial view about language: J. L. Austin advocated for such a view more than 70 years ago. Subsequently, that language constitutes actions (such as apologizing, promising, asserting, ordering, requesting, and the like) has become a philosophical mainstay.

So, according to the Constitutes Thesis, in each of the opening examples, the speaker demeans, discriminates, subordinates—in short, oppresses—the person she speaks to or of, as well as those who belong to the same social group. The Constitutes Thesis does not detract from the view that utterances cause harm or contribute to oppression. After all, the causal effects of our speech are accounted for.⁵ For instance, the

that pornography, since it is recognized in Constitutional law as speech, constitutes gender oppression. However, in part because of dismissive criticism from defenders of pornography, the discussion now focuses mostly on utterances that express racist, sexist, and homophobic content.

⁵ We might add to McGowan's apology example by acknowledging that one causal effect of Cindy's apology is that McGowan acquires satisfaction or accepts the apology.

proponent of the Constitutes Thesis would summarily analyze Susannah's utterance to her daughter as constituting (i.e. having the illocutionary force of) a demeaning act and causing (i.e. having the perlocutionary effect of) Rebecca's feeling insulted.

One might wonder about the value or merits of a dissertation on oppressive speech and the Constitutes Thesis. If the view that utterances constitute action is a philosophical mainstay, then the more specific claim that some utterances constitute acts of oppression should be equally obvious and true. This is simply not the case. Various legal and political philosophers have criticized the speech act analysis of the Constitutes Thesis as philosophical sleight of hand—a “dangerous confusion” (Dworkin 1993) or “philosophically indefensible” (Parent 1990) or “metaphorical” (Michelman 1988).⁶ Perhaps, in the back of their minds, the critics of the Constitutes Thesis cannot square mere words and language with paradigmatic acts of oppression—those physical, often violent acts—lynching, exploitation of another's labor, or barring someone from political action.

⁶ It is not lost on me that such criticisms, especially given that they issue from three men, are instances of oppressive speech. The criticisms are not principled rejections—so and so argues from a Marxist perspective, which is flawed because...—or not concerned with the minutiae of speech act theory. Alexander Bird (2002), on the other hand, offers a criticism of Langton's commitments regarding the notion of *uptake*. Bird's criticism is by far the most cogent and not blatantly dismissive of the Constitutes Thesis. Though, I think Bird confuses the success conditions of illocutionary acts with the success conditions required for securing uptake (a perlocutionary effect).

Consider, for the moment, Ronald Dworkin’s criticism—a “dangerous confusion”.⁷ Dworkin’s criticism derives from his interpretation of the principle of equality—roughly, equality involves treating people’s suffering and frustration with equal concern and treating individuals’ differing views about the good life with equal respect in the law.⁸ For instance, he maintains that “it would plainly be unconstitutional to ban speech directly advocating that women occupy inferior roles, or none at all, in commerce and the professions, even if that speech fell on willing male ears and achieved its goals” (1991, 14). I am not here concerned with the question of whether sexist speech deserves First Amendment protection or whether it may be regulated. Rather, I am interested in an assumption behind Dworkin’s claim, namely that he assumes such speech *expresses one’s views about the good life*. Under the First Amendment, we have the right to express our views about the good life—whatever their religious, philosophical, or political content—hence, why banning such speech would be unconstitutional. Therefore, before the law we all have equal respect to express our views about the good life.

When proponents of the Constitutes Thesis argue that some speech constitutes oppression (so reasons Dworkin), they confuse the idea that speech is a *mere expression* of a view with the idea that speech is also an action. This confusion is dangerous because it undermines some (e.g. sexist or racist) speakers’ fundamental rights. However, the critics of the Constitutes Thesis stop here. They do not recognize that speech can do more

⁷ I focus on his criticism because (a) it is the most cogent and well grounded in a (his) theory of justice and (b) I am interested in his view because it is a liberal view that seeks a First Amendment of protection hate speech.

⁸ From Dworkin (1977) but he makes similar remarks in his *New York Review of Books* articles (1991; 1992; 1993).

than express views, so they do not recognize that speech might contribute (or, even, constitute) the suffering or frustration of a group of people—the other (arguably, the more important) side of Dworkin’s principle of equality.⁹

Taken in its most charitable reading, this line of criticism is on the right track because it points to a gap in the explanation of how mere expression of a conception of the good becomes an oppressive action.¹⁰ Nonetheless, the Constitutes Thesis is true, though current articulations, viz. Langton’s and McGowan’s, are flawed insofar as they assume that speech act theory is *sufficient* for explaining how some speech constitutes oppression. Instead, we must also recognize the explanatory role a theory of social practices must play in the claim that speech constitutes oppression. In other words, the current explanations of the Constitutes Thesis locate oppressive force in language (the speech act) and not the background, normative practices within which the language is a constitutive move. So, the speech act defenses of the Constitutes Thesis rest on a confusion. Thus, the goal of the dissertation is to make the Constitutes Thesis more precise and clear up the confusion.

⁹ Of course the critics of the Constitutes Thesis recognize that some speech is action—verbal contracts, hiring a hitman, yelling ‘fire’ in a crowded theater. However, doing so relies on a technicality. Speech that does these things is no longer speech—such speech is a crime.

¹⁰ I do not think Dworkin is questioning whether speech can be an act. He would obviously recognize the existence of speech acts. Rather, speech about ways of life have a special status since they are the stuff of ideas and conceptions and paradigmatic of free speech.

2. My Version of the Constitutes Thesis

Most proponents of the Constitutes Thesis endeavor to explain how some speech constitutes oppression by appealing to speech act theory, which is necessary in that it explains how speech constitutes action—i.e. how the utterance “I’ll be there” constitutes a promise. Generally, speech act theories offer conditions of success for each speech act type. Often, it might not be clear which speech act an utterance is, especially if the context is ambiguous or uncertain. For instance, “Don’t worry about it” may be advice, a promise, a response, or something else altogether. Moreover, most speech act theorists allow for speech act pluralism—one utterance, plural speech acts. Importantly, though speech act theory offers success conditions for identifying the speech act type, a full explanation of the speech act must also appeal to the context or background conditions that make a particular set of success conditions salient. Speech act theory is often silent on these background conditions. A refrain throughout J.L. Austin’s groundbreaking *How To Do Things With Words* (1975) is that the speaker must be in the “appropriate circumstances” and must have done what is “normally required.” Such phrases dodge a much needed explanation of the background conditions of speech acts.

What is “normally required” or what are the “appropriate circumstances”? I take these to be the institutions and social norms that enable utterances to count as moves within these social practices. However, without investigating the background social conditions that enable oppression, we cannot explain how some speech act or another is oppressive. Speech act theory is just not up to that task: it explains how speech is an act, but not how that act is oppressive.

My version of the Constitutes Thesis, which I call the Constitutes-Iteration Thesis and develop in Chapters 3, 4, and 5, differs from other accounts insofar as I turn the spotlight away from language and speech act theory and attend more to the social underpinnings of how our speech acquires force within our social practices. The Constitutes-Iteration Thesis emphasizes the shaping power of our practices and the norms that govern those practices, especially oppressive institutions, and how, by engaging some of these practices, our speech constitutes oppression. So, I stress the ceremony, the ritual, the practice over the script, chant, or speech of those practices.

Thus, in an important way, my version of the Constitutes Thesis differs from other versions because I maintain that speech act theory is necessary but not sufficient for explaining how speech constitutes oppression. A theory about oppression and a theory of social phenomena are also necessary for explaining and defending the Constitutes Thesis. All three theories are jointly sufficient. Granted, for many of our practices, speech is constitutive of the practice, but the locus of that power comes from the complex of social practices, norms governing those practices, and our internalized beliefs and desires about the appropriateness of these norms.

My version of the thesis differs in a second way from other proponents' versions. For instance, as I will discuss at length in Chapter 1, formulations by both Langton (1993) and Mary Kate McGowan (2003; 2009), who both argue that some form of the exercitive-type speech act—an utterance that enacts a policy or makes something the case—best models oppressive speech. In other words, they argue that all instances of oppressive speech have the same success conditions, since all oppressive speech is

exercitive. This position seems *prima facie* at odds with actual instances of oppressive speech. Whereas a South African legislator's passing a law prohibiting black South Africans from voting is paradigmatically the enactment of a policy, Russell's homophobic greeting or Susannah's utterance to her daughter does not seem to enact a policy or make something the case. So, instead, I argue in Chapter 2 for a pluralist model of speech acts for modeling oppressive speech.

3. 'Oppressive Speech' and Oppression

Before discussing the conception of oppression that will be in the background of the argument throughout the dissertation, I first want to motivate my use of terminology. Throughout the dissertation I use the phrase "oppressive speech" rather than "hate speech" or "racist speech" (or "sexist" or "homophobic") not because "oppressive" is a more general term or shorthand for "racist, sexist, and homophobic speech," but because 'oppressive speech' denotes a specific category among these socially charged types of (harmful) speech.

Consider racist speech. It is racist in virtue of its content: it is speech that makes a claim about someone (or some group) on the basis of their membership in a racial group. In other words, racist speech is directed at a member of a racial group or about a racial group that expresses denigration, condescension, or a slight on the basis of skin color or other racial marker. Definitions of sexist and homophobic speech proceed similarly, except that relevant social groups and social markers (perceived sex traits, clothing, etc)

differ depending on the group involved.¹¹ Racist and sexist speech are equal opportunity abusers—women may say sexist things about men, Latinos may say racist things about a white person—because such speech is distinguished in terms of its content. To have an easy label, let’s call such speech “groupist speech.”

Hate speech, on the other hand, conveys and emphasizes the motives of the speaker as opposed to the content of the speech. Hate speech is directed at a member of a social group or about a social group (or member) that expresses condemnation or hostility of that member or members on the basis of an arbitrarily non-moral feature of the social group. Commonly, slurs are exemplars of hate speech—they are often used hatefully and to express condemnation or hostility. So, if an utterance is about Asians (or transgendered individuals), then it is groupist (i.e. racist or sexist). But not all groupist speech is hate speech. We can imagine a husband who says the “darnedest things” about women in general and his wife in particular, assuming a benevolently paternalistic stance towards women, and loving his wife very much so that there is no hint of contempt or hate in his words or actions. What he says is often sexist, but not hate speech.

Oppressive speech demeans or subordinates a member or members of a social group on the basis of their membership in (i.e. an arbitrarily non-moral feature of) a social group and that the group suffers from a history of oppression or from structural oppression. Whereas the distinguishing feature between groupist speech and hate speech is the presence of hostility, oppressive speech is distinguished by the social practices that support it. Thus, at least in our current social context, members of a socially dominant

¹¹ Social groups include racial, ethnic, national, religious, gender, sexuality, age category, disability, and other groups.

group oppress other (less dominant) groups. Moreover, oppressive speech is necessarily groupist speech; it is not necessarily hate speech. When the loving but paternalistic husband above reminds his wife that a woman's place is the kitchen, his utterance is oppressive (and sexist) but not hateful. In short, oppressive speech is groupist speech directed at or about a socially disadvantaged group that demeans, derogates, or subordinates members of that group.

Now, let me explain how I understand oppression. Traditionally, 'oppression' refers to the behavior of tyrannical individuals and regimes, such as Maoist China or the Inquisition of sixteenth century Spain, towards some specifically marked groups, such as capitalists and Westernized intellectuals or Jews and Moors. However, since the last third of the twentieth century, 'oppression' has come to refer to a wider range of practices, including discrimination, subordination, and other injustices suffered by members of disadvantaged groups because of social practices, whether these practices are institutional (e.g. Apartheid), implicit policies or norms of institutions (wage discrepancies between men and women), or part of our everyday, informal interactions.¹² 'Structural oppression'

¹² The classic texts of the structural oppression include Marilyn Frye's "Oppression" in her (1983), Iris Marion Young's "Five Faces of Oppression" in her (1990), and Sandra Bartky's "Psychological Oppression" in her (1990); Ann E. Cudd (2006) and Sally Haslanger (2004) have recently offered interesting and provoking work. The narrative I teach my students is this: Frye introduces metaphors to help us conceptualize instances of oppression beyond traditionally acknowledged instances. One of these metaphors involves a press or bind in which one's options are extremely limited and each option exposes the individual to censure, penalty, or deprivation. The binds come in different forms; in addition to this basic "double-bind" are two others. In the vicious double-bind, one's limited options expose one to the same consequences (a woman's sexual activity or sexual inactivity is seen as a justification for rape); in the identity double-bind, one's options are extremely limited and these options contradict or are contrary to one's role expectations, or cause other psychic tension. Young expands the characterization of

was coined to refer to this more recent usage, and structural oppression suggests that we have come to identify, more readily, less obvious cases of oppression.

However, expanding the extension of ‘oppression’ has neither weakened nor blurred the concept because in both the traditional and recent usages the core phenomenon is the same: oppressed groups suffer through the misuse of social power whether at the hands of particular individuals or groups (the traditional usage) or through social practices (structural usage). That is, in both usages, oppression arises from systemic and social constraints on groups and members within those groups. These constraints harm individuals by impeding their ability to develop their autonomy and exercise their desires and thoughts. Often, members of oppressed groups are seen to be *naturally* one way or another. For instance, take the stereotype that women are less intelligent or less capable in STEM academic fields. From a critical perspective, one sees how the influence of social power incapacitates members of oppressed groups and does so in a way that naturalizes or normalizes the appearance of members’ incapacity. The naturalizing process occurs through internalization and censoring and occurs along the fault-lines of the normative structure of the relevant institution (see Chapter 4 for a more in-depth explanation of these mechanisms). Moreover, keeping with traditional usage,

oppression such that individuals of oppressed groups "suffer some inhibition of their ability to develop and exercise their capacities and express their needs, thoughts, and feelings" (1990, 40). In addition to offering this common criterion for identifying oppression, Young also characterizes five faces or mechanisms of oppression: marginalization, exploitation, cultural imperialism, systematic violence, and powerlessness. Bartky expands on Young's mechanisms by considering how oppression is internalized, thereby further limiting an individual's options, and offers sexual objectification and stereotyping as additional forces of oppression.

similar groups are oppressed—including but not limited to, racial minorities, women, the elderly, the physically and mentally disabled, and gay men and women.

An important consequence of structural oppression is the recognition that oppression often does not involve an oppressor. On the traditional conception of oppression, some individual, say a Communist Party Member or agent of the Inquisition, acts intentionally, e.g. passes a law or perpetrates violence against individuals of a marked group. However, when oppression is conceived as a structural phenomenon, oppression more frequently occurs because the social institutions are unjust and not because of an agent's intentions. Consider an example adapted from McGowan (2009). Suppose that Shopkeeper Ben, a benevolent and well-intentioned fellow, requires prospective employees to have a valid driver's license before he hires them. Moreover, suppose that, unbeknownst to Ben, members of a racial minority do not have driver's licenses because of some economic or racial injustice within the community. Consequently, his hiring policy is racially oppressive: in hiring only those with a driver's license he is systematically disadvantaging a racial minority. However, Ben is not an oppressor because any injustice to the group lies in the antecedent conventions and practices of his society rather than particular actions on his part.

Pointing out that oppression does not involve an oppressor is important because much of the oppression that arises out of our everyday practices is based on injustices within these practices. Of course there are familiar and perennial instances of bigoted and chauvinistic people acting intentionally against socially marked groups, but they are only

part of the story: the deeper and more troubling part of oppression is its being commonplace and widespread in our everyday lives.

Those who wish to offer a unified account of the traditional and structural oppression face a problem: how to reconcile agential and structural explanations of oppression. A large part of this problem emerges because structural theorists attempt to explain traditional instances of oppression in terms of a structural explanation.¹³ As such, if the theorist privileges structural and institutional oppression in the unified account, the theorist shifts the focus of oppression away from agents and individual displays of prejudice. Consequently, structural accounts treat oppression as only a social (or political) injustice and not as an individual moral wrongdoing. This consequence has two further, problematic implications. First, structural accounts lack the resources to discern differences in the severity of the wrongs associated with structural oppression and explain the wide range of wrongs. All wrongs associated with structural oppression are social-political wrongs and not necessarily moral flaws of individuals. And, second, it is unclear how such practices are created—i.e. structural accounts offer a weak explanation of the creation of such institutions.¹⁴

¹³ I follow Lawrence Blum (2004) who raises problems for accounts of racism that treat racism as either only structural or only agential. Although Blum focuses on one sort of oppression, his concerns are generally applicable to theories of oppression because (a) racism (along with sexism) are specific forms of oppression and (b) some of the authors he criticizes offer accounts of oppression that are formally similar to their accounts of racism.

¹⁴ The weakest explanation is that someone (with the right sort of social or institutional power) creates the institution by fiat. Such an account is true in cases of legal or institutionalized oppression—when Southern states enacted various Jim Crow laws, or when states outlaw some abortions. However, the alternative—and somewhat stronger—

Consider the following two cases regarding the perpetuation of racial oppression.¹⁵ In the first, a white homeowner planning to sell her house tells a black buyer that her house is sold. She tells the prospective buyer this out of racial contempt and disgust of having a black family in her neighborhood. As such, her action contributes to segregation and housing inequality. In the second, another white homeowner is planning to sell his home; his neighborhood is predominantly white, though a few black families have moved in recently. Nonetheless, this homeowner believes that the value of his house will decrease were the majority of the neighborhood to become black, so he sells his house preemptively and to a black family. His action contributes to white flight in the neighborhood, thereby contributing to segregation and housing inequality. The structural theorist can explain both cases in terms of structures and the perpetuation of racism. However, the theorist cannot explain the difference between the two homeowners because structural theorists do not help themselves to concepts for characterizing individual behaviors.

Sally Haslanger (2004; 2012) has offered a plausible solution to the unification problem. She recognizes that oppression involves two different types of wrongs: agent oppression, which involves an agent's misuse of power, and structural oppression, which involves an illegitimate distribution of social power. Her theory is disjunctive—many instances of oppression are typically one or the other type of wrong, as the next examples

explanation is agential and that social practices are habituated, normalized, or performed such that they become a natural part of our social context. See Joan Mason-Grant (2004) for a discussion of the performative nature of social practices as well as my Chapter 4.

¹⁵ These examples are from Blum (2004, 62-63).

indicate—but can account for cases of overlap in which one misuses one’s power itself ill-gotten by illegitimate distributions of social power. Consider two examples with which Haslanger motivates her view. In many academic contexts, professors have more power than their students because of the various rules, practices, and expectations afforded to them in those contexts. In the first case, at Contemporary University, Stanley gives low grades to all women of color regardless of their academic performance. Since the student-professor relationship is structured fairly, the moral wrong of Stanley’s actions is explained by his particular moral failings and abuse of the power accrued to him as a professor. In a second case, at Contempt College, Larry grades everyone fairly and based on each student’s achievement. However, Contempt College has an admission policy denying admission to everyone except men and white women. In this case the admission policy is unjust and the locus of oppression.

Haslanger’s account of oppression resolves the unification problem and addresses the first of the two problematic implications. Oppression has two sources—agential abuse of power and misallocation of social power. So, we can recognize a range of wrongs in part because our moral theory can explain both what is immoral regarding instances of agential abuse and what is unjust in the misallocation of power. Moreover, the weight of the wrongs can be evaluated from the perspective of our theories of morality and justice. Any good moral theory ought to explain the difference in severity between an act of grade discrimination and calling on a student to validate a claim about her ethnicity. Haslanger’s account does not address the strength of the explanation of the creation and

perpetuation of practices (the second problematic implication). However, I will offer such an explanation in Chapter 4.

Allow me to sum up my various commitments regarding oppression. First, I endorse Haslanger's account (i) that oppression has different sources—personal and structural—and, consequently, I recognize (ii) that oppression can be both a moral wrong or a political-social injustice. Also, I maintain that (iii) in many cases of structural oppression there will be oppression without an oppressor, yet (iv) depending on the instance, the individuals involved might have a responsibility to resist or end the perpetuation of the oppression. Moreover, (v) racism and sexism are particular instances of oppression only when the socially or politically dominant group perpetrates or benefits from the oppressive structure or action.¹⁶

4. A Summary

The two dominant accounts of oppressive speech, Langton (1993) and McGowan (2003; 2009), maintain that oppressive speech is best analyzed in terms of exercitive speech acts, utterances that make something the case or enact a policy or law. Typically exercitive speech acts include “The meeting is adjourned” said by a chairperson, and “Your curfew is now 10 p.m.” said by a parent to his child. However, as I argue in Chapter 1, the exercitive model is inadequate because exercitives fail to model the wide range of instances of oppressive speech.

¹⁶ Theses (iv) and (v) were implicit in my discussion of 'oppressive speech'.

A successful, exercitive utterance depends on a number of conditions: (i) that the locutionary content express the content of the enacted policy; (ii) that the speaker intends his utterance to have exercitive force; and (iii) that the speaker has the requisite authority. Langton's account fails because ordinary speakers of many oppressive utterances (e.g. a man's saying "don't get hysterical" to a woman) do not satisfy the exercitive's stringent success conditions. McGowan abandons the standard account of exercitives Langton offers and advances the notion of a covert exercitive, which does not require stringent success conditions. However, her covert exercitives fail to characterize the range of oppressive speech. In the first place, covert exercitives still do not characterize some oppressive utterances, such as those said in contexts in which it is already permissible to subordinate others or utterances that merely express some attitude of the speaker. Second, covert exercitives blur the distinction between engaging rules and creating rules.

I conclude that we should abandon exercitive models of oppressive speech. In Chapter 2, I argue for a speech act model, inspired by Kent Bach and Robert Harnish (1975), that characterizes a range of speech acts: the Ceremonious (exercitives), Collateral (jokes, puns), and Communicative (assertions, descriptives, offers, and many others). The 3Cs model is superior to exercitive accounts because it characterizes utterances naturally, allows for speech act pluralism, yet does not appeal to a speaker's intentions vis-à-vis oppression. I end the second chapter by considering and arguing against the possibility of a new speech act type, the oppressive.

In accepting the 3Cs model of oppressive speech we take a step towards explaining how some speech constitutes oppression. However, we are still not in a

position to defend the Constitutes Thesis. The Constitutes Thesis literature assumes that speech act theory is the only theoretical apparatus needed to explain the thesis. I argue, throughout Chapter 3, that this assumption is false and develop a framework that elucidates other constitutes-claims implicit in the Constitutes Thesis. The framework invokes the notion of a status function, introduced by John Searle (1995; 2010) to explain how social institutions operate.

Using the framework to unpack the Constitutes Thesis, I show that the thesis requires three levels of explanation: we must explain (1) how sounds we utter constitute a speech act, (2) how that speech act constitutes a move within a larger social practice, and (3) how that move constitutes an act of oppression. Speech act theories offer an explanation of (1), but explanations of (2) and (3) are outside of its scope. Consequently, the advocate of the Constitutes Thesis, must appeal to other resources: an explanation of (2) lies in social ontology and social philosophy and (3) in theories of oppression. After unpacking the Constitutes-Iteration framework, I return to Langton's and McGowan's accounts and explain how their analyses blur the three iterations into the first level.

Since I articulate the speech act iteration in Chapter 2 and endorse Sally Haslanger's theory of oppression for that iteration, I must offer an account of the intermediate iteration— how a speech act constitutes a move within a social practice. In the first section of Chapter 4, I introduce and develop the basic concepts of a theory of social practices. In particular, I examine the concepts of institutions, conventions, social norms, social roles, authority, and legitimacy as well as their relationships with each other. Then, I argue that social practices are best understood as institutions and that a

move involves an authorized action that is either in accordance with a convention or a social norm, or legitimatizes a convention or social norm.

In the second half, I apply the theory to explain how utterances can be moves within social practices. My argumentative strategy begins with straightforward and recognized instances of institutional acts and moves to less recognized acts, invoking more complicated examples at each step of the analysis. I demonstrate how utterances (but not oppressive utterances) constitute moves within social practices and explain how an action (but not an utterance) constitutes an act of oppression. Finally, I use the concepts developed in the first half of the Chapter 4, to support an argument from the first chapter, that McGowan's notion of covert exercitive blurs engaging rules and creating rules.

Now that theories underwriting the three iterations of the Constitutes-Iteration Analysis have been argued for and defended, I focus Chapter 5 on defending my version of the Constitutes Thesis. I argue that utterances constitute moves within oppressive institutions, and thereby oppress. My strategy is similar to that of the preceding chapter: I employ the Constitutes-Iteration Analysis on straightforward cases of actions (non-utterances) that constitute moves within a social practice, and build up to cases in which utterances constitute oppressive speech. In doing so, I work through the examples examined throughout the dissertation.

I then turn to considering and responding to objections. I address those charges of metaphor, philosophical sleight of hand, and implausibility, which are now seen to be unfounded. I also consider challenges to the Constitutes-Iteration framework. Finally, I

draw out implications and consequences of the Constitutes-Iteration Thesis. First, in explicating how our utterances engage the normative structure of institutions, we have a beginning to an explanation of how speech contributes to the normalizing mechanisms of pernicious institutions and norms. Second, the Constitutes-Iteration framework can help us adjudicate debates related to oppressive speech, in particular regarding whether pornography should be regulated or protected by the First Amendment.

Chapter 1

IS OPPRESSIVE SPEECH EXERCITIVE?

Case 1: A legislator in Pretoria, South Africa, utters, “Blacks are not permitted to vote” in the right context and under the right conditions so that the legislator’s utterance constitutes a new law that underwrites South African apartheid. (Adapted from Langton (1993, 302).)

Case 2: Susannah says to Rebecca, her daughter, “The idea of your kissing another woman is unimaginable and disgusting.”

Case 3: Steve and John are co-workers at a factory with very few female employees. They are eating lunch in the lounge, and John asks, “How’d it go last night?” Steve responds, “I banged the bitch.” John, smiling, asks, “She got a sister?” (Adapted from McGowan (2009, 399).)

Case 4: Senator Rand Paul, addressing the Iowa Faith and Freedom Coalition, says, “The President recently weighed in on marriage. Call me cynical, but I wasn’t sure his views on marriage could get any gayer.”

From these examples it is clear that we use speech to subordinate, demean, and discriminate in many ways. For instance, we pass laws, express our feelings, report events, and joke. Any account of oppressive speech should explain how each of the example utterances is oppressive. For the purposes of this paper, oppression should be understood as arising from systematic and social constraints on socially marked groups (e.g. racial and gender groups) and individuals within those groups. These constraints harm individuals by impeding their ability to develop their autonomy and exercise their desires and thoughts.¹⁷ Oppressive speech, then, involves these systematic and social constraints. Offering an adequate explanation of how speech is involved in these constraints is a matter of controversy. Thus, a condition of adequacy for any account of

¹⁷ I argue for such a conception of oppression in the Introduction. There I expand on this provisional, working conception and provide an analysis of how oppression works to undermine the autonomy and capacities of individuals of socially marked groups.

oppressive speech is that it must explain the range of utterances that we recognize as racist, sexist, or homophobic. The subject of this chapter is whether analyses modeled on exercitive speech acts satisfy this condition. I argue that they do not.

Those who argue that speech *causes* oppression have a straightforward explanation of these examples: some utterances cause or perpetuate oppression in virtue of the effects of what is said. The effect of the legislator's utterance is to prevent black South Africans from voting, and Susannah's utterance causes her daughter to feel offended or unloved. On the other hand, those who maintain that some utterances *constitute*, or just are, acts of oppression—i.e. the Constitutes Thesis—argue that oppression is not merely the causal consequence of some speech, but under the right circumstances speech is a subordinating or oppressive act. Proponents of the Constitutes Thesis often appeal to speech act theory to explain precisely how some speech constitutes oppression. However, speech act theory does not recognize a category of 'oppressives' alongside 'assertions,' 'directives,' 'commissives,' and the like. Consequently, the Constitutes Thesis often models oppressive speech in terms of one of these traditional categories of speech act.¹⁸

Two Constitutes Thesis approaches take exercitive speech acts as the model of oppressive speech.¹⁹ An exercitive makes something case, or enacts or alters

¹⁸ The thesis that some speech causes oppression is uncontroversial—there is much empirical evidence corroborating this view (see Matsuda et al. (1993) for an in depth discussion of the effects of hate speech). However, the Constitutes Thesis is a matter of controversy and, in later chapters, I will defend this thesis.

¹⁹ Recently, the exercitive models have been supplemented with the pragmatist's tools of presupposition, rules of accommodation, and common ground: see Langton and West

permissibility facts, such as altering a policy or enacting a law. Paradigmatic exercitives include the utterances “The meeting is adjourned,” said by a chairperson and “Your curfew is now 10,” said by a parent to his child. Rae Langton (1993) utilizes the standard notion of exercitives as developed by J.L. Austin (1975). Standard exercitives have three stringent success conditions: that the content of an utterance express the content of the enacted policy; that the speaker intends his utterance to have exercitive force; and that the speaker has the requisite authority. However, as I will argue in the first section, Langton’s account fails because, in most instances of oppressive speech, speakers do not satisfy all three conditions. Cases 2 through 4 are not the stuff of policy or law and, moreover, each fails to satisfy one or more of the conditions.

Mary Kate McGowan offers an account of covert exercitives that bypass the stringent conditions of standard exercitives. Instead, covert exercitives enact or alter permissibility facts in virtue of their contribution to rule-governed activities. I argue later that the covert model also fails to explain many instances of oppressive speech. First, treating *all* instances of oppressive speech as altering permissibility facts mischaracterizes many utterances, especially those that express the speaker’s attitude (Case 2) or those that are said in contexts in which it is already permissible to demean or subordinate others (Case 4). Second, covert exercitives are conceptually murky insofar as they blur the distinction between engaging rules and enacting rules. In short, both

(1999), Langton (2012), and McGowan (2009; 2012). For the purposes of this discussion, I will set aside how these supplements affect explanations of oppressive speech because, for the most part, these concepts serve to explain belief formation and alteration through the course of a conversation and are not central to the question of how speech constitutes oppression.

standard and covert exercitive models fail to characterize the various ways in which our utterances constitute oppression.

Although I argue that these explanations of the Constitutes Thesis fail, I do not reject the thesis. It has important implications in understanding the mechanisms of institutional oppression, and substantiating the thesis will go a long way in developing social policy to combat these mechanisms. Nonetheless, an adequate explanation of how some speech constitutes oppression should not appeal to only one speech act type. Instead, as I advocate in the next chapter, we should invoke a pluralism of speech act types in modeling oppressive speech.

1. Langton's Standard Exercitive Model

In her groundbreaking work “Speech Acts and Unspeakable Acts,” Langton initiated the speech act analysis of oppressive speech. In that paper, she elucidates Catherine MacKinnon’s (1987; 1996) thesis that pornography is speech that subordinates women. In defending MacKinnon’s claims, Langton outlines an Austinian account of speech acts to demonstrate how pornography involves speech that either subordinates women or silences women’s speech. To situate and motivate her analysis of pornography, Langton first discusses racist, subordinating speech. She analyzes two clear and uncontentious speech acts—a law that bans blacks from voting and a “whites only” sign. Through these examples she explains how exercitive speech acts subordinate. In what follows I expound her account and argue that it cannot account for many cases of oppressive speech.

A. The Standard Exercitive Model Explained

Following Austin, Langton offers an analysis of speech acts in terms of an utterance's locutionary content, illocutionary force, and perlocutionary intent. The locutionary content of a speech act is the content of what the speaker says: the literal meaning of the utterance. So, if I say to you, "It will likely rain tomorrow," the locutionary content is just the meaning of the words I utter. Although some theorists debate whether locutionary content is identical with literal meaning, for the following I assume that it is. So, even in a clearly ironic case, when someone says, "Jeremy is a good friend," we should understand the locutionary content as being that Jeremy is a good friend. The irony, then, must be analyzed in other terms (e.g. the illocution or perlocution). Some speech act theorists, e.g. John Searle (1969), maintain that the locutionary content expresses a proposition, in the first case that *it will rain tomorrow* or, in the second, that *Jeremy is a good friend*.

The illocutionary force is understood traditionally as individuating the speech act type (or types) of the utterance.²⁰ The same proposition (that *it will rain tomorrow*) may be used as the locutionary content of any number of different illocutions: questioning (will it rain tomorrow?), predicting (it will likely rain tomorrow), warning (it will rain

²⁰ Langton accepts speech act pluralism—as do I—in which one utterance may involve more than one illocutionary act. For instance, the utterance "it will rain tomorrow" may be an assertion or prediction, but in the right contexts in might *also* be a warning.

tomorrow), or asserting (it will rain tomorrow).²¹ Following Searle, we can say that utterances are a complex of propositional content and illocutionary force. Illocutionary force may be determined in two ways: through conventions and through speaker intention or meaning. Conventions determine force in two specific ways. In the first, force is determined by the conventions constituting the practice. “I do” has the conventional force of marrying only within a marriage ceremony when said by the right person at the right time. The umpire’s utterance of “Strike!” counts as a strike because he adheres to and satisfies various baseball conventions that authorize umpires to call strikes, when the utterance follows a pitch and he is behind the plate.²² In the second, force is determined by linguistic conventions, say by a syntactical or tonal indicator of force (e.g. a rising tone at the end of an utterance conventionally marking a question) or the linguistic meaning of a word (e.g. explicit performatives, such as ‘promise’). The utterance “I promise to pick you up at the airport at eight tomorrow night” is a promise in virtue of the meaning of ‘promise’. Had I said, “I will” to your query for a ride home, my utterance has the illocutionary force of a promise in virtue of my intention to promise.

Perlocutionary effects are the consequences of an utterance’s illocutionary force. In the case of promises, the perlocutionary force is the expectation that the promiser will act according to what the locutionary content expresses. In ordinary instances, the perlocutionary effect depends on the speaker’s audience and does not bear on the success

²¹ The last two cases illustrate the difficulty in determining which illocution is operative, especially if speech act pluralism is correct. I can both assert and warn you that it will rain tomorrow. In all cases, context matters.

²² We might call illocutions determined in this way "ceremonious speech acts". I will say more about Ceremonious acts in Chapter 2.

of the illocution. I can warn you without your taking heed; I can insult you without your taking offense; I can assert *p* without your coming to believe *p*. However, when conventions determine force (i.e. ceremonious speech) the perlocutionary effects follow from the success of the illocutionary act. That is, by successfully satisfying the conditions of a ceremonial illocution one thereby brings about the perlocutionary effect(s). If the umpire successfully utters (under the right conditions) “strike,” the pitch counts as a strike; if the umpire utters “strike” and it is the third strike, the batter is out (a perlocutionary effect).

Langton’s two examples of subordinating speech are exercitive,²³ utterances that make something the case by enacting policies or rules, conferring (or denying) powers and rights, or altering the permissibility facts.²⁴ Exercitives include ordering, permitting, prohibiting, authorizing, and enacting laws. For instance, in the right context, the professor’s utterance, “The paper is due at the start of class next Wednesday,” enacts the

²³ Langton also considers subordinating speech in terms of verdictives, utterances that have the illocutionary force of ranking, valuing, or delivering a finding of some matter of fact or value. The umpire's "Strike!" is verdictive because, with the utterance, he judges a pitch as such. I simplify Langton's account for three reasons. First, verdictives have success conditions similar to exercitives: (i) that the locutionary content express the content of the judgment (e.g. "Strike!" or "Guilty."); (ii) that the speaker intends his utterance to have verdictive force; and (iii) that the speaker has the requisite authority to rank or value. Indeed, because of their similarity in success conditions, Bach and Harnish (1979, 110–113) treat verdictives as close relatives to exercitives (they use the term 'effective'). Second, paradigmatic instances of both illocutions occur in ceremonious contexts, those in which conventions determine force. Third, McGowan extends exercitive force from enacting policy or laws to altering permissibility facts. Consequently, both alter what is permissible (e.g. the jury's guilty verdict permits sentencing).

²⁴ Searle (1995; 2010) calls the conferring or denying of rights, and altering of permissibility facts 'deontic powers'. I point this out here because deontic powers play a large role in Chapters 3 and 4.

due date, confers late status on papers turned in afterwards, and creates the responsibility for turning in the paper at or prior to the due date. She has the authority to set the paper deadline because of the institutional practices and policies within the university. The professor utters another exercitive when she says the Monday prior to the due date, “I’ve decided to extend the paper deadline: it is now due Friday before class starts.”

The exercitive is a good model for (some) oppressive speech because in uttering an exercitive a speaker subordinates individuals or groups by enacting a policy of discrimination or other status-lowering policy. Here is Langton’s analysis of Case 1 above.

Consider the utterance: “Blacks are not permitted to vote.” Imagine that it is uttered by a legislator in Pretoria in the context of enacting legislation that underpins apartheid. It is a locutionary act: by “Blacks” it refers to blacks. It is a perlocutionary act: it will have the effect, among others, that blacks stay away from polling booths. But it is, first and foremost, an illocutionary act: it makes it the case that blacks are not permitted to vote. It—plausibly—subordinates blacks.

...

In virtue of what do the speech acts of apartheid subordinate? In virtue of what are they illocutionary acts of subordination? In virtue of at least the following three features, I suggest. They *rank* blacks as having inferior worth. They *legitimate* discriminatory behavior on the part of whites. And finally, they *deprive* blacks of some important powers: for example, the power to go to certain areas and the power to vote.²⁵ (1993, 302-303, emphasis in the original)

In short, some utterances enact permissibility conditions or make things the case that are oppressive to groups. “Blacks are not permitted to vote,” when said in the right context by a Pretoria legislator is an act that ranks South African blacks as having inferior worth,

²⁵ Though Langton focuses on the utterance’s exercitive force, it also possesses verdictive force insofar as the utterance ranks and legitimates. In any case, this is another instance of speech act pluralism.

legitimizes discriminatory behavior towards them, and deprives them of an important right (voting power).

Langton offers a similar explanation for the “whites only” utterance, which subordinates insofar as the utterance forbids blacks from entering the establishment, permits whites’ entry, and legitimizes discriminatory behavior towards blacks. Thus, Langton thinks that the standard exercitive model applies generally to all cases of oppressive speech.²⁶ However, the mother’s utterance and Senator Paul’s joke serve as counterexamples to the standard exercitive model. I now turn to considering these examples.

B. Criticism of the Standard Exercitive Model

Langton’s paper has undergone substantial criticism. Those opposed to speech act analyses of pornography (Bird 2002; Dworkin 1993; Parent 1990) have argued that Langton’s account does not accurately explain how pornography *qua* speech constitutes oppression. Langton has also received criticism from fellow proponents of speech act analyses of pornography. McGowan (2003) offers the most insightful criticism, arguing that pornography is not exercitive because exercitives have characteristics that pornography does not.

McGowan’s criticism is directed at Langton’s account of pornography. However, McGowan (2003) does not assess Langton’s more general account of oppressive speech.

²⁶ At least in her (1993). More recently, Langton (2012) has supplemented her account with the pragmatist’s notions of presupposition, accommodation, and common ground. Moreover, during a colloquium at Claremont McKenna College (December 2010), she endorsed McGowan’s account, which I will discuss shortly.

So, here, I will apply McGowan's criticisms to Langton's more inclusive account of oppressive speech. Following McGowan, I will argue that the standard exercitive is not a satisfactory model for oppressive speech because they (i) rely too heavily on the locutionary content of the utterance, (ii) rely on speaker intentions, and (iii) require the speaker's authority. Additionally, Cases 2 and 4 do not seem exercitive since those utterances do not paradigmatically enact permissibility facts. So, Langton's exercitive model is inadequate in a second way: it cannot characterize different types of utterances recognized as oppressive. I now turn to each of these criticisms.

(i) relies too heavily on locutionary content

A characteristic of standard exercitives is that they express the content of the permissibility facts or policy enacted by the utterance. That the locutionary content describes what is enacted is a necessary condition for the exercitive's success. The locutionary content of the Pretoria legislator's utterance straightforwardly is the law she enacts denying South African blacks the right to vote. Had she said something else, she would have enacted a different law. A parent alters curfew by saying to his child "Your curfew is now 10 p.m." Had he misspoken (without correcting himself) and said 11 p.m., the child's curfew would be later. For standard exercitives to succeed the content of what is enacted must be stated. One must express the content of the fact one enacts.

However, exercitive speech can oppress without expressing the locutionary content that matches the oppressive fact enacted. Consider the following example in which a speaker enacts a racist policy, but the racist policy differs in content from the

locutionary content of his exercitive.²⁷ The proprietor of restaurant says, “From now on, I will not hire anyone without a valid driver’s license.” Although being legally permitted to drive is not required for working at the restaurant (it is not a delivery joint), the proprietor thinks that having a driver’s license indicates the prospective employee’s reliability. However, and unbeknownst to the proprietor, nonwhites in the community typically do not have driver’s licenses, perhaps, because they are too poor to own cars, the nearest DMV is prohibitively far away, or because of a racist plot at the local DMV. In such a case, the proprietor has uttered a racist (oppressive) exercitive, but the content of his utterance does not match the content of the racist policy.²⁸ So, since a case exists in which one enacts a policy but the content of the locution does not describe the oppressive policy thereby enacted, standard exercitives cannot be an adequate model of oppressive speech. The necessary characteristics of standard exercitives cannot account for the oppressive force of the proprietor’s utterance.²⁹

Perhaps, the exercitive theorist will point out that the proprietor’s utterance is an instance of speech that causes or perpetuates oppression and is *not* an instance of speech constituting oppression. That is, the utterance is an ordinary exercitive that unfortunately has (unforeseen) perlocutionary effects that oppress, given the unjust structures of

²⁷ I borrow this example from McGowan (2009). She uses the example to demonstrate that there need not be oppressors within structures of oppression.

²⁸ Here I am relying on the idea that institutions are sources of racism and oppression (see the Introduction for my conception of oppression).

²⁹ There is a strong, intuitive sense in which the proprietor's utterance can be explained exercitively. The policy enacted is "sneakily" oppressive and as such does not rely on the speaker's intention. McGowan’s account of exercitives is designed to handle this sneakiness.

society. As such, the utterance is not a subject of explanation for the proponent of the Constitutes Thesis. This line of thought is rather shortsighted. First, the policy enacted makes it the case, albeit accidentally, that non-whites are discriminated against. But, given Langton's analysis of the legislator's utterance, a policy that discriminates unfairly constitutes oppression. Second, if this response to my criticism is correct, there is a problematic consequence for the Constitutes Thesis proponent: very few instances of recognizable oppressive speech are analyzable in exercitive terms. However, this consequence conflicts with the presumed prevalence of oppressive speech.

(ii) *relies on speaker intentions*

Another condition of success for standard exercitives is that the speaker must intend the utterance to have the illocutionary force that it has. The Pretoria legislator must intend to deprive South African blacks of their right to vote; the parent must intend to alter his child's curfew. So, if exercitives model oppressive speech, then the speaker's illocutionary intention matters for determining whether speech oppresses. However, one's illocutionary intention does not matter for oppressive speech. The restaurant proprietor example might be a "well-intentioned liberal" who wishes to divorce himself from any racist action. When he learns his new hiring policy is oppressive, he most likely will disavow the policy, explaining he did not intend his policy to be racist. He might reassert his original intention of hiring reliable people. Nonetheless, he enacted an oppressive policy. His speech was oppressive even if he did not mean it.

One might think that this concern with speaker intention is irrelevant—the policy is not oppressive unless the policy-maker so desires. And, in the case in question, it is just an unfortunate accident that his well-intentioned policy had such negative consequences. However, in oppressive speech, the intentions of the speaker do not always matter because social practices and structures support much racism, sexism, and homophobia, and these structures fly under the radar of intentions and occurrent beliefs. Oppressive speech is one of those cases in which we are hostage to the social meaning of our speech: speaker’s intention is a very bad indication of whether speech is oppressive.³⁰

(iii) *requires the speaker’s authority*

Standard exercitives also require that the speaker occupy a position of authority.³¹ That is, one needs the positional authority to enact policies in the relevant domain. For instance, I lack the social-biological authority to determine the bedtime for my neighbor’s children, unless I babysit and they allow me to set bedtime. In such a case, I have derived positional authority. I can extend the deadline for a paper in my class because the university underwrites my authority to do so. So, if oppressive speech is exercitive, then

³⁰ See Chapter 2, section 2, for a more in depth discussion of these ideas.

³¹ Regarding authority and oppressive speech, there are two problems. The first I deal with here: whether speakers have the positional authority for their utterances to *succeed* as exercitives. For those of us who do have authority such that our utterances succeed as exercitives, our success is specific to those domains in which we have authority. The second problem involves whether and how one acquires the requisite authority to *oppress*. Aside from the obvious explanation—appealing to our positional authority—other explanations of acquisition of such authority are contentious. See Maitra (2012) and my Chapter 4 for more discussion of this second problem.

speakers must have the authority to enact policies and permissibility facts of oppression.³²

Two problems emerge regarding the exercitive authority condition. First, few speakers have the positional authority to enact policies. True, some individuals, say the department chair, have the requisite authority and in different domains (her department, her classes, her family). However, aside from authority within one's family, many do not have positional authority to enact policies. Since oppressive speech is widespread, many speakers would need to possess the authority to enact oppressive policies, if the exercitive model is correct.³³ Yet it is not clear whether speakers do possess such widespread positional authority. So, suppose that, to accommodate as many oppressive utterances in the exercitive model as possible, ordinary people possess the required positional authority to exercise in the domain of oppressive practices. Here the second problem emerges. A liberal, left-leaning straight, white, male—if anyone has the positional authority in oppressive institutions, he does—could “legislate” away all existing oppressive policies. However, in the next moment, his bigoted counterpart could reverse these liberal policies

³² Admittedly, here, I say little about authority, but I will say more in Chapter 4 in which I discuss social institutions. There I will argue that oppressive social institutions authorize some people (especially straight, white, males) in certain domains (racial, gender, heteronormative institutions) because of the role they occupy in virtue of their social identities. These institutions authorize members of the dominant group such that they are permitted to subordinate members of less dominant groups and are permitted to enforce norm compliance and norms governing the institution.

³³ My position regarding speaker authority avoids this first problem. Since I maintain that most oppressive speech is not exercitive, then many of our utterances are not required to satisfy the authority condition. Instead, oppressive speech requires the positional authority *to subordinate*. Some of us possess this authority in virtue of our social identities.

and reinstate the previously oppressive ones. Clearly, this does not occur and is rather implausible, so it does not appear that many speakers of oppressive speech meet the authority condition for exercitives.³⁴

Besides these problems involving the success conditions of exercitives, the main problem with the model is that much oppressive speech is not obviously exercitive. Clearly, some standard exercitives oppress, as we have seen with Pretoria legislator and “whites only” sign. Nonetheless, Cases 2 (the mother’s utterance) and 4 (Senator Paul’s joke) do not involve enacting policy or permissibility facts. When Susannah says to her daughter, “The idea of your kissing another woman is unimaginable and disgusting,” she is not enacting anything. The utterance is more naturally characterized as an assertion or expression of her attitudes.³⁵ Susannah communicates to her daughter her existing judgment about lesbian sexuality. Similarly, Senator Paul’s joke does not enact or alter policy regarding gay men or alter the meaning of ‘gay’ such that it is synonymous with ‘stupid’ or ‘lame.’ Instead, the success of the joke turns on both the fact that in some communities ‘gay,’ used as pejorative slang, is synonymous with these other terms and that his audience is familiar with these senses of ‘gay’. Senator Paul may possess

³⁴ Recently, Ishani Maitra (2012) has argued that speakers may possess authority to subordinate that is not due to the speaker’s position. Instead, speakers are *licensed* to subordinate when their speech goes unchallenged. Her position is insightful, correct (regarding how speaker’s become licensed), and a step towards solving the authority problem of oppressive speech. I will address her account in detail in Chapter 4.

³⁵ One might make a case for characterizing Susannah’s utterance as a verdictive. Susannah ranks and values her daughter in virtue of her sexuality. However, Susannah’s speech act does not alter a valuing or ranking because, presumably, Susannah already finds her daughter’s lesbian sexuality disgusting. Perhaps the idea is that Susannah ranks her daughter as a lesbian, but then the utterance does not satisfy the locutionary content condition.

positional authority to enact policies, given his role as Senator; however, his speech is oppressive but not necessarily exercitive. So, it seems that the exercitive model is deeply flawed. Another account of exercitives purports to explain Cases 2 through 4 by doing away with the stringent success conditions of standard exercitives. I will now consider this second account of exercitives.

2. McGowan's Covert Exercitive Model

Mary Kate McGowan's recent work on oppressive speech (2003; 2009; 2012) improves upon Langton's account in her groundbreaking article. As a first step, Langton showed how some utterances—e.g. “Blacks are no longer permitted to vote,” said by the Pretoria legislator or a “whites only” sign—are exercitive. However, as we have seen, this model fails because many instances of oppressive speech either do not satisfy the stringent success conditions of standard exercitives or do not appear to enact permissibility facts. According to McGowan, Langton's insight lies in locating the oppressive force of utterances in altering or creating permissibility facts. McGowan's exercitive model dispenses with the success conditions, allowing her notion of exercitives the flexibility needed to model the diversity of speech acts that oppress. McGowan utilizes these “covert” exercitives to explicate Cases 2 through 4. In the sections that follow, I present her account of covert exercitives and argue that they fail to characterize oppressive speech because they blur the distinction between engaging rules and enacting rules.

A. The Covert Exercitive Model Explained

A covert exercitive is a special type of exercitive. Standard exercitives (think “I hereby pronounce you husband and wife”) make something the case (e.g. marriage) in virtue of the speaker’s authority (the state’s having granted the speaker officiant powers) and the locutionary content of the utterance (that with this utterance the officiant pronounces the bride and groom married). However, a covert exercitive does not require these conditions in making something the case. Instead, covert exercitives enact permissibility facts by triggering the norms of an activity just as conversational contributions are made permissible by triggering rules of accommodation operative in conversational contexts.³⁶

Many of our practices are socially coordinated and rule- or norm-governed. Some practices are governed by strict, formal, and explicit rules, as is the case with professional baseball. For instance, it is not permissible for a batter to walk after a third ball. If he does, not only does he do something wrong but he ceases to play the game. However, norms are not always strict, formal, and explicit—in many practices, participants are hard pressed to articulate the norms or the rules are rather pliable. Conversations are such practices and, as David Lewis (1983) points out, are governed by rules of accommodation, which tend to accommodate participants’ moves regardless of whether those moves are, at the time, appropriate or salient moves. If we have been discussing our weekend plans and you start talking about a recent email you received, rules of

³⁶ Covert exercitives are distinguished from conversational exercitives because conversational exercitives function through rules of accommodation that underwrite conversations, whereas covert exercitives are a more general notion and function through any rule-governed activity, see McGowan (2009, 395).

accommodation permit this change in topic, assuming that I do not challenge or question the shift. Contrast rules of accommodation with, say, the formal rules involved with granting an individual legislative authority. It is much easier (and widely accessible) to alter what is permissible through the former rules than to go through a long vetting process and raise millions of dollars.

Covert exercitives function similarly to conversational contributions insofar as both alter permissibility facts through the rules of the activity for which they are moves (395).³⁷ Accordingly, they share similar characteristics. The success conditions for altering what is permissible in a conversation require that one is a participant and other participants accept what one says; satisfying these conditions is rather inexpensive.³⁸ Likewise, the success conditions of covert exercitives require that one is a participant in the activity and that one's move is successful. When a pitcher throws a fourth ball, the pitch is a covert exercitive in that the batter is now permitted to walk to first. Moreover, in both cases, contributions are covert for two reasons. First, the permissibility facts enacted are independent of speakers' intentions and awareness. Second, the permissibility facts enacted need not match the "content" of the contribution. Clearly, the move "pitching a ball" does not match "may walk to first". Conversational contributions enact

³⁷ For the remainder of this chapter all in text citations are to McGowan (2009) unless otherwise noted.

³⁸ Consider how easy it is to become a participant in a conversation—eavesdroppers often butt in and, for some length of time, participate in the conversation. Moreover, even though A challenges or questions B's contribution, B's contribution is not completely struck from the record. When B, says, "Carol is a slut." and A says, "No, she's not!" The association between Carol and promiscuity lingers in the conversational score. Clearly, the association is on the participants' minds and, later, either can return as the topic of conversation.

permissibility facts that are not encoded in the utterance. Your “You’d never guess who sent me an email” changes the conversational score but nothing in the locutionary content of the utterance signals that it is now permissible to discuss your email. Consequently, covert exercitives avoid the stringent requirements involved in successful standard exercitives.

Covert exercitives work in virtue of their contribution to the norm-governed activity that the utterance is a move within. “Speech triggers the rules of that activity and thereby enacts facts about what is subsequently permissible in that activity” (396). The contribution succeeds because the rules of the activity alter what is now permissible. So, when utterances are moves within a norm-governed activity, they have exercitive force and enact new permissibility facts. Conversational contributions are covertly exercitive insofar as they trigger rules of accommodation. Consequently, any move at the intersection of a conversation and another norm-governed activity is doubly covertly exercitive. For instance, conversation at a dinner party intersects at least two norm-governed activities: etiquette and conversation. A polite conversational contribution, then, enacts permissibility facts for the conversation and possibly different permissibility facts within etiquette.

To help motivate this picture, McGowan develops additional terminology. First, *g-rules* “govern all instances of the rule-governed activity and they are not enacted by the performing of any particular such activity” (396).³⁹ As examples of *g-rules*, she cites grammar and Grice’s cooperative principle: grammar is a (set of) constitutive rule(s) for

³⁹ We might think of these as the rules that constitute the practice as in, say, chess: rooks move rank and file, bishops move diagonally.

what counts as well-formed sentences and the cooperative principle is a social norm that governs conversations. G-rules establish the parameters for how an activity is to proceed. By analogy, we might think of the MLB's rulebook as explicitly articulating the g-rules of professional baseball. Second, *s-rules* are enacted by the performance of a move within the rule-governed activity and are of a limited duration and limited scope particular to the circumstances of action (396–397). Moreover, which permissibility facts are enacted depends on the g-rules of the norm-governed activity (398). In enacting an s-rule, a speaker determines what is permissible “here and now” only if those facts are supported by the practice's g-rules.⁴⁰

McGowan maintains that gender oppression is a norm-governed practice because, as a system of oppression, it ranks individuals according to their membership in socially marked groups and that ranking involves treating those in one group differently from those in another. She acknowledges that the g-rules of oppression are often implicit and are difficult to identify with any precision. So, utterances made within the activity of gender oppression enact s-rules that are covertly exercitive and, thereby, make it permissible to oppress women here and now.

Before considering her example, a few points need to be teased out. In explaining how covert exercitives contribute to norm-governed practices, McGowan utilizes two idioms. First, she speaks of covert exercitives as “triggering the g-rules of the system”

⁴⁰ For clarity's sake, I find it helpful to note that McGowan treats various g-rules, norms, and permissibility facts as synonymous. The parent who alters curfew enacts a new rule (or permissibility facts) for her teenage child.

(396; 398.n21; 402) and, second, she speaks of them as enacting permissibility facts.⁴¹ The “triggering” idiom parallels how rules of accommodation function: “[b]y triggering the rules of accommodation operative in conversational contexts, contributions to conversations thereby enact [permissibility] facts...” (394). However, this idiom has problematic consequences for McGowan’s overall project. Suppose you say, “You’d never guess who sent me an email,” which changes the topic of conversation. On this explanation, your utterance triggers the rules of accommodation operative in the conversation, making your move permissible. (Here the rules of accommodation are g-rules.) In other words, your utterance causes a change in the topic—it causes new permissibility facts. Likewise, an utterance of oppressive speech would cause permissibility facts that oppress. And here is the difficulty: the “triggering” idiom explains how speech *causes* oppression. But recall the Constitutes Thesis, which purports to explain oppressive speech in terms of its illocutionary force and not in terms of what speech causes (its perlocutionary effect).⁴² Consequently, the “triggering” idiom is not

⁴¹ In her (2009) she utilizes both idioms, but in a more recent article (2012) she stresses the “enacting” idiom. “When speech constitutes a move in a norm-governed activity, it has exercitive force in virtue of enacting new permissibility facts for the activity in which it is a move. When a poker player says, “I call,” she thereby makes it permissible for anyone to raise the bet” (134).

⁴² At the outset of her (2009), McGowan says that she is “interested in what such speech actually *does, in and of itself*.” (389, emphasis in the original). The “triggering” idiom relies on g-rules to oppress, so speech does not oppress in and of itself.

helpful since it explains how speech causes oppression and does not explicate the Constitutes Thesis.⁴³

The “enacting” idiom is ambiguous. Which rule-type (s-rules or g-rules) underwrites the participant’s contribution to enact or alter permissibility facts? When you tell me about your inbox and change the topic, it is unclear which rule-type makes your contribution a permissible move. Since rules of accommodation govern conversations, your utterance is permissible and changes what is subsequently permissible; without such a rule your contribution would not have been successful. On the other hand, your contribution is responsible for it being impermissible to talk about anything other than your inbox. So, the “enacting” idiom is unclear between engaging a g-rule or enacting an s-rule. I examine this ambiguity in more detail shortly.

McGowan provides an example of how ordinary oppressive speech is covertly exercitive. Steve and John are co-workers at a factory with very few female employees. As they eat lunch in the employee lounge, John asks Steve “How’d it go last night?” Steve responds, “I banged the bitch.” John, smiling, asks, “She got a sistuh?”

McGowan explains that Steve’s utterance is “*doubly* covertly exercitive” (399). First, Steve’s utterance is a contribution to a conversation and enacts permissibility facts

⁴³ I would like to point out that, if the “triggers” idiom is correct, it does not diminish McGowan’s insight regarding the causal mechanism of oppressive speech. In recent work, McGowan suggests that her project has shifted away from treating covert exercitives as illocutionary: “covert exercitives are not technically an illocutionary phenomenon; they are instead (what I call) parallel acts” (2012, 132, n20). McGowan explains that, like Bach and Harnish’s collateral acts, covert exercitives work parallel to illocutionary acts but, unlike collateral acts, do not depend on the speaker’s intentions or purposes (email correspondence).

(an s-rule engaging the g-rule of accommodation). Second, Steve's utterance is a contribution to gender oppression and enacts permissibility facts:

Since Steve's utterance is a verbal means of mistreating women, it is a contribution to, and thus a component of, a system of gender oppression. As a result, it covertly enacts permissibility facts (s-rules) *in this system of gender oppression*. If the permissibility facts (s-rules) enacted oppress, then so does Steve's utterance. Thus, to determine whether Steve's utterance is an act of oppression, we must, it seems, identify the s-rules enacted by it. As we have seen, since the s-rules depend on the g-rules and since the g-rules for gender oppression are not well understood, we can only speculate about what the enacted s-rules may be.

Here's a hypothesis. Steve's utterance makes it acceptable, in this immediate environment and at this time, to degrade women. His utterance makes women second-class citizens (locally and for the time being). If Steve's utterance does this, then it is akin to a sign reading: 'It is hereby permissible, in this local environment and at this time, to treat women as second class citizens.' Such a sign would surely be an act of gender oppression. The hypothesis suggested here is that, perhaps, Steve's utterance is too. (399–400)

In short, McGowan argues that some utterances constitute oppression because they enact localized s-rules that permit the subordination of socially marked groups. Furthermore, as contributions to oppressive institutions, such utterances are part and parcel of the oppressive institution and carry the oppressive force of that institution. Speakers need not possess the positional authority required of standard exercitives because the g-rules of the oppressive practice supply the needed authority. Accordingly, McGowan's covert exercitive analysis is an improvement over Langton's analysis insofar as McGowan's recognizes that, in addition to creating g-rules of institutions, speech contributes to oppressive practices in other ways.

B. Criticism of the Covert Exercitive Model

In what follows I do not deny that Steve's utterance is a verbal means of mistreating women or that the utterance is a contribution to a system of gender oppression. It is. What I wish to deny is the explanation of what makes it oppressive. The utterance does not (covertly) *enact* permissibility facts within the practice of gender oppression. Instead the relevant permissibility facts had been antecedently established prior to Steve's utterance by the various norms (g-rules) of the oppressive practice in which his utterance is a contribution. Steve's utterance counts as successful contribution (and thereby constitutes oppression) because the utterance *engages* (and not *enacts*) the existing norms of gender oppression. To demonstrate this point I will argue that, first, the relevant permissibility facts are always operative through the norms (g-rules) that govern oppressive practices. As such permissibility facts are not altered in fiat-like ways. Second, Steve's utterance is disanalogous to the sign: Steve's utterance is a contribution that engages the norms of gender oppression, but the sign describes a norm of gender oppression.

(i) permissibility facts are not altered in fiat-like ways

As a first step, notice that Steve's utterance is a contribution to (at least) two norm-governed practices: conversation and gender oppression. As a contribution to the conversation, Steve's utterance alters the permissibility facts regarding what the conversation is currently about as well as its linguistic-register: it is now impermissible for John to discuss football, unless his next utterance is about football, and it is now

permissible to use “low-brow” or vulgar language. Moreover, Steve alters what is permissible because his contribution is successful.

But, why is the contribution successful? This question raises a more general question: what counts as a successful contribution to a practice? In the conversational practice, pretty much every contribution is successful because conversational rules of accommodation permit the move by altering the conversational score to accommodate the contribution. In other words, a norm (g-rule) of conversations determines whether the contribution succeeds. As I pointed out earlier, such success is inexpensive because of how rules of accommodation function. However, norms governing other practices are more stringent. In baseball, a batter walks after the fourth ball: it is impermissible to walk otherwise. In such cases a norm governing the practice determines the success of the contribution: the batter’s walking to first is a successful move only if the umpire calls a fourth ball. So, as a contribution to gender oppression, Steve’s utterance alters permissibility facts only if his contribution is successful.

McGowan and I both agree that Steve’s utterance oppresses and does so because it is a successful contribution to the oppressive practice, but we disagree about what role the utterance plays. She argues that the utterance enacts permissibility facts (rules) that oppress. However, I maintain that the utterance engages permissibility facts (rules) that were already operative, just as the batter engages a rule when he walks to first after the umpire calls the fourth ball. That is, the batter engages a rule that was already operative within the practice.

The distinction between engaging and enacting permissibility facts may seem as if I am splitting hairs. But consider Case 4. Senator Rand Paul, addressing the Iowa Faith and Freedom Coalition shortly after President Obama announced his evolved stance on same-sex marriage, says, “The President recently weighed in on marriage. Call me cynical, but I wasn’t sure his views on marriage could get any gayer.” On McGowan’s account Senator Paul’s utterance enacts permissibility facts such that “it [is] acceptable, in this immediate environment and at this time, to degrade” gay men and women. This explanation does not seem quite right because it is already permissible, at this meeting, to degrade gay men and women because members and guests of the Coalition were discussing strategies to combat the political and social gains of “Gay America.”⁴⁴ Earlier, in the context of critiquing Langton’s view, I pointed out that Senator Paul’s punning joke does not enact or alter policies regarding gay men and women or alter the meaning of ‘gay’. But, in this context, Senator Paul’s joke succeeds as a contribution to the oppressive practice because he engages existing norms governing the meeting. His utterance does not enact a new norm “here and now”. If this is true regarding the meeting, it is also true of widespread oppressive practices.⁴⁵ So, Steve’s utterance demeaning women succeeds because it engages norms (permissibility facts) already operative within the context of the broad practice of gender oppression.

⁴⁴ Regardless of your conception of oppression, whether structural or the more traditional, purely legal-political conception—such a meeting seems paradigmatic of trying to establish laws and social structures that limit (and oppress) members of the LGBT community.

⁴⁵ I take the Iowa Faith and Freedom Coalition to be a particular norm-governed anti-gay practice (an institution) within a widespread norm-governed anti-gay social practice.

Allow me a few words motivating my distinction between engaging and enacting permissibility facts. As I argue for more fully elsewhere,⁴⁶ the permissibility facts of social practices are rarely enacted in fiat-like ways. Of course, standardly exercitive utterances shape some aspects of our practices, as happens in the Pretoria legislator example or when the governing body of an institution meets and develops new bylaws. However, for the most part social practices, especially those that are widespread and informal (e.g. practices involving family, gender, and race), and the norms constituting these practices are performed and normalized in such a way that creates certain, standing permissibility facts.⁴⁷ For instance, given historical, sociological, and political practices, a white person's use or mention of the N-word is *always* impermissible—even in contexts when the speaker is explicitly *not* subordinating, as when a conference speaker discusses the semantics of pejoratives. Of course, speech is one way to perform and normalize oppressive practices and norms, but one's use of oppressive speech expresses a commitment to a norm (i.e. engages a norm) rather than enacts or alters a norm.

⁴⁶ I argue for these claims in the fourth and fifth chapters of my dissertation.

⁴⁷ Consider the following example. A father decides to divvy up chores among his children and he assigns his daughter laundry and cleaning chores and his son pet detail and yard work. He engages existing norms regarding what is considered appropriate work for women and men; he has not enacted new permissibility facts regarding gender oppression, though he has enacted permissibility facts regarding who does which chores. Moreover, the father, by engaging these norms reinforces and perpetuates the relevant norms. In such a case, the “enacting” idiom seems misplaced.

(ii) *disanalogies between the sign and Steve's utterance*

McGowan's hypothesis that Steve's utterance is akin to a sign that reads, "It is hereby permissible, in this local environment and at this time, to treat women as second class citizens" is misleading. First, the sign describes (or expresses) a norm of gender oppression. Although the message of the sign specifies the norm for a particular locality, it does not enact or alter permissibility facts within gender oppression, since it was already permissible to demean women. The sign just reminds us of these social facts. Consider Case 2 in which Susannah says to her daughter, "The idea of your kissing another woman is unimaginable and disgusting." Her utterance is akin to the sign insofar as it expresses a norm of sexual oppression. Among other things, Susannah's utterance reminds her daughter that some participants of the oppressive practice conform to and enforce this norm.

There is another point of analogy between Susannah's utterance and the sign. *Posting* the sign and the utterance are both moves that engage operative norms of the relevant oppressive practice. So, perhaps, what is meant to be analogous between the sign and Steve's utterance is that *posting* the sign and the utterance are akin in that both are contributions to oppressive practices that engage the relevant norms. If this is correct, then the sign analogy further blurs the distinction between engaging a rule and enacting a rule. Neither posting the sign nor the content of the sign enacts permissibility facts that were not already operative. In the first place the sign expresses a norm of gender oppression (just as Susannah expresses a norm of sexual oppression) and, in the second,

posting the sign and the utterances are contributions to oppressive practices, but they engage (and not enact) existing norms (permissibility facts).

3. Conclusion

To return to the question of my title, “Is oppressive speech exercitive?” The answer is a highly qualified “yes”. Some oppressive speech is standardly exercitive insofar as an individual with the right positional authority enacts a policy that oppresses. So, the Pretoria legislator’s utterance and “whites only” signs oppress because of the policies they enact. However, oppressive speech is rarely exercitive in this sense because speakers either rarely enact such policies or fail to satisfy the stringent success conditions of standard exercitives. So, the strategy discussed in the first half of the paper is a poor model for explaining how the majority of oppressive speech is speech that constitutes oppression.

The second strategy also fails not because the success conditions of covert exercitives are too stringent, but because it does not adequately explain how speech acquires oppressive force. Covert exercitives model oppressive speech in terms of what utterances enact. However, utterances engage existing norms and do not enact permissibility facts. Whereas the standard exercitive model fails to generalize to many instances of oppressive speech, the covert exercitive model mischaracterizes the mechanism by which utterances contribute to norm-governed oppressive practices.

A third strategy, which emerges in the second half, suggests that “constitutes” is best explained by appealing to how speech is a contribution that oppresses because it

engages the norms of an oppressive institution. Contrast this explanation with Langton's explanation of "constitutes," which turns on whether an utterance has the right sort of illocutionary force and with McGowan's, which turns on whether speech *qua* contribution enacts rules that oppress. In the first case, to constitute oppression speech must have the right sort of illocutionary force, but as we have seen, instances of oppressive speech may have very different illocutionary force. In the second case, speech must enact rules that oppress yet, as I have argued, some speech engages rules within oppressive practices. Speech constitutes oppression insofar as it is a successful contribution because norms of the oppressive practice permit the contribution. That is, speech constitutes oppression when it engages a g-rule that oppresses.

Although neither account of exercitive speech satisfies the condition of adequacy presented at the outset, we should not give up on the Constitutes Thesis. So far, we have two clues for developing a more adequate explanation of how speech constitutes oppression. First, we must explain how speech engages the norms of oppressive institutions. Second, since we have seen how exercitive-only accounts fail to satisfy the condition of adequacy, we must offer an analysis that relies on a pluralism of speech acts in modeling oppressive speech.⁴⁸

⁴⁸ I address explain how speech engages the norms of social practices in Chapter 4 and argue for a pluralism of speech acts in modeling oppressive speech in the next chapter, Chapter 2.

Chapter 2

THE THREE CS OF OPPRESSIVE SPEECH

(Or, a Minimalist Model of Oppressive Speech)

In the previous chapter, I argued that exercitive models of oppressive speech fail to explain how some speech constitutes oppression because both of these models fail to satisfy a condition of adequacy, namely that any model of oppressive speech must explain a range of utterances that we recognize as oppressive (racist, sexist, homophobic, etc.). Such failure, however, is not cause for abandoning the Constitutes Thesis. Instead, we should set aside exercitive-only models of oppressive speech and look elsewhere for an explanation of how speech constitutes oppression. The argument of the previous chapter left us with two clues for developing this more adequate account: (1) we must explain how speech *engages* the norms of oppressive institutions and (2) we must offer an analysis that relies on a pluralism of speech acts. The task of this chapter takes up the second clue and argues for such an analysis. The other task will have to wait—chapters three through five offer such an explanation.

The guiding thought behind the current chapter's argument acknowledges that we do a lot with speech—and through an array of various different types of speech acts. Just this morning I *greeted* various people, *directed* someone to HMNSS 3400, *joked* about tea bags and tea parties, *asked* about my office-mate's weekend, *recited* (to myself) bits of a lecture, *lectured*, *assigned* homework, *graded* a paper, and *changed* the topic of conversation from something potentially embarrassing. These speech acts run the gamut

of communicative-type speech acts—acknowledgments (greeting), constatives (lecturing), directives (directing, asking)—ceremonious-type speech acts (assigning and grading), and collateral speech acts (joking, reciting, and changing the topic). When we consider all the ways we use language to subordinate, demean, and dehumanize, we will generate a list closer to my list of the morning’s speech acts than to the short list offered by the exercitive models of oppressive speech.

Another way to characterize the problem of exercitive-only models is to consider what explanations of non-obvious exercitive utterances will ultimately look like. For instance, how will an explanation of “I find your kissing another woman disgusting and unimaginable” look on the exercitive model? The exercitive models of oppressive speech argue that oppressive speech must be exercitive because *only* exercitive speech acts make something the case. Thus, when analyzing oppressive jokes (“why are aspirin white? you want them to work, don’t you?” or “why are women abused? so, they’ll listen”), slurs, compliments (“hey, baby, I like what you’re working with) and complaints (“she’s pushy” of an outspoken woman), the advocate of the exercitive account must offer a complicated (and contorted) explanation of how such utterances make something the case.⁴⁹ My account seeks to also avoid this problem.

The account I argue for is pluralistic and minimalist. I call this account the “3 Cs of Oppressive Speech” (or “3Cs” for short) because, following Kent Bach and Robert M Harnish’s (1979) theory of speech acts, the account models oppressive speech through

⁴⁹ Indeed, as I argued in the first chapter, for such jokes and slurs to oppress, much already must have been made the case.

the various species of Communicative, Ceremonious, or Collateral speech acts.⁵⁰ The 3Cs account accepts speech act pluralism insofar as it ascribes utterances oppressive force through a variety of different speech act types and some utterances may have oppressive force through two or more different speech act types simultaneously. In fact, my hypothesis is two fold: first, any instance of oppressive speech can and will be categorized into, at least, one of the recognized, legitimate speech act types (e.g. assertives, suggestives, advisories, prohibitives, exercitives, verdictives, greetings, etc.); second, for any speech act type (acknowledgments excluded) there will be utterances that constitute oppression.⁵¹ Since I have neither space nor my reader's patience to prove the hypothesis, I will discuss a handful of examples that exemplify different speech act types.

Moreover, the 3Cs account is minimalist insofar as it characterizes utterances naturally and according to the speaker's *prima facie* intention for uttering what he does. An assertion that "women belong in the kitchen" is just that—an assertive utterance by which the speaker expresses his belief and his intention that his audience have a similar

⁵⁰ My labels differ slightly from Bach and Harnish's. What I call "Ceremonious" they call "Conventional". In Chapters 4 and 5, I develop a technical sense of 'convention' that differs from how they use 'convention'. Nothing is lost by calling these acts "Ceremonious," though. In fact, the designation helps to reinforce the infrequency of such acts.

⁵¹ I do not mean the second part in a trivial sense such that one could always affix a slur into one's utterance and thereby oppress. My exemption regarding acknowledgments captures the fact that sincere and literal instances of, say, condoling and apologizing, could not be oppressive. Apologizing and condoling, if containing a slur or used to demean seem to undermine the speech act. Other instances of oppressive speech may be categorized as acknowledgment-type acts (see the end of section I.B below).

belief.⁵² However, a consequence of the 3Cs minimalism is that, on its own, the account does not offer an explanation of how speech oppresses. We saw, in the previous chapter, that the exercitive accounts faced trouble in explaining how exercitives constitute oppressive force. The 3Cs eschews this responsibility: any speech act model of oppressive speech cannot (and should not) explain how speech oppresses until it explains how such utterances engage the norms of oppressive institutions. However, such an explanation will have to wait until later chapters.

In the first section, I present the 3Cs account and demonstrate how instances of oppressive speech may be characterized using various species of speech acts. My method in this section is to consider a handful of utterances I have uttered, heard, or have been told about and model and explain how the 3Cs account models these utterances. Then, I consider two alternatives to my account. Both alternatives suggest a speech act type called “oppressives”. The first suggests that oppressives are a species of constative (alongside assertives and suggestives) and the second suggests that oppressives are a species of acknowledgments (alongside greetings and congratulating).⁵³ I argue that my account is superior to both alternatives. The oppressives speech act type requires that

⁵² Of course this utterance expresses a rather obviously bigoted belief and, given today's social climate, the speaker may even intend to oppress or, at least, offend in uttering what he does. Consider a less bigoted utterance, a case of "civilized" oppression, say, when someone calls President Obama lazy because of his lackluster performance during a debate. In such a case, a speaker need not be aware of how the utterance relies on and contributes to the oppression of African-Americans insofar as "lazy," when applied to African-Americans, is code for stereotypes. Instead, all the speaker need intend is his contribution to the conversation.

⁵³ In earlier drafts of this chapter, I considered discussing semantics-based alternatives. However, I have decided to excise this discussion from the dissertation and develop it elsewhere.

speakers possess an intention to oppress, but many speakers lack such intentions.

Throughout the chapter, I assume familiarity with Bach and Harnish's theory of speech acts. Readers who are unfamiliar with their theory are advised to peruse the appendix to this chapter, in which I offer an overview of their account.

1. The Three Cs of Oppressive Speech.

I have been arguing that any account of oppressive speech must explain the range of utterances recognized as racist, sexist, or homophobic. The 3Cs model satisfies this condition because it characterizes oppressive speech on three bases: either (i) as Communicative speech acts, according to the speaker's illocutionary intention, or (ii) as Collateral speech acts, according to the speaker's extra-linguistic intentions, or (iii) as Ceremonious speech acts, according to the speaker's intentions to adhere to a convention. Shortly, I will say much more regarding each of these bases, but for the moment it will be sufficient to point out that much speech in conversational contexts falls within the Communicative and Collateral classes and the remainder of speech in such contexts is of the Ceremonious class. In this way, the 3Cs account explains which speech act(s) constitute an instance oppressive speech.

It might seem strange that my argument turns on a speech act theory that characterizes oppressive speech in terms of the speaker's intentions. Surely, there are problems for any account of oppressive speech that depends on a speaker's intention and the hearers' recognition of that intention, if the oppressive speech act is to succeed. The strangeness is more apparent if one remembers that in the Introduction I argued that

oppression often occurs without an oppressor. For example, in the previous chapter, I helped myself to a case in which a restaurant proprietor enacted a hiring policy, which turned out to be oppressive. Moreover, I recognize that much oppressive speech is both “civilized” or occurs “under the radar” for most speakers. Non-private speech is rarely intentionally oppressive.⁵⁴ The really pernicious cases of oppressive speech are those that occur when the speaker is unaware of the oppressive force of their speech. Of course, the out and out bigot intends to subordinate and chooses his words for this purpose. However, a well-intentioned liberal may unintentionally utter a racist, sexist, or homophobic remark and think nothing of it until someone points out his offense and he immediately retracts his comment and apologizes profusely.⁵⁵ Nonetheless, in both the bigoted and well-intentioned cases, the speaker certainly intends the speech act he utters: the proprietor intended to enact a policy and the well-intentioned liberal intended to remark or comment.

In these cases, we ought to point to the oppression (and the structures that create, perpetuate, or allow this action within the structure) and argue that oppression occurs without the intention to oppress (and despite the well-meant intention to help). I consider these problems superficial because, given the minimalism of the 3Cs account, speech act theory does not need to meet the worry about intention and oppression. We need to have

⁵⁴ A constellation of social norms exist that regulate and prescribe against outwardly bigoted language. In conservative circles this constellation is (pejoratively) called "political correctness". These norms are less operative in private spheres (or, at least, places away from public scrutiny). For instance, these norms were not operative in the locker room of my high school hockey team.

⁵⁵ See Marilyn Frye's chapter "One Being White" in her (1983).

certain intentions (e.g. Bach and Harnish's R-intentions) to communicate, but oppressive social institutions may override our intentions. So, in some ways our illocutionary acts are hostage to the perversity of our audiences and social circumstances.⁵⁶ For instance, given the long history of race relations in the United States, I should *never* say the "N-word," even when I have the best intentions in lecturing about the pernicious and damaging effects of slurs. My utterance of the N-word is hostage to racist institutions.

Nonetheless, characterizing oppressive speech in terms of the speaker's intentional speech acts has two benefits. First, it reinforces the naturalness and straightforward explication of the 3Cs minimalism. The advocate of the 3Cs model does not need to offer a contorted explanation of a speaker's speech act. Second, it redirects the question of how speech constitutes oppression by directing focus away from any particular speech act-type or power imbued in such speech acts. In other words, focusing on the speaker's intentional speech acts, especially in those cases where the speaker does not intend to oppress, suggests that the ultimate explanation of the oppressive force of speech lies elsewhere: in social institutions that are oppressive and the social norms that constitute these institutions. However, I have run ahead of myself—the argument of this chapter is that the 3Cs satisfy the condition of adequacy regarding the range of utterances

⁵⁶ A well-developed subgenre of the oppressive speech and pornography literature addresses how some speakers are illocutionarily silenced because audiences fail to secure uptake of the speaker's illocutions—for instance, rapists fail to recognize a woman's "no" as a refusal of sex (see Langton (1993); Langton and West (1999); Maitra and McGowan (2009); McGowan (2009b)). Some critics, e.g. Jacobson (1995) and Bird (2002), have argued that this is implausible because speakers' intentions are not hostage to their audience in such ways. Rebecca Kukla (2012) has recently offered an account of precisely how speakers' illocutions are hostage to their audiences.

that constitute oppressive speech. Beginning in the next chapter, I argue for this ultimate explanation.

In what follows in this section, I examine each base of the 3C model and demonstrate how instances of oppressive speech are characterized by the different speech act types that comprise each base. By way of introducing each of the 3Cs, I briefly explain the class of speech acts. For a more in-depth explanation of each class of speech act, consult the appendix. Since I discussed exercitives (one species of the Ceremonious class) at length in Chapter 1, I turn to Ceremonious speech acts first.

A. Oppressive Ceremonial Speech Acts

The most natural place to begin advancing my argument for the 3Cs account is within the Ceremonious class of speech acts, a class populated by exercitive and verdictive speech acts. In the previous chapter we discussed and investigated exercitives at length. Verdictives are closely related to exercitives and have the illocutionary force of ranking, valuing, or delivering a finding of some institutional matter of fact or value. The umpire's "Strike!" is verdictive because, with that utterance, he judges or ranks a pitch as such. Moreover, verdictives have success conditions similar to exercitives, namely that the locutionary content expresses the content of the judgment, that the speaker intends his utterance to have verdictive force, and that the speaker has the requisite authority (within an institution) to rank or value.

With both exercitives and verdictives the speaker's intention is not necessarily communicative because the speaker does not express an attitude (belief, intention, desire,

etc.) by offering an utterance as evidence for having that thought. Instead, exercitive and verdictive utterances affect or alter institutional states of affairs and so the speaker's intention is just to alter these states of affairs. Ceremonious speech acts affect and alter the institutional status of persons or objects, create or alter institutional rights and obligations, or further some institutional practice or procedure (11).⁵⁷ Moreover, Ceremonious speech acts succeed when the speaker satisfies the relevant convention underwriting the speech act.⁵⁸ For instance, a wedding officiant satisfies marriage conventions when she says "By the powers invested in me by the state of California, I now pronounce you husband and wife".

As we have already seen in the previous chapter, Rae Langton offers the Pretoria legislator's "Blacks are not permitted to vote" as a paradigmatic exercitive speech act that oppresses. Following the foregoing analysis of Ceremonious speech, the legislator satisfies the relevant conventions—being elected, having the requisite authority, and saying the right words in the right context—and thereby alters the institutional state of affairs, namely that black South Africans are no longer permitted to vote. The same utterance, as Langton rightly argues, is also verdictive insofar as the legislator legitimates discrimination against South African blacks and ranks them as second-class citizens.

I argued in the previous chapter that much oppressive speech is not exercitive because most of us are not in a position to satisfy the various success conditions of

⁵⁷ All in-text citations refer to Bach and Harnish (1979).

⁵⁸ Bach and Harnish stress that 'convention' here is a technical concept and does not connote ordinary uses of 'convention'. By 'convention' they just mean 'counts as' rules: saying "strike!" counts as judging a pitch a strike. This sense of 'convention' will be further addressed in Chapters 3 and 4.

exercitive and verdictive speech acts, especially the authority condition. That is, few of us are ever in a position to establish (through exercitives) oppressive policies that create or reinforce existing institutions of oppression. It is just a fact about who we are that much of the speech—oppressive or not—that we utter is best characterized by Communicative or Collateral speech acts. Nonetheless, recognizing that a few instances of oppressive speech belong to the Ceremonious class of speech acts is important for an adequate and comprehensive model of oppressive speech. I now turn to the other classes of speech acts.

B. Oppressive Communicative Speech Acts

A crucial component of my argument in the dissertation requires recognizing that the vast majority of oppressive speech ought to be classified in terms of different species of communicative illocutionary acts, which include constatives, directives, commissives, and acknowledgments. A communicative illocutionary act is successful if the speaker's illocutionary intention (say, to assert, to promise, to request, etc.) is recognized by the speaker's audience. To effect success, in uttering what she does, a speaker offers evidence for having a particular thought. Thus, illocutionary acts are identifiable by understanding what attitude the speaker expresses in uttering the words she does.⁵⁹

My argument in this section is inductive: I present examples of oppressive speech for a few species of speech act types within each genera of the Communicative class and show how these examples are characterized. In the explications that follow I am, technically, only arguing that oppressive speech is characterizable in terms of different

⁵⁹ For a more comprehensive explanation of communicative speech acts, see the section on Communicative speech acts in the Appendix.

speech acts (i.e. the first part of my hypothesis). I aim to demonstrate that the 3Cs account satisfies the condition of adequacy laid out in the previous chapter.⁶⁰ I encourage the reader to generate her own examples, accumulating more evidence for my hypothesis. So, to show that assertions, promises, ascriptives, prohibitives, and so on, are oppressive, I provide Bach and Harnish's analysis of the speech act type under investigation. I, then, present an example utterance of oppressive speech and demonstrate how the example fits Bach and Harnish's analysis.

Within the constative genus of Communicative speech acts, I will examine assertives, descriptives, assentives, and suggestives, which are only a few of the species of speech act types that populate the constative genus. Bach and Harnish offer the following analysis of assertives:

Assertives: (affirm, allege, assert, aver, avow, claim, declare...[and so on for verbs that denote assertion].)

In uttering e, S asserts that P if S expresses:

- (i) the belief that P, and
- (ii) the intention that H believe that P. (42)

Suppose one man, talking to another, says sincerely and literally, "Women belong in the kitchen." We can characterize his utterance as such:

In uttering "women belong in the kitchen," the man asserts that women belong in the kitchen if he expresses:

- (i) the belief that women belong in the kitchen, and
- (ii) the intention that the other man believe (or continue to believe) that women belong in the kitchen.

⁶⁰ Keep in mind, though, I take satisfying this condition as only part of the explanation of how some speech constitutes oppression. The other part of the explanation involves how these speech acts so characterized *engage* the norms governing oppressive institutions. I will argue for this portion of the explanation in Chapters 4 and 5.

Both (i) and (ii) are satisfied because, by hypothesis, the man communicates sincerely and literally. On such an analysis, we can explain how this and other utterances are assertions that oppress. For instance, when Susannah says to Rebecca, her daughter, “The idea of your kissing another woman is unimaginable and disgusting,” the utterance is best analyzed as an assertion: Susannah offers her utterance as evidence to her daughter that (i) Susannah believes her daughter’s kissing another woman is disgusting and unimaginable and that (ii) Susannah intends that her daughter believe that Susannah has this belief.⁶¹ Likewise, we can accommodate Steve’s utterance “I banged the bitch” to the assertive—a more natural characterization of his speech act than the covert exercitive characterization Mary Kate McGowan advances, which we discussed in the previous chapter.

Suppose Francine and Marvin are discussing their recent math test and have the following sincere and literal exchange:

Francine: Asians are good at math.

Marvin: Yeah, and that’s why I never set the curve.

We can characterize the utterances as follows:

Descriptives: (appraise, assess, call, categorize...[and so on])

In uttering e, S describes o as F if S expresses:

(i) the belief that o is F, and

(ii) the intention that H believe that F applies to o. (42)

So,

⁶¹ At this stage of the argument, it may seem that my explanation is unsatisfactory because I have not explained how these assertions oppress. I agree: so far the explanation *is* unsatisfactory; it will become more satisfying at the next stage of the argument, which occurs in later chapters. Momentarily, I will address the unsatisfactoriness of the current stage of argument. See section II.D below.

in uttering “Asians are good at math,” Francine describes Asians as being good at math if she expresses:

- (i) the belief that Asians are good at math, and
- (ii) the intention that Marvin believe that being good at math applies to Asians.

Marvin’s utterance can be characterized as an assentive and a suggestive:

Assentives: (accept, agree, assent, concur)

In uttering e, S assents to the claim that P if S expresses:

- (i) the belief that P, as claimed by H (or otherwise under discussion), and
- (ii) the intention (perhaps already fulfilled) that H believe that P. (43)

So,

in uttering “yeah,” Marvin assents to the claim that Asians are good at math if he expresses:

- (i) the belief that Asians are good at math, as claimed by Francine, and
- (ii) the intention (already fulfilled) that she believe that Asians are good at math.

Marvin’s utterance also contains a suggestive—“And that’s why I never set the curve.”

Given Bach and Harnish’s analysis, we have

In uttering “that’s why I never set the curve,” Marvin suggests that he never sets the curve if he expresses:

- (i) the belief that there is a reason (Asians are good at math), but not sufficient reason, to believe that he never sets the curve, and
- (ii) the intention that Francine believe that there is a reason, but not sufficient reason, to believe that he never sets the curve.

As is true in the case of assertion, conditions (i) and (ii) are satisfied in the above examples because, by hypothesis, the interlocutors communicate sincerely and literally. Moreover, suppose that Marvin’s suggestive was not preceded by the assentive “yeah”. In such a case, Marvin’s utterance of “And that’s why I never set the curve” can be characterized as both an assentive (he is agreeing with Francine’s suggestive) and a

suggestive. Thus, we can explain an utterance's expressing a plurality of illocutionary intentions and, moreover, explain how an utterance involves a plurality of speech acts.⁶²

Oppressive speech also occurs as directive speech acts. For instance, there are clear cases of oppressive prohibitives and advisories. A prohibitive communicates that the content of the sentence one utters is a reason not to do something or other. When I say to my students "Late papers are not accepted" I am providing a reason not to turn their papers in late. Bach and Harnish characterize prohibitives as such:

Prohibitives: (enjoin, forbid, prohibit, proscribe, restrict)
In uttering e, S prohibits H from A-ing if S expresses:
(i) the belief that S's utterance, in virtue of his authority over H, constitutes sufficient reason for H not to A, and
(ii) the intention that because of S's utterance H not do A. (47)

Suppose Heather, a recent transfer to the branch, and Shawn, the branch's manager, are discussing the recent meeting with the regional manager. During the meeting, the regional manager ignored her suggestions, but listened avidly when male employees offered similar suggestions. Heather has just expressed her indignation and Shawn says, "Don't be hysterical. Here's what you should do: Next meeting, wear a nice dress—not those frumpy suits you always wear—and flirt a little, if you want him to take you seriously." Shawn's first sentence, given the prohibitive analysis, is easily characterized:

⁶² I point this out because speech act pluralism is important for at least two reasons. First, by allowing that an utterance involves a plurality of speech acts, I can accommodate Langton's and McGowan's intuitions that oppressive speech involves a pluralism of speech acts. (I track this in various footnotes in the first chapter.) Second, in allowing for speech act pluralism, I can explain how one utterance contributes to a number of social practices by simultaneously engaging (i.e. being a contribution) to various norms governing a particular social practice or by engaging various social practices simultaneously.

In uttering “don’t be hysterical,” Shawn enjoins Heather from acting hysterically if Shawn expresses:

- (i) the belief that his utterance, in virtue of his authority over Heather, constitutes sufficient reason for her not to act hysterically, and
- (ii) the intention that because of his utterance, she stop being hysterical.

Moreover, Shawn advises Heather. The analysis of advisories is such that

In uttering e, S advises H to A, if S expresses:

- (i) the belief that there is (sufficient) reason for H to A, and
 - (ii) the intention that H take S’s belief as (sufficient) reason for H to A.
- (48)

Accordingly,

in uttering “wear a nice dress...and flirt a little...,” Shawn advises Heather to wear a nice dress and flirt with the regional, if Shawn expresses:

- (i) the belief that there is reason for Heather to dress well and flirt, and
- (ii) the intention that she take his belief as reason for her to dress well and flirt with the regional.

Commissives are utterances that express the speaker’s belief and intention to obligate herself in some way or other. As is the case with other communicative illocutions, commissives also characterize certain instances of oppressive speech. Bach and Harnish provide analyses for two representative commissives: promises and offerings. A promise is analyzed thus:

Promises: (promise, swear, vow)

In uttering e, S promises H to A if S expresses.

- (i) the belief that his utterance obligates him to A,
- (ii) the intention to A, and
- (iii) the intention that H believe that S’s utterance obligates S to A and that S intends to A. (50)

Commissives, then, might be a good candidate for characterizing racist and sexist threats in which the threatened consequence is what the speaker obligates himself to do. Bach and Harnish analyze offerings as follows:

Offers: (offer, propose)

In uttering *e*, S offers A to H if S expresses.

- (i) the belief that S's utterance obligates him to A on condition that H indicates he wants S to A,
- (ii) the intention to A on condition that H indicates he wants S to A, and
- (iii) the intention that H believe that S's utterance obligates S to A and that S intends to A, on condition that H indicates the wants S to A. (51)

Clear cases of oppressive offers in the arena of sexism are those made by superiors—managers, professors—or peers that proposition the hearer with a sexual quid pro quo.

Finally, I turn to the remaining type of communicative speech act:

acknowledgments. At their core, acknowledgments express certain feelings towards the hearer: these feelings ought to be appropriate, given certain occasions. The feeling may be genuine and sincere or they may be expressed to satisfy certain social expectations (51). So, the analysis of each type of acknowledgment involves the expression of some feeling and the intention that the hearer believes that the speaker has the feeling or that the speaker's utterance fulfills the social expectation. For instance, greeting receives the following analysis:

Greet: In uttering *e*, S greets H if S expresses.

- (i) the pleasure at seeing (or meeting) H, and
- (ii) the intention H believe that S is pleased to see (or meet) H.⁶³ (52)

A superficial problem for my account is that, for the most part, Bach and Harnish describe positive types of acknowledgment—e.g. apologizing, condoling, congratulating, thanking, and so on—all of which are good or socially beneficial things to do. This fact

⁶³ I have excluded the social expectation conditions. They are as follows: (i) the intention that S's utterance satisfy the social expectation that one express pleasure at seeing (or meeting) someone, and (ii) the intention that H take S's utterance as satisfying this expectation.

complicates matters because condolences and apologies seem far from oppressive speech.

However, I propose two ways to address this problem. First, even the positive acknowledgments may be oppressive. A former housemate, answering his phone when his (straight) cousin calls, frequently greeted him, “Hey, faggot!” Second, we should not accept that Bach and Harnish have provided an exhaustive list of acknowledgments. For instance, insults and compliments are missing from the list. If we amend their list of acknowledgments to include these speech acts, then we can characterize straightforward cases of oppressive speech. The (purported) compliment, “Hey, baby, I like what you’re working with” oppresses because it objectifies the target of the utterance. Nonetheless, the speaker expressed a feeling (of approval? appreciation?) and the intention that his addressee believe that he has that feeling. One could easily provide an analysis along similar lines for racial, sexist, homophobic, and other group-directed insults.

I have by no means offered a comprehensive account of how the Communicative class of speech acts models oppressive speech. Nonetheless, I have offered a case for some species of communicative speech acts. I now turn to the last base of the 3C account, Collateral acts.

C. Oppressive Collateral Speech Acts

Collateral acts are conversational acts that are not communicative. That is, they do not express a communicative intention (i.e. speaker’s attitude), but play some other role in the conversational exchange. Collateral acts may occur in the place of a

communicative act (e.g. small talk) or along side of a communicative act (e.g. changing the subject). Collateral acts may be covert insofar as the act not be intended to be recognized, or they may be overt insofar as the act is intended to be recognized.

- Overt collateral acts include: kidding, storytelling, joking, punning, mimicking.
- Covert collateral acts include: innuendo, deliberate ambiguity, and sneaky presupposition.

Instances of oppressive speech abound among collateral acts. Someone who, in conversation or in a digression from it, tells a racist or sexist joke has performed an oppressive collateral speech act. Senator Paul's 'gay' joke is an overt act of oppression, so too the jokes found at the outset of this chapter. Other examples of overt collateral acts—on the way from dinner at a Chinese restaurant to a movie theater, one's date says, "You no be solly. The soup, big spicy," mimicking the waiter's accent and pidgin. A number of my elementary school classmates used to jeer at a Jewish student, saying "Roses are red / violets are blue / thanks to Jesus / I'm not a Jew." A few days after the jeering, I heard a friend recite the poem to herself on the bus ride home. I often find students using sneaky presupposition in class discussions about race, gender, and sexuality. In discussing the role of race and gender in the Democratic primaries of 2010, one student said, "Fortunately, American women decided to act rationally when they voted for Obama." Apparently, voting for Hilary Clinton was clearly not an option for that student.

D. Wrapping up the 3Cs Account

I hope that I have offered enough examples over the previous three sections to demonstrate my thesis that many different types of speech acts characterize oppressive speech. Earlier I claimed that the 3Cs account is pluralistic and minimalistic. It is pluralistic because the account allows that one utterance may have a plurality of illocutionary forces. The account is minimalistic because it characterizes utterances according to the speaker's *prima facie* intention for uttering what she does. There is no explanatory benefit in complicating the analysis of oppressive speech so that it fits one or other speech act type. Before considering alternative ways to analyze oppressive speech acts, I wish to point out a few strengths of my minimal account.

First, my application of Bach and Harnish's theory of speech acts is natural and non-mysterious—a virtue of the account's minimalism. Given the three classes of speech acts, I can characterize any utterance of oppressive speech and do so without stretching or contorting the analysis to fit one speech act type that is presumed to be the locus of oppressive speech. Thus, I avoid the problem of the exercitive models of oppressive speech: oppressive speech does not need to satisfy any stringent conditions for success (as does Langton's standard exercitive account) nor does oppressive speech have to covertly enact permissibility facts (as does McGowan's covert model). In short, oppressive speech runs the gamut of speech act types and none of those types solely explain how speech oppresses. Indeed, as I will argue in the next chapter, speech act theory is explanatorily inert regarding how speech oppresses.

Second, my account allows that one utterance may be characterized as a plurality of speech acts. In allowing for a pluralism of speech acts, we can track the various and complex attitudes we express during communication. Moreover, we can track the various contributions these utterances make to different oppressive practices and how an utterance can make different contributions to one institution or social practice. Reconsider the branch manager's advice—"Next meeting, wear a nice dress—not those frumpy suits you always wear—and flirt a little, if you want him to take you seriously"—which may be understood in terms of an advisory and an insult. Such an utterance doubly contributes to sexism at the workplace. In the first place, the utterance advises the addressee to act more feminine, which undermines her ability to "act like a man," a condition of succeeding at the bank, given the various norms associated with the banking industry. Additionally, the utterance insults the woman's capability and undermines her ability to succeed at the bank. In the fourth and fifth chapters I will discuss how utterances make such contributions.

Third, although the 3Cs model appeals to speakers' intentions to explain which speech act is performed, we do not need to appeal to these intentions in explaining how speech oppresses. The minimalism of the 3Cs account accommodates the relevant intentions, beliefs, and other attitudes to the speaker's purposes in communicating. "Of course, I meant to say that women belong in the kitchen. Those were the words that came out of my mouth. However, I didn't intend to offend or cause distress." In such cases we need not commit the speaker to expressing beliefs, desires, or the like that are oppressive. Speakers cannot (legitimately) deny the oppressive aspects of their speech because what

their speech ultimately does (i.e. oppress) is out of their control. The upshot, here, is that an analysis of oppressive speech is not beholden to the speaker's knowledge or sincerity. Instead, we must appeal to the social context in which they utterance is a move or contribution to a system or institution of oppression. The 3Cs account, then, captures the intuitive idea that speakers intentionally assert, promise, and so on, what they intentionally utter, but the account avoids explaining how the utterance constitutes oppression by appealing to what was intentionally illocuted. As I discussed in the Introduction and will return to in later chapters, much oppressive speech, bigotry aside, is not spoken on purpose but is an insidious consequence either of not thinking about what one says or a testament to the ubiquity and potency of the oppressive institutions in which we live.

At this point, however, the reader will likely be unsatisfied by the 3Cs account articulated and defended in this chapter because it does not explain how some utterances constitute oppression. All I have done so far is to identify examples of oppressive speech that are best characterized by appealing to illocutionary or other intentions. On my view there is no *one* speech act that has the illocutionary force of oppressive—all speech act types may be involved in oppression. I encourage such unsatisfied readers to consider my argument in Chapter 3 as to why speech act theory cannot explain how speech oppresses and to consider my explanation throughout the fourth and fifth chapters of how speech acts, as contributions to oppressive institutions, engage norms governing oppressive practices.

Nonetheless, my job in defending the 3Cs account is not finished. We ought to rule out two other alternatives for how speech oppresses. In the last section of this chapter, I argue against positing a type of speech act, the oppressives, and explain how oppressives will not help in our task of explaining how some speech constitutes oppression.

2. Alternatives: Oppressives

The 3Cs account is one possible application of the Bach and Harnish theory of speech acts to oppressive speech. There are alternative ways of applying the framework and I examine two of these alternatives below. My application of the Bach and Harnish theory of speech acts is minimal insofar as the application says little about how speech constitutes oppression and minimal insofar as the 3Cs model characterizes instances of oppressive speech using the extant taxonomy of speech acts. In other words, my account is minimal because I have not revised or departed from Bach and Harnish's initial framework.

One might offer a non-minimal, non-pluralistic application of the Bach and Harnish theory and claim that there exists a species of speech act that has long been ignored, "the oppressives".⁶⁴ This newly discovered type of speech may have characteristics similar to threats (a species of commissives) or insults (a species of acknowledgments) as types of speech acts that harm their targets or those singled out

⁶⁴ Mary Kate McGowan employs this strategy in early papers on conversational exercitives (2003). There she claims that standard exercitives have been focused on in the literature and that she is uncovering another type of exercitive.

through the utterance's content. As such, the speech act type "oppressives" offers an explanation of how some speech constitutes oppression: just as some utterances are illocutionary acts of promises and thereby constitute promises, some utterances will be illocutionary acts of oppression and thereby constitute oppression. Thus, the alternative is not minimal—it extends and alters Bach and Harnish's taxonomy to include newly discovered speech act types. Additionally, since the new speech act type, as suggested by the parenthetical comments above, may fit into the constative genera or the acknowledgment genera, this alternative is not pluralistic because oppressive speech is only constative or an acknowledgment, depending on which genera the oppressive belongs to.

Moreover, if this alternative is successful and offers an explanation of oppressive speech, then proponents of the Constitutes Thesis would have a strong tool for arguing for First Amendment regulation of oppressive speech (i.e. hate speech) because oppressives could be understood and regulated as speech that harms. Just as hiring a hitman (or other speech acts of criminal activity) and threatening someone are understood as speech acts that constitute harm (and illegal activity) and, are therefore not protected by the First Amendment, so too oppressives-type speech acts.

Unfortunately, oppressives do not stand on their own as a viable speech act type. In what follows I will explore this alternative and ultimately reject the notion of oppressives. Although oppressives may not help explain how speech constitutes oppression, the exercise is not a futile one. First, in exploring the viability of oppressives, we will perform an exercise similar to those performed by other speech act proponents of

the Constitutes Thesis: one discovers a speech act type and argues that this type explains how speech oppresses. The upshot of such an exercise lies in learning why such approaches fail: whether the analysis of the privileged speech act is failing or whether the basis and argument for the Constitutes Thesis is the source of failure. Second, the exercise will be an indirect argument for my 3Cs account insofar as it illustrates problems for the other possible alternatives of the Bach and Harnish theory.

According to my count there are three alternatives: (A) oppressives may be a particular species of constatives or (B) a particular species of acknowledgments. If the constative and acknowledgment possibilities fail, then we have a reason to consider the third possibility, (C) a new genus of communicative illocution.⁶⁵ Oppressives seem a good candidate for both constatives and acknowledgments. In saying, “Women belong in the kitchen,” a speaker might be expressing his belief that women are subordinate to men or the speaker might be expressing (i.e. acknowledging) his feelings regarding the subordination of women. For each alternative analysis, I discuss problems specific to that conception of oppressives. After a discussion of the (A) and (B) possibilities, I point out systemic problems with a communicative illocutionary conception of oppressives. The major systemic problem is this: if oppressives form a category of communicative

⁶⁵ That is, oppressives might be a genus of communicative speech in addition to constatives, commissives, directives, and acknowledgments rather than as a species of one of these genera. I will not argue against this third possibility in the body of the paper. The arguments employed against oppressives as constatives or acknowledgments will also work against the genus-alternative.

I have offered possibilities for an analysis of oppressives as if the speech act type may only be communicative. Oppressive speech that is conventional—i.e. exercitive or verdictive—is easily explained by the existing categories of conventional illocution (see Chapter 1). I address the possibility of oppressives as collateral acts in Chapter 3.

illocutionary acts, then the intention to express an attitude to oppress and the intention that the hearer recognize the expression is necessary for communicative success.

However, oppressive speech often occurs without the speaker's intending to express such attitudes. So, for the particular and systemic reasons, oppressives do not seem an adequate possibility for explaining how speech constitutes oppression.

Any application of the Bach and Harnish framework of communicative illocutions must address the following two questions: in uttering an oppressive, (i) what attitude does the speaker express? and (ii) what hearer-directed intention does the speaker express? Addressing these questions will help us model the various alternatives for oppressives.

In the Introduction, I identified "oppressive speech" as a class of speech that subordinates, dehumanizes, demeans, or inferiorizes another person on the basis of that person's membership in a marked group. The motivation to define "oppressive speech" this way was to track how we define "oppression" as "any action that dehumanizes, demeans, or inferiorizes individuals on the basis of social group membership, actual or perceived." Slavery is oppressive because it dehumanizes workers into tools or machines; sexist behavior is oppressive because it seeks to subordinate women to men. All of the actions of oppression suggest "putting below oneself," so I will take *subordinates* as the

paradigmatic speech act verb⁶⁶ of the category oppressive that means “*to treat members of G as having less value.*”⁶⁷

Although I have provided a provisional definition of ‘subordinate’ as speech act, we still need to determine the attitude-type expressed. Speech act species of a particular genera share with each other a similar form of speaker-attitude: constatives express a speaker’s belief; directives, a speaker’s desire that the hearer perform some future action; and so on. An analysis of oppressives might start with the communicative form of a speech act genera. I plan to do this below. However, I consider only constatives and acknowledgments because the purpose of commissives and directives is bringing about some future action. We can set aside these categories because oppressive speech does not necessarily bring about some future action.

A. Oppressives as Species of Constatives

Let’s examine the constative possibility for oppressives in more detail. If oppressives are a species of constatives, then oppressives should have an analysis similar in form to other constative verbs. Remember, speech act types are individuated by

⁶⁶ “Dehumanize”, “demean”, “inferiorize,” and other oppression verbs for speech acts will possibly have slightly different analyses, both in terms of the speaker’s expressed attitude and associated R-intention.

⁶⁷ I leave the relation “less value” open so that the attitude expressed captures the “essentialism” that often underpins oppression—i.e. members of a group are essentially x. Moreover, leaving open the relation also captures the wide scope of oppressive speech in that, often, oppressive speech does not target specific addressees of a group and that in-group members may contribute to their own oppression. For instance, the utterance “Blacks are lazy” expresses the attitude that African-Americans are inferior regardless of whether it’s spoken by a White, Black, or Asian person.

illocutionary intentions that correspond to the expressed attitude. In performing any one species of the constative genus (say asserting), not only am I expressing my belief that such and such is the case, I am also intending that my audience form or hold that belief. So, for instance, if I say to my office mate, "The new ink cartridge is on the shelf," I express my belief that the new cartridge is on the shelf and I intend that he form the same belief. Following Bach and Harnish's examples, an analysis of oppressives-as-constatives should take the following form:

Assertives: In uttering e, S asserts that P if S expresses:
(i) the belief that P, and
(ii) the intention that H believe that P

Other constatives share the form with the paradigmatic assertives. The analysis of ascriptives, for example, cash out "P" with "F applies to o".

Ascriptives: In uttering e, S ascribes F to o, if S expresses:
(i) the belief that F applies to o, and
(ii) the intention that H believe that F applies to o.

Thus, an analysis for a constative "subordinates" ought to have the following form, cashing out "that P" with the earlier stipulated definition:

Constative Oppressive: In uttering e, S subordinates members of G with P, if S expresses:
(i) the belief that members of G have less value because of P,⁶⁸ and
(ii) the intention that H believe that members of G have less value because of P.

⁶⁸ The definition was "to treat members of G as having less value", so the "because of P" in the analysis (attempts to) explains what it is about members of G that they have less value

In other words, in uttering “women belong in the kitchen,” the speaker subordinates women with the claim that women belong in the kitchen if the speaker expresses the belief that women have less value because they belong in the kitchen and expresses the intention that the hearer believe that women have less value because they belong in the kitchen.

However, such an analysis of oppressives falls short in two important respects: (i) the utterance can be characterized by an already recognized species of constative and (ii) more than belief content seems to be expressed. First, given, the recent analysis of constative oppressives, it seems as if the analysis sneaks in some other kind of speech act or is reducible to a more familiar constative act. Consider the utterance, “Can you pass the peas?” which sneaks in a second speech act. Bach and Harnish treat such utterances as cases of indirect illocutionary acts. The utterance is indirectly a request, but directly a question.⁶⁹ The success of the indirect act depends on the success of the direct act, so “Can you pass the peas?” succeeds as a request, if the hearer first recognizes the utterance as a question. Thus, the above analysis of oppressives sneaks in an indirect speech act: the speaker utters, “Women belong in the kitchen” and directly performs an assertion and indirectly performs an oppressive.⁷⁰ Yet, at this point, there is no good reason to treat the utterance as indirectly oppressive, especially when the oppressive content of the language is explicit. Alternatively, the constative oppressive falls short because, given any

⁶⁹ Indirect speech acts may cross communicative, illocutionary genera. For instance, “My mouth is parched” is directly an assertive, but indirectly a request for something to drink (70).

⁷⁰ I would like to thank Megan Stotts for raising this problem for oppressives.

constative speech act type and an utterance, the utterance can be characterized by the constative type without appeal to oppressives, just as I have done in section I.B above. The best strategy, as I argue in Chapter 3, is to accept that oppressive speech is a familiar speech act type and explain how it oppresses by some other means.

Second, constative oppressives seem to fail in characterizing the attitude that the speaker expresses. One might say that, true, such a speaker expresses a belief that corresponds to the content of the utterance, but he also expresses more than the belief articulated in the content of the uttered sentence (i.e. another attitude in addition to the accompanying communicative intention). To develop the point about expressing more than the belief articulated in the content of the utterance, the proponent of oppressives might attempt to analyze them in terms of acknowledgments.

B. Oppressives as a Species of Acknowledgments

Providing an analysis of oppressives-as-acknowledgments faces a *prima facie* difficulty, which rests in pinning down the illocutionary intention of acknowledgments. The form of the illocutionary intention is similar throughout instances of acknowledgment-types and takes the following form: the intention that the hearer believe that the speaker Xs some state of affairs. In the case of apologizing, the speaker expresses the intention that the hearer believe that S regrets having done something to the hearer; in greeting, the speaker expresses the intention that the hearer believe that S is pleased to meet the hearer. So, in determining the illocutionary intent of oppressives, if it is a

species of acknowledgments, we must determine what state of affairs the oppressive acknowledges.

A second difficulty of determining the illocutionary intention of oppressives-as-acknowledgments involves the existence of the state of affairs acknowledged. I congratulate you on your promotion to dean because you have been promoted to dean; I offer my condolences about the death of Fido because Fido has recently passed. This difficulty is troubling, given the content of the attitude expressed—*to treat members of G with less value*. It is never the case that individuals are less valuable as persons because of their group memberships: nothing about the purported differences in genetics or psychology of gender and race ground the claim that individuals of certain races or genders are superior or inferior as persons. Perhaps, we are mistaken when we utter an oppressive acknowledgment. Of course, I can congratulate you and be unsuccessful. Suppose I heard wrong—you were not promoted, but someone with a similar-sounding name was promoted; or you were offered the job, but turned it down. Nonetheless, that is a failure in my application of offering congratulations. In the instances in which I am not mistaken, the acknowledgment works. However, this dodge does not work in the case of oppressives because every such utterance would misfire. Unsuccessful congratulations occur because (most) cases of congratulations are successful. If attempts to congratulate never succeeded, we would not try to congratulate each other or have linguistic expressions that enable us to do so. So, if every oppressive acknowledgment failed, we would soon stop oppressing. Nonetheless, many of us continue to speak oppressively.

Perhaps this second difficulty dissolves if the state of affairs acknowledged is not considered “objectively”. For instance, the state of affairs may be purported: the speaker acknowledges on the basis of perceived or imagined properties that mark the individual as a member of a social group. Alternatively, perhaps the group has suffered years of discriminatory practices such that members of the group are in fact socially subordinate and lack the material conditions to develop their abilities.⁷¹ It is a consequence of our social institutions that American women earn 77% of what men earn, women are less likely to pursue careers in STEM fields, and so on. So, the speaker might acknowledge a purported or socially real state of affairs. When the speaker’s utterance is an oppressive acknowledgment, then, the speaker presumes the existence of such a state of affairs. So we might have the following analysis:

Acknowledgment Oppressive: In uttering e, S subordinates H for (purported) membership in G if S expresses
(i) lesser value towards H for belonging to G, and
(ii) the intention that H believe that S values H less for H’s belonging G.

An obvious flaw now emerges: not all oppressive speech is said to hearers who belong to the group targeted by the content of the speech. The utterance “women belong in the kitchen” said by a man kibitzing with a male commissarant is not an acknowledgment directed towards or about the hearer. Instead, the attitude or feeling expressed is about a group. Though the acknowledgement captures expressed attitudes in addition to the belief expressed, the analysis of an oppressive acknowledgment seems to mischaracterize how speech is often used.

⁷¹ This is not to say that the group is subordinate by nature, essentially, or in any non-social way.

I have so far discussed a few problems with particular analyses of oppressives. Now, I want to raise two systemic problems for the concept of oppressives—a lack of speech act verbs for oppressives and the fact that intention plays no role in oppressive speech. First, consider the linguistic fact that English lacks speech act verbs for oppressives, especially when one considers that all other speech acts seem to have verbs that correspond to the speech act.⁷² Second, the more damaging problem, there is no necessary relationship between oppression and intention, as has been shown in the no-oppressor cases in the Introduction and the restaurant proprietor case in Chapter 1. The verbs we do have—“subordinates,” “demeans,” “degrades”—apply more generally to out and out physical acts and not just speech acts. We have speech act verbs for asserting, promising, predicting, betting, redacting and so on, and the paradigmatic cases of these verbs involve utterances (or symbolic gestures as is often the case with betting). Although we have verbs for demeaning, subordinating, dehumanizing and so on, the paradigmatic cases involve the treatment of a person or group by another person or group.

Whereas it might be stylistically awkward to prefix one’s utterance with “I assert” or “I predict,” or “I offer” such uses are still conceptually faithful. Moreover, such prefixes are often practical: in uttering the words that denote the speech act I take myself to perform, I make it easier for you to infer or determine my illocutionary intent. That is, I prefix my utterance with “I suggest” so to make it clear that I am not asserting, but just suggesting. An utterance along these lines, “I assert that women belong in the kitchen”

⁷² Obviously, I recognize that sexism and marital rape existed long before anyone coined the terms that signify them. My worry about the lack of speech act verbs does not imply that oppressive speech does not exist but rather that locating oppressives among speech acts is problematic.

sounds awkward because (perhaps, conventionally) asserting is so prevalent that we need not point to the fact that we are asserting. However, the utterances “I subordinate that women belong in the kitchen” or “I demean that women belong in the kitchen” seem to be worse than awkward: we might say that the person speaking this way does not know how to use “demean” or “subordinate”.

Nonetheless, we do prefix some of our oppressive speech. However, in doing so we do not indicate a speech act. We indicate what we are not doing or, at least, offering grounds for deniability. “I’m not sexist, but women belong in the kitchen” or “I don’t mean to sound racist, but...”. That we prefix our utterances in such ways suggests that more is going on than making clear what inference our hearers ought to draw about the speech act we take ourselves to perform.

The second systemic problem, and the more important one, involves the role of intention. In part, oppressive speech occurs without appeal to the speaker’s expressed attitude. And, the other part, whether speech is oppressive ought not be held to the hearer’s recognition of the speaker’s intention.

Consider the well-intentioned liberal who is well aware of sexism and racism—he might actively work against obvious forms of racism and sexism—who unreflectively or out of ignorance says something that is, nonetheless, racist. Alternatively, consider Juan Williams’s clumsy remark, “When I get on a plane...if I see people who are in Muslim garb, I get worried. I get nervous.” In such cases we cannot explain how Williams’s or the well-intentioned liberal’s speech is oppressive in terms of an attitude to oppress or involving the desire to oppress because it is not clear that the speaker is communicating

such attitudes and, usually, will actively and sincerely deny that they have such attitudes. Moreover, the success of communicative illocutionary acts depends on the hearer's recognition of the speaker's communicative intention. So, if oppressives are correctly analyzable as a special type of communicative illocutionary act, oppressives would succeed only when hearers recognized the speakers' intention to express an oppressive attitude. However, chances are that if one accepts that there is oppressive speech, then one probably accepts the claim that oppression occurs whether we recognize it as such or not. So, the notion of an oppressive as a separate communicative illocutionary intention seems mistaken in so far as oppressive speech is not and should not be dependent on the conditions of communicative success.

My aim in this chapter has been to argue for the 3Cs account of oppressive speech. This account satisfies the adequacy condition, that any account of oppressive speech must explain the wide range of utterances recognized as oppressive speech, developed in the previous chapter. In doing so, the account offers a pluralism of speech acts that characterize oppressive speech. However, one consequence of the addressing the adequacy condition is that any speech act account which satisfies the condition will, subsequently, not be able to explain how speech oppresses; the different speech act types provide an account of illocutionary force, but none of these illocutions are themselves oppressive or explain how the utterance has oppressive force. Throughout this chapter, however, I have not explained how speech constitutes oppression—this is not a task any speech act theory can accomplish. In the next chapter, I offer argue for this claim.

APPENDIX TO CHAPTER 2:

An explication of Bach and Harnish's Theory of Speech Acts.

Kent Bach and Robert M Harnish have proposed a thorough (though not exhaustive) account of speech acts. While their primary target is the communicative speech act, they provide theoretical space for other phyla of speech acts. At its core, their model distinguishes conversational speech acts from conventional speech acts and, within the conversational speech acts, they distinguish between acts used to communicate our mental attitudes and those that do not necessarily communicate attitudes (i.e. collateral acts). The communicative family contains the most diversity. There are the constative, directive, commissive, and acknowledgment genera. Each of these genera are populated by various species. For instance, constatives include assertives, predictives, descriptives, and at least twelve other constative speech act types. These distinctions are not exhaustive of all speech acts. For instance, helping ourselves to the vast literature of Gricean counterexamples, recitation (or rehearsal) cannot be placed within either the conversational or conventional kingdoms. A number of these counterexamples involve language that is not social (i.e. neither conversational nor conventional). So, for the most part, I ignore speech acts within the Catchall kingdom. A crude taxonomy would look, so far, like this:

expresses his desire for help by uttering the words he does. “Expressing an attitude” is technical jargon and means “to intend that the hearer take the utterance as a reason to think that the speaker has that attitude” (15). Accordingly, Sam says the words he does with the expectation that Alpie infer that Sam wants help. Now, further suppose that Alpie does in fact infer this. *Viola!* Linguistic communication.

Notice two implications of this case and its description. First, Alpie need not actually lend a hand—doing so is a perlocutionary effect of the exchange. Communication succeeds as long as Alpie recognizes (i.e. infers) that Sam has expressed a request for help. Second, Sam need not actually have the desire for help, though what Sam says is a reason for Alpie to think that he (Sam) has the desire for help. In short, for communication to succeed, Alpie need only infer that Sam has expressed a desire.

Bach and Harnish argue that linguistic communication is an inferential process and necessarily involves (i) the speaker’s having a special sort of intention, called an “R-intention,” that the hearer make an inference about what is said and (ii) the hearer’s making that inference. So, given that communication is an inferential process, communication succeeds if a number of beliefs are shared and operative. That these beliefs are shared is constitutive of the hearer’s recognizing the attitude the speaker has expressed.

First, there are a whole slew of mutual contextual beliefs (MCBs) that particular interlocutors share. These MCBs vary from context to context as well as vary with the interlocutors’ relationships to each other: two strangers on a bus share a lot of contextual

beliefs (Barack Obama is president, they are riding a bus, it is cloudy, etc.), but two friends share a lot more.

Second, interlocutors must share what Bach and Harnish call the “Linguistic Presumption” (LP)—that whenever someone (S) utters any expression in the language to another (H), H can identify what S is saying, given that H knows the meaning of the expression in the shared language (7). So, for instance, when Sally utters “the tomatoes are rotten,” Henry knows what the expression *means*, given the meanings of the individual words. If Sally utters “our mothers bore us,” Henry knows that the expression might mean, the truism, that our mothers gave birth to us, or that our mothers are stultifying. (If Henry and Sally are philosophy colleagues of a certain caste, they might have the MCB that Sally is quoting a Quinean example.) Nonetheless, in the second example, Henry needs more than the LP to figure out which possibility Sally means. Basically, the LP, because it operates as a mutual belief, ensures that interlocutors can assume that their utterances mean what they think they mean.

Third, interlocutors must share another mutual belief, what Bach and Harnish call, the “Communicative Presumption” (CP). Namely, that whenever S says something to H, S does so with some recognizable illocutionary intent (7). So, for instance, when Sally says to Henry, “What did you do last night?” Henry knows she’s *asking him* about his nocturnal meanderings. However, had Henry walked by Sally’s office (empty except for her and her back is to the door) as she utters “what did you do last night,” Henry does not take her to be communicating with him but, perhaps, reciting something or other.

Communicative illocutionary acts, assuming that LP and CP hold, are successful if the speaker's illocutionary intention is recognized by the hearer. When a speaker utters something for the purposes of communicating, the utterance is issued with an "illocutionary intention," an intention that the speaker be understood. So, the intended effect of an act of communication is, primarily, the recognition of the intention of being understood. The hearer recognizes that the speaker has an intention to produce a certain effect in the hearer that the hearer is to identify (and thereby succeeds in achieving the effect) partly by recognizing the effect. To communicate successfully is (on the speaker's part) to express a thought (attitude: belief, intention, desire, etc.) by offering an utterance as evidence of having that thought. To do this, one might say, is for the speaker to R-intend that the hearer take S's utterance as reason to think S has that attitude. (12–15)

Two things are worth pointing out. First, Bach and Harnish are particular about the difference between perlocutionary and illocutionary acts. We might as well keep their stipulation because it is quite useful and will help in the discussion of oppressive speech. To make things simple, Bach and Harnish limit perlocutionary acts to "the *intentional* production of effects on (or in) the hearer" and to producing effects from the various steps of the inferential process (17). Both requirements are in place so that, theoretically, we have the tools ready to explain the rationale of a speech act.

Stipulating perlocutionary effects in this way has a straightforward implication about the literature's notion of *uptake*—the idea that, for a successful speech act, the hearer needs to understand what the speaker says. Bach and Harnish identify uptake with the special sort of intention: the R-intention speakers have when they express a mental

attitude to communicate (13). They claim that the R-intention is not perlocutionary because the hearer's identifying the R-intention (securing uptake) is constitutive of the success of the communicative illocutionary act.

Consider a case when uptake is not secured. While they are cleaning out the garage, Sam says to Alpie, who cannot hear Sam because he is listening to his iPod, "Do you want to take a break for lunch?" Alpie did not understand what was said (because he did not hear Sam), so Sam's attempt at asking Alpie if he wanted to break did not succeed. But what happens when Alpie hears Sam? Just that Alpie recognizes Sam's desire or what Sam is trying to do. But there is no perlocutionary effect until Alpie replies—either "yes" or "no". Perlocutionary effects, according to Bach and Harnish, are better understood as the consequences of recognizing the speaker's intention, and not merely the recognizing of the speaker's intention. So, in the Alpie and Sam case, the perlocutionary effect of Sam's question is Alpie's response.

Consider another example, one involving assertion. Suppose I say to my partner, "I ruined dinner". Assuming that she thinks I am being sincere and literal, she understands that I asserted (said) I ruined dinner. The perlocutionary effects in this case are the beliefs that she has now formed: (i) her belief that I believe I ruined dinner (this is the attitude I expressed in my assertion) and (ii) her belief that she believes I ruined dinner. In this case, unlike the Sam and Alpie case, the perlocutionary effect (as described) is the belief formation (or confirmation) of beliefs in my partner, the hearer. There might be, in this later case, perlocutionary effects in addition to belief formation, especially if she responds to my assertion.

Second, and important for a discussion of oppressive speech, a speaker's utterances are only *evidence* for the speaker's attitudes. The speaker may not in fact have the attitudes for which she provides the utterance as evidence. It is rare that I ever ruin dinner, but sometimes the dish does not come off as I hoped. I may either have tried a method too experimental, or worried about technique and botched something but, in these cases, the dish is still edible. Nonetheless, in these moments, I preface dinner with "I ruined dinner". My partner knows that I am a perfectionist in the kitchen, so she knows that I am being insincere. Consequently, she does not infer from my utterance that I in fact ruined dinner or that I believe I actually ruined dinner.

So far I have discussed what is characteristic about communicative speech acts—that we say certain things as evidence that we have a corresponding attitude. However, I have not said anything about particular types of communicative speech acts and doing so is important because we should have a rough system in place for locating various examples of oppressive speech.

According to Bach and Harnish, types of illocutionary acts should be distinguished by the types of illocutionary intention (i.e. the intended illocutionary effect) rather than by grammatical form or perlocutionary effects. That is, illocutionary acts are identifiable by understanding what attitude the speaker provides evidence for. Additionally, and serving as an additional reason to identify illocutionary acts with the illocutionary intention with which they are performed, the hearer's recognition of an attitude is constitutive of the success of the speaker's illocutionary effect: a communicative speech act is successful, if in part, the audience (the hearers) recognize

what illocution the speaker intends to communicate and thus perform. Moreover, since the illocutionary intention is tied very closely to the attitude the speaker is expressing, types of individual acts are classified in terms of the speaker's expressed attitudes.

There are four basic forms (and many specific types) of communicative intention. Here is a summary of the basic forms.

Constatives express the speaker's belief and his intention or desire that the hearer have or form a like belief (42).

Directives express the speaker's attitude toward some prospective action by the hearer and his intention that his utterance (or the attitude it expresses) be taken as a reason for the hearer's actions (47).

Commissives express the speaker's intention and belief that his utterance obligates him to do something (49).

Acknowledgments express feelings regarding the hearer or the speaker's intention that speaker's utterance satisfies social expectation to express certain feelings and belief that it does (51).

2. Collateral Acts

The four genera mentioned above—constatives, directives, commissives, and acknowledgments—do not exhaust the speech acts of a conversation, though they do exhaust the range of communicative linguistic intentions. However, there are speech acts that occur in conversational exchanges. Bach and Harnish call this range of speech acts “collateral acts”.⁷⁴

If we think of a conversation as a game and the various exchanges and turns between speakers and hearers as moves within the game, then we have already discussed

⁷⁴ See Bach and Harnish (1979, 96–107) for a more detailed discussion.

those “primary” moves of the game and such moves comprise communication. Collateral acts should be understood as “secondary” moves within the game. However, depending on the context and purpose of the conversation, the collateral moves may come to the forefront and become primary moves, as is the case when two canny diplomats sally for prestige or two cantankerous philosophers argue. Nonetheless, the point of the game metaphor is to highlight the additional speech acts performed while communicating.

Some collateral acts occur in the place of or alongside a communicative illocutionary act. A collateral act may take the place of a communicative act, for instance, when one engages in small talk. One is not necessarily expressing one’s attitudes, but rather dealing with uncomfortable silences, treading until the conversation picks up or gets going again, or acknowledging an acquaintance. Other times the collateral act may be performed along with (in addition to) the R-intention. I may tell a joke or story, thereby suspending the communicative presumption, or I may tell a joke or story and in doing so express some complex attitude on my part. For instance, a priest I knew would tell complicated parables instead of providing straightforward advice. Then, there is the enigmatic professor—every department has at least one—who only communicates in collateral acts. Moreover, many collateral acts that are performed along with communicative acts are “conversational moves”—those acts that either sustain or restructure the conversation. Those acts that sustain the conversational situation keep the conversation within mutually expected bounds insofar as the move is appropriate at the current stage or carries the conversation into the next move. The success of these

restructuring acts—whether they change the terms or course of the exchange—depends on the cooperation or lack of opposition between speaker and hearers.

Bach and Harnish distinguish covert collateral acts from overt collateral acts. The difference between them is whether the intention motivating the utterance is intended to be recognized. If the intention is intended to be recognized, then the collateral act is overt, and the act succeeds if the hearer recognizes the speaker's intention. But these acts are not communicative because they do not express an attitude. Instead the speaker exploits the communicative presumption, and the hearer recognizes the intention to exploit this presumption. On the other hand, if the intention is not intended to be recognized, then the act is covert. Such covert acts succeed if the intention is not recognized. One's innuendo, deliberate ambiguity, and devious presuppositions succeed if the hearer does not recognize that the speaker intends these. Finally, some acts, those conversational moves discussed earlier, do not depend on the intention's recognition and need be neither overt nor covert.

Collateral acts are still *intentionally performed*. Although the acts may not be communicative insofar as speakers do not express (provide evidence for) attitudes, we should admit collateral acts into our taxonomy because (i) we can describe more of the conceptual space of speech acts and (ii) we can accommodate other illocutionary acts involved in conversation but not necessarily communicative ones.

3. Conventional (or Ceremonious) Speech Acts

In what follows, I say little about conventional speech acts, because exercitive (and verdictive) speech acts, which were discussed at length in Chapter 1, are the paradigm Conventional speech acts.

Conventional illocutionary acts are not communicative.⁷⁵ For Bach and Harnish, then, conventional illocutions do not express a speaker's attitudes. Instead, such utterances alter or affect institutional states of affairs. In short, Bach and Harnish claim that "they affect the institutional status of persons or things" and in other cases they "create institutional rights and obligations" as well as "further or are otherwise part of some institutional practice, process, or procedure" (111). For the moment, understand "institution" as referring to widespread social practices and groups: marriage, the practice of christening ships, Congress, the NFL, and the National Scrabble Association are all institutions. I will say more about institutions in later chapters.

Since conventional illocutions are not communicative, they do not involve an R-intention. Nonetheless, these are still illocutionary acts in which a convention takes the place of the R-intention. So, the conventional speech act succeeds when the speaker satisfies a convention. An appropriately timed "Aye" or hand-raise is an often-used

⁷⁵ Although "convention," "counts as," and "institution" are already technical terms for Bach and Harnish, the same words take on slightly different significance in Chapters 3 through 5 of my dissertation. Here, I would like to flag my divergence from their terminology. I discuss the differences between "convention" and "institution" in Chapter 4. Institutions come about through a series of constitutes (i.e. counts-as) relations, and "convention" assumes a meaning closer to our everyday usage of regular practice. So, Bach and Harnish's identification of counts as rules and convention will not hold up. Thus, I change the name of "Conventional Illocutionary Acts" to "Ceremonious Illocutionary Acts," or "Ceremonious Acts" for short.

convention in voting for a measure or policy. At the monthly HOA meeting, saying “aye” when my address is called satisfies my HOA’s convention for voting, and so my illocutionary act of voting succeeds. If, at the moment my address is called, I accidentally burp or stammer “um,” I have not succeeded in voting. Moreover, since satisfying the relevant convention is usually intentional, we can say that (to parallel the intentions of communicative speech acts) this is the conventional intention—to satisfy the relevant convention. Now, most times, the convention is satisfied when the right sorts of words are uttered, and, other times, when the right sorts of words are accompanied by some other gesture. The appropriate convention may be highly contextualized.

For Bach and Harnish, “convention” is technical and rather narrow—a convention is just a “counts as rule”. A convention is an action which, if done in certain situations, *counts as* doing something because members of a society or group mutually believe or recognize that the specific utterance in that specific context to be a means for doing something. I will not say more about counts-as rules, mutual belief, and recognition here. These concepts will receive much more in depth treatment in chapters three and four.

A consequence of the lack of an R-intention in conventional illocutions and that conventions just are counts-as rules is that the success of the conventional act is in no way dependent on the audience or their uptake. That one or a few members of the audience fail to secure uptake—because they misheard or do not understand the ceremony—is a trivial way in which the success of conventional illocutions do not depend on an audience. The young ring bearer or flower girl who does not fully understand the marriage ceremony does not frustrate the success of the marriage. The less

trivial sense in which conventional acts do not depend on the audience is that in performing a conventional speech act, no audience is required. Granted, conventional speech acts necessarily involve other participants. The marriage ceremony, in most states, involves an officiant, the prospective spouses, and one witness. However, these four are not an audience to the marriage, but the ceremony's participants: there need not be anyone watching the ceremony, if the participants play their individual roles correctly. Suppose a couple secretly marry. Even the broadest construed audience—the rest of the world—may be ignorant of their marriage and not recognize their vows. Nonetheless, because they fulfilled the necessary conventions, they are married. So, though conventional illocutions are essentially social insofar as the ceremony in which the conventional illocution occurs requires other participants, the success of the conventional illocution is in no way dependent on this necessity.

However, success does depend on the authority of the speaker. This requirement is the same as the requirement of satisfying a convention because, to do so, one must have the authority within the ceremony to satisfy the convention. One has authority with respect to an institution when the institutional states of affairs are such that the authorized speaker has acquired her authority through the right set of institutional affairs.

There are two types of conventional acts—exercitives (aka effectives) and verdictives—and both of these affect institutional states of affairs.⁷⁶

⁷⁶ From now on, I will call the effective conventional acts "exercitives" because Bach and Harnish's terminology has not taken. Both Langton and McGowan call this speech act "exercitive" and so I follow.

Exercitives effect changes in institutional states of affairs. An utterance counts as an effective of a certain sort in virtue of being mutually believed to be an act of that sort. Use of an effective verb (arrest, censured, married, bequest, promoted) is just a short hand way of describing it as producing a fact within an institution. For instance, the ‘resign’ in “I resign” is shorthand from my removing myself from a position. Every effective verb, then, is short hand for an institutional change. (113–114)

Some examples of exercitives are “I now pronounce you husband and wife,” “To my cousin Matthew Crawley, I bequeath the estate of Downton Abbey,” “The paper is now due Thursday, the 11th, rather than Tuesday, the 9th.” All of these change some institutional state of affairs.

Verdictives are judgments that have official, binding import in the context of the institution in which they occur. Moreover, they serve the institutional purpose of settling issues so that continued moves within institution may continue to go on, given the new import placed on the person or object so judged. (115–116)

Some examples of verdictives are “Not guilty,” “Striike!” or writing a “C+” on a student’s paper because these acts are official judgment on a person or object within an institution. The person who is judged not guilty is free to leave the judicial system; calling a pitch a strike has an impact on the next move within baseball.

Chapter 3

THE CONSTITUTES-ITERATION ANALYSIS OF OPPRESSIVE SPEECH

So far, I have argued that a condition of adequacy for any account of oppressive speech must explain the range of racist, sexist, or homophobic speech that we recognize as oppressive. In the first chapter, I argued that two current exercitive models fail to satisfy this condition. Then, in the second chapter, I argued for my own model of oppressive speech that does meet this condition. Moreover, I suggested that accounts that do satisfy the condition of adequacy do not yet fully validate the Constitutes Thesis: absent from any account is an explanation of how speech engages the norms of oppressive institutions. That is, the exercitive models as well as my 3Cs model can explain which speech act type our utterance exemplifies, but none of the models explains how the speech act-type oppresses or is an act of oppression.

The literature that defends the Constitutes Thesis assumes that speech act theory is the only theoretical apparatus needed to explain oppressive speech because proponents of the thesis try to accommodate oppressive speech acts into one of the four basic speech act categories. I argue that this assumption is false. In my view, any explanation of oppressive speech must appeal to (at least) three levels of explanation: any account must explain how our utterances constitute speech acts, how speech acts constitute moves within larger social practices, and how these moves constitute oppression. Current speech act accounts offer an explanation of only the first level: speech act theory explains how our utterances count as assertions, promises, exercitives, and the like.

In what follows, I argue that speech act theory (alone) is not sufficient for defending the Constitutes Thesis and offer a framework that elucidates other constitutive claims implicit in the Constitutes Thesis. I proceed as follows: in the first section, I examine how polite speech is sometimes explained within the speech act literature. Then, in the second part, I develop and argue for a framework, which invokes the notion of a status function introduced by John Searle to explain how social institutions operate. Using the framework to unpack the Constitutes Thesis, I show that the thesis requires three levels of explanation: we must explain (1) how sounds we utter constitute a speech act, (2) how that speech act constitutes a move within a larger social practice, and (3) how that move constitutes an act of oppression. Speech act theories offer an explanation of (1), but explanations of (2) and (3) are outside of its scope. Consequently, the advocate of the Constitutes Thesis, must appeal to other resources: an explanation of (2) social ontology and social philosophy and (3) theories of oppression. In the third and final section of the chapter, I return to Langton's and McGowan's accounts and demonstrate that their accounts are compatible with the Constitutes-Iteration Analysis, though they blur the three iterations into the first level.

1. Alternative Explanations

Defenders of the Constitutes Thesis argue that a theory of speech acts can explain how speech is oppressive. Such analyses follow Austin's insight that some utterances constitute acts above and beyond the acts of producing sounds and moving one's lips. For instance, my utterance "I'll pick you up at the airport tomorrow" constitutes a promise;

my utterance “Please, open the door” constitutes a request. Speech act theory, then, aims to explain how the first utterance is a promise, how the second is a request, and how speech acts of these types are individuated. Though different theories might disagree about the details of the explanation, they all would conclude that the first utterance is a promise and the second is a request.

Speech act theorists usually do not employ speech act theory to explain why the second utterance constitutes a polite request. Politeness is above and beyond a basic speech act type: I can politely remain quiet, politely open the door, and do countless other nonverbal activities politely. Once again, although particulars concerning the explanation of polite speech may differ, speech act theorists provide relatively the same general analysis: in uttering a polite request, the speaker engages another set of norms or practices outside the scope of speech act theory while simultaneously performing a speech act. Obviously, in the case of polite speech, the speaker engages the norms of etiquette. Kent Bach and Robert Harnish, for instance, call actions that engage a set of norms other than speech act norms “collateral acts,” and think of such acts as performed alongside or in conjunction with a speech act (1979, 96–107).⁷⁷ In addition to etiquette, Bach and Harnish also consider punning, telling a story or joke, changing the subject, and using deliberate ambiguity as collateral acts. Suppose I say to you “Please, open the door”—as long as you recognize that I intend to express a request, then I have successfully requested. But, further suppose that you are suspicious of my tone or thought I rolled my eyes. My attempt at politeness, then, may have failed, though I still

⁷⁷ McGowan (2012) has recently begun to incorporate Bach and Harnish's notion of collateral acts as a supplement to her covert exercitive model.

communicated my request. Since the success of these collateral acts has no bearing on the success of the speech act, a speech act analysis does not aim to explain the politeness of speech.

Other speech act theorists do not directly address such acts. For instance, Searle, in his discussion of constituting rules and regulating rules, suggests that etiquette has no place in a speech act analysis. In that discussion (1969, 33–42), he compares regulative rules, e.g. “When cutting food, hold the knife in the right hand,” with constitutive rules, which underlie speech acts. He argues that regulative rules regulate activities that exist independently of any (constitutive) rules and that constitutive rules create or define new activities. Constitutive rules are involved in explaining how a particular utterance constitutes a particular speech act, say, an assertion or request. These rules comprise a different system of rules from those that govern etiquette.⁷⁸ Hence, the implication: the rules and norms that constitute etiquette are independent of the rules and norms that constitute speech acts. Consequently, explaining how “please, open the door” counts as being polite requires resources outside of the purview of speech act theory. These resources might appeal to sociological facts and other explanations.

Bach and Harnish’s and Searle’s accounts of polite speech do not exhaust the various explanatory possibilities within the literature, though both accounts are representative of how speech act theorists explain polite speech. I think that we should

⁷⁸ If you are like me, you do not understand how etiquette is not also constituted by constitutive rules. However, Searle's point is still insightful: the (constitutive and regulative) rules of speech acts are a very different system of rules from those that govern etiquette. Moreover, when the systems of etiquette and communication overlap, we have the rules of polite speech.

understand oppressive speech similarly. That is, to explain how some speech constitutes oppression, we need to appeal to some set of norms or practices in addition to those norms that underwrite speech acts.

However, neither collateral acts nor an appeal to a (single) set of rules seems to offer the right sort of explanation for explaining how some speech constitutes oppression. In part, as explanatory resources, collateral acts and a single set of rules are not fine-toothed enough because they only bracket off aspects of our practices that speech act theory cannot explain. Of course, we need to appeal to norms different from those that underlie speech acts, but there is no single set of norms that will offer an adequate account of how speech constitutes oppression. In fact, any satisfactory account we might offer will be very complicated and involve a number of systems of doubly interlocking norms, in one way the set of interlocking norms form a system and, in the other way, sets of interlocking norms interlock with other systems or sets of norms.

As I will argue below, in defending the Constitutes Thesis, we should appeal to (at least) three different sets of norms: norms that explain how sounds or marks count as speech acts; norms that explain how that speech act counts as a move within a social institution or practice; and norms that explain how that move within a social institution or practice counts as oppression. Each of these different sets of norms are iterations—to use terminology that I will develop soon—of the constitutes-relation that underwrites the claim that some speech constitutes oppression.

Both Langton's and McGowan's work are alive to the possibility of the Constitutes-Iteration Analysis, or so I will demonstrate in the third part of the chapter. In

part, the iteration framework is compatible with their commitment to the Constitutes Thesis, though I argue that the Constitutes Thesis is a bit more complicated than their respective accounts seem to acknowledge. Nonetheless—the other part—both of their accounts are suggestive that other resources are required in explicating the Constitutes Thesis. I have developed the iteration framework in such a way that it is compatible with Langton's and McGowan's accounts. So, although we may disagree over the correct theory of speech acts—or (possibly) over the correct theory of social institutions or oppression—the Constitutes-Iteration Analysis will enable us to meet criticism of the thesis.

2. The Constitutes-Iteration Analysis

Assume, for the moment, that oppressive speech exists and that a fair number of people's everyday utterances constitute oppression—i.e. assume that you defend the Constitutes Thesis. We just need to offer an explanation as to how speech constitutes oppression. One might, as do Langton and McGowan, argue that some speech act theory or other is sufficient for explaining how speech constitutes oppression. Call this type of view "Speech Act Analysis." Speech act theories typically offer an explanation of how the words we utter constitute (or count as) assertions, requests, promises, and other recognized speech acts. So, according to the Speech Act Analysis, oppressive speech must be one of these speech acts that has, hitherto, not been recognized. However, as was demonstrated in the previous section, one might be suspicious that oppressive speech is

among these basic types of speech acts.⁷⁹ The Speech Act Analysis assumes that speech act theory is the only theoretical apparatus needed to explain how speech constitutes oppressive speech because oppressive speech is among the basic categories of speech acts. This assumption is false: any adequate explanation of oppressive speech requires resources beyond speech act theory.

I will argue for the Constitutes-Iteration Analysis throughout the following section. In doing so, I review Langton's Speech Act Analysis and argue that any such analysis cannot explain how speech constitutes oppression.⁸⁰ Second, I introduce terminology Searle has developed in his recent work on social reality and explain how this terminology illuminates the missing resources needed to explain how the utterances can constitute oppression. Third, before moving onto the final substantial section of the chapter, I present the Constitutes-Iteration Analysis and work through each of its iterative levels.

A. Gaps in the Explanation

The cases that Langton and McGowan use to motivate their accounts of oppressive speech go a long way in priming their readers into accepting their respective

⁷⁹ Elsewhere, in chapter two, I argue against treating oppressive speech as a category of speech acts, i.e. as a category in addition to constatives (which include assertions), directives (including requests and prohibitions), commissives (promises), and acknowledgments (greetings and congratulating), and against treating oppressive speech as a species within these categories.

⁸⁰ Due to space considerations, I do not consider McGowan's Speech Act Analysis here. However, since my claim is about any Speech Act Analysis, a similarly styled argument may be offered for McGowan's particular analysis.

accounts. Langton, for instance, analyzes two examples—a Pretoria legislator passing a law during apartheid and a proprietor posting a “Whites Only” sign in his shop window. McGowan also discusses an example similar to Langton’s proprietor example, but also analyzes the utterance “I banged the bitch” said by one male to another.⁸¹ All four of these cases are clearly oppressive speech, but the utterances in these examples wear their oppressiveness on their sleeve.

Both Langton and McGowan maintain that utterances have to be some form of an exercitive in order to oppress. Exercitives are those utterances that make something the case. For instance, the umpire’s “strike” makes a pitch a strike, a lawmaker’s utterance (in the right context) of “Smoking is no longer permitted within 20 feet of public establishments” makes it the case that such behavior is illegal, and a parent’s saying to his child “From now on, you must be in bed by 10 p.m.” makes it the case that his child’s bedtime is 10 p.m. All of these utterances are cases of exercitives. So, on their views, in order for a speech act to oppress it must make it the case that some group or other is oppressed.

If we look at more insidious or inconspicuous cases of oppressive speech, we will see that the Speech Act Analysis fails to explain these more complicated cases.⁸² Consider an utterance that might be spoken in the context of a managerial meeting of the department heads of some company of which the overwhelming majority of participants are men. One of the women—the head of her department—offers a possible solution to a

⁸¹ See Chapter 1 for a detailed discussion of each of these examples.

⁸² Consider the various examples presented throughout Chapters 1 and 2.

problem under discussion. Her colleagues ignore her contribution; some snicker.

Moments later, one of the male participants offers the same solution, but this time the solution generates discussion. After the meeting the woman mentions to a male colleague that when she offered the solution, she was ignored. He fails to see the problem and asserts, “You’re overreacting; don’t be hysterical.” So, the question is, how does this utterance constitute oppression?⁸³

Neither McGowan’s nor Langton’s analyses can explain how the utterance constitutes discrimination, subordination or oppression. I am not, here, arguing that their accounts fail to distinguish between the cases in which the utterance is overtly oppressive from the cases in which the utterance is insidious or inconspicuous. Instead, my point is that the more insidious cases demonstrate the failure of their accounts, which rely on a Speech Act Analysis, to explain how speech constitutes oppression in either the insidious and inconspicuous cases or the obvious cases of oppressive speech. In particular, consider Langton’s analysis of her Pretoria Legislator example:

Consider the utterance: “Blacks are not permitted to vote.” Imagine that it is uttered by a legislator in Pretoria in the context of enacting legislation that underpins apartheid. It is a locutionary act: by “Blacks” it refers to blacks. It is a perlocutionary act: it will have the effect, among others, that blacks stay away from polling booths. But it is, first and foremost, an illocutionary act: it makes it the case that blacks are not permitted to vote. It—plausibly—subordinates blacks....

In virtue of what do the speech acts of apartheid subordinate? In virtue of what are they illocutionary acts of subordination? In virtue of at least the following three features, I suggest. They *rank* blacks as having inferior worth. They *legitimate* discriminatory behavior on the part of whites. And

⁸³ I assume that you recognize this interaction as a classical example of gender discrimination and, therefore, agree that the colleague's response is discriminatory, subordinating, or oppressive.

finally, they *deprive* blacks of some important powers.... (1993, 302-303, emphasis in the original)

Although Langton and I both agree that the legislator's utterance is an instance of illocutionary oppression, Langton fails to explain how the utterance is an act of oppression. Langton offers an Austinian-styled account of how certain utterances have exercitive illocutionary force—namely, the utterance is said by the right sort of speaker under the right sort of conditions in the right sort of context. Moreover, she has explained the utterance's perlocutionary force—namely, the utterance causes (future) oppression by ranking blacks and legitimating discriminatory behavior. However, she has not offered an explanation of how the illocution constitutes subordination.

One might suggest that I am being too strict or stringent in what counts as a satisfactory explanation: in showing how the speaker legitimates, ranks, and discriminates, Langton has done enough to argue that the Pretoria Legislator's utterance constitutes oppression. However, consider two examples that parallel Langton's Pretoria Legislator example, but may not be considered examples of oppression. In the first case, a legislator says under the right circumstances, "No individual is permitted to marry a second cousin or nearer blood relative." In the second case, a legislator, perhaps motivated by her perceptions that the nation's youth are immature, passes a law and under the right circumstances, says, "Individuals under 21 are not permitted to vote." If the Pretoria Legislator's utterance is an exercitive, so too are these utterances.

Moreover, both examples also rank and discriminate particular groups as well as deprive these groups of particular rights. For instance, the voting law ranks people under 21 as having lesser worth than those older than 21: the legislation does not recognize

those younger than 21 as fully competent persons. The voting law legitimates discriminatory behavior on the part of those older than 21: adults can pass other discriminatory laws more easily and parents might have reason to prohibit their children from certain activities until they reach the new majority age. Obviously, those under 21 are deprived important political powers. Alternatively, the marriage law ranks certain behavior as taboo or undesirable, legitimates teasing and other discriminatory practices on the basis of whom one loves, and deprives close relatives of important powers (such as those exhibited by marriage laws and the ability to express their romantic love).

Nonetheless, the question remains whether either of these utterances constitutes oppression.⁸⁴ The more general question—what constitutes oppression?—is a good question that, currently, we are not in a position here to offer much of an answer. So, it may turn out that one or both of these laws constitute oppression, but until we answer the more general question we cannot adjudicate whether the above laws are oppressive. Provisionally, though, we might treat oppression as involving an unfair (unjust) institution or practice within a society that targets a social group.⁸⁵ The laws enacted in

⁸⁴ We should bracket the worry that any deprivation of legal rights is or constitutes oppression—or, at the very least, constitutes injustice—as there are legitimate reasons for depriving or denying groups rights: children typically are cognitively immature and, while protecting their natural rights, we suspend many political rights from criminals as part of their punishment.

⁸⁵ For the current discussion it might do well to review the conception of oppression I endorse in the Introduction. We should understand oppression in terms of the two most prominent conceptions of oppression: an abuse of power, which is often understood in terms of tyrannical dictators or laws or in terms of violence against particular groups, and as social practices and institutions that misallocate power and unfairly mistreat members of racial, gendered, or other social groups. The second conception explains how the traditional family structure oppresses women because it allocates power to the patriarchal

the marriage law and voting law examples are definitely institutions within a society—they were just codified. Yet it is not clear that the laws target social groups unfairly. If the legislator in the voting law example raised the voting age because of concerns about maturity and if those concerns are well-founded, then the law (at face value) seems fair. So, her utterance does not constitute oppression. Moreover, despite good empirical reasons—a higher risk of congenital diseases and disorders occur when close blood relatives produce offspring—to think that the marriage law is justified, the law may be unfair because individuals should be able to make choices without governmental inference: laws forbidding smoking or consuming alcohol while pregnant would be considered unfair. The law might be unfair but still not constitute oppression because members of incest relationships do not form a coherent social group.⁸⁶

Given the provisional definition of oppression above, the words the Pretoria Legislator utters do constitute oppression. However, the utterance does so in light of its fulfilling the two conditions involved in that definition: the law creates an unfair practice and the law targets a social-identity group. This provisional definition of oppression is outside the purview of speech act theory because all that is warranted by speech act theory is an explanation of how the three utterance examples are instances of exercitives.

Suppose that a (white) proprietor of a restaurant announces to his employees (of whom all are white), “From now on, any employee of mine who serves a non-white

authority. This is roughly the accepted definition of oppression within the social justice literature. Please see the Introduction for a more detailed explanation of oppression.

⁸⁶ The notion of a social group is further developed in Chapters 4 and 5 of my dissertation.

customer will be fired.”⁸⁷ The utterance is an exercitive and makes it the case that serving a non-white customer is grounds for being fired since proprietors are allowed to set policies that govern their restaurants and this proprietor uttered these words in the right sort of circumstances. Moreover, at least under the provisional definition of oppression, the utterance constitutes oppression because in uttering these words, the proprietor creates a policy that unfairly targets a social group. Given our social history, the proprietor’s utterance constitutes oppression. However, the proponent of a Speech Act Analysis, given her assumption that speech act theory is sufficient for explaining how speech constitutes oppression, can explain only how the proprietor’s utterance is an exercitive. Without helping herself to a theory of oppression, the proponent of Speech Act Analysis cannot explain how the proprietor’s utterance constitutes oppression.

One might think that, since the Pretoria Legislator’s and the proprietor’s utterances have racist content, that the utterances are oppressive. It does not follow, however, that any racist (or for that matter sexist) utterance constitutes oppression because not all racism (or sexism) is oppressive. To see this, consider the following case. Suppose that the community in which the proprietor lives and works is predominantly non-white—both the majority of the citizens are non-white and the majority of the political and social capital is controlled by a non-white majority. In this hypothetical situation—at least, according to the theory of oppression I endorse in the Introduction—the proprietor’s utterance would not constitute oppression because the community lacks widespread institutions that contribute to the oppression of non-whites. Once again, the

⁸⁷ I owe this example to McGowan (2009).

proponent of a Speech Act Analysis is not entitled to these resources because the distinction between racism qua racism and racism qua oppressive institution cannot be made from the perspective of speech act theory.

I have tried to show above that the Speech Act Analysis of oppressive speech cannot on its own explain how some utterance or other is oppressive. Instead, we need to appeal to another theory regarding oppression. I provisionally appealed to a basic definition of oppression for the sake of demonstrating what form the additional resources need to take in order to offer an explanation of oppressive speech. Two gaps in the Speech Act Analysis formed. First, Speech Act Analysis could not explain the conditions under which some utterance constitutes oppression as opposed to constituting racist or sexist speech in virtue of the utterance's locutionary content. Second, the analysis could not offer an account of how certain acts contribute to institutional practices. In the preceding, I maintained that defending the Constitutes Thesis requires us to consider other sets of rules or norms in addition to the rules or norms that govern and underwrite speech acts. Also, I initially suggested that oppressive speech should be understood by analogy to polite speech, which follows the norms and rules of speech act theory and etiquette. Now, I suggest that oppressive speech, in addition to the norms and rules of speech acts, also involves the norms and rules of justice insofar as oppression is a species of injustice. In the following sections I offer a first pass at the Constitutes-Iteration Analysis and argue for a framework explaining oppressive speech that utilizes this framework.

B. Filling the Gaps: A First Pass

In the Pretoria Legislator example above, we saw how Langton characterizes the utterance “Blacks are not permitted to vote” as an exercitive. For the most part, she relies on the Austinian theory of speech acts and, as such, offers an explanation of how the utterance counts as (or constitutes) as an exercitive speech act.⁸⁸ Langton has explained a particular instance of the following relationship, the Speech Act Iteration (SAI):

SAI a meaningful utterance of “blah blah blah” counts as an exercitive

Since Langton offers an Austinian-styled speech act theory, “counts as” is explicated in terms of “the right sort of speaker, in the right sort of context”. Had she relied on, say, a Searlean-styled account, “counts as” would have been explicated in terms of constitutive rules and necessary and sufficient conditions for the successful performance of an exercitive. For present purposes it does not matter which speech act theory one uses to explain the SAI relationship. Instead, at this stage of the argument, acknowledging the relationship is important.

It should be noted that the SAI relationship assumes another relationship, the Linguistic Convention Iteration (or LCI), which explains how marks and sounds count as meaningful words:

LCI such and such sounds or marks count as the meaningful utterance “blah blah blah”

⁸⁸ Notice that I have shifted phrasing: “counts as” and “constitutes” are synonymous terms within speech act literature, especially in light of Searle’s introduction of constitutive rules, which will be discussed below, that are formulated using the phrase “counts as”.

SAI assumes LCI because the utterance that is explicated in SAI has meaningful content. Moreover, assuming LCI or taking it for granted is permissible within the context of Langton's project because LCI explains a relationship not within the domain of speech act theory, but rather within the domain of semantics or linguistics.⁸⁹ Once again, it does not ultimately matter which semantic theory one uses to explicate the LCI relationship.

All that a Speech Act Analysis of oppressive speech can offer is an explanation of SAI. Another relationship needs to be explained—the relationship between some speech act, say, an exercitive and oppression. Call this as of yet unexplained relationship “X”.

X such and such speech act counts as oppression

That is, we need to provide an account of how such and such speech act is an act of oppression. Notice that the formulations of each iterative step are formally the same—the purpose of the Constitutions-Iteration Analysis is to explain how, given the context, one thing counts as another. Explanations of how one thing counts as another, then, are cashed out in terms of the relevant theory. Relationship X is not satisfactory because, as I noted in the previous section, there are two gaps in the Speech Act Analysis—conditions for what counts as oppression and conditions for what counts as a contribution to an institutional practice—so two iterative relationships must be explicated.

⁸⁹ Speech act theories usually take for granted the semantics of utterances unless those utterances contain semantic ambiguity that must be resolved prior to explaining a speech act or when the utterance is used non-literally or indirectly.

C. The Constitutes-Iteration Analysis

Before I can present the framework of the Constitutes-Iteration Analysis in its entirety, I first need to explain some terminology that Searle introduced in developing his account of social reality. The first bit of terminology concerns the distinction between regulative rules and constitutive rules, of which the latter are used to explicate each “counts as” iteration. The second bit of terminology is the notion of a status-function, which is imposed on objects and people through constitutive rules. After discussing the role of status functions, I generalize the concept, offering a framework in which to discuss the different iterations that underwrite the Constitutes Thesis. Finally, I sketch a rough model of how this iterative framework can help defenders of the Constitutes Thesis explain how utterances can constitute oppression.

A major goal in Searle’s landmark book, *Speech Acts*, was to, first, argue for and articulate rules that must be satisfied in order for speakers to perform speech acts successfully and, second, to derive from these rules necessary and sufficient conditions for a successful performance of a speech act. In elucidating these rules, Searle introduced a now famous distinction between two different sorts of rules that guide (social) behavior—regulative rules and constitutive rules. These rules, in particular the latter, are important for understanding the “counts as” relationship. It will be helpful to quote recent work by Searle:

Constitutive rules not only regulate but rather constitute the very behavior they regulate, because acting in accordance with a sufficient number of the rules is constitutive of the behavior in question. An obvious contrast is between the regulative rules of driving, such as drive on the right-hand side of the road and the constitutive rules of chess. Driving can exist without the regulative

rule requiring right or left; the rule regulates an antecedently existing activity. But chess cannot exist without the rules, because behaving in accordance with (at least a sufficient subset of) the rules is constitutive of playing chess. (2005, 9)

Admittedly, there is some ambiguity here. First, the distinction between constitutive rules and regulative rules is not mutually exclusive, though some argue that the distinction is mutually exclusive.⁹⁰ Second, Searle's choice of examples, especially etiquette and driving, are problematic because driving, at least as a widespread social practice, seems constituted by rules and laws of the road. Ambiguities and problems aside, it is important for the ensuing discussion to see the conceptual distinction between these types of rules. Constitutive rules both define or create new behaviors. That is, following constitutive rules is just acting in accordance with the norms of some social practice, broadly construed.

Searle, then, develops a parallel distinction between the formulae characteristic of regulative and constitutive rules. Regulative rules, claims Searle, typically take the form of imperatives. One can paraphrase regulative rules along the following lines: "Do X" or "If Y, do X." Of course, some constitutive rules might be paraphrasable into these forms, since constitutive rules also regulate the practices they constitute. For instance, the constitutive rule defining touchdowns can be paraphrased into the form "Cross the opposing team's goal line" or "If you want to win this game, score more touchdowns than your opponents."

⁹⁰ Andrei Marmor (2009) offers such an argument. I argue otherwise in my "Marmor's Distinction and the Extension of 'Convention'" (draft).

On the other hand, consider some constitutive rules that Searle offers: “A checkmate is made when the king is attacked in such a way that no move will leave it unattacked” or “A touch-down is scored when a player has possession of the ball in the opponents’ end zone while a play is in progress”. These rules are paradigmatic of another formula of which only constitutive rules can be paraphrased. This formula is the “counts as” relationship “X counts as Y (in context C).” Accordingly, crossing the opponents’ end zone while a player is in possession of the ball and while play is in progress counts as a touch down (in the context of this particular American Football game).

Joseph Ransdell (1971) has pointed out a number of problems with Searle’s distinction between regulative and constitutive rules. He argues that Searle’s notion of a constitutive rule is vague and that Searle does not explain *how* constitutive rules function definitionally. We should put these worries aside because Searle has addressed these issues in recent work (1995; 2010). Nonetheless, Ransdell addresses another issue relevant to our current discussion: constitutive rules seem to perform two very different functions. Consider the constitutive rule (or the “counts as” relationship) for “touchdown”:

TD an *offensive player’s* crossing the *opponent’s end zone* while in *possession* of the *ball* and while play is in *progress* counts as a touchdown.

The words I have italicized in TD are “practice terms” and have specific meaning within the context of the practice—the meaning of ‘offensive player’ in football has a meaning different from that in basketball. These terms identify other specific phenomena that are underwritten by other constitutive rules just as ‘offensive player’ is itself defined in terms

of other constitutive rules. So, we have the first function Ransdell identifies of constitutive rules: the rule justifies the application of some practice term to an object or player. For instance, constitutive rules tell us what counts as a touchdown, ball, or endzone within the game. The second function of constitutive rules is that they create the various permissions and obligations associated with that object. Once some chunk of inflated leather counts as a ball, then certain activities are acceptable with the ball within the practice. For instance, offensive players behind the line of scrimmage may throw forward passes, but offensive players who cross the line of scrimmage cannot.

The problem, as Ransdell sees it, is that when we understand constitutive rules in terms of the first function, the “counts as” relationship seems definitional. However, if we understand constitutive rules in terms of the second function, the practice terms drop out of the constitutive rules and we cannot apply the rules to the practices.

In later work, Searle addresses this concern, converting Ransdell’s worry into a virtue of his account. Searle connects the idea of constitutive rules with the notion of a *status function* and, as a consequence, sets of constitutive rules are both systematic and the glue that binds many of our social practices. A status function is a function that is not based on physical attributes of objects or persons, but nonetheless, imposes a function in virtue of our recognition and acceptance of the object having that status. An individual imposes a function onto an object of nature when she utilizes a found stone as a hammer or chisel. In using the stone this way, the individual treats the stone as a tool: in the context of use, the stone counts as a tool. However, this stone-tool is not yet the proper subject of a constitutive rule because it is not engaged in a social practice, i.e. recognition

and acceptance of a function. Suppose this individual carries the stone-tool around with her and her cohorts come to recognize and accept the tool as hers and attribute ownership rights of the tool to her. In this case, the stone-tool counts as personal property—a status function has been imposed on the tool in virtue of her society’s recognition and acceptance of the tool as hers.⁹¹

An additional feature of status functions is that they carry, in Searle’s terminology, “deontic powers.” When her cohorts recognize the stone-tool as her private property, certain rights, duties, obligations, requirements, permissions, and the like, accrue to the stone in virtue of its counting as property. Only she can loan the tool out; it is wrong of you to steal it; she is responsible for its upkeep, and so on. As such, Searle’s notions of status functions addresses Ransdell’s concern that Searle sneaks in two very different functions in the notion of constitutive rules. Status functions explain how objects come to have permissions and obligations (i.e. the various deontic powers that objects and people come to possess) and that constitutive rules impose status functions explains how the practice terms are not merely definitional.

The notions of status function and constitutive rule have two main advantages within the context of the views defended here. The first advantage is that constitutive rules and status functions work *in virtue of our recognition and acceptance* of them. The importance of this advantage lies in understanding how the nature of oppression depends

⁹¹ Moreover, the function of the tool is also tied to the stone’s physical properties, whereas the personal-property function is not a function of the stone’s physical properties

on mutual or social recognition and acceptance of certain practices—practices acquire force and strength precisely because they are recognized and accepted.⁹²

The second advantage, and more apropos to the current discussion, involves how status functions and constitutive rules are interlocking in two important ways. First, since constitutive rules impose new status functions onto objects, the rules in effect cement together the deontic powers and actions that make up the practice. All the rules of chess come as a set—once we begin to change a number of the rules we cease to have the game of chess. Second, the status functions and constitutive rules of one social practice interlock with other social practices. Those status functions and constitutive rules that underwrite personal property also inform other social practices such as small claims court, etiquette, and borrowing. The “counts as” relationship (i.e. that which generates the status function) expands upward more or less indefinitely and can be said to seep downward until “bedrock” is hit, when there are no more functions imposed on the physical object or person, as in the case of the stone prior to its becoming a tool. Alternatively, starting with the stone, we can apply status functions to it, making the stone a tool, imposing property rights on the tool, and enhancing its status until, perhaps, it is a historical artifact and resides in a museum. Additionally, application of status functions can apply laterally and acquire status outside of the domain of the initial status: formerly a tool, then property, but now evidence in a murder trial.

Now that I have explained some of the terminology employed in my model, I would like to generalize on Searle’s notion of status function and develop the framework

⁹² See the next chapter for my explanation of how social norms play this role.

of my Constitutes-Iterative Analysis. The framework seeks to fill in the explanatory gaps in the Constitutes Thesis that are left by a Speech Act Analysis. The basic idea is this: starting with the Linguistic Convention Iteration, in which meaning (a status function) is imposed on sounds or marks (the physical bedrock), we impose status functions (speech act types) onto the already existing status functions (e.g. LCI) until we can explain how utterances constitute oppression. Ultimately, we will need three steps in addition to the LCI: (1) SAI, (2) an iteration explaining how speech acts count as moves within a social practice, and (3) an iteration explaining how such moves count as oppression. To cut a path for my model, I will begin with non-contentious examples to model an iterative framework of status functions.

First, reconsider the constitutive rule for touchdowns (TD above), which will help make my point by analogy. Ransdell raised concerns for such rules because, in the first place, the rules seem definitional and so do not explain how new practices are constructed or, second, because the practice terms seem redundant. However, given that we can iterate status functions (through the use of different constitutive rules), we can better understand how the constitutive rules interact and interlock with other constitutive rules within the same system (the constitutive rules that constitute the practice of American football) as well as those within other systems (status functions that work laterally). We are now in a position to understand the touchdown rule, which can be

understood as a third-level iteration of other constitutive rules and status functions. Thus, we have the following iterative structure:⁹³

- Level 1: This object made of leather possessing such and such physical features counts as *the ball*.
- Level 1: Such and such space that is 360 feet in length and 160 feet in width counts as the *playing field*.
- Level 2: Such and such lines marked on the *playing field* count as the *end zone*.
- Level 3: An *offensive player's* crossing the *opponent's end zone* while in *possession* of the *ball* and while *play* is in progress counts as a *touchdown*.

This is the sort of iterative structure that underlies the Constitutes Thesis.

However, the football example and other game examples are disanalogous to the Constitutes Thesis as well as other interesting instances because the explanation between each level of game examples is intrinsic to the particular game. That is, the explanation of the “counts-as” relationship for each iteration amounts to “because that’s how the game works” or “because we want to make the game safer...more interesting...faster” and so on. However, in terms of widespread social practices (including oppressive speech), the explanations will differ significantly at each level because each level involves a different (often lateral) set of constituting rules and status functions. Consider one of Searle’s illustrations of status functions iterating upward:

in virtue of my birth I count as a citizen of the United States, but as a citizen of the United States of a certain age, I am eligible to become a registered voter. And as a registered voter I can become a member of the Democratic Party... (2010, 15)

⁹³ What follows is simplified and leaves out a lot. For instance I do not provide constitutive rules for imposing status function of *player* or *offense*. Nonetheless, the iterative structure captures my point.

Searle continues until he's in office, but I have provided enough to demonstrate my point about how the explanations differ. Suppose we construe the iterative structure as follows⁹⁴

- Level 1: being born within *US borders* counts as being a *citizen* of the US.
- Level 2: being a *citizen* and at least 18 years old counts as being eligible to *register to vote*.
- Level 3: being a *registered voter* counts as being allowed to *choose party allegiance*.

So, what explains the application of the status function at Level 1? We would appeal, rightly, to the 14th Amendment and the reasons concerning naturalizing slaves after the Civil War. That explanation is different from the explanation one might offer for age-related enfranchisement (though both explanations are similar in that they come from a political-historical perspective). Nonetheless, the explanation at level 3 is extremely different: we should appeal to Searle's personal reasons for choosing the Democratic Party as well as the government (as institution) and the rules and policies of voter registration.

That different (theoretical) explanations are involved in the claim that some utterances constitute oppression is precisely the point missed by proponents of the Speech Act Analysis. As I mentioned earlier, I think there are at least four iterative levels to the claim that such and such an utterance constitutes oppression. In the first iteration (LCI), certain sounds (or marks) count as meaningful words of English. The second iteration (SAI) explains how utterances count as such and such speech acts. One's

⁹⁴ I am not committed to the construal that each of these levels is a move upwards. Some of the levels might be lateral moves, especially considering the move between levels 2 and 3.

(favored) speech act analysis will explicate how the counts as relationship should be understood. In the third iteration, the Social Practice Iteration (SPI), we explain how speech acts count as moves within some social practice or other. Finally, the fourth iteration, the Theory of Oppression Iteration (TOI), appeals to an explanation of how moves within social practices count as oppression. Each “count as” relationship is explicated in terms of a relevant theory. Schematically, the framework Constitutions-Iteration Analysis looks like this:

- LCI** such and such sounds or marks count as a meaningful utterance
- SAI** this meaningful utterance counts as such and such speech act
- SPI** this speech act counts as a move within such and such a social practice
- TOI** this move within this practice counts as an act of oppression

SPI bridges SAI and TOI so to help explain the insidious and inconspicuous cases of oppressive speech by explaining how such cases are in fact moves within social practices of sexism, racism, or homophobia. That is, SPI helps explain how certain behaviors engage oppressive institutions. Since the insidious cases are not obviously sexist, racist, or homophobic, work needs to be done to explain why or how such utterances are oppressive, while the more obvious cases of oppressive speech may not need explication at the SPI level. On one hand, when the content of the exercitive or verdictive is straightforwardly oppressive, say, as in the Pretoria example, in which the content of the utterance deprives legal rights to members of social groups, we do not need to appeal to the bridging SPI because the exercitive creates a new social practice. All we need in cases of this sort is SAI to explain how the utterance is a speech act and TOI to explain how the deprivation is unjust.

On the other hand, there will be obvious cases of oppressive speech that are not exercitive or verdictive speech acts—and, thus, do not create a new practice—such as the assertion “Blacks are lazy” or the joke “Why do women live longer than men? They aren’t married to women.” These speech acts are straightforward moves within an oppressive social practice and will have a less complicated explication on the SPI level than the more insidious cases.

Let’s take stock of the Constitutes-Iteration Analysis. I utilize Searle’s notions of status function and constitutive rule to demonstrate what is meant by “constitutes.” The notion of status function lends itself to various iterations of sets of constitutive rules and different philosophical theories will explicate what “constitutes” means at each iteration. So, for instance, we can model the earlier case of insidious oppressive speech as follows:

- LCI** the sounds {You’re overreacting; don’t be hysterical} count as the meaningful utterance “You’re overreacting; don’t be hysterical.”
- SAI** the utterance “You’re overreacting; don’t be hysterical,” said by a male colleague to a female colleague counts as an assertion and a prohibition speech act.
- SPI** the assertion and prohibition speech acts count as a move within a sexist work practice.
- TOI** this move within a sexist work practice counts as an act of oppression.

Notice that the framework does not perform an explanatory work; the framework demonstrates (i) that more than the Speech Act Analysis is required for defending the Constitutes Thesis about oppressive speech and (ii) what else is required to defend the thesis. In addition to the Speech Act Analysis (SAI), we need to explain how the utterance constitutes a move within a social practice (SPI) and how this move constitutes an act of oppression (TOI). The Speech Act Analysis assumes that speech act theory is

the only theoretical apparatus needed to explain how speech constitutes oppressive speech. We are now in a position to see that this assumption is false: any adequate explanation of oppressive speech requires (at least) two theories beyond speech act theory: a theory of what counts as being a move within a social practice and a theory of what counts as oppression. However, in addition to the framework, we need theories that can adequately explicate the “counts as” relationship in each of the above iterations. Arguments for particular explications of a move within a social practice and oppression will be offered in chapters four and five.

3. The Constitutes-Iteration Analysis and Other Accounts of Oppressive Speech

In this final section, I would like to discuss how some existing accounts of the Speech Act Analysis of oppressive speech are compatible with the framework of the Constitutes-Iteration Analysis as I have developed it. Specifically, I examine Langton’s and McGowan’s accounts of oppressive speech. Although I am not interested in determining what Langton’s and McGowan’s particular uses of “constitutes” consists in, both accept the constitutes language in their defense of the Constitutes Thesis. As I have argued in previous sections of this chapter, their analyses of oppressive speech blur three importantly different iterations—SAI, SPI, and TOI—into one iteration, the SAI.

Langton gestures towards a need for the SPI when, after presenting her Austinian analysis of subordinating speech acts, she presents two caveats to her account. In the first caveat, she argues that, although the speech act might legitimate something, making someone believe what is legitimated (the perlocutionary effect) is different from

legitimizing it (the illocutionary speech act) (1993, 303). Here Langton follows the usual Austinian illocution/perlocution distinction: not all illocutions (legitimizing speech) result in the intended perlocutionary effects (belief that something is legitimate). For instance, as an instructor, with a certain range of authority I can legitimate this or that. However, my students do not have to believe me, although they usually do because they believe I am knowledgeable about the assigned reading. With regards to oppressive speech, most people do believe what has been legitimated. Langton explains that the perlocutionary effect is likely to occur “because it has indeed been made legitimate in that *particular arena of activity* (though there may still be some perspective outside that arena from which one can say that discriminatory behavior is never truly legitimate)” (1993, 303, my emphasis). Thus, in highlighting the difference between the illocutionary speech act and the perlocutionary effect, Langton gestures towards the SPI insofar as she mentions a “particular arena of activity” that grounds the legitimacy of the illocutionary act. The explicating theory at SAI will explain how the utterance has legitimate-making force. At the SPI level, among other concepts, the explicating theory would explain how the practice strengthens and reinforces the legitimacy of the speech act. In particular, such an account would explain how a speaker acquires the necessary social capital (i.e. authority within the social practice), such that the speaker’s utterances are more successful in legitimating the content of the illocution.⁹⁵

⁹⁵ I grant that the justification underwriting one's authority within a social practice may be rather weak and illegitimate. Within sexist social practices, I tend to have authority in virtue of being a male. Nonetheless, this authority is rather illegitimate because sexist institutions are immoral and unjust. See Chapter 4, section 1.E and 1.F for a more in-depth discussion about authority and legitimacy.

Moreover, Langton's parenthetical comment above suggests her view is compatible with TOI. Speech act theory cannot explain why the behavior is not truly legitimate (i.e. not just). A moral theory or theory of justice would provide a perspective from which to understand the illegitimacy of the speech act or move within the social practice. Moreover, Langton's second caveat in which she explains that not all legitimating, ranking, and depriving of power are subordination demonstrates her account's compatibility with the Constitutes-Iteration Analysis:

someone may rank an athlete as the fastest, legitimate beer drinking on campus, or deprive a driver of his license....But, unlike these, the speech acts of apartheid are acts of subordination: they *unfairly* rank blacks as having inferior wealth; they legitimate *discriminatory* behavior on the parts of whites; and they *unjustly* deprive them of some important powers (1993, 304, my emphasis)

Once again, Langton's account is compatible with the Constitutes Iteration Analysis because she recognizes that more explanatory work is needed to explain how speech acts that rank (verdictives), legitimate (verdictives and exercitives), or deprive powers (exercitives) do so unjustly.

McGowan implicitly appeals to SPI and TOI.⁹⁶ Although McGowan frames her discussion of oppressive speech as addressing "what such speech actually *does, in and of itself*" (2009, 389, emphasis in the original), she also suggests that such speech does very

⁹⁶ In an earlier work, McGowan (2003) makes suggestions similar to Langton's suggestions already discussed. McGowan begins her piece in examining Catherine MacKinnon's worry that regardless of free speech we do not have the legal right to say what we please, and sometimes what we say is unprotected by the First Amendment. "When Lilly said, for example, "You are hereby hired to kill my ex-husband," her utterance was illegal. Although freedom of expression in general guarantees the free expression of ideas, some utterances are nevertheless prohibited based on what such utterances do. In saying what she said, Lilly performed the action of hiring a hit man and that action is illegal." (2003, 157) Here, McGowan appeals to the SPI and TOI iterations.

little without the support of other institutions. Through McGowan's (2009) analysis of covert exercitives and oppressive speech, she alludes to "trigger" mechanisms of oppression.⁹⁷ These trigger mechanisms are just the various social practices and institutions that contribute to and perpetuate oppression. Additionally, one of McGowan's assumptions about oppression is that oppressive social practices are always operational (2009, 391). McGowan's account of oppressive speech, insofar as it relies on the social practices and trigger mechanisms that underwrite oppression, is thus compatible with the Constitutes-Iteration Analysis in that she appeals to resources that would be explained by the theory explicating the counts-as relationship in the SPI.

Moreover, McGowan states her assumptions about oppression in a way that demonstrates compatibility with TOI. Two of these assumptions are most illustrative. First, oppression is structural such that our social practices serve as the nexus of oppression and, second, that all cases of oppression require unjust social arrangements (2009, 390–391). In light of her assumptions about oppression, McGowan's account is open to a problem I raised earlier in part two. We can imagine counterfactual situations in which a particular speech act is not oppressive. Suppose we live in a society in which men are an oppressed group. Then, to use McGowan's example of oppressive speech, the utterance "I banged the bitch," said by John to Steve in the factory lounge is not oppressive given how the counterfactual society is structured. John's utterance might be sexist, but it would not constitute oppression because there are no unjust social practices

⁹⁷ A covert exercitive, as an exercitive, makes something the case, but not in virtue of the utterance's content or the speaker's authority. The notion of a covert exercitive is deeply flawed and incoherent—I argue this in Chapter 1.

directed towards women in that society. Since these assumptions about oppression are important for informing what counts as *oppressive* speech, McGowan's account implicitly accepts TOI in arguing that some speech constitutes oppression.

But, more importantly, covert exercitives are exercitives in virtue of their connection to rule-governed practices. Since McGowan has identified these practices as those of racism, sexism, and homophobia, then we can understand specific speech acts as moves within these oppressive social practices. In other words, McGowan has offered a Speech Act Analysis assuming that the speech acts work covertly through resources that are explicated at the Social Practice and Theory of Oppression iterations. Given her assumptions about oppression, that oppressive institutions are always operative, and how McGowan understands covert exercitives, her view is compatible within the framework. However, arguing that covert exercitives are sufficient for explaining how speech constitutes oppression is no longer viable. McGowan ought to recognize explicitly that such an explanation requires resources outside the purview of speech act theory.

Langton and McGowan have done insightful and groundbreaking work in understanding how speech oppresses. Although Langton, McGowan, and I may disagree over details regarding which theory best explains speech acts, social practices, or oppression, we all agree that some speech constitutes oppression.⁹⁸ Nonetheless, both of their accounts are compatible with the framework of the Constitutes-Iteration Analysis: either their accounts of oppressive speech assume resources that would be explicated in

⁹⁸ The debate between advocates of the Constitutes Thesis has mostly been over which speech act theory most plausibly characterizes oppressive speech—in recent years Langton seems to offer a less-Austinian account and one more similar to McGowan's (2003) and (2009) analyses.

the SPI or the TOI but argue as if speech act theory does the bulk of explaining how speech constitutes oppression, or their accounts acknowledge that more explanation might be needed in explaining how speech constitutes oppression but do not dwell on the further explanation.

4. Conclusion

The purpose of the Constitutes-Iteration Analysis is twofold. First, the framework offers a structure for analyzing the Constitutes Thesis that avoids the charge that the thesis is philosophical sleight of hand or metaphorical. I believe that acceptance of the Constitutes-Iteration Analysis will strengthen the defense of the Constitutes Thesis because criticizing the framework of the Analysis is more difficult than denying that speech alone constitutes oppression. For instance, very few people are inclined to reject LCI or SAI. Admittedly, disagreement as to the correct or most plausible semantics or speech act theory is still an open question in the relevant literature, but few would dismiss the need for explaining how a semantic theory constitutes meaning out of sounds or marks. Detractors of the Constitutes Thesis cannot really deny any of the iterative steps of the Constitutes Iteration Analysis—how can one deny that some actions count as or are also moves within larger social practices? How might one deny that certain actions count as oppression? Instead, detractors would have to deny or disagree with particular theories that aim to explicate each iteration. Such disagreement, though, is fundamentally different from the dismissive treatments that Ronald Dworkin, Frank Michaelman, and William Parent have offered of the Constitutes Thesis. Instead, detractors of the

Constitutes Thesis must engage its proponents in a debate over whether speech is operative at each iterative level of the framework.

Second, the Constitutes-Iteration Analysis is a model of how different phenomena interact such that we have oppressive speech. It clearly sets out what any theory of oppressive speech must explain: any adequate theory of oppressive speech must include a theory about speech acts, social practices, and oppression. Moreover it performs a more important and more needed task; the Constitutes-Iteration Analysis invites further inquiry into and debate about how each of these theories interacts with the others. Whereas speech act theory has enjoyed nearly seventy years of inquiry and conversation, how this theory interacts with other important theories has seldom received attention. The Constitutes-Iteration Analysis opens this discussion concerning oppressive speech. In the two remaining chapters, I turn to this discussion and explain how speech act models of oppressive speech interact with theories of social practices.

Chapter 4

HOW TO MOVE WITHIN A SOCIAL PRACTICE: NOTES ON A THEORY

In the previous chapter I argued that speech act theory is not sufficient for explaining how speech constitutes oppression because any speech act theory provides only part of the explanation. In other words, speech act theory explains how our words are promises, assertions, insults, and the like. In arguing for this claim, I developed the Constitutes-Iteration analysis so to separate different iterations of the Constitutes Thesis. I thereby opened myself to two tasks. First, I must explain the Social Practice Iteration (SPI), i.e. how a particular speech act counts as (or constitutes) a move within a social practice—oppressive or otherwise. The second task, which developing fully would take me too far from the objectives of the dissertation, requires demonstrating how such contributions count as (or constitute) acts of oppression. This chapter takes up the first task: articulating how speech counts as a contribution (or move) within a social practice.⁹⁹

Articulating an explanation of how speech constitutes a contribution to a social practice, however, requires that I provide a framework—in short, a theory—of social practices. That is, I need to articulate and lay out fundamental and necessary concepts

⁹⁹ For my thoughts on what constitutes oppression, see the Introduction where I review Sally Haslanger's work on oppression. I strongly recommend her work, especially her recent anthology, *Resisting Reality* (2012).

that explain the mechanisms by which we act socially.¹⁰⁰ These concepts include social practices (institutions and organizations), conventions, social norms, social roles, and authority. In brief, here is a rough sketch of this theory:

'Social practices' refer to interactions of and between social groupings of people in which (i) the grouping is more than a mere aggregate, and (ii) these interactions are governed by a system of interlocking (and somewhat alterable) roles and norms that constrain (positively or negatively) the identities of the group's members.¹⁰¹ In what follows I will discuss two types of social practices: organizations (e.g. the NFL, North High School's PTA, my HOA, the UC system) and institutions proper (e.g. the American economy, the English language, families, the American system of racial inequality). I will use 'social practice' and 'institution' interchangeably. A *'contribution'* or *'move'* refers to ways of acting within these organizations and institutions. I recognize four types of moves: acting in accordance with a convention, acting in accordance with a norm,

¹⁰⁰ Philosophers (as opposed to social scientists) debate whether social action is a species of individual action (for instance, David Lewis (1969), Seumas Miller (2001), Philip Pettit (1990), Raimo Tuomela (2002; 2007), and John Searle (1995; 2010),) or corporatist action (Margaret Gilbert (1989)). The proponents of individual action disagree over whether intentions (Miller, Searle, and Tuomela) or beliefs/desires (Lewis, Pettit) are the explanatory grounds of individual action. Throughout the remainder of the dissertation, I assume an individual and intentionalist account of social action.

¹⁰¹ An aggregate grouping is best thought in terms of demographics—people between the ages of 18 and 28, those who live in the Wood Streets neighborhood, people below 5'7"—and is a socially external way of grouping people. By "socially external" I mean groupings that occur without ingroup-outgroup behaviors. Of course, some aggregate groupings correspond to social groups I am interested in (e.g. the group 'residents of Compton' include a number of social-identity groups), but these groupings are accidental. So, I am not concerned with the group of men under 27 who live in Riverside or the group of blond, moderate Republicans who go to church at least once a week.

A word about positive and negative constraints. I mean 'constrain' to connote both positive and negative limitations on permissible action.

legitimizing a practice (or norm), and creating a norm (or practice). To round out this theory, I will also discuss phenomena that mediate between moves and social practices: *social roles, authority, and legitimacy*. These concepts are rather important. For instance, not any action may be a move within a social practice because, to be a move, the agent must have (or have acquired) the authority to affect the social practice. So, being the sort of action recognized as a move within a practice is necessary, but that action's being authorized is necessary and sufficient.

Much of this chapter, consequently, develops the conceptual tools used in later sections of this chapter and throughout the final chapter. In addition to laying out a framework of social practices, the chapter serves as a critical review of the Philosophy of Sociality literature. In the body of the chapter I will focus on articulating my understanding of key concepts for a theory of social practices and how these concepts interact. Many footnotes will be devoted to delineating the various lines of thought and controversies in the existing literature. Nonetheless, my full theory of social practices will not be given here.¹⁰² Although a few—perhaps, many—of my claims are contentious in light of the existing literature, each concept I delineate below is a necessary feature of a theory of social practices and is necessary for my defense of the Constitutes Thesis. So, though one may offer alternative understandings of the conditions and extension of the concepts under discussion, these alternatives should not affect my overall argument that some speech constitutes oppression.

¹⁰² Obviously, this is a long-term, tenure-pursuing project! This chapter lays the foundations of my thinking on these concepts.

The chapter has three parts. The first catalogs and explains the concepts needed for a theory of social practices. The second part explains what sort of actions are contributions to or moves within a practice, and I also substantiate the distinction between engaging and enacting a norm (or permissibility fact) originally made in critiquing McGowan's model of oppressive speech. The third section connects the first two to the Constitutes-Iteration framework and sets the ground for the final chapter. The remainder of this section addresses a few methodological caveats.

The first addresses the current state of play within the social practice literature. Although Anglophone analytic philosophers have been writing about social concepts (e.g. conventions, social roles, social norms and rules) since the early twentieth century—think Wittgenstein and the ordinary language philosophers—there has been a recent explosion in a literature variously called “Philosophy of Society,” “Philosophy of Sociality,” “social ontology,” or “social theory”. The early 1990s saw groundbreaking works—Margaret Gilbert's *Social Facts* (1989) and John Searle's *The Construction of Social Reality* (1995)—both of which critique David Lewis's *Convention* (1969). However, Gilbert's and Searle's work as well as other recent work (e.g. Seumas Miller (2001) and Raimo Tuomela (2002; 2007)) offer a systematic theory of social ontology that begins with some basic action or other. For instance, Searle's work takes speech acts as basic and builds a systematic account of social theory from these origins; Miller's work investigates joint actions, goal-directed actions that require individuals cooperating to achieve their collective end.

I find the existing literature troublesome in two ways. First, much of the literature privileges theoretical commitments found elsewhere in the author's corpus. For instance, Searle's project is guided by his commitment of avoiding dualist metaphysics and to explain how we have social knowledge given that only "brute," physical things exist. Insofar as a Philosophy of Society privileges these other commitments, the resulting social theory is just an epicycle of that more basic theory. Second, often the literature neglects, what I take to be, key concepts. For instance, Tuomela (2007) focuses on individual and social attitudes (including knowledge), actions, and social institutions, and ignores (or mentions in passing) conventions, social norms, authority, and legitimacy. However, explaining how some act is a contribution to a social practice requires these and other similar concepts. My approach attempts to rectify these slights.

Second, at first glance, the words 'move' and 'social practice' are vague and rely on the metaphorical extension of our vocabulary and competency with games. For instance, one may intuitively understand what a move in checkers is or what someone means when they say "my yoga practice," though in the latter case one not familiar with practicing yogis might need a moment of reflection to parse the phrase. However, when we try to apply these terms to social phenomena or do so with philosophical rigor, the highly *interpretative nature* of the enterprise makes going on difficult. One problem we will frequently face is this interpretative nature of social phenomena: what I define as a social norm or analyze as convention, you may think is better understood as a custom, tradition, or something different altogether. So, in what follows, allow for and set aside terminological disagreement, but focus on the conditions and characteristics I offer for

each concept. My goal is to describe phenomena by appealing to distinguishing features so to offer an explanation of how social practices work.

Admittedly—and a third caveat—there are no seams or joints at which to carve up the social phenomena in question as there seem to be when we classify and describe nature. Moreover, much of my motivation for carving social phenomena up in the particular ways I do derives from the utility of understanding these social phenomena and their contribution to understanding how social practices work. I borrow from Ronald Sundstrom's work on social kinds to help alleviate this concern. Sundstrom (2002) holds that a kind—whether natural or social—is real if its members are united by a number of shared properties and these properties play an explanatory role in the relevant theory. A physical kind, say, hydrogen atoms, is unified by an internal structure shared by individual hydrogen atoms, which explains its chemical characteristics and behavior; a biological kind is unified by a significant biological relation and explains the biological entity's behavior.¹⁰³ A social kind is real when it is unified by a number of shared properties and these properties play an explanatory role in a social theory or explanation. So, in what follows, I will delineate properties that explain how a concept contributes to a social practice. Thus, I acknowledge that many of my definitions will seem stipulative,

¹⁰³ Sundstrom's account does not entail that necessary and sufficient conditions must be provided to delineate a kind. Two hydrogen atoms and one oxygen atom covalently bonded may be necessary and jointly sufficient for being a water molecule, but there is a family resemblance among hydrogen isotopes.

but I assure you there is sincere philosophical motivation behind each stipulative definition.¹⁰⁴

A final caveat ought to be mentioned. Many of the concepts I explain are “accordion terms” such that, depending on one’s perspective, the terms will denote different things. For instance, if we examine a practice, say, going to dinner, we will see certain actions, say, placing a reservation and paying for dinner, as moves within the social practice of going to dinner. This is, perhaps, a myopic perspective. From a wider perspective, we might see going to dinner as a move within some other practice, say, of dating or conducting business. Of course, there is a perspective wider still: dating and conducting business are moves in the social practices (i.e. institutions) of marriage and the economy. Given this concern, as well as the others, I acknowledge that the concepts I am about to discuss are slippery and open to interpretation.

1. Basic Concepts of a Theory of Social Practices

At the outset of this section, I would like to reiterate two key definitions.

Social practices — interactions of and between social groupings of people in which (i) the grouping is more than a mere aggregate, and (ii) these interactions are governed by a system of interlocking (and somewhat alterable) roles and norms that constrain (positively or negatively) the identities of the group’s member.

A contribution or move — a way of acting within a social practice. I recognize four types of moves: acting in accordance with a convention, acting in accordance with a norm, legitimating a practice (or norm), and creating a norm (or practice). Each of these actions counts as a move or contribution to the practice.

¹⁰⁴ Of course, the long-term project will need to develop and argue for this motivation.

A. Institutions and Organizations

Two concerns may be in the minds of my readers, given the preceding definition of social practices. First, I have stipulated that institutions and organizations are social practices. In doing so, one might accuse me of a category mistake: a social practice is an *action* (individually done, though interdependent on the actions of others) or a set of related actions, whereas an institution is a *structure* through which those actions occur.¹⁰⁵ For instance, according to the accuser, playing chess is a complex set of related actions and is thus a social practice and FIDE, the international chess federation, is an institution within which the social practice is supported and comes to fruition. While it is true that the FIDE regulates official matches and professional chess players and thereby is an institution within which a lot of chess is played, the accusation of a category mistake ignores a significant feature of institutions: normative structure. To bring this feature to light, consider the difference between Sarah, who is practicing scales, and me, who is making sounds. We might be making very similar sounds. However, Sarah is engaged in the social practice—the institution—of music, whereas I might be imitating her, voicing my boredom, responding to her in frustration—none of which are actions within or under the social practice of the institution of music. In this case, my actions do not adhere to musical norms (the norms of the social practice of music).

¹⁰⁵ Dancing the tango, singing a duet, and dropping mail into a mailbox are paradigmatic of one sense of social practice, but I consider them conventions—licensed moves within larger social practices. I will discuss conventions in more depth shortly, but consider the caveat regarding accordion terms.

Second, I want to set aside the issue of whether or not membership in an institution is voluntary or consensual.¹⁰⁶ In short, my view is that voluntary or consensual membership is frequent, but not paradigmatic of membership in an institution. For instance, membership in the institutions of family, nation, heteronormativity, and race are not consensual since we are born into these institutions. Admittedly, one may cut away all ties to one's family or emigrate from one's country of origin. However, for many people that is not a real or practical option, given their commitments and economic-social backgrounds. So, in a very general (structural) sense, these institutions are not voluntarily entered into. Other institutions (e.g. heteronormativity and race) are less easy to flee from. Granted, by fleeing to another country, one may "choose" to be of another race insofar as one's physical appearance grants them more racial privilege or status than, say, in the United States; however, there is little escape from heteronormative institutions. But, suppose that someone did manage to voluntarily leave or enter one of these institutions, they would still be a member for two reasons. First, it is pretty much a truism of human beings that we live through social roles and haveordinates or subordinates relative to that role, so (except for Robison Crusoe situations) we always belong to some institution or other in virtue of the social roles we occupy. Second, often times we are "inducted" into an institution because of others' reactions towards us and not merely

¹⁰⁶ The issue over consensual membership, I think, is a distraction, although quite a few theorists argue over its centrality for understanding institutions and, especially, the legitimacy of institutional authority (e.g. Hardimon (1994), Marmor (2011a; 2011b)). The discussion is a distraction insofar as advocates of consensual membership often use such a condition to eliminate widespread and important practices (e.g. racial and gender institutions) as legitimate instances of institutions. As such, the consent-condition is often utilized to downplay oppression and other systemic problems within institutions.

because we consented. An African-American who passes as white may do so in large part because others (white and black alike) recognize and treat her as being white. Over time these reactions normalize our (role) identities such that we become members of the institution or occupiers of some social role within that institution. There is a sense in which one is not born a brother or sister—obviously, biologically one is, but this is not a social role—but has to grow into or learn to be a brother or sister.¹⁰⁷

Institutions and organizations are broadly similar, but differ in how fine-grained their ends are. My gloss on ‘institution’ is the following: an institution is, at its most basic, a system of structures of conventions, social norms, social roles, and particular collectively shared ends or goals, that regulate (i.e. constrain positively or negatively) various aspects of our behavior (both social and private). Most philosophers who investigate institutions consider the American economy a paradigmatic institution: one ought to buy and sell with American dollars and businesses ought to seek a good reputation with the local Better Business Bureau (social norms); one can use cash or plastic as mediums of exchange (various conventions); there are consumers, entrepreneurs, and regulators (social roles); individuals or organizations can occupy any number of these roles; and the economy has particular ends in that it, among others, seeks to maximize GDP, maximize individual wealth, and produce innovative and marketable goods. Such ends are not fine-grained. Compare these broad ends with those of an

¹⁰⁷ I will say more about the question of voluntariness in footnotes throughout, but in general I wish to avoid these issues here. For a good discussion of the voluntariness of roles and membership in institutions see Hardimon (1994) and Sciaraffa (2009).

organization, say Medwecare Co's, to offer affordable treatment and medicine to the population of Sub-Saharan developing countries.

A key feature of institutions is that some of the norms that constrain behavior are "secondary" in that they confer power or status (authority) to a particular object or person.¹⁰⁸ A characteristically human practice is to impose a function (or functions) onto things. For instance, a person might impose a function on a physical object when that person uses a found stone as a hammer or chisel. In using the stone this way, the individual treats the stone as a tool; the stone counts as a tool. Institutional norms that confer power or status are just instances of this widespread human practice.

As I discussed in the previous chapter, Searle (1995; 2010) has coined the term 'status function' for functions we impose on objects and persons that go beyond the objects' or persons' natural properties. In the context of social behavior, he thinks that for an object or person to perform the non-physical-based function, the status function must be collectively recognized or acknowledged as applying to the object or person.¹⁰⁹

Suppose I carry the above stone-tool around with me and my cohorts come to recognize it

¹⁰⁸ "Primary" social norms, then, are those that regulate and prescribe behavior; secondary social norms create or establish new possibilities of behavior. This distinction is meant to parallel Searle's famous yet controversial distinction between regulative and constitutive rules (1969, 33–42). Below I will say more about authority. But, now I want to focus on how these norms create roles and other norms.

¹⁰⁹ Searle's explanation of this recognition and acknowledgment is rather unsatisfactory and relies on the notion of collective intentionality, a rather contentious concept in the social philosophy literature (for his explanation of how recognition and acknowledgment work to ground status functions, see his (2010, 7–9, 42–60). However, here, I want to eschew both Searle's explanation and the controversy over collective intentionality. The supplemental explanation I would offer involves social norms and normalizing the secondary norms that create these status functions.

as mine and attribute ownership of the rock to me. In this instance, the status function imposed on the stone-tool is personal property, but the stone tool is *mine* only because my cohorts recognize it as such.¹¹⁰ A second, and for our discussion more important, feature of status functions is that they carry, in Searle's terminology, 'deontic powers'. When my cohorts recognize the stone tool as my private property, certain rights, duties, obligations, requirements, permissions, and so on accrue to the stone in virtue of its being (my) property: only I can loan the tool out; it is wrong of you to steal it; I am responsible for its upkeep; and so on. This feature, as Searle argues, is a necessary feature of institutions and the means by which the normative structure of an institution is grounded, justified, and occasionally altered.¹¹¹ Moreover, deontic powers allow agents in specialized social roles, assuming that the agent possesses the necessary deontic power, to act within the institution as an agent of that institution and, possibly, to alter the normative structure.

So, on my understanding of institutions, status functions are the various secondary norms that help structure the conventions, social norms, and roles that constitute an institution. For instance, consider the institution of marriage. It involves functional social

¹¹⁰ Admittedly, this story brackets the complexities that other norms (both primary and secondary) play in imposing the status function, property, on the stone-tool. For instance, there needs to be structures regarding enforcement—either internalized norms or public penalties of some sort—as well as social roles for policing.

¹¹¹ Strictly speaking status functions are the means by which the institution is grounded and justified *qua institution*. Oppressive institutions are grounded and justified *qua institution* by secondary norms that convey status to those within the institution, but these same norms do not ground or justify the institution *morally*. More will be said about this distinction below in the discussion of legitimacy.

roles (husband or wife, spouse, partner)¹¹² that create or impose deontic statuses (e.g. one has an obligation to care for one's spouse through sickness and health, both may file taxes as one individual). Various conventions are involved in the institution: some spouses wear wedding bands, while others do not; most Americans practice the convention of monogamy, some an open marriage, and others polygamy. Sometimes these deontic powers are imposed through ceremonies that depend heavily on conventions such as lighting a unity candle, smashing a glass, tossing a bouquet, and so on.

I have little, here, to say about organizations other than mentioning the few characteristics in which they differ from the broader notion of institution. Taxonomically, organizations are a subset of institutions and are a bit more fine-grained and particular in their operation and collectively shared goals.¹¹³ First, often membership in organizations is consensual. A parent voluntarily joins his child's school's PTA; and I registered as a Democrat. However, explicit agreement or consent is not necessary. As a graduate student at UCR, I belonged to its student association, though I never explicitly consented or agreed to membership. When our department formed a mini-Graduate Student

¹¹² These words do not denote the same role because roles are constituted by social norms and the norms constituting the wife-role may involve sexist and oppressive norms, while the spouse-role may not. Moreover, an utterance of "my partner" (in non-business contexts) may suggest that the speaker is gay or lesbian.

¹¹³ My position is a controversial one. For instance, Miller (2001) maintains that organizations and institutions are conceptually distinct, though some institutions are organizations and vice versa. He prefers to define their difference in terms of the normative structure: institutions necessarily have a normative structure but organizations do not. My position is that all organizations are institutions, but not all institutions are organizations; organizations require fine-grained specialization and consent (both tacit or explicit).

Association, I became a member regardless of my desire to do so. Second, an organization or system of organizations may comprise an institution. For instance, a corporation is a paradigm organization and, along with countless other corporations as well as personally owned businesses, makes up a large part of the American economy. Third, organizations also involve more fine-grained “specialization” of roles because organizations tend to have more specific and narrower goals than institutions do. The roles mother and father are specialized (in virtue of being roles), though the duties and obligations of these roles sometimes overlap. In an organization, roles may be fine-grained such that duties do not overlap. For instance, at UCR, though all three are teacher-roles, tutors, teaching assistants, and professors, have very different obligations. Role-occupiers cannot pursue the specific role-goals of other roles because they either lack the ability or authority to accomplish these goals. Although the occupiers of these roles are interchangeable (as all social role-occupiers are), there may be specialized requirements on who can occupy the role (as long as the occupier has acquired organizational authority to occupy the role). For instance, the new hiring line is open to any person who has a PhD, the right AOS, and so on.

Over the last few paragraphs I hope I have elucidated the key features of institutions and organizations as well as how I understand these institutions to be structured. Early on in the chapter I stipulated that institutions and organizations were non-accidental (non-aggregate) groupings of people that constrain, through systematically interlocking norms and social roles, individuals’ behavior. I now turn to discussing concepts related to individuals’ behavior within social practices.

B. Conventions

My understanding of convention is complex: I recognize three necessary and jointly sufficient characteristics as the core of conventions and a family-resemblance-like cluster of characteristics that some conventions may or may not have.

A *convention* is, necessarily (a) a repeatable pattern of behavior reproduced from past instances of the behavior;¹¹⁴ (b) arbitrary, in the sense that there exist conceivable alternatives to the actually followed pattern;¹¹⁵ and (c) normatively neutral.¹¹⁶

¹¹⁴ The sense of 'repeatable pattern' I have in mind is a recognized set of behavior that can be and often is repeated—an action or set of actions that can be or is a regularity. For instance, for those of us who have mailboxes with flags on them, the repeatable pattern to send mail is: sender puts mail in box and raises the flag; mail carrier sees the flag, removes mail, and lowers the flag. I do not have such a mailbox. Instead, I place outgoing mail in a central mail location within my condo complex. Both patterns are recognized patterns of sending mail. Such patterns may be more or less complex, depending on the sequence embodied in the convention.

¹¹⁵ Suppose the convention is goal oriented: for example, suppose we wish to continue our phone conversation despite repeated drop calls. There seem to be four patterns of behavior open to us: the caller might call back, the called might call back, both might call back, or neither may call back. The first three patterns of behavior could have become the conventional practice, whereas the fourth would not have achieved the same end as the other possible conventional patterns. So, that the first did become the convention (as opposed to the second and third options) is arbitrary in the sense I am intending here.

¹¹⁶ I reserve 'normative' to refer to social or moral normativity. By 'normatively neutral' I mean that no social or moral normativity is necessarily associated with conventions. Of course, as a matter of practice, conventions are often "backed" by social norms, but this is a contingent feature of conventions.

Moreover, I recognize (at least) three levels of normativity: instrumental rationality, social normativity, and moral normativity. All three might be involved in acting conventionally, but the analysis of conventional action *qua* convention does not require social or moral normativity, though at other levels of analysis social and moral normativity play important roles in conceptual analysis. If I wish to mail a letter (and have a mailbox with a flag), then the best means to send my letter is to follow the conventional pattern associated with this sort of mailbox: I ought to raise the flag. This 'ought' involves instrumental rationality—using the convention is the best means to my

According to these necessary conditions, three paradigmatic conventions are (i) serving turkey for Thanksgiving, (ii) the caller calling back when a call is dropped, and (iii) saying “faucet” to refer to a device that controls the flow of a liquid. However, according to my definition, some practices typically understood as conventional are not conventional. For instance, promising is not a convention because it is not arbitrary—there is no conceivable alternative to the act of promising—though the particular ways we promise (“I promise,” “sure thing,” “I do,” etc.) are clearly conventions. Some think that dead conventions, for instance, handing out cigars at the birth of a son, are not conventions because the practice is not binding—there is no “one ought to do it” associated with the pattern of behavior. However, I recognize that dead conventions are still conventions and that they are “dead” because we no longer have a social norm enforcing the convention.¹¹⁷

In addition to these necessary conditions, there are a cluster of nonnecessary characteristics that are significant for any discussion of conventions. First, some conventions are solutions to coordination problems, as are conventions (ii) and (iii) above.¹¹⁸ These conventions offer a repeatable pattern of behavior for solving how people

end—and not the other forms of normativity. Social or moral normativity does not yet enter the explanation of my action.

¹¹⁷ Marmor (2009) holds a view about conventions such that conventions are social rules that are binding. More on what work social norms do in a bit.

¹¹⁸ There are two senses to a coordination problem. First, the formal sense in which the coordination problem “arises when several agents have a particular structure of preferences with respect to their mutual modes of conduct; namely, that between several alternatives of conduct open to them in a given set of circumstances, each and every agent has a stronger preference to act in concert with the other agents, than his own

may coordinate their behavior and go on together. Usually coordination conventions must be regularly repeated patterns of behavior so that the coordinations succeed.¹¹⁹ Second, many conventions that solve coordination problems often have functions or goals, namely, the solution to the coordination problem. However, not all conventions have functions—(i) does not. Similarly, the conventions of decorating in orange and black for Halloween or of a bride throwing her bouquet to her bridesmaids do not have functions.¹²⁰

I will not argue for the necessity of characteristics (a) and (b), since formulations of both are common to every account of convention I am familiar with.¹²¹ However, allow me to say a few words about the necessity of (c). Suppose there is a convention that people stand a certain distance from each other. On my view, there is nothing normative about the convention—as of yet, there is no social or moral reason to follow the

preference for acting upon any one of the particular alternatives" (Marmor 2009, 20). Second, the informal sense in which there is a problem of choosing between more or less equally plausible but mutually exclusive alternative patterns of behavior (Miller 2001, 94–95).

¹¹⁹ Ruth Garret Millikan (2005) advocates a view in which conventions are patterns of behavior that are reproduced because of the weight of precedent—patterns of behavior are reproduced not because that pattern has certain merits (i.e. is more effective, more aesthetic, etc.) but because of a desire to conform, a lack of imagination to do otherwise, superstition, ignorance, or another reason. For Millikan, whether the convention is a regularity matters only when the parties to the convention are either blind or semi-blind to each other's behavior or when the stakes of the action are high or dangerous.

¹²⁰ Miller (2001) introduces the notion of a "collective end," a goal that is shared by a number or group of individuals and that can be accomplished only when all of these individuals act accordingly. As such, Miller interprets the function or goal characteristic broadly so that, on his analysis, all conventions have a function or goal.

¹²¹ I do not argue here that characteristics (a), (b), and (c) are jointly sufficient, though I do elsewhere. See my "Can Conventions Have More Than One Function?" (draft).

convention.¹²² Alternatively, some people think that conventions are necessarily normative: since there exists a convention about standing distance, then people have a reason—people *should*—stand that distance from another person. The literature on conventions offers two strategies for explaining how conventions have such normative force. One strategy treats conventions as being necessarily social rules and another strategy appeals to conventions as providing a compliance-dependent reason: I ought to conform to this convention because others conform. Often both strategies are employed together.¹²³

Since conventions are necessarily arbitrary in the sense that there exist conceivable alternatives to the acceptable pattern of behavior, the conventional pattern of behavior does not offer an additional reason for acting that way. Though, because of social norms, we may have a social reason for conforming. Any of the possible alternatives are equally good reasons for following those patterns of behavior—each will lead to one of us calling back the other (assuming we both want to talk to each other). Admittedly, there are additional reasons for why the caller should call back, but those reasons derive from sources other than the convention itself. If a convention does happen to have a strong normative force, that force is derived from a social norm or institutional

¹²² Millikan (2005) and Miller (2001) concur that conventions are normatively neutral. Millikan admits that, though we might formulate conventions as rules—"At Christmas, decorate with red and green" or "To ask a question, raise your hand"—we should treat the rules as merely descriptive of the convention pattern and not prescriptive of the practice (15). Miller allows that conventions might have a strong moral component, but this is a contingent feature of conventions. As a matter of fact, some conventions are the accepted way of following the prescription of a norm or directive or, in following such and such a convention, we also satisfy a normative demand.

¹²³ As Marmor (2009) does.

enforcement of the institution's norms or rules. In other words, the apparent normative component of a convention comes from its association with a social norm and institution.

Admittedly, the distinction between the neutral normativity involved in conventions and the stronger, social normativity, involved in social norms is a bit esoteric and is motivated by my own theoretical concerns. Practically speaking, conventions and social norms are often paired such that the convention acquires normative force from the social norm. Consequently, many people have the intuition that one ought to conform to the convention. Dead conventions, such as handing out cigars at the birth of sons, no longer have social norms associated with them. Were we to ask one why she must conform to the convention, an answer appealing to social reasons (as opposed to goal-directed reasons) will likely be given. Compare the reasons involved in the mailbox and flag example with the reasons involved in the personal space example. In the latter example, one does not appeal to the conventional pattern or the goal or end for which the conventional action is done, as might happen with the mailbox example. Instead, one appeals to a social norm governing the practice.

Consider a series of examples. Class has let out and students and faculty are traveling to the next class. The convention on campus is to travel on the right side of paths and walkways. Not everyone follows this convention: some short-cut across the lawn, others walk in groups three or four across, others walk on the left. What, if anything, is wrong about the non-conformists' behavior? They have neither committed a moral wrong nor violated a campus policy—two sources of social norms. The non-conformists simply do not follow the convention. Now suppose, in addition to the

pedestrians, someone rides her bike. What, if anything, is wrong about the bicyclist who does not conform to the convention? Nothing *qua* convention. Though, possibly, she violated a norm about avoiding injury, which might result since she can expect that others will probably be walking on the right. Now suppose that campus has posted signs that prohibit bicycling inside campus and advise people to walk their bikes. What, if anything, is wrong about a bicyclist riding on the path? Again, nothing is wrong in terms of convention, though she has broken campus policy and violated an instituted norm of the campus. Also, her action may be wrong insofar as she is not conforming to a (moral) norm about avoiding injury (another reason for which the policy might have been instituted).

C. Social Norms

In the philosophical literature, social norms and conventions are often treated co-referentially; other times, conventions are analyzed in terms of social norms.¹²⁴ I think that both treatments rest on a conceptual confusion: conventions are necessarily patterns of action, while social norms necessarily involve beliefs about what one (or others) ought to do or not do. Nonetheless, that this confusion occurs is understandable because, in most cases, a social norm and the conventional action that the norm prescribes occur together and both involve regularities in action. Indeed, as I will explain momentarily, social norms necessarily involve regularities. So, since conventions are patterns of

¹²⁴ See Marmor (2009) for an analysis of convention in terms of social norms. Miller (2001, 126–130) and my “Marmor’s Distinction and the Extension of ‘Convention’” (draft) argue that such analyses are problematic.

behavior caused by previous instances of the pattern, chances are that a widespread convention is also a regularity.¹²⁵ Practically speaking there is little reason to separate the two, especially if one's focus is on social norms or norm-guided behavior. But, importantly, social norms and conventions, conceptually speaking, are very different.

The difference, in addition to being cashed out as one between action and belief, also involves a difference in normative force. Conventions have neutral normative force (i.e. instrumental rationality) insofar as conventions do not motivate one's ends or goals as do social norms or moral norms. Suppose that our call is dropped and I want to continue or conversation—I started it in the first place. Three possible conventional means exist: (i) I (the caller) can call back, (ii) you (the called) can call back, or (iii) we both call back until we connect again.¹²⁶ As a means for accomplishing my goal, the first two patterns are equally effective.¹²⁷ Further suppose we live in a society in which the first pattern is the known, recognized pattern—you expect me to call and so will not call me. Then, the most efficient means to achieving my end is to follow the first pattern. Thus, the caller's calling back is instrumentally rational. As described, the convention does not yet have social normative force. However, in actual practice, the convention to

¹²⁵ One helpful way of thinking about the two concepts is that a convention has the potentiality of becoming sanctioned by a norm when the pattern of behavior constituting the convention is norm-alized whether this in fact happens depends on other social factors. Alternatively, the difference between a dead convention (such as passing out cigars at the birth of sons) and a live convention (ringing the doorbell or knocking at a stranger's house) is that a norm is associated with live conventions but not dead ones.

¹²⁶ Here, a fourth option, (iv) no one calls back is not a conventional alternative because such inaction will not accomplish my goal.

¹²⁷ The third alternative is not as effective, since it may result in busy signals and impede the efficiency in connecting our call.

call back likely has such normative force. But why? We need to assume that there is an associated censure for not conforming to the called's expectation that the caller will call back. When such censure accompanies the conventional behavior we have a social norm. Contrast the existence of such censure with the convention of walking on the right of a path or walkway. Nonconformists to the walk-on-the-right convention do not receive social censure.

So, convention *qua* convention (i.e. a necessarily reproduced, arbitrary pattern of behavior) neither prescribes a pattern of behavior (prescribes a convention) or enables the censure of deviation from following the convention. In this section, I wish to elaborate on these two features—prescriptive force and censuring—so to understand the role social norms play in social practices and in shaping and authorizing our behavior within these practices.

Social norms are necessarily both regularities and prescriptions, whereas conventions are never prescriptions and may be regularities, if a convention is widespread and current.¹²⁸ Following Pettit's definition of norms, we can think of norms involving three characteristics, two of which are not shared with conventions. Here is a formal definition I endorse; it is Graham's modified formulation of Pettit:¹²⁹

¹²⁸ Following Peter Graham (forthcoming), Miller (2001), and Pettit (1990), I think of social norms from both the scientist's and philosopher's perspectives. In the former, norms are what is normal, typical, or regular; in the latter, norms are what ought to happen and not necessarily what one does.

¹²⁹ Graham (forthcoming) offers this definition. In this chapter I will not argue for a definition of social norms, since my target is how norms function in social practices and shape social roles.

A regularity R in the behavior of members of a population P, when they are agents in a recurrent situation S, is a [social] norm [to the extent that], in any instance of S among members of P:

1. Members of P conform to R [and this is common knowledge].
2. Members of R prescribe conforming to R (believe each of us ought to do R) and disapprove of failures [and this is common knowledge].
3. The fact that nearly everyone approves (believes one ought to conform) and disapproves (believes it is wrong not to conform) helps to ensure that nearly everyone conforms.

Notice that the context-setting part of the definition relies on there being a pattern of behavior acted upon. So, here proto-conventional behaviors are candidates for social norm behaviors.¹³⁰ A few words on each characteristic. First, that members of some population conform to the behavior: as with conventions, such candidate behaviors are not mere regularities (e.g. people regularly eat breakfast or plan vacations during the summer). Mere regularities lack the second characteristic, that they are prescribed. So, in part, people conform to the behavior because it is prescribed. Additionally, people conform, in part, because of the third characteristic involving approval and disapproval. In fact, the third characteristic is crucial and functions to unify the first two characteristics—the various patterns of approval and disapproval sustain and perpetuate conformity to the norm and the various patterns of approval and disapproval offer motivation for conforming to the norm.

So, in short, approval and disapproval take the prescriptive element of a norm and enforces the norm such that it becomes a regularity. Graham, utilizing studies from evolutionary social science, highlights two mechanisms through which approval and

¹³⁰ By 'proto-conventional behaviors' I mean actions that are nearly conventions, but may not be caused by previous instances of the pattern of behavior (perhaps, because they have not been norm-alized yet).

disapproval ensures that a norm becomes a regularity. The first is a system of rewards and punishments. Obviously, one is likely to conform to a norm if conformity results in approval or if lack of conformity or deviance from the norm results in punishment, which can run the gamut from shunning or ostracizing, refusing assistance, threats of or actual physical harm, and gossip. Additionally, within institutions, punishments may be enforced through institutionalized punishments (fines, imprisonment, sanctions).

A second mechanism involved in conforming is the process of internalization in which one is socialized to find the norm intrinsically motivating and one conforms because of this inner motivation. The agent experiences some internal motivational force (from beliefs or emotions) that she ought to (or ought not) act in accordance with what the norm prescribes. That is, internalization creates a new preference or transforms our existing preferences such that we come to think that acting in accordance with the norm is the right thing to do.¹³¹ Moreover, once a norm is internalized, it connects to other social emotions—guilt, shame, embarrassment, resentment, respect—and strengthens one’s motivation for conforming with the social norm.

I would like to briefly return to the preceding discussion of convention, especially my claim that conventions are normatively neutral. The normative force of social norms is stronger than the instrumental rationality involved in conventions. Moreover, the motivational mechanisms of approval and disapproval also strengthen the normative

¹³¹ The subsequent (normative) force of social norms is stronger than the instrumental normativity involved in merely following a convention.

force (at least the felt force) of social norms.¹³² A convention is neutral regarding its normativity until that convention is associated with a social norm, then the convention inherits the strength of the prescriptive aspect of the social norm. Consider the convention and social norm that we stand a certain distance from each other. Indeed, there are as many conventions for ‘personal space’ as there are cultures. However, I (as many people do) feel obligated to follow my culture’s convention primarily because of the social censure associated with not following the various conventions about personal space. That is to say, I follow the convention because I have internalized the social norm associated with the convention and not because of any normativity essential to the convention.¹³³ I conform because of the social censure in deviating and not because the following the convention best brings about my end of standing next to people.

One final point about social norms. One might think of social norms as a society’s or culture’s rules, which include norms about social interactions, gender roles, etiquette and other behavior between individuals and various classes of the society. I accept this general application of norms, but I also accept that social norms can be institutionalized. Institutionalization occurs when an institutional secondary norm codifies or legitimates a social norm such that it constitutes the institutional or social practice. For instance, a social norm may become institutionalized through a bylaw or policy of the institution, say

¹³² That is not to say that the felt force is often illusory. For instance, the social norm that women ought to be submissive to their husbands is probably a strong motivator in some women, but the social norm lacks a moral legitimacy that would make the norm *actually* normatively strong. See my remarks about *ultimate* and *formal legitimacy* below.

¹³³ Additionally, if I live among people of another culture I would likely internalize their norms about personal space and thereby conform with their conventions.

when a company enacts a policy against clocking in late, or through institutionalized penalties or rewards, as when a company provides a bonus for landing a new and lucrative account.

D. Social Roles

A social role is constituted and individuated by a set of social norms that govern the role. For instance, the wife-role and husband-role are each constituted by a different set of norms, though some norms (or their content) may overlap (e.g. be faithful). Moreover, a subset of the norms constituting a role delineate the role's deontic powers (i.e. the rights and duties of the role), which are imposed on individuals occupying the role through status functions such that the role-occupier has the requisite and institutionally legitimate authority and permission for fulfilling some role-specific function within the relevant institution.¹³⁴ As an instructor, I have the authority to submit grades for students—a power I did not possess as a teaching assistant.

Since, I understand society as a composed of an indefinite number of institutions, each of which have various roles that, in part, constitute these institutions, then individuals, who exist within these institutions, will occupy any number of these roles. For instance I am a son, brother, spouse, citizen, advanced graduate student, union member, instructor, HOA member, etc. Moreover, the roles we occupy shift throughout time: recently, I acquired the spouse-role and eventually I will lose the graduate student-role and maybe acquire the parent-role. Occupiers of social roles have rights and duties

¹³⁴ I discuss the concepts of authority and legitimacy in the next two sections.

that they would not have outside of those roles—e.g. police have the power to arrest—and, moreover, many of these rights and duties involve significant and important aspects of our lives.

It will be helpful to point out additional characteristics of social roles. First, following Michael Hardimon (1994), not every normative status (or cluster of them) is a role. For instance, being a human being or person (a moral status) is not a role, though persons have moral obligations that nonpersons do not possess. Moreover, maintaining that ‘person’ denotes a fundamental and essential role seems to lie on a conceptual mistake: persons occupy social roles.¹³⁵ Roles involve institutional relationships, which are often hierarchical. So, being a friend is not occupying a role—what institution does such a relationship belong to?—but parent and child or teacher and student are roles. The spouse-role implies a different relationship from the wife- or husband-roles, a relationship that is not hierarchal.¹³⁶ Although roles involve relationships, these relationships need not be personal: I occupy the citizen-role while Barack Obama currently occupies the president-role.

¹³⁵ Allow me, here, a distinction a bit more fine-grained than required of the current discussion. The distinction is three-fold: human beings, persons, social individuals. Human beings are members of the species but may lack a first-person perspective or a minimal sense of autonomy (as with babies and sufferers of dementia). A person possesses a first-person perspective and a minimal sense of autonomy, the latter of which grounds the ethical obligations of persons. A social individual is just a person who occupies a constellation of social roles, which ground the social individual’s socially deontic powers. Normativity runs throughout the distinction—we are constrained by biological normativity, then there is moral normativity, and social normativity. Moral norms trump social norms, but neither trump biological constraints. Charlotte Witt discusses this distinction in more detail; see chapter 3 of her (2011).

¹³⁶ A hierarchal relationship need not imply injustice or oppression: we can imagine just and fair interactions between the parent-child roles or the teacher-student roles.

Second, since roles are institutionally specified rights and duties that pertain to a specific institutional function, it might be easy to confuse social roles and natural statuses. For instance, there are two senses of the ‘mother’—natural (or biological) status and social role. An adoptive son might have a social mother who is not his biological mother. He might have a social-role obligation to love the woman who occupies the social-role of mother but no obligation to love his biological mother. Equally, he might have a natural-obligation to donate bone marrow or a kidney to his biological mother but not his social mother.

Third, a role-obligation is a normative requirement that attaches to the institutional role, which fixes the content of the role-obligation in virtue of its institutional function. Role-obligations, then, are socially normative. Indeed, they are a subset of social norms that govern particular roles. Moreover, role-obligations employ the same approval and disapproval mechanisms—rewards, penalties, and internalization—that social norms employ. Whereas internalization and social censure are probably stronger mechanisms in the functioning of social norms than are institutional penalty and reward, role-obligations are a strong mixture of reward and penalty and internalization of role-obligations. Both mechanisms are equally important in structuring and constraining one’s behavior regarding the role.

I take my point about institutionalized penalty and reward as being obviously true, in part, because we are all familiar with the rewards and punishments of our occupations, which more often than not involve organizations and institutions. However, allow me a few remarks about internalization and social roles. Not every child wants to be a brother

or sister—many of us are familiar with those children who are upset and frustrated by the fact that their parents' attention is directed at other siblings. Nonetheless, over time, many of these children come to identify and cherish their roles as brothers or sisters. Such identification is not instantaneous but accrues over time through internalization. That is, the child who eventually identifies as a sibling comes to identify with the role-obligations of a sibling. The process through which this identification occurs is pretty much the same as internalizing a norm. Indeed, the process of role-identification involves taking on the normative commitments of the role as one's own commitments. To identify with a role is to (a) occupy that role in fact, (b) to recognize that one occupies the role, and (c) conceive of oneself as someone for whom the norms of the role function as reasons.¹³⁷ It is characteristic (c) that parallels internalization: in both role-identification and norm-internalization, the person comes to value the norms and be motivated by the norms.

Fourth, sometimes social roles are invisible or nearly so because they are so widespread, diffuse, or taken for granted that they cease to be understood as roles. A role such as father or husband are not the sort of roles I have in mind because, usually, such roles are entered into voluntarily, with expectation, and with ceremony. I have in mind roles such as the native citizen role, which many people taken for granted such that the role structures their behavior and assumptions towards everyone else; the bus-rider role, which is diffuse such that we do not become aware of a change in status when entering the bus and that the role disappears into other roles, such as those specified by class or

¹³⁷ See Hardimon (1994). His condition (c) provides the "evaluative standards associated with a role, its rights, duties, virtues, ideals and supererogations, have reason-giving force" (358).

ethnicity; or gender roles, which are so widespread that we may think being a woman or being a man is a natural status and not a social role. I point out this characteristic to highlight that some institutions that oppress exploit this feature of social roles by playing up the “naturalness” of the norms that govern the role: women are naturally emotional and irrational, Asians are naturally good at math, and so on.

Finally, there is controversy over whether race and gender are institutional roles. For instance, Hardimon denies that this is the case because role obligations are defined in terms of institutions and not groups. Moreover, he recognizes that one may occupy a role either by consent (in a very minimal sense) or by birth, and the only roles assigned at birth are citizenship and those of family (1994, 347–348). However, I conceive of race, gender, and other social groups as institutional, so I must address Hardimon’s skepticism. The first step to addressing Hardimon’s skepticism is to rely on something I said earlier: that membership in institutions is not necessarily consensual and that most of institutional memberships are inescapable (and, even if practically escapable, we exchange it for a membership in a new institution or we upgrade or downgrade our current membership (status)). That is, the range of social roles I recognize for which we are *thrown* into at birth is much more exhaustive than Hardimon’s. At birth, in addition to the establishment of familial relationships, we enter into a number of other relationships on the basis of our perceived sexual organs, the color of our skin (or parent’s skin), the economic position of our family, and so on. Since we are born into these relationships, which are structured by social norms and widespread institutions, we are born into social roles to which we have yet to identify with. Second, following Sally Haslanger (2000) and others, I recognize

that, at least in institutions of inequality (viz, racism, sexism, and heteronormative institutions) there are general status roles. For instance, in sexist institutions there is the ordinate-role (man) and the subordinate-role (woman). A similar phenomenon happens in terms of race. In a society such as ours in which the U.S. census identifies a number of races and ethnicities (Asian, Pacific Islander, Black, White, Hispanic American Indian) there exists a hierarchy role structure, with the white-role at the top.

Thinking of race and gender this way is further validated by how I have described roles. For instance, people's roles often shift and change: so we can explain the phenomena of 'passing' or 'emasculatation'. Additionally, we can explain how privilege (as well as disadvantage) works by appealing to the cluster of rights and obligations individuals inherit through occupying roles. For instance, as a white male, I am, in general, socially authorized to have consensual intercourse with women: I do not receive social censure if I sleep with a number of women. However, women who sleep with a number of men receive social censure, given the norms about sexual intercourse. Moreover, women who do not sleep with any man (because she is celibate or a lesbian) receive censure. So, the cluster of rights and obligations that accrue to the social role 'woman' involves censure however she has intercourse.

E. Authority

The concept of social authority intersects our current discussion at two points. First, returning to issues with the exercitive models of oppressive speech discussed in the first chapter, is there a sense of social authority that underwrites utterers' ability to

execute speech acts that oppress? For instance, exercitive speech acts require that one have the requisite authority to enact or make the case the content of the one's exercitive utterance.¹³⁸ Clearly, there exist some forms of institutional authority that underwrites a speaker's ability to successfully perform some speech acts, namely the exercitive (and verdictive). The Pretoria legislator, as we discussed in the first two chapters, meets the institutional criteria for properly executing his exercitive speech act. Once we acknowledge the obvious cases of institutional authority, does it make sense to cast the net of institutional authority wider? Momentarily, I will argue that we can, given the preceding discussion of institutions and social norms.

Second, assuming we can cast the net of authority sufficiently wide enough to explain ordinary instances of oppressive speech, how might the concept of authority help us understand how some utterances constitute oppression, whereas others do not? In other words, how does the notion of authority adjudicate questions of when some utterance or other, especially one that is racist, sexist, or involves forms of hate speech, is oppressive? For instance, Heather's boss's utterance of "You're overreacting; don't be hysterical" is oppressive, but a black man calling me a "honky" is not. The former is oppressive speech and sexist speech, but not hate speech; the latter is racist speech and hate speech, but not oppressive speech.

¹³⁸ See Chapter 1, 1.B. for a discussion of success conditions of exercitive speech acts and how many instances of oppressive speech fail to satisfy these conditions.

The problem of authority, which characterizes the first question above, is as follows.¹³⁹ In the Pretoria legislator case, the legislator's utterance subordinates successfully because he possesses the right kind of authority to enact laws and the law he enacts subordinates black South Africans. His authority derives from the institutional normative structure of the South African government. However, an ordinary speaker whose utterance involves hate speech or other (purportedly) oppressive content does not have such authority. Therefore, ordinary speakers do not (and cannot) subordinate (or, generally, oppress) others through their speech. Typically, arguments along these lines are considered fatal for the advocates of the standard exercitive model of oppressive speech.¹⁴⁰ Others, for instance McGowan [2003; 2009; 2012], argue that authority is not necessary for speech to subordinate or oppress. McGowan argues that speech enacts permissibility facts that are oppressive in virtue of being covertly exercitive utterances and thereby bypass the need for success conditions of authority. I will argue that we must have the requisite authority for our speech to oppress. However, depending on one's social role, such authority is rather inexpensive.

Following Maitra, I would like to distinguish two aspects of the authority problem. First, is it true that some (ordinary) speakers have the authority to subordinate others through their speech? In other words, do speakers have the authority to rank others as inferior, and so on, or to legitimate discriminatory behavior against them, as does the Pretoria legislator when he enacts the law restricting who can vote? Also, assuming that

¹³⁹ See Ishani Maitra (2012, 95–101) for a more in depth framing and analysis of the problem of authority.

¹⁴⁰ See Bauer (2006), Bird (2002), Green (1998), Jacobsen (1995), and Parent (1990).

some speakers do have such authority, how do (what is the process by which) speakers come to have such authority? And, what is the *scope* of the authority—whom can the speaker oppress?

Maitra answers the first set of questions regarding whether and how ordinary individuals have the requisite authority to oppress by developing a number of terminological distinctions. For instance, individuals may have authority in a given situation derived from positional authority—positional authority involves “having authority over others to perform certain actions” (104) in virtue of one’s social position, which Maitra recognizes as political office or occupation. Her examples of positional authority involve the Pretoria legislator and a teacher. One may have *deputized* positional authority, if one is formally granted authority by the occupier of positional authority as might happen when an elementary school teacher asks a student to divide the students into groups of three when teacher is called out of the room. The student has acquired the *deputized* authority to say who is in which group. Alternatively, one may acquire positional authority through *omission* on the part of the occupier of positional authority. Thus, when the teacher is present and one of the students divides up the other students into groups without the teacher’s interfering, this student has acquired derived positional authority.

Additionally, individuals may have authority in a given situation because others *license* the authority and not because it is derived from positional authority. Typically, in such cases, the speaker’s authority relies on others *not* (or refraining from) challenging their utterances. Maitra offers the following example to motivate licensing:

A bunch of friends want to go on a hike on the coming weekend. They begin to discuss the logistics of the hike: where to go, for how long, what to bring, how to get there, and so on....Andy begins to be concerned that nothing will get organized. He decides to take over, and begins to make decisions. He assigns each of the group members a specific task....No one objects. Everyone completes their tasks, and the hike takes place as Andy planned. (106)

Here, Andy's first assignment is granted by his audience, he acquires authority after he issues the first assignment, and everyone's agreement is not required.

Maitra, then, uses these distinctions to explain how speakers, in various instances, possess the authority to oppress. Consider one of her examples—the one in which her distinctions work most clearly:

An Arab woman is on a subway car crowded with people. An older white man walks up to her, and says, “F***in’ terrorist, go home. We don’t need your kind here.” He continues speaking in this manner to the woman, who doesn’t respond. He speaks loudly enough that everyone else in the subway care hears his words clearly. All other conversations cease. Many of the passengers turn to look at the speaker, but no one interferes. (100–101)

For Maitra, the speaker's utterance is licensed because no one on the subway challenges the speaker's utterance. Interestingly, given the above reconstruction of her account, the man's first utterance, “F***in’ terrorist, go home,” lacks the authority to oppress. Consequently, what he later says—“He continues speaking in this manner to the woman...”—is oppressive speech because, by then, the rest of the subway riders have licensed him the requisite authority.

First, this consequence is, obviously, problematic—all of his speech should be oppressive, if any of it is.¹⁴¹ Suppose that the man said what he did and a number of people on the subway spoke up and criticized him for being a bigot. According to Maitra, then, none of his utterances would be oppressive. My intuition is that, regardless of the other passengers' reactions, the man's speech is oppressive. So, any purported authority he possesses does not come from being licensed by the other passengers. Consequently, and second, although Maitra's distinctions are insightful and correct regarding (ordinary) interactions between individuals, I think Maitra's distinctions shift our attention away from a more basic and straightforward explanation: none of us are "ordinary" speakers, in that many of us possess positional authority in virtue of occupying the social role(s) we occupy. For instance, parents have authority over their children, but not the children of others and, according to some historic marriage norms, husbands had authority over their wives.

On my view, many individuals already have—in Maitra's terminology—positional authority that allows them to oppress. So, in virtue of one's social roles—those roles that are socially ordinate (being a man, white, straight, abled)—one has the authority to subordinate; it is a case of simple positional authority. For instance, as a straight individual, Rebecca's mother has the authority (within the heteronormative institution) to censure those who deviate from the norms of that institution. So, she has

¹⁴¹ Megan Stotts points out that McGowan's example involving Steve's "I banged the bitch" and John's "She got a sistuh?" faces the same problem. Assuming that Steve's contribution is the first sexist comment in the conversation, Steve has not yet acquired the license to oppress. Nonetheless, given Maitra's analysis, John's utterance and Steve's subsequent contributions are oppressive.

the authority to engage those norms and bring them to bear on her daughter when she says “I find the idea of your kissing another woman unimaginable and disgusting.” Men have authority within the gender institution. When Heather points out an unfairness in her boss’s treatment of her, she is not being submissive or complying with a man’s will—not conforming to gender norms. And so, her boss, given the authority of gender institutions and his authority within the company, censures her by calling her hysterical and dismissing her concerns.

It is interesting that Maitra provides us with the identity of the speaker on the subway—a white male. Presumably the Arab woman is dressed in traditional clothing, marking her as *other* (and deviating from Western norms of clothing), for how else would the bigot know to pick her out this way? So, when he says what he does, his utterance is authorized to subordinate, since he is engaging norms of post-9/11 xenophobia. In terminology that I will develop shortly, his utterance is a move within an oppressive institution because the utterance conforms to a social norm in the institution of American xenophobia.

Maitra does not address the second aspect of the problem of authority—what is the scope of authority?—but we have the resources to do so. In short, one has authority to oppress if their social role is ordinate-enough over the social role of another. Imagine that, at a bar, a white man and a black man get into a disagreement. The black man calls the white man a “honky”. The utterance is racist—a racial slur was uttered. However, it is not oppressive because the black man, given his social role in the institution of American racism, does not have the requisite authority to subordinate or oppress white people *qua*

white.¹⁴² Although, in a similar case, a woman may say to a man, “don’t be a sissy,” and censure him for failing to conform to some gender norm or other of masculinity.

However, she is merely censuring him and not subordinating or oppressing him. If her utterance is oppressive—and it is—she is complicit in her own gender oppression insofar as she, by uttering those words, engages the norm that women act in such a manner.¹⁴³

In short, then, some speakers do possess the authority to oppress because their social role(s) provide them with the requisite authority to do so. I will address this concern in more detail below. Nonetheless, in explicating key concepts in a theory of social practices, we should understand authority accruing to individuals in virtue of the social roles and the institutions through which we occupy these roles, as providing the enabling conditions (through secondary norms) of our social authority.

F. Legitimacy

There are two issues regarding legitimacy that I ought to say a little about in order to substantiate my account of social practices. The first issue is: how is the authority invested in (occupiers of) social roles or in institutions legitimate? The second issue is

¹⁴² This consequence leads to an interesting question that I cannot answer here: can individuals occupying a subordinate social role oppress others occupying an equal or ordinate social role? For instance, suppose that the racial hierarchy in the United States is white-Asian-Hispanic-black. Can an individual of Hispanic descent oppress an individual of Asian descent? I think that it would be possible, given sufficiently oppressive structures since the Hispanic individual can invoke the norms of oppression towards Asians.

¹⁴³ Here I want to avoid a full discussion of being complicit in one's own oppression, but interested parties should consult Sandra Bartkey's classic work on psychological oppression (1990) as well as Marilyn Frye's work on oppression (1983).

whether an institution is legitimate? The following paragraphs are not meant to offer arguments but rather an explanation of how I understand these concepts.¹⁴⁴

Consider the second issue first. Ultimately, whether an institution is itself legitimate depends on whether the institution is just or moral. For instance, the former American institution of slavery was not a legitimate institution morally speaking. Let's call this sense of legitimacy *ultimate legitimacy* since the legitimacy depends ultimately on whether it meets the standards of morality or justice. From the vantage point of ultimate legitimacy it turns out that, historically speaking, many of our institutions are not legitimate. Nonetheless, many of those institutions, unlike slavery, have had a lot of staying power, so what explains their longevity? The other sense of legitimacy addresses both their longevity and the first issue.

Institutions, in particular the authority invested in social roles and the enforcement of institutional rules and norms as well as in defining the cluster of rights and duties that make up a particular role, have another sense of legitimacy, which we might call *formal legitimacy*. Essentially, an institution's formal legitimacy hails from the status functions within the institution. The institutional secondary norms (those that confer deontic powers) explain how a person (occupying a role) can be in or have authority. First, second-order rules state what is to count as a first-order rule—i.e. what will count as an officially binding first-order rule. Second, some people are authorized in such a way to carry out or enforce other secondary or primary institutional norms. Thus, formal legitimacy amounts to: One is in authority if one's role is constituted in terms of the

¹⁴⁴ Perhaps, a future line of inquiry might pursue my ideas on some of these topics.

appropriate second-order empowering rules or if the person authorizing him has himself the authority to authorize.

In a way, then, the legitimacy of an institution is self-imposed and self-perpetuating. Some might find this consequence unsavory because unjust and immoral institutions have self-perpetuating justification. However, I think that this feature of institutions is correct conceptually, though unfortunate practically. Nonetheless, we still have resources to contest the existence of unjust and immoral institutions by appealing to ultimate legitimacy. One might think that there needs to be a grounding of legitimacy external to the institution. Given what I have said about status functions, any such grounding comes from the grounding of the status functions, which (according to Searle) involves recognition and acknowledgment from individuals who act within the institution.

2. Moves Within a Social Practice

So far, I have discussed social practices as institutions and organizations that structure our lives, primarily through social norms and roles, and discussed how conventions and norms are a part of these institutions, especially part of the structure that perpetuates and contributes to the institutions' existence. Now, I turn to developing the notion of a move or contribution within these practices. I recognize four types of moves: acting in accordance with a convention; acting in accordance with a norm; legitimating a

convention, norm, or practice;¹⁴⁵ and enacting new norms (bylaws and policies) of an institution. The first three types involve actions that *engage* existing practices and are successful when they are permitted by the normative structure constituting the practice. The fourth type—*enactment*—is rare compared with the other three types and so I will say little regarding it.

To see how all of these types are moves or contributions within social practices, consider how these moves are exemplified in the game of chess.¹⁴⁶ In chess there are roles—players, rooks, pawns, queens, and so on—and, as such, each role-occupier has various deontic statuses associated with them: rooks may move rank and file; if white's piece moves to a position occupied by black's piece, black's piece is removed from play. Any move will necessarily involve alterations of the deontic status of the role occupier (or, in the case of enactment-type contributions, altering the normative structure of the institution). Since chess is a turn-based game, each move alters each player's deontic status—when white moves, black gains permission to move her piece and white loses permission to move his piece. Sometimes a number of alterations occur through one

¹⁴⁵ An action legitimates a convention, norm, or practice when it enforces a chunk of the normative structure of a social practice without being an action in accordance with a norm. Actions that express approval or disapproval, for instance, ridiculing one's daughter for her pudgy appearance, legitimate the norm.

¹⁴⁶ I take games to be paradigmatic social practices, although there are some asymmetries. For instance, the consequences of failing to conform to the norms or rules are slight: a newbie player does not garner much in consequence of failing to conform to the rules of chess. Instead, the more experienced player explains that a piece does not move in such a way. Alternatively, the game comes to an end either through a natural consequence of play (checkmate or draw) or when one grows tired and forfeits. Widespread social practices, however, often have heavy penalties for not conforming or cannot be opted out of.

move: white's deft move may capture black's bishop (and remove all game status from that piece), put black's king in check, and grant black permission to take her move. Moreover, these alterations occur because of the background of interlocking norms that constitute the practice that permit successful moves to further the "play" of the practice. A move is successful only if it adheres to the normative structure of the practice. For instance, moving a pawn backwards is not successful because it is not permitted by the rules of chess. Play does not continue until an action is a successful move within the practice.¹⁴⁷ So, in chess, any action that accords with the norms (rules) of chess is a move or contribution towards the game. Also, moves may accord with a conventional act (say, with the opening conventions of the Sicilian Defense or the King's Indian Attack).¹⁴⁸

The third type of contribution to social practices—legitimation of a convention, norm or practice—requires leaving behind the analogy between games and widespread social practices since the type often either involves the interaction between vertical or horizontal institutions or involves actions that approve or disapprove of others' behavior.

¹⁴⁷ It may seem as if I am equivocating 'successful'. For instance, earlier I claimed that someone's utterance of "honky" towards me does not count as oppression because our society lacks institutional practices that oppress white people (*qua* white people). As an act of oppression, the utterance is unsuccessful, though it is successful as a speech act and successful as a contribution to various other practices.

¹⁴⁸ In games, norms and conventions do not come apart; conventions, as a matter of fact, conform to the norms (or rules) of the game. This is also true of many widespread social practices. For instance, driving on the right is a convention, social norm, and a law (an explicitly codified, institutional norm); in most Western societies, shaking hands is a convention and norm of meeting. However, in widespread practices it is not necessary that conventions and norms collapse into one another. A norm in the American economic institution is that services and products be paid for in US dollars, and there is any number of conventions for doing so—using a debit card, a credit card, pay pal, a check, or paper money.

Consider a case of vertical and horizontal legitimation: political campaigning is a social practice (though, an institution onto itself) within a more widespread social practice, government.¹⁴⁹ During August 2012, then-Representative Todd Akin said, during an interview while on the campaign trail for a Senate seat representing Missouri, that “First of all, from what I understand from doctors [pregnancy from rape] is really rare. If it’s a legitimate rape, the female body has ways to try to shut that whole thing down.”¹⁵⁰ I take his interview to be a move with his campaign for senate: it is an action that accords with the norm that candidates ought to engage the public through the media.¹⁵¹ I would like to focus on Akin’s claim about ‘legitimate rape’.

Akin’s statement is not a move in one of the first two senses—acting in accordance with a convention or in accordance with a norm—because his action does not alter anyone’s deontic status: he is not enacting policy or a law, nor does his action alter someone’s normative status. Akin’s statement, intentional or not, is a move to legitimate various (sexist) norms: (i) that there are different types of rape (i.e. instances that are justifiable from those that are not), (ii) (false) views about women’s bodies and the rate of

¹⁴⁹ There are conventions (stump speeches and moderated debates), norms about what criticisms are below the belt (discussion of the candidates' children are off limits), explicit rules (what remains of campaign finance law) and roles (nominee, candidate, etc).

¹⁵⁰ From the Washington Post <http://www.washingtonpost.com/blogs/the-fix/wp/2012/08/19/todd-akin-gop-senate-candidate-legitimate-rape-rarely-causes-pregnancy/> (accessed 2/17/2013).

¹⁵¹ Remember, I think that 'move' and 'social practice' are accordion terms, so do not think there is any conceptual confusion to say that Akin's statement is a move within an interview, which is a move itself with in a campaign.

pregnancy due to rape,¹⁵² and (iii) a reinforcing of the suspicion that many instances of rape are false (not legitimate cases of rape) and thereby undermine a victim's claim about being raped.¹⁵³ Akin's statement is a move within the campaign practice insofar as it is part of his interview, but the statement is also a legitimating move horizontally—from campaign practice into sexist social practices. Akin's statement may also be understood as a legitimating a move vertically—from campaign practice into the Republican Party (qua organization)—since Akin was expressing his support (approval) for the party's platform on abortion.¹⁵⁴

Since we have turned from modeling games to widespread practices, I return to the institution of marriage and work through the various ways in which actions are moves within the social practice. Marriage involves the social roles of husband, wife, or spouse. Moreover, since the institution of marriage intersects with that of family, we might even consider the roles of 'father,' 'stepmother,' 'mother-in-law' as additional (or secondary) roles. Marriage also involves the creation and imposition of deontic statuses on individuals: the obligation to care for another's spouse through sickness and health, that

¹⁵² At the time, Akin was on the House Committee on Science, Space, and Technology, so he has an institutional role that enables him to legitimate claims involving science because he is a legislative expert on science and that allows him to create laws and policy regarding science.

¹⁵³ Moreover, certain inferences are licensed if someone accepts his claim. Since, according to Akin's "science" that maintains that women's bodies do not allow for pregnancies from rape, one might conclude that a woman who is pregnant was not raped, since her body did not reject the fetus.

¹⁵⁴ Often vertical legitimatization involves approval and disapproval of particular norms of the institution (and not necessarily individuals' conformity or deviance from an institutional norm).

both may file taxes as one individual, etc. Finally, various conventions and norms structure the institution.

Obviously, moves in marriage are often actions in accordance with conventions. Two people enter the institution together through conventionalized rituals and ceremonies and take on new deontic statuses. These new deontic statuses are recognized legally through a convention: signing a state marriage license.¹⁵⁵ One norm of marriage (traditionally conceived) is that spouses ought to have and raise children. Typically, couples act conventionally, say, by conceiving through intercourse or adopting through a state agency. Either action, through according with the convention, alters the deontic status of those involved: the spouses become ‘parents’ and the child a ‘son’ or ‘daughter’. Another convention of marriage in some communities (generally white, upper-middle-class ones) is that one of the spouses works away from the home while the other works in the home.¹⁵⁶ When this convention is practiced, each spouse accrues different obligations and responsibilities within the household. Acting in accordance with convention engages the operating norms that structure and legitimate the institutional practice.

Often though, actions are contributions to a social practice not because the actions accord with convention, but because the action accords with institutional norms. For

¹⁵⁵ Granted, individuals on their own can recognize and attest their commitment to and for each other, thereby committing themselves to some of the normative obligations a married couple possesses. However, much of the cluster of rights and duties do not accrue to the couple unless they are legally married. Thus we can distinguish the moral deontic statuses of partnership and the legal deontic status of marriage.

¹⁵⁶ A convention is a pattern of behavior that is caused by previous instances of the pattern and has alternatives. So, both the single-income or dual-income marriages are both conventional. The obvious difference is that one is normative—single-income (from the male), though many want to de-normalize this convention.

instance, marriage involves norms regarding spousal fidelity and care during sickness. Often there are no conventions that delineate how to act in accordance with these norms. One may wear a wedding ring (a convention) to signal that one is married, but acting in accordance with marriage norms of fidelity require more: one does not act in ways that promote or encourage romance with one's co-workers, one does not flirt with acquaintances, and so on.

My next step is to consider a contentious case and to demonstrate that race and gender are social practices as well as how we ought to understand moves within these practices. Race and gender are systems of interlocking and (somewhat alterable) roles and norms that constrain (positively or negatively) the identities of their members. We move by acting in accordance with conventions and norms as well as legitimating these moves and norms. Later I will explain how these institutions are oppressive, after I validate claims made earlier in Chapter 3 about the various levels of the Constitutes-Iteration analysis.

That there are social norms associated with gender, I think, is clear from our everyday experience. Women should wear their hair long, should shave their legs and armpits, should find work that is flexible enough for raising children, should not be aggressive, should be personable and smile; men should wear their hair short, should find work that will support a family and should devote much of their time to that job, should be aggressive, should be unemotional.¹⁵⁷ Of course there are norms regarding race too, many of which rely on stereotypes and expectations. For instance, we have norms about

¹⁵⁷ Notice that I have also provided norms that intersect a heteronormative institution as well.

how labor or occupations are racialized.¹⁵⁸ And, as I explained previously in discussing social roles, we can understand race and gender in terms of social roles, especially hierarchical ordinate-subordinate roles and, in the case of gender, roles offer a division of labor.

But what might count as moves within the institutions of race and gender? This question sounds odd because people usually do not think about the conventions of racial behavior. Acting in accordance with a convention usually involves active behavior. One *drives* on the right side; one *raises* one's hand to ask a question during class. However, if much of the behavior associated with norms is *not deviating* from the prescriptions of the norm there might not be active behavior and so it might appear that conventions do not play any such role. Perhaps the best way to identify gender and racial conventions is to identify norms and see whether there is any behavior in accordance with the norms that is also conventional. Earlier I mentioned a number of gender norms: women should wear their hair long, but there are many styles, which are conventional (arbitrary patterns of behavior caused by previous instances of the patterned behavior).

Earlier, in Chapter 1, I postponed arguing for the claim that permissibility facts of social practices are rarely enacted in fiat-like ways. Then I conceded that exercitive utterances shape some aspects of our practices—e.g. when the governing body of an organization passes new bylaws—but suggested that for widespread social practices, especially those of race, gender, and family, the norms constituting those practices are

¹⁵⁸ However, many of the prescriptions involved in these norms are 'invisible' such that usually they are offered either as stereotypes (e.g. Latinos are good at landscaping, or Asians are good at math), or treated as individual—as opposed to systemic or institutional—instances.

performed and normalized such that standing permissibility facts exist. Now, given the preceding discussion regarding moves within social practices, I am in a position to make good on the earlier promise.

Of the four types of contributions, only one type involves enacting permissibility facts (i.e. norms or rules) in an institution; the other three types involve engaging existing norms within an institution. Enactment is not the typical way we contribute to social practices. Moreover, few of us have the requisite social role or authority to enact new policies or norms within the organization, institution, or practice. As a straight, white, male, I am situated with advantage in terms of social role and authority in racial, gender, and heteronormative institutions. That is to say, I have the social authority to censure deviance and reward compliance as well as to occupy social roles to which accrue much social privilege. However, I do not have the requisite authority within any of these institutions to alter the secondary norms of the institution, which govern the primary norms that permit what counts as a contribution to the social practice. There is no one in, say, the gender institution, that occupies the role of legislator or governing body, so no one has the requisite authority to alter the permissibility facts (norms) of widespread institutions, especially those with which we are concerned in our investigation of oppressive speech.

Instead, the standing permissibility facts (i.e. norms of the institution) are changed overtime by de-normalizing the norm such that a new practice begins. Consider an instance of adhering to a norm. A father asks his tween-aged son to accompany him to the hardware store, while mother and daughter bond in the kitchen; both parents act in

accordance with gender norms. The father engages the existing permissibility fact (norm) that males ought to be “handy”. He does not enact these norms in either an original (he was the first) or a specific (here and now it is appropriate) sense because the norms exist in virtue of gender institutions. Indeed, he is probably engaging his internalized beliefs about what is and is not appropriate. Moreover, chances are that this is not the first time the father has brought his son into some gendered-activity and is just another instance of what the son learns to be normal and acceptable. But, to reiterate, it is acceptable (i.e. permissible) because there already are standing permissibility facts that make it so.

3. Validating the SPI and TOI iterations

In Chapter 3 I postponed defending the second and third levels of the Constitutes-Iteration analysis until I had discussed the relevant concepts within social philosophy. Now that I have done that, I would like to explain how those levels work.

A speech act is a move within a practice when it is an act that accords with a convention or norm of the institution or when it legitimates or creates a norm within the institution. Given the conceptual geography developed in the first part of this chapter and many of the examples Austin offered at the inception of speech act theory, it should be clear that speech acts are moves within social practices. Nonetheless, we are now in a position to articulate how each utterance works within widespread social practices—what type of move is it? by which mechanism does the move work? what sort of authority or social role is required in order to execute the move felicitously? I have already discussed how utterances said during a wedding ceremony are moves within the ceremony and the

larger institution of marriage, so let's consider some other examples. Saying hello to someone is both acting in accordance with a convention (there are many ways to greet someone)¹⁵⁹ and with the social norm that we should greet and recognize others. That utterances create institutional norms is clear from legal cases and situations in which organizations alter their bylaws or other governing structures. Finally, utterances can legitimize or enforce a norm and thereby constitute a move within the practice. A parent who utters "Now, what do we say when someone does something nice for us? Say, 'thank you'." to his child makes a move in the practice of etiquette by socializing and normalizing his child in the practice. I take it the idea that utterances are moves within a social practice is not controversial, so I will now turn to discussing moves within institutions of oppression.

The final task of this chapter is to pull together some loose strings regarding moves within an oppressive social practice. I address two concerns: how should we understand the phrase 'oppressive institution' or 'oppressive social practice'? What moves can count as oppression? The goal of this last section is to explain how moves within a social practice may constitute oppression. Once all the conceptual machinery developed in this chapter is in place, I can argue for my version of the Constitutes Thesis in the next chapter.

First, we should consider what sort of thing an oppressive social practice or institution might be. One reading of the phrase 'oppressive social practice' suggests that

¹⁵⁹ Of course, one might greet another in a language other than English, but I think the language one uses indicates what institution one is acting through. "Hello," "Hey," "Yo," "What's shakin'?" and "Hi" are some of the conventional ways we greet each other.

‘oppressive’ modifies social practice just as ‘ancient’ or ‘traditional’ might modify ‘practice’ such that ‘oppressive’ indicates a contrastive type—‘oppressive’ as opposed to ‘just’. There is some truth to this sense of the phrase. For instance, in the Introduction, when discussing the Larry and Stanley cases that illustrated the difference between abuse of institutional power and the misallocation of power, I presented the cases assuming this first, contrastive reading of ‘oppression’. The racist and misogynist Stanley works in a just university (organization), while the conscientious Larry works at Contempt University, an unjust or oppressive organization.

An alternative reading of the phrase ‘oppressive social practice’ is not contrastive but categorical. On this reading there is no just version of the social practice. For instance, a number of economic institution-types—slavery and feudal economies—are oppressive in this second sense. A benevolent institution of slavery still fundamentally undermines people’s autonomy and development of their human capacities. If, as I have argued above, race and gender are institutions, they are probably candidates of the second reading of the ‘oppressive social practice,’ in part, because the normative structure of categorically oppressive social practices involve a categorical misallocation of power. Contempt College might undergo a sea change and address those secondary norms that unfairly allocate institutional power; Contempt College might transform into Contemporary University. Nonetheless, institutions of race and gender are institutions of inequality based on morally arbitrary features of people, so they are, by definition, unfair

allocations of institutional power.¹⁶⁰ Although some might be of the opinion that the current institution of gender has been undergoing such transformation, I am doubtful that any gender institution might transcend inequality. But, for the moment, suppose that we might achieve just gender and racial institutions: the relevant physical features would be no different from eye or hair color, or having dimples or not. However, we do not have institutions of eye color or institutions of having dimples, so in this idyll we would have no institutions of gender or race. That we do have such institutions suggests that they are categorically oppressive.

Nonetheless, I understand ‘oppressive social practice’ or ‘oppressive institution’ on both readings above. It is probably easier to change contrastive-oppressive social practices than it is to do away with categorically oppressive ones, though the latter has happened numerous times throughout history. On either reading, the institutions can be characterized in the vocabulary developed early in the chapter: we can identify moves as acting in accordance with social norms and conventions or by legitimating or creating those norms and conventions; we will find identifiable social roles and secondary norms that authorize and legitimate the institution’s roles and primary norms. Moreover, the institutions are oppressive for the same reason: some portion (or all) of the structure of

¹⁶⁰ Not all institutions of inequality are categorically oppressive. For instance, affirmative action and minority-exclusive groups (such as the National Society of Black Engineers) are institutions of inequality. Both, in part, attempt to address a more widespread inequality and, in the latter, although membership is exclusive on the basis of race, it does not contribute to further racial inequality. Moreover, family institutions (from the perspective of generations) are institutions of inequality insofar as parents are not equal to their children. But, ideally, this inequality does not work to undermine the children's capacities. Thus, family institutions may be oppressive only in the first sense.

the institution works towards undermining the capacities of an occupier of some role or other.

Second, I should note what moves count as oppression. Since I endorse Sally Haslanger's account of oppression, it will be helpful to briefly review her view and then proceed by considering moves within traditional oppression and moves within structural oppression.¹⁶¹ Following, Haslanger I recognize that oppression has different sources—in persons and in institutions—so consequently, I recognize that oppression is both a moral wrong (in the persons cases) and a political-social injustice (in the institutions cases). Also, I allow for, in cases of structural oppression, instances of oppression without an oppressor. Nonetheless, depending on the situation, individuals might have a responsibility to resist or end the perpetuation of the oppression. Finally, I recognize that racism and sexism are particular instances of oppression only when the socially or politically dominant group perpetuates or benefits from the oppressive structure. In what follows I will consider what counts as moves in traditional oppression and structural oppression.¹⁶²

Typically, the cases we associate with traditional oppression had their origin in persons, who may or may not be acting through existing oppressive institutions and who may or may not create institutions to perpetuate their power or ideology. For instance, I

¹⁶¹ For a more in-depth explanation of Haslanger, see my Introduction.

¹⁶² I recognize that this distinction is rather artificial, in part because many cases of actions within the category "traditional" oppression are successful because there is a widespread institutional or structural justification of such behavior. Nonetheless, I proceed with the distinction for methodological reasons: I understand the critics of the Constitutes Thesis as recognizing cases of traditional oppression, but not structural oppression.

take the following as paradigmatic cases of traditional oppression: Mao Zedong's persecution of Chinese intellectuals and capitalists, lynchings of African-Americans in the south, and the various laws and policies the Nazi regime enacted to ghettoize and exterminate European Jews. In such cases, one may act in accordance with convention or in accordance with norms. So, since these cases issue from one's abuse of power, we can understand Hitler's passing anti-Semitic laws as adhering to the various conventions of the German legislature. Moreover, he had the institutional power to do so as the head of the German government. That is, his role as *führer* allowed him to enact the multitude of anti-Semitic laws. Since these laws become the primary norms that govern social institutions of Germany, people who acted in accordance with the laws would then be acting in accordance with the (institutionalized) norms of Germany. In both cases, these are moves—enacting laws or following the prescriptions of the laws or suggested by the laws—in an oppressive social institution. Someone who does nothing or ignores the persecution of Jewish Germans by these laws also makes a move within a social practice by legitimating those laws.

Alternatively, we can understand similarly moves within instances of structural oppression. Consider Contempt College once again. The admissions counselor, who follows campus admission policy, thereby denying women of color admission, acts in accordance with the institutional norms. Perhaps, Contempt College recognizes that its admission policy is illegal and decides to raise tuition to 80 thousand dollars a year, a sum prohibitively expensive, reasoning that few women of color can afford the cost. The Financial Aid office has a convention of offering a generous financial aid package to men

and white women. Here the individuals in the Financial Aid office follow a convention and thereby make a move within an oppressive institution. Again, one moves by legitimating the institution by not acting. Others make moves when they offer arguments for why tuition is so prohibitively expensive when few of the students pay the full cost out of pocket.

Throughout this last section, I have sketched how speech acts constitute moves within some social practice or other and I have sketched how actions constitute moves in oppressive social practices. One final step remains: showing how some speech acts constitute moves in oppressive social practices. In the following chapter, I will argue for such an explanation and defend my articulation of the Constitutes Thesis.

Chapter 5

WE DO BAD THINGS WITH WORDS: THE CONSTITUTES-ITERATION THESIS DEFENDED

In the preceding chapters I have argued for three positions. First, oppressive speech is not adequately modeled on exercitive—standard or covert—speech acts. Indeed, any explanation that limits the explanatory repertoire to one (or two) speech act types will be inadequate. Instead, the best model advocates for speech act pluralism and utilizes the full range of speech act types to characterize oppressive speech. Second, any Speech Act Analysis is insufficient for explaining how speech constitutes oppression because, as I argued in Chapter 3, such analyses cannot explain both how speech is a move within a larger social practice or how such a move is oppressive (i.e. an act of oppression). I did not argue for a theory of oppression, preferring to endorse Sally Haslanger’s account, which I presented in the Introduction. Third, I argued for an interpretation of “move within a social practice”¹⁶³ to demonstrate how claims about social constituency, say “‘I do’ count as an act of marrying” or “‘The female body has ways of shutting that whole thing down’ counts as a legitimation of the Republican platform.” The remaining task is to defend my version of the Constitutes Thesis, the Constitutes-Iteration Thesis.

¹⁶³ In which we understand “move” to refer either to actions in accordance with conventions or social norms of the relevant institution or social practice, or to actions that legitimize such conventions or norms, or to actions that create norms within the institution; and in which we understand “social practice” as a widespread social institution composed of an interlocking normative structure.

As I discussed in the Introduction, both the Speech Act Analysis advocates of the Constitutes Thesis and their critics are correct. The Constitutes Thesis is true, but defending it in terms of speech acts only is deeply limited (as we saw in Chapter 3). The force of oppressive speech is not explained by or exhausted by the illocutionary force of a speech act, as is the force of a promise-utterance or warning-utterance. Instead, the force of oppressive speech originates in and is explained by the background, normative practices of which the utterance is a move. That is, speech is oppressive insofar as it is a move within an oppressive social practice.¹⁶⁴ This is not to say that the Speech Act Analysis of the Constitutes Thesis is misplaced. Indeed, it is a necessary component for explaining oppressive speech. The problem, as I argued in Chapter 3, is that a speech act analysis is not sufficient: we need to incorporate a theory of social practices and a theory of oppression.

Whereas, in the previous chapter, I showed how utterances (but not oppressive ones) constitute moves within practices and how actions (but not utterances) constitute moves within oppressive institutions, I will now argue that utterances constitute moves within oppressive institutions, and thereby are acts of oppression. My strategy is similar to the strategy of the preceding chapter: I employ the Constitutes-Iteration Analysis on straightforward cases of actions (non-utterances) that constitute moves within a social practice and build up to cases in which utterances constitute oppressive speech. In doing so, I work through the examples found in Langton's and McGowan's work as well as other example utterances used throughout the dissertation.

¹⁶⁴ As I discussed in the previous chapter, I understand oppressive social practices in both a contrastive and a categorical sense. Both senses are meant hereafter.

After arguing for my version of the Constitutes Thesis I consider and respond to a number of objections. First, I respond to those criticisms of the Constitutes Thesis that began this investigation, arguing that the charges of metaphor, philosophical sleight of hand, and implausibility are now seen to be unfounded because I have made explicit what its critics deemed sleight of hand. Second, I consider challenges to the Constitutes-Iteration framework.

In the last section of the chapter, I draw out various consequences of my version of the Constitutes Thesis and sketch possible ways of extending or applying the theory developed over the last four chapters. Two consequences are of particular interest. First, in explicating how our utterances engage the normative structure of institutions, we have the beginning of an explanation regarding how speech contributes to the normalizing mechanisms of pernicious institutions and norms. This is generally helpful for turning our attention towards understanding the practical consequences of our speech. Second, the Constitutes-Iteration framework will help us adjudicate debates related to oppressive speech, in particular the debates regarding its First Amendment protection.

1. The Constitutes-Iteration Framework

A. The Framework

When proponents of the Constitutes Thesis claim that speech constitutes oppression, I maintain that their claims are shorthand for four theoretical claims. As I demonstrated in Chapter 3, the Constitutes-Iteration Analysis works to delineate these four claims. The analysis employs John Searle's notion of a status function to analyze

‘constitutes’ such that ‘x constitutes y’ is separated into incremental claims that build on lower-order iterations.¹⁶⁵ For any social constituency claim, then, the Constitutes-Iteration Analysis maps the various iterations. Each iteration, then, must appeal to a relevant theory for further explication.¹⁶⁶ For instance, to return to an example developed in Chapter 3, the claim that “scoring a touchdown counts as earning 6 points” can be analyzed as follows:

- Level 1: This object made of leather and possessing such and such physical features counts as *the ball*.
- Level 1: Such and such space that is 360 feet in length and 160 feet in width counts as *the playing field*.
- Level 2: Such and such lines marked on *the playing field* count as *the end zone*.
- Level 3: *An offensive player’s crossing the opponent’s end zone while in possession of the ball and while play is in progress counts as scoring a touchdown.*
- Level 4: *Scoring a touchdown counts as earning 6 points.*

The italicized terms above indicate a game theory, which is needed to explain these terms. An incomplete game theory is offered at various, lower iterations (such as in the Level 1 iterations). The above delineation, in effect, unpacks the additional (nonexplicit) levels of constituency involved in claiming that scoring a touchdown constitutes earning 6 points. The crucial take-away from this example is how the Constitutes-Iteration framework unpacks a constitutes-claim and delineates the associated claims so that they can be analyzed in terms of and by other theoretical resources. I plan to utilize this crucial

¹⁶⁵ Obviously, not all claims about constituency are analyzable by the Constitutes-Iteration framework. For instance, claims regarding material constituency or moral constituency—say, “helping others, in part, constitutes morality”—are not analyzable as such. The Constitutes-Iteration analysis is limited to social constituency.

¹⁶⁶ If we take games as paradigmatic, we would appeal to a game theory—a rulebook. In social practices, we appeal to the theoretical study of that practice.

take-away in what follows. Earlier, I argued that these nonexplicit iterations are either assumed or taken for granted and as such do not receive explanation in speech-act-only analyses of oppressive speech.¹⁶⁷ Nonetheless, once we recognize that claims about constituency involving higher-level iterations must appeal to lower-level iterations, we can understand why the “metaphor” and “sleight of hand” criticisms are misplaced, or so I will argue in the objections and response section. Also, we can identify what is missing in the explanatory work of the speech-act-only analyses of oppressive speech.

B. Straightforward Analyses

Before arguing for my version of the Constitutes Thesis with respect to oppressive speech, let’s examine three cases of constituency within social practices. The first example involves a straightforward case of action within an institution, the second involves an utterance as constituting a move within an institution (the move adheres to a norm and creates a norm), and the third involves a physical action (a traditional instance of oppression) within an oppressive institution.

Imagine the following situation. It is the first week of classes, during which the university has a policy requiring each student enrolled in a course to attend the first week’s classes. The professor does not enjoy taking attendance, especially when there are over 150 students in her class, and decides to have her students answer multiple-choice pop-quiz questions using a clicker system. Kyle is enrolled in PHIL 101, attends class, and at the right time points his clicker and clicks ‘D’ to answer the pop-quiz question. His

¹⁶⁷ The third section of Chapter 3 endeavors to show how and where these iterations are implicit in McGowan's and Langton's accounts of oppressive speech.

action of pointing and clicking constitutes two actions within the University: (i) he logs his attendance and adheres to a University policy and (ii) he completes an assignment for PHIL 101. We can analyze the constitutes-claim as follows.

- Brute Action** Pointing his clicker and pushing ‘D’ counts as answering the pop-quiz question.
- SPI(i)** Answering the question counts as logging his attendance.
- SPI(ii)** Answering the question counts as completing an assignment in PHIL 101.

Notice that the SAI iteration is not part of the analysis because there is no need to explain an utterance act.¹⁶⁸ Instead the Brute Action iteration functions similarly to Linguistic Convention Iteration, which offers an explanation of how sounds take on meaning, in that we have the “ground floor” of the iterative structure.¹⁶⁹ That is, the action at the brute action iteration is the basis on which other deontic statuses are applied. For instance, in logging his attendance, Kyle fulfills the mandate to attend class during the first week and is permitted to remain enrolled; in completing an assignment in PHIL 101, it is then the professor’s “turn” to judge, score, or correct the assignment.

Straightforward cases of utterances constituting moves within a social practice abound. Indeed, such cases are Austin’s paradigmatic examples of speech acts—

¹⁶⁸ Actually, a natural way to include SAI is to think of Kyle's pushing the button as corresponding to his answer choice as an utterance—a response to a question. Kyle's pushing the button may be understood as a response or acknowledgment, a "here" to the query of his presence. Such natural readings are evidence that *a lot* of our "physical" behavior is also analyzable in terms of speech acts—evidence for those who decry that speech acts are not real actions or cannot really oppress. Should we wish to provide a speech act iteration,

SAI Pushing ‘D’ counts as an assertion that the answer is ‘D’
However, we need not do so for the current analysis.

¹⁶⁹ Pushing 'D' is similar to the found rock in earlier discussions of status functions and deontic status.

christening ships, making promises, saying I do, passing verdict, enacting laws. All of these cases and the countless others should be evidence that utterances constitute moves within social practices. Nonetheless, most of these paradigmatic cases help themselves to explicit performatives—utterances that include the speech act type in their locutionary content. So, utterances of the Austinian paradigm take the form “I promise to do...” rather than “Ok, honey” or “Sure thing”; “I christen this girl Josephine” (said by a priest) rather than “Let’s call her Josephine,” said by her parents. In the next case, I want to analyze an utterance, which is not an explicit performative, that constitutes a move within a social practice—I do this because many of the instances of oppressive speech are of the non-performative speech act types. So, in keeping with the previous example, consider the following example. Kyle’s grandfather has fallen ill and his family expects his grandfather to pass over the weekend. A paper for Phil 101 is due Monday and Kyle has just asked his professor for an extension. The professor responds “If you need the extra time, turn in the paper by next Friday.”

- SAI** The utterance “If you need the extra time, turn in the paper by next Friday” said by the professor counts as an exercitive speech act. (She has made it the case that the due date for Kyle is next Friday).
- SPI** This exercitive utterance counts as a move within the university, in particular her course.

Kyle’s professor obviously occupies the social role of ‘instructor on record’ and can make amendments to class policies, especially those she has enacted in the syllabus and through other mediums, so she is entitled to offer Kyle an extension. Moreover, she is licensed to make exemptions and changes to policy when students’ circumstances merit such alterations. Thus, the professor meets the authority conditions for successfully

exercising—she also meets the locutionary content and speaker intention conditions for successfully exercising.¹⁷⁰ Should the professor change her mind or penalize Kyle’s work, if he turns in the work after the initial class due date, she would have acted wrongly and against the new policy.

The professor’s exercitive utterance is a move within the organization of her university; it is doubly so. First, she alters Kyle’s normative status (insofar as he possesses the social role “her student”)—his paper is now due Friday—by creating a new norm (rule) to which Kyle is now bound. The normative structure of the university explains why the professor has the authority to enact this new norm and alter Kyle’s status (as student). Second, the professor’s response is a move in accordance with a social norm of the university—the norm that students may request extensions without penalty provided that they have a legitimate reason and request the extension prior to the original due date. This norm need not be explicit—say, stated in the syllabus—but may be widely known throughout the student body and faculty.¹⁷¹ So, clearly, her utterance is a move within the university and the SPI is intelligible in light of the theory of social practices offered in the previous chapter.

Now that we have discussed two noncontentious examples (neither of which involve oppression) that delineate the various claims implicit in a constituency claim, I

¹⁷⁰ See Chapter 1 1.B for more discussion of these conditions.

¹⁷¹ I am inclined towards thinking the professor's utterance is a move in another sense—her utterance legitimates the norm regarding extensions because she rewards Kyle's compliance with the norm.

turn to cases in which the Constitutes-Iteration Analysis delineates constitutes-claims about oppression.

According to Iris Marion Young (1990) oppression manifests through five faces: cultural imperialism, marginalization, exploitation, powerlessness, and systematic violence.¹⁷² However, it is difficult to find an example of an oppressive act that does not involve language.¹⁷³ Since cultural imperialism relies on various media, systematic violence relies on the use of threats (so to be ever present in the absence of actual physical violence), powerlessness relies on decision-making or the deprivation of decision-making, and many laws create or perpetuate these five forces, it is clear that language and speech acts seem to be either central to acts of oppression or the mechanisms through which the oppressive acts are brought into the world. For an example, consider an individual's act of arson that destroys an LGBT community center. It is natural to understand the man's setting fire to the center as an act of oppression. We may analyze the action as follows:

¹⁷² For a more in-depth description of each face, see Chapter 2 "Five Faces of Oppression" in her (1990).

¹⁷³ When I began sketching this chapter, my initial instinct was to utilize instances of cross burning because, given our national history, I figured such instances would be recognized as a paradigmatic act of white supremacy and racial oppression. However, in studying the history of the practice, I learned that cross burning has its origins in Scotland as a *declaration of war*. So, the practice of cross burning began as a speech act. As I thought through the ways we oppress others so to come up with a non-speech example of oppression, my initial inspiration for the dissertation was enforced—so many of these actions involve language or speech acts as the mechanism of oppression, whether through the enactment of laws or the bombardment and normalization of cultural symbolism—language is a dominant means of oppressing others.

Action	Setting fire to another's property counts as arson.
SPI	This instance of arson counts as a violent act of a homophobic (or heteronormative) institution.
TOI	This violent act counts as an act of oppression.

Although I have slipped institutional terms into the Action iteration (property and arson, both of which reflect deontic statuses of legal institutions)¹⁷⁴, their presence is not troubling because the act of setting fire will be a move within various social institutions.¹⁷⁵ I have argued in previous chapters that racism, sexism, and homophobic practices are institutions because they involve social norms, social roles, and an interlocking structure of norms and roles. So, here, I will not pursue an argument or explanation for whether such institutions exist.

Instead, I would like to focus on how the individual's act of arson is a move within a homophobic institution. A central social norm in the institution of heteronormativity is that one *ought* to (romantically) love and sexually interact with members of the opposite sex; another central norm is that one *ought* to satisfy the various social norms that prescribe gender behaviors. Since the LGBT community center, through those individuals it serves and their allies, represents deviance from these two central norms, the center and its participants are subject to the mechanisms of compliance, namely punishment. Moreover, because the heteronormative institution lacks a recognizable institutionalized enforcement (such as a police force) of its associated norms, other members may feel—and, one might argue, are formally legitimated to

¹⁷⁴ Hence, I do not label the iteration as 'Brute Action'.

¹⁷⁵ If you find this move troubling, I leave it as a reader exercise as to how to delineate the various iterations that take the brute action of setting fire to something as engaging other institutions.

feel—that it is their obligation to punish deviance from the various social norms that structure the institution. And, although the arsonist is committing a crime, the individual might think that ensuring compliance with heteronormativity outweighs legal censure, if he is caught. Nonetheless, the arsonist’s behavior is a move within the institution of heteronormativity: the arsonist’s setting fire to the LGBT center legitimates the institution (and a number of its norms).

As for the TOI iteration, one’s theory of oppression needs to explain how the act of arson (the violent act) constitutes oppression. Not every arsonist act is an act of oppression: some arson is done to collect insurance money, while other acts, say starting a fire in retaliation (say, according to revenge norms) are not acts of oppression because they neither target members of a marked social group nor have explicitly hate-of-group motivation.¹⁷⁶ Helping ourselves to the theory of oppression developed in the Introduction, we can explain how setting fire to the LGBT center is oppression. First, it is an individuals’ misuse of power. Granted, most of us have the capability of setting fires but, in addition to this basic misuse of physical capability, the community center arsonist utilizes his formally legitimated power granted by the heteronormative institution to punish or censure deviance. Moreover, since the consequence—and probably purpose—of the arson destroys a community center that promotes the interests and needs of the LGBT community and, in all likelihood, contributes to fear within the local LGBT

¹⁷⁶ For instance, a man was recently convicted in San Bernardino for setting a fire that subsequently destroyed 91,000 acres and killed five people. The MO identified was retaliation for being kicked out of another's home.

community, the arson's actions perpetuate oppression. Hence, his action of setting fire to the community center constitutes oppression.

Over the course of the previous three examples, I have shown how, using the Constitutes-Iteration framework, one can unpack the various iterations of the relevant constitutes-claim and explain each of those iterations by appealing to a theory relevant to the respective iteration. I began with straightforward cases of actions and built on those cases to show how some utterances constitute moves within an institution and how actions constitute oppression. I now turn to the cases under contention, cases that involve utterances that constitute oppression.

C. The Constitutes-Iterative Analysis of Oppressive Speech

My method of argument in this section proceeds from the intuitive sense and relative ease in which the vocabulary of the Constitutes-Iteration framework applies to noncontentious cases of action within institutions and extends the framework to the more contentious cases of oppressive speech. I begin by examining Langton's and McGowan's examples of oppressive speech discussed in Chapter 1. These cases involved purported exercitive speech acts that enacted a norm (or permissibility fact). The Constitutes-Iteration framework shows that, though both utterances are moves within oppressive institutions, the oppressive force of the utterance is found in the normative structure of the institution and not in the illocutionary force of the relevant utterance. After discussing these cases, I analyze the other example utterances from Chapter 1 and explain how they

constitute oppression because the utterance engages the normative structure of the institutions in which the utterances are moves.¹⁷⁷

i. "Blacks are not permitted to vote."

SAI The utterance "Blacks are not permitted to vote" said by a legislator in Pretoria counts as an exercitive speech act.

SPI This exercitive utterance counts as a move within the legislative social practice of South Africa, i.e. enacting a law.

TOI Enacting this law counts as an act of racial oppression.

Standard Austinian exercitives are parasitic on wider social practices that enable or empower speakers with the requisite authority such that, assuming the relevant conditions are met, any of the speaker's exercitive utterances have exercitive force. The difficulty of parsing the SAI and SPI iterations when discussing standard exercitives should not be a mark against the Constitutes-Iteration Analysis. Instead, the difficulty illuminates the interconnectedness of the various iterative levels, especially when we attend to the fact that the standard exercitives alter the normative structure of the practice. Moreover, this difficulty offers insight into why Langton and McGowan may not have recognized the need to appeal to resources outside of speech act theory in explaining how such utterances constitute oppression.¹⁷⁸ A full explication of the SPI iteration for legislative practices will need to appeal to a theory of law and the existing conventions of the

¹⁷⁷ In the following examples, I leave off the Linguistic Convention Iteration (LCI), which explains how marks and sounds count as meaningful words.

¹⁷⁸ See the third section of Chapter 3 for my error theory regarding why others have overlooked the iterative structure of constituency-claims.

political-legal system of South Africa. Expounding a full explanation of the South African governmental structure will take us too far from the purposes of this chapter.

Sally Haslanger (2004) maintains that the source of oppression is either in the abuse of individuals' power or the misallocation of power in social institutions. Appealing to her account, as articulated in the Introduction, we can understand how the utterance "Blacks are not permitted to vote" constitutes oppression. First, the enactment is an abuse of an individual's power (or presumably an abuse of the majority enacting the law). The legislator has the power to enact laws in virtue of his positional authority as legislator, and with this utterance the legislator enacts a law that is discriminatory. As such, the legislator's action is akin to Stanley's actions of assigning low grades to women of color regardless of their academic performance. In both cases, the legislator and Stanley use the power afforded to them by their respective institutions to undermine other individuals' abilities to develop and exercise their capacities and express their needs, thoughts, and feelings. With the utterance, the legislator bans a racial group's ability to exercise their political voice—a clear constraint on black South Africans' ability to express their political needs and participate in the political process.

Second, the law itself is a misallocation of power within a social institution. Not only does the law alter the deontic status of black South Africans, who lose the status (i.e. role) of 'voter' and the related rights, permissions, and obligations associated with being a voter, but the law also perpetuates racial oppression by, within the institution itself, legitimating and ranking black South Africans as not possessing the wherewithal for a capacity of voting. Admittedly, Langton also highlights this point about perpetuating

racial discrimination in her analysis of the utterance. But, on my analysis, more attention is placed on how the laws and practices that make up the political-legal institution of South Africa are responsible for not only empowering the utterance as having oppressive force, but also for normalizing anti-black sentiment within the political-legal institution and those other institutions that intersect it.

ii. *“I banged the bitch”*

SAI The utterance “I banged the bitch” said by Steve in the factory lounge counts as an assertive speech act.

SPI This assertive utterance counts as a move within a sexist social practice.

TOI This move counts as an act of gender oppression.

First, it should be noted, as I have previously argued, that the utterance analyzed in SAI is best understood not as a covert exercitive but as an assertive.¹⁷⁹ Steve asserts, in less expressive content, that he slept with the woman being discussed. However, the force of the assertive does not entail oppression on its own. We need to appeal to the normative structure of the sexist social practice as well as a theory of oppression.

‘Bitch’ is polysemous: ‘bitch’ refers (i) to a female dog, (ii) a pejorative mode of presentation for a woman (through extension of the first sense), and (iii) has various appropriated senses. The club associated with gender studies at my undergraduate institution designed t-shirts that, in addition to other terms, defined ‘bitch’ as “a confident, opinionated, and assertive individual.” Their re-definition was nothing new,

¹⁷⁹ In Chapter 1, I argued against the notion of covert exercitives and, in Chapter 2, I argued that the more natural (and correct) way of understanding Steve's utterance is an assertion. In Chapter 2, I analyzed the utterance "Women belong in the kitchen," which is analogous to Steve's utterance in terms of context and speech act analysis.

but a move in solidarity to appropriate the pejorative sense to a more empowering sense. Here, the point regarding the polysemy of ‘bitch’ is meant to illustrate the various additional factors, which I attribute to social practices, that are at play.

Consider who may and may not use the N-word. It is commonly recognized that white people should not use the N-word—in any context, even in those meant to discuss the power of the word, in educational situations, or those meant to illustrate fraternity and solidarity. Understanding the normative structure of racism goes a long way to understanding why this is the case. As I argued in Chapter 4, racist social practices create a social role-hierarchy based on social norms, and in such racist social practices, members of one race are understood to occupy a privileged or subordinate social role.¹⁸⁰ So, as a white male in the American racist social practice, I occupy a privileged role and accrue the various entitlements involved with that role. I have the social positional authority to derogate other races because the racist institution formally legitimates (though not ultimately legitimates) my derogation. Nonetheless, we also live among anti-racist social institutions (namely those that seek moral and just goals) that offer a normative structure against racism. The constraints on white people saying the N-word issue from these institutions. Moreover, we identify our social roles and the social practices that govern our behavior by analyzing what norms (or normative structure) we act in accordance with. My avoidance of using the N-word—to quote the rapper Eminem

¹⁸⁰ See Haslanger (2000) for a detailed account of the meaning of racial and gender words in terms of the hierarchical and normative structure of racial and gender institutions.

“That word is not even in my vocabulary”—is because I act under the anti-racist norms.¹⁸¹

So, back to Steve’s utterance, the oppressive force of his utterance comes from the sexist institution(s) in which Steve acts and lives. The original context of the example is that Steve and John are in the factory lounge in a factory in which few women work. Not only is the factory *qua* organization sexist, but so too is the larger, widespread institution in which they have the conversation: we live in and through a widespread sexist institution. Steve and John are acting in accordance with the normative structure of sexism and not an anti-sexist institution because their conversation adheres to sexist norms; they clearly are not utilizing the appropriated sense of ‘bitch.’ And it is this latter institution that provides the oppressive force and doubly so. First, both Steve and John occupy the ‘man’ gender role and thereby have accrued the social authority to demean women.¹⁸² And, second, they are in an organization, an unequal workplace, that allows for such behavior. In other words, Steve’s utterance, then, engages the existing norms

¹⁸¹ This is not to say that I am free from the racist institution. Implicit bias, reflexes, and other behaviors would suggest, that like most people, I navigate both institutions.

¹⁸² If we imagine a different scenario in which two women are speaking about a man (or even a woman) the utterance does not have the same oppressive force, though it does have the same illocutionary force. Perhaps, different senses of 'bitch' are asserted. Nonetheless, there seems something infelicitous about the locution in this imagined context—the infelicity, though, is not due to the referent of 'bitch' being a man because men can have 'bitch' attributed to them ("don't be a whiny bitch" or "then he got all bitchy") when someone wants to attribute "female" characteristics to them. The infelicity, I suggest, occurs because the women in this case do not have the requisite social authority or role to demean men in this way. That is, the infelicity lies at the SPI level and does not undermine the success of the speech act. Women might have social authority to attribute "womanly" or "feminine" qualities to men, but the locution seems infelicitous unless the female speaker is also asserting something about the man's "womanly" character.

associated with the ‘man’ gender role (viz. that men are (formally) permitted to demean and objectify women) and those norms that govern the factory (for one, that such talk is permitted or allowed).

iii. *“The idea of your kissing another woman is unimaginable and disgusting.”*

SAI The utterance counts as an assertion.

SPI The assertion counts as a censoring move within the heteronormative institution.

TOI The censoring move counts as an act of oppression.

As in the previous cases, the SAI level is elucidated by appealing to the speech act theory articulated in Chapter 2.¹⁸³ The analysis, though, becomes more interesting at the SPI level. Why or how is a woman kissing another woman unimaginable or disgusting? Surely the possibility is conceivable—we see it with increasing frequency in the news, TV episodes, and movies (pornography makes a lot of hay over this possibility). Nonetheless, the assertion is a move within the institution of heteronormativity, which involves norms regarding appropriate and “normal” sexual behavior. Moreover, the normative structure of such an institution involves internalizing these norms and developing emotional and reactive attitudes towards compliance and deviance from such norms.

As was true in the arson case, the mother’s action is an act that seeks censure within the heteronormative institution. And, similar to the arson case, such an action is oppressive. The mother—as an occupier of heteronormative roles (say, as straight woman

¹⁸³ The mother’s utterance belongs to the assertion category of speech acts. Debate may ensue over its proper speech act type analysis—is it an assertion, an expressive, etc?—but consensus ought to be reached regarding its membership in the assertive genera.

or as wife)—has individual power to censure deviance from heteronormative norms. This social positional authority of heteronormativity is rather widespread—all heterosexual people have such formal authority—but, as such, the authority to censure is not diminished. Moreover, the mother has additional positional authority in virtue of being a mother.¹⁸⁴ Within the institution the mother has not misused her power. Indeed, she acts legitimately (formally). Nonetheless, the heteronormative institution misallocates power by undermining the rights and dignity of those who do not pair-up in heteronormative fashion by normalizing deviance from the normative structure as “unnatural”.¹⁸⁵

A dissimilarity between the arson case and the mother’s utterance lies in the source of moral wrong and the extent of blameworthiness. In the arsonist’s case (but not the mother’s), the arsonist is fully blameworthy because the source of the moral wrong issues from his actions that destroy the community center and thereby undermine members of the LGBT community. Legal prosecution (or at least the possibility of legal prosecution) further substantiates the idea that he is to blame. However, the mother is less blameworthy because the source of the moral wrong is located in the unjust structures that enable her action. This point is helpful for adjudicating a related debate regarding hate speech and its regulation. My analysis attempts to preserve the intuition that the mother has acted wrongly, though the wrongness of her action is not grounds for

¹⁸⁴ "Mother" is polysemous from the perspective of institutions: biological mother, social mother, mother as traditional heteronormative pairing. In this instance, I am not concerned with 'mother' as a role within familial institutions, but as the role within the heteronormative institution in which men and women pair off into husbands and wives and then ought to have children.

¹⁸⁵ In the heteronormative social practice, celibate bachelorhood is a deviance and is seen as unnatural—something must be wrong with him.

regulating her speech. Instead, if anything is to be done, we ought to root out the unjust social practices that enable her action.

iv. “The President recently weighed in on marriage. Call me cynical, but I wasn’t sure his views on marriage could get any gayer.”

In Chapter 1 I argued that Senator Paul’s joke did not enact any new norm or policy regarding gay men and women, but rather he (through the utterance) engages existing norms governing the meeting of the Iowa Faith and Freedom Coalition (IFFC). His utterance also engages existing norms governing heteronormative institutions. In the latter case, i.e. from the perspective of the widespread heteronormative institution, the Constitutes-Iteration analysis of his joke would have an analysis similar to the case involving Susannah and her daughter.¹⁸⁶ Though, instead of censuring a gay man or woman, Senator Paul censures President Obama for his deviance (allying himself with same-sex marriage proponents) from widespread heteronormative norms. So, rather than retreat ground similar to that covered in the analysis of Susannah’s utterance, I would like to examine the Senator’s utterance from the perspective of the IFFC, an institution in its own right with its own normative structure. That is, I want to examine the utterance as a move within an organization.

Remember, from Chapter 4, that the key features of organizations are that they are a taxonomical subset of institutions and are more fine-grained in their operation, collective goals, and role specialization. The IFFC “is a non-partisan, biblical worldview

¹⁸⁶ The analysis would be similar at the SPI and TOI levels. Of course, Senator Paul's utterance would receive a different analysis at the SAI because it is more than an assertion.

organization that supports the efforts of voters and politicians who advocate for smaller government” and one of its stated goals is to “pave the way for a pro-family agenda in the White House, the US Congress and the Iowa Legislature.”¹⁸⁷ So, as an organization, the IFFC involves a set of norms that govern behavior such that some actions are (acceptable) moves within the organization. Moreover, given its anti-gay and lesbian agenda, it seeks to limit gay men and women’s rights as citizens, thus moves within the practice of the IFFC will be moves of oppression.

So, how does Senator Paul’s utterance figure into the normative structure of the IFFC? Above, I have considered actions that create norms of institutions (the Pretoria legislator), actions that accord with norms (the Steve and John case), and actions that legitimate norms through censuring (the Susannah case). Senator Paul’s utterance is best understood as an action that accords with a convention (and so too a norm) of a practice and legitimates a norm(s) of that practice. In the first case, Senator Paul uses ‘gay’ to mean ‘stupid’ or ‘dumb’. This is clearly a conventional use of ‘gay’ to derogate members of a social group—a convention that acquires such force, in part, through more widespread anti-gay social practices. And, in this context, the convention of the widespread practice also figures as a convention of criticism: since Senator Paul’s utterance plays on this innuendo to effect a criticism of President Obama, the utterance also counts as an act in accordance with the convention (of the IFFC) of criticizing those who do not advocate the IFFC’s pro-family agenda. In the second case, the senator’s utterance is a move of legitimization and doubly so. Not only does he vertically

¹⁸⁷ From the IFFC's website, <http://ffciowamedia.com/lobbyist-reports> and <http://ffciowamedia.com/voter-guides> both accessed on 2/7/2013.

legitimate the heteronormative norm against deviating from heterosexuality, he also legitimizes the norms and goals of the IFFC, taking an anti-gay stance and defending the traditional family structure that the IFFC seeks to further legitimize and advance within American politics and culture. Since these norms are oppressive (the norms seek to limit individuals' rights and liberties), the Senator's utterance engages norms that oppress.

As such, we can analyze his utterance as follows:

- SAI** The utterance counts as a joke (or an assertion involving innuendo or a pun).
- SPI** The joke counts as a conventional move and as a legitimating move.
- TOI** These moves count as acts of oppression—at least contributing to an agenda of an organization that seeks to oppress members of the LGTB community.

2. Objections and Responses

I now turn to consider objections to my view. Let's begin with the standing objection, which many years ago motivated me to become articulate about the Constitutes Thesis, that the thesis is “philosophical sleight of hand,” “strikingly implausible,” metaphorical, or rests on a “dangerous confusion”.¹⁸⁸ On the most charitable reading of this criticism, the critic points to an explanatory gap in the Constitutes Thesis: it can explain how speech constitutes a speech act, but cannot explain how such speech acts constitute oppression. In the Introduction I claimed that the gap comes about because such speech is just an expression of a conception of the good. That is, such speech is a speech act—of the assertion genera (including assertions, descriptives, ascriptives,

¹⁸⁸ See Bird (2002), Dworkin (1991; 1992; 1993), Jacobsen (1995), Michelman (1989), and Parent (1990). These authors all criticize various authors' attempts to argue that pornography is oppressive speech or that racist or sexist speech constitutes oppression.

suppositives, and the like)—that articulates a worldview. Attempting to explain how, in addition to being an expression, that speech was an act of oppression did not have explanatory merit. So, does the account I offer here bridge this explanatory gap or is it still metaphorical, striking implausible, or involve sleight of hand?

This charge may be levied against my version of the Constitutes Thesis in either one of two ways. First, the charge might be directed against the Constitutes-Iteration Analysis, the framework that breaks any claim of (social) constituency into various explanatory levels. However, understood this way, the charge of metaphor or sleight of hand does not hold. On one hand, I have tried to cash out what is implicit in the constitutes-claim as straightforwardly and transparently as possible. When one claims “X constitutes Y,” the claim is delineated by finding a brute (or grounding) physical phenomenon—in most cases, this physical phenomenon will be a simple action (e.g. clicking a button, lighting a pool of gasoline, moving one’s mouth and making noise)—and then determining the series of deontic status iterations that build up to the Y-variable in the constitutes-claim under investigation. Admittedly, determining the relevant (and correct) series of statuses might be difficult, but this is a worry very different from offering an argument that relies on sleight of hand. Nonetheless, something’s being difficult to delineate is not a sufficient reason for rejecting the account.

On the other hand, the Constitutes-Iteration Thesis is not metaphorical. As a corollary of the analysis’s transparency, I have made explicit each claim that is implicit in the claim “X constitutes Y.” The nature of the analysis is iterative such that, should we realize an additional iteration is involved in a constitutes-claim, we can address the

oversight by adding that iteration. Moreover, the Constitutes-Iteration Analysis does not try to expand claims from one domain of inquiry into claims from another, distinct domain. So, given a charitable reading of Dworkin's claim that the Constitutes Thesis is confused, I understand him as maintaining that the use of philosophical conclusions reached in one domain of inquiry into another, unrelated domain is fallacious. However, my version of the thesis does not commit this fallacy because the Constitutes-Iteration Analysis does not extend one domain's conclusions into another. Instead, it recognizes that iterations may require vastly different explanations: a speech act explanation is extremely different from a theory of justice or theory of oppression. So, the analysis is not open to the charge of being confused or metaphorical.¹⁸⁹

Second, the charge might be directed at each of the explanatory theories at work at the different iterative levels. That is, perhaps, one or more of the theories I have offered involve sleight of hand or metaphor. I do not think this charge holds any water. Obviously, one might disagree with the various explanations I have offered throughout the dissertation. Not every speech act theorist accepts a theory of speech acts in the style of Bach and Harnish's account—Langton and McGowan favor a more traditional Austinian-Searlean type of theory. Nonetheless, disagreement at this level does not entail that the theory one disagrees with is metaphorical or sleight of hand. The various points of contention or debated questions within speech act theory will be resolved in due time and, presumably, whatever those solutions are they can be accommodated at the speech

¹⁸⁹ In fact, neither is the claim "pornography constitutes oppression" (when 'pornography' is understood not as the depiction of sex, but as the dehumanization and/or subordination of one or more of the sexual partners) is no longer metaphorical. For a longer discussion, see the final point in the "Consequences and Implications" section of this chapter.

act iteration. In fact, I offered a Bach and Harnish-style theory of speech acts because I believe it best characterizes the range of speech acts involved in oppressive speech.

Should McGowan, Langton, or other philosophers working on oppressive speech develop or rely on an account that explains the range of speech act types used to oppress, then that theory would be of great explanatory help at the SAI level. Likewise for my leaning on Haslanger's account of oppression—she takes pains to point out that her account is far from a definitive account of oppression and recognizes problems with her account. In fact, and this is a project for another time, there are elements of her account I would improve upon.

So, aside from disagreement, are there any other reasons the explanatory theories might be metaphorical? I do not see any other charitable senses of this question. I have provided a framework and enlisted cogent and dominant theories of the relevant phenomena to help do the heavy philosophical lifting in explaining what “X constitutes Y” amounts to. Admittedly, the weakest explanatory theory is my own regarding social phenomena. Nonetheless, we would still reach the same conclusion regarding why speech constitutes oppression if we enlist a theory of social phenomena from more established writers, such as Searle, Miller, or Tuomela. If we did rely on the theories of these writers, we would need to change some of the explanatory details; for instance, we would need to accommodate different accounts of social role authority to explain how some speakers have authority to oppress. But the criticism of metaphor or sleight of hand ends here—unless the claim is that the theoretical explanations developed in these domains of inquiry

are metaphorical. However, such a criticism is rather undermining of some good philosophical work.

A second challenge to my version of the Constitutes Thesis takes concern with some ideas I just articulated. That is, my version of the Constitutes Thesis is beholden to the various theoretical commitments I have taken on throughout the dissertation. So, since others could quite plausibly reject those theories, my version of the Constitutes Thesis is on shaky ground.

There is some truth to this objection. As I have recently pointed out, not everyone within the oppressive speech debate utilizes a Bach and Harnish-style theory of speech act theory. Moreover, McGowan [2009; 2012] deploys an account of oppression that focuses on structural oppression in analyzing exercitive speech, whereas my account of oppression utilizes Haslanger's dual-approach framework and explains the wrongs of oppression in "developmental capacity" vocabulary, which is indebted to the work of Iris Marion Young and Martha Nussbaum. Additionally, I take some controversial positions regarding social norms, conventions, and social roles that many thinkers on those topics would object to. Admittedly, there is plenty room for disagreement and, perhaps, when each of these accounts is further explicated it will turn out that, as theories, they are untenable for explaining speech acts, oppression, or social phenomena. Nonetheless, such disagreement does not undermine the Constitutes-Iteration framework since the framework developed in Chapter 3 is a meta-theory and delineates what types of theory are needed to explain how some speech constitutes acts of oppression. So, if further philosophical inquiry undermines the particular theories I advocate, then all the better—

we will have more plausible and developed accounts of speech acts, oppression, and social phenomena.

However, I take the two central claims of the dissertation to be (i) that speech act analysis is an insufficient resource for explaining how speech constitutes oppressive speech and (ii) that the framework developed in Chapter 3 articulates the additional resources needed to defend the Constitutes Thesis. Although it may turn out that the explanatory theories engaged for each iteration are wrong-headed or less plausible than alternative explanations at such and such an iteration, it does not follow that the iterative structure is flawed. Perhaps it is and I have left out some crucial iterations, sloppily blurred iterations, or have otherwise skated over various difficulties. Yet, if these omissions have occurred, the basic framework has not been undermined. Instead, the next step would involve both revising or expanding the iterations at work in a particular constitutes claim.

A third objection challenges whether, on my view, speech acts are theoretically important at all.¹⁹⁰ If I am correct about the iterative structure of constituency claims then, the philosophical import of speech acts becomes a peripheral issue. Speech acts are necessary and of the utmost importance for McGowan and Langton because they both attribute oppressive illocutionary force to utterances, whereas I separate the illocutionary force from oppressive force and locate the latter in normative structures in which utterances are moves. So, reasons this critic, speech falls to the background—just as the

¹⁹⁰ I owe this objection to Justin Coates.

Linguistic Convention Iteration, the Speech Act Iteration takes a back seat to my emphasis on social theory and oppression.

I agree that I separate oppressive force from illocutionary force, but I do not think that this undermines the theoretical importance of speech act theory in the Constitutes-Iteration Thesis or that the Speech Act Iteration is taken for granted (as is the LCI). Speech acts are still necessary for explaining how speech constitutes oppression. In fact, the Constitutes Thesis is contentious—at least, according to Dworkin and others—because it is not clear that speech is the sort of thing that can oppress. So, showing how speech act types (assertions, descriptives, advisories, etc.) are moves that oppress within (oppressive) social practices is still an important task for my theory. Indeed, it is the most important. The first wave of application of my theory is to illuminate oppressive speech that masquerades as well-mannered discourse, especially when such speech is touted as political expression and is thereby immune to regulation.

A fourth and final objection maintains that my account proves too much. It is an undesirable consequence of my social theory and commitments to oppression that any move within an oppressive institution is an oppressive act. This is a bullet I am willing to bite—indeed, I would argue, it is a virtue of my account. Oppression is a widespread phenomenon within our lives, in part, because of the pervasiveness of key oppressive (racist, sexist, and homophobic) institutions and the influence of these institutions on our behavior. In a sexist society, any reinforcement of gender difference engages the oppressive norms of the gender institutions. This is not to say that gender norming is inherently problematic—it is only when an institution attaches superiority / inferiority or

authority to the gender difference that problems arise. Similarly, cultural norming is not inherently problematic, but touting one's culture as superior is.

Rather, this consequence is elucidatory rather than problematic for my theory. I take my project to be a contribution to the larger project within feminism and critical race theory of articulating the forces of oppression and attempting to undermine them. Both the Constitutes-Iteration framework developed in Chapter 3 and the inklings of a social theory developed in Chapter 4 provide tools for uncovering and making explicit the various ways in which racist, sexist, and homophobic institutions and behavior manifest throughout our lives. Moreover, considering the relationship between institutions and social roles—that social roles are individuated by the set of social-institutional norms that govern the role—we are in a better position to see just how much these norms influence our thoughts and interactions with others.

3. Consequences and Applications

I have developed my iterative framework by extending the notions of status function and deontic statuses to explicate the relationship between various levels of institutional norms from their use in Searle's work as the explanans of non-physical, institutional facts. Although I used the framework to articulate the Constitutes Thesis, the framework is not limited to explaining how speech constitutes oppression, as the touchdown (Chapter 3) and the attendance (Chapter 4) examples indicate. The iterative framework, I hope, may be used to clarify any investigation into institutions, social practices, and the complex web of obligations and responsibilities we navigate daily.

Moreover, now that I have established a non-metaphorical, non-sleight of hand version of the thesis, I can engage the various debates regarding hate speech and pornography and demonstrate how they both constitute oppression. Since such practices are constitutive of oppression, they should not be protected by the First Amendment.

One consequence of my research is that we now occupy a better position for understanding how speech contributes to the normalizing mechanisms of pernicious institutions. We readily recognize traditional acts of oppression—those paradigmatic physical and violent actions or explicit changes (new laws) to a legal system that undermine the civil rights of some group or other. However, we less readily recognize that oppression often occurs through a medium as intangible as speech and often occurs in everyday contexts. Some people find it so unlikely that speech and ordinary contexts could plausibly oppress that they cry foul when explanations are offered. Others cite a culture of political correctness and overly sensitive interest groups. Why is it that these mundane contexts are overlooked or discredited?

Part of the answer, undoubtedly, comes from the privilege and clout that comes from occupying ordinate social roles. Privilege accrues to being white, to being male, to being straight, to being abled, and so on. From the vantage point of such privilege, those of us who occupy any number of these intersections of identity may fail to recognize how much ordinary interactions can subordinate, demean, or undermine another person. For instance, in a 2003 Supreme Court case, *Virginia v Black*, which involved a Virginian law against cross burning, a six justice majority found the law unconstitutional because it placed the burden of proof on the defendant to demonstrate that he did not intend the

cross burning as intimidation. Only Justice Clarence Thomas—only one justice!—argued that cross-burning carried the presumption of intimidation. So too is privilege the explanation when I need to explain to the male students in my Race and Gender class that “hysterical” is deeply problematic and demeaning.

However, part of the answer also comes from how speech and the mundane are naturalized (normalized) by the various institutions in which we live. As I have indicated in earlier examples, the first step of the Constitutes-Iteration analysis need not be an utterance or other symbolic act (e.g. drawing a swastika, flinging a noose over a campus lamppost). Most of the time the ground floor of the analysis will be some brute action or object. Nonetheless, an object or action acquires deontic status through a speech act. Often this institutional item will undergo status alterations though non-speech acts, but more often than not speech acts are responsible for alterations in its normative status. But we normally take these alternations as inevitable and natural. As such, we ought to recognize how important speech is to the institutional life of our actions. That is, recognizing both the role and importance of speech acts to institutions will de-naturalize these statuses.

To support this seemingly far-fetched claim, consider the alterations to the various obligations and permissions in the lives of young people. The majority of a young person’s obligations, responsibilities, and status depend on a parent, guardian or teacher’s speech acts: setting curfew, granting permission for visiting friends or hosting sleepovers, assigning reading, establishing due dates, scoring and grading work. To reiterate, utterances (whether speech or symbolic gesture, broadly construed) are part and parcel of

the daily minutiae of the institutions in which we live. So, to deny that speech constitutes an act of oppression, when ‘oppression’ is understood in terms of an institution or social practice, seems wrong-headed. Recognizing the role of speech acts in granting institutional status and its prevalence is tantamount to understanding how speech normalizes (and legitimates) the practices and norms of an institution.

Nonetheless, more work—both empirical and philosophical—ought to be done to understand how speech normalizes the norms and practices of institutions, especially those norms and practices that are pernicious. That is not to say that no such research has been done: much has been done over the last two decades or so in social psychology. More philosophical work, though, should be done to explain how speech naturalizes these pernicious norms. One line of research, which I hope to pursue shortly, will examine how the norms that govern social roles contribute to the naturalizing process.

A second consequence shows what explanatory gaps remain, especially regarding a research program in social theory, I have already discussed two such lines of inquiry that fall out of my work in the dissertation: addressing how the privilege associated with widespread social roles (being white or male) and how we might work to de-naturalize these structures. However, the work on social roles is rather underdeveloped. Most work on social roles examines role obligations in relation to moral obligations broadly conceived—for instance, how does a mother decide between her obligations to her children and obligations to her fellow humans? With the exception of excellent and thought-provoking essays by Michael Hardimon (1994) and Stefan Sciaraffa (2009), little work has been done on social roles and their function within institutions. A study of the

indexes of work on the philosophy of social theory by leading scholars—Seumas Miller, Raimo Tuomela, and John Searle—returns less than five pages of content. Surely more can be done.

A third consequence, which opens a range of potential applications, is that we now occupy a better position for navigating debates regarding oppressive speech and the First Amendment. Initially, Rae Langton (1993), following suggestive comments of Catherine MacKinnon, argued that pornography constitutes oppression of women and that pornography often silences women.¹⁹¹ This groundbreaking article discussed speech acts and oppressive speech as a stepping-stone for articulating how pornography as speech oppresses and silences women's refusals of sex. Langton's subsequent work and other work by anti-pornography feminists received a flood of criticism because they, in part, sought to censor types of speech. A growing trend, which is now something of an industry, was to take a step back from pornography and explain how speech oppresses. The intention was to develop a knock down explanation of how speech is harm. Now that I have a version of the Constitutes Thesis that addresses the range of criticism including the thesis's being a "dangerous confusion," metaphorical, or "sleight of hand," it is time to move forward from oppressive speech back to explaining how pornography oppresses. In other words, with the Constitutes-Iteration Thesis in hand, we can address problems with the arguments of pro-pornography liberals.

Consider the following argument Dworkin offers for protecting the right of pornographers to produce pornography and the right of viewers to consume

¹⁹¹ Langton treats pornography as speech because the Supreme Court recognizes pornography as First Amendment protected speech.

pornography.¹⁹² The argument relies on Dworkin's principle of equality which maintains that equality is a matter of treating other people's suffering and frustration with equal concern and treating people's differing views about the good life with equal respect in the law. Although people may not like pornography or may find it offensive, censoring or banning the production (or use) of pornography limits the producers' (or consumers') freedom on the basis that such a way of life is inherently less worthy than other ways of life. That is, the laws banning or censoring the production (or consumption) of pornography would violate the equality principle. Moreover, the principle would be violated even if a majority voted for or passed such laws. Therefore, the right to produce (or use) pornography derives from and protects equality. In other versions of the argument, Dworkin considers whether pornography should be censored if pornography causes harm to women. However, despite the three decades worth of empirical evidence, Dworkin denies that any of this evidence is persuasive.

Parallel arguments can be formed regarding racist, sexist, or homophobic speech—substitute the relevant type of speech for instances of pornography in the above paragraph—and how such speech ought to be protected. Similarly, Dworkin rejects empirical evidence, again despite decades of research that demonstrate a causal

¹⁹² Dworkin offers similar arguments throughout his early corpus (1977; 1991; 1992). More recently (2009; 2012), focusing on hate speech, he argued for similar conclusions from the perspective of political legitimacy. A democratic government will protect people from workplace and legal discrimination through laws. The legitimacy of these anti-discrimination laws rests in allowing everyone to have a fair opportunity to express their attitudes, prejudices, and ideals. If a government (even with a decisive majority) enact laws that ban or censor speech (even hate speech), then some will not have a fair opportunity to express their attitudes. So, the anti-discrimination laws will lose legitimacy.

connection between oppressive speech and various physiological and psychological harms. However, there is a new wrinkle in the recent work: Dworkin focuses on the offense or insult of oppressive language.¹⁹³ In other words, at least from the perspective of a theory of oppression, Dworkin focuses on an insignificant harm, possible harm to one's self-esteem (insult) or sensibility (offense). Perhaps, Dworkin, like many of the justices in the *Black* case, is blinded by his privilege and cannot see that the harm of oppressive speech goes much deeper than one's occurrent psychological states.

Nonetheless, with the Constitutes-Iteration Thesis in hand, we can avoid the distraction of focusing on offense and insult or squabbling over whether the scientific data is compelling, and focus on Dworkin's principle of equality. In other words, the thesis can show how *protecting* pornography and oppressive speech undermines the principle of equality in two very different ways. In the first place, by protecting, say, pornography, the government favors the producers' and consumers' view of the good life over women's views of the good life.¹⁹⁴ In the second place, the Constitutes-Iteration Thesis helps us understand how oppressive speech and pornography undermine the first conjunct of Dworkin's principle—that equality is a matter of treating other people's suffering and frustration with equal concern—since oppression does not secure equal concern. What follows is a brief sketch of how the Constitutes-Iteration Thesis may help

¹⁹³ "So in a democracy no one, however, powerful or impotent, can have a right not to be insulted or offended" (2009, viii).

¹⁹⁴ These views are, of course, not monolithic, but share (in a very minimal sense) a commitment to bodily integrity, equal respect before the law, and fair access to opportunities.

substantiate these conclusions. Moreover, the results below can be applied to Dworkin's and others' arguments regarding hate speech that oppresses.

As a first step, it will be helpful to remember that the Constitutes-Iteration Thesis demonstrates how something can constitute a social phenomena, say, how utterances constitute oppression: utterances are speech acts, and these speech acts are moves in some social practice, and some of these practices are oppressive. We can understand claims that "such and such pornography constitutes oppression" similarly. Obviously our starting point will not always be utterances but will include utterances, tropes, scenes, and the like, and these may be understood as moves within a practice and these practices may or may not be oppressive, depending on the goals and ends of these practices. For instance, a pornographic scene that depicts a rape-myth—in which a woman at first refuses intercourse and, perhaps, fights off the male, but comes to enjoy intercourse (perhaps, ecstatically so)—will be a move according to a norm that women ought to play hard to get, that all women really want to be raped, or that when women say "no" they really mean "yes" and these norms are oppressive insofar as it demeans or subordinates women, treating women as objects for men's pleasure and encouraging or providing a reason for the violation of a woman's bodily integrity. The scene might also be a legitimizing move insofar as it allows men to have these attitudes.

A second step, then, is to consider how a rape-myth scene (or other demeaning and subordinating scene) undermines Dworkin's principle of equality. First, the scene undermines treating different views of the good life with equal respect in the law. By protecting speech, the government protects the values and attitudes that such speech

expresses—these values and their expression are not criminalized or censored. For example, the speech of Democratic representatives is protected and, thus, the government protects the expression of Democratic values and attitudes; so too, does it protect the values and attitudes of pornography producers and consumers. Since, the attitudes expressed by the rape-myth include that women are objects of men’s pleasure and that women want to be raped, the government protects these values. However, this protection seems inconsistent with the government’s more general concern of protecting individuals’ equal standing: before the law, both men and women are equally persons, but in according First Amendment protection to pornography, the government protects a view of women as not equal. That is, the government endorses an oppressive view of women.

Moreover, as I demonstrated above, producing (and consuming) the rape-myth scene is a move within an oppressive institution, so the scene is more than the expression of a view about the good life. The scene is a move within an institution, whose goal is that good life. Set aside the contentious cases of pornography and oppressive speech. Are there any views of the good life that are not treated equally in the law in terms of expression? I am hard pressed for an example in America. The government, however, treats some views of the good life unequally when those views are acted upon—the Mafioso’s or jihadist’s actions that exemplify their respective views of the good life are criminal acts.

Second, the Constitutes-Iteration Thesis can demonstrate how the scene undermines the first conjunct of the principle—treating other people’s suffering and frustration with equal concern. There are two senses of “suffering and frustration.” The

first is the subjective sense involving one's occurrent psychological states: e.g. I do not suffer (feel insulted or offended) if someone calls me a honky, but I do suffer when I receive a rejection letter from a department my heart was set on. The second is the objective sense involving whether one has access to basic legal and social resources that enable equality: e.g. the institution of slavery did not treat all people's suffering with equal concern, and still allowing unequal pay between men and women in similar positions does not treat suffering and frustration equally. Allowing the rape-scene seems to pass Dworkin's principle if we invoke the subjective sense of suffering and frustration—"in a democracy no one, however, powerful or impotent, can have a right not to be insulted or offended" (2009, viii)—because if pornography were regulated, producers would suffer economic losses, consumers would have their desires frustrated, and some women would no longer be insulted and offended. However, if we understand "suffering and frustration" in the objective sense, the rape-scene no longer passes the equality principle. The Constitutes-Iteration Thesis demonstrates that the rape-myth scene is a move that adheres to certain sexist norms and those norms seek to demean and subordinate women to the level of objects of male's pleasure. In other words, the scene demeans women for the sake of male pleasure. So, we (or the government), by allowing pornography, favor the frustration of producers' and consumers' desires over the loss of equality because women are seen as subordinate and objects that are to be used and debased.

4. Conclusion

I have not argued for whether pornography (or oppressive speech) should be regulated or lose its First Amendment protection. Such arguments are for another time and place. Instead I focused on a particular application of the Constitutes-Iteration Thesis: demonstrating a flaw in Dworkin's argument for protecting pornography (and oppressive speech). Although we may apply the thesis in arguments for regulating or not protecting such speech, I advocate using the Constitutes-Iteration Thesis as a hermeneutic for identifying oppressive practices and identifying flaws in arguments for First Amendment protection or in arguments against the regulation of hate speech or pornography.

Bibliography

- Austin, J. L. (1975). *How to Do Things With Words*. Cambridge: Harvard University Press.
- Bach, Kent & Harnish, Robert M. (1979) *Linguistic Communication and Speech Acts*. Cambridge: The MIT Press.
- Bartky, Sandra Lee. (1990). "On Psychological Oppression" in *Femininity and Domination: Studies in the Phenomenology of Oppression*: 22–32. New York: Routledge.
- Bauer, Nancy. (2006). "How to Do Things with Pornography," in *Reading Cavell*, eds., Alice Crary & Sanford Shieh: 68–97. New York: Routledge.
- Bird, Alexander. (2002). "Illocutionary Silencing". *Pacific Philosophical Quarterly*. 83(1): 1–15.
- Blum, L. (2004). "What do Accounts of "Racism" do?" in *Racism in Mind*, eds., Michael P. Levine & Tamas Pataki: 56-77. Ithaca: Cornell University Press
- Cudd, Ann. E. (2006). *Analyzing Oppression*. Oxford: Oxford University Press.
- Dworkin, Ronald. (1977). *Taking Rights Seriously*. Cambridge: Harvard University Press.
- . (1991). "Liberty and Pornography," *The New York Review of Books*, August 15.
- . (1992). "The Coming Battles over Free Speech," *The New York Review of Books*. June 11.
- . (1993). "Women and Pornography," *New York Review of Books*. October 21.
- . (2009). "Forward" in *Extreme Speech and Democracy*, eds. Ivan Hare & James Weinstein: v–ix. Oxford: Oxford University Press.
- . (2012). "Reply to Jeremy Waldron." In *The Content and Context of Hate Speech*, eds. Michael Herz & Peter Molnár: 341–344. Cambridge: Cambridge University Press.
- Fine, Cordelia. (2010). *Delusions of Gender: How Our Minds, Society, and Neurosexism Create Difference*. New York: WW Norton.
- Frye, Marilyn. (1983). *The Politics of Reality: Essays in Feminist Theory*. New York: The Crossing Press.

- Gilbert, Margaret. (1989). *Social Facts*. New York: Routledge.
- Graham, Peter. (Forthcoming). "Epistemic Normativity and Social Norms," in *Epistemic Evaluation: Point and Purpose in Epistemology*, eds., John Greco & David Henderson. Oxford: Oxford University Press
- Green, Leslie. (1998). "Pornographizing, Subordinating, and Silencing," in *Censorship and Silencing: Practices of Cultural Regulation*, ed., Robert Post: 285–311. Los Angeles: The Getty Research Institute.
- Hardimon, Michael. (1994). "Role Obligations" *Journal of Philosophy*, 91(7): 333-363.
- Haslanger, S. (2000). "Gender and Race: (What) Are They? (What) Do We Want Them to Be?" *Nous* 34(1): 31–55.
- . (2004). "Oppressions: Racial and Other," in *Racism in Mind*, eds., Michael P. Levine & Tamas Pataki: 97-123. Ithaca: Cornell University Press.
- . (2012). *Resisting Reality: Social Construction and Social Critique*. Oxford: Oxford University Press.
- Jacobson, Daniel. (1995). "Freedom of Speech Acts? A Response to Langton". *Philosophy and Public Affairs*. 24(1): 64–79.
- Kukla, Rebecca. (2012). "Performative Force, Convention, and Discursive Injustice." *Hypatia*. DOI: 10.1111/j.1527-2001.2012.01316.x
- Langton, Rae. (1993). "Speech Acts and Unspeakable Acts." *Philosophy and Public Affairs* 22(4): 293–330.
- . (2012). "Beyond Belief: Pragmatics in Hate Speech and Pornography," in *Speech and Harm: Controversies over Free Speech*, eds., Ishani Maitra and Mary Kate McGowan: 72–93. Oxford: Oxford University Press.
- Langton, Rae & West, Caroline. (1999). "Scorekeeping in a Pornographic Language Game." *Australasian Journal of Philosophy*. 77(3): 303–319.
- Lederer, L. & Delgado, Richard, eds. (1995). *The Price We Pay: The Case Against Racist Speech, Hate Propaganda, and Pornography*. R. Delgado (Ed.). New York: Hill and Wang.
- Lewis, David. (1969). *Convention, A Philosophical Study*. Cambridge: Harvard University Press.

- . (1983). “Scorekeeping in a Language Game” in *Philosophical Papers Vol 1*. Oxford: Oxford University Press.
- MacKinnon, Catherine. (1987). “Francis Biddle’s Sister: Pornography, Civil Rights, and Speech” in *Feminism Unmodified: Discourses on Life and Law*. Cambridge: Harvard University Press.
- . (1996). *Only Words*. Cambridge: Harvard University Press.
- Maitra, Ishani. (2012). “Subordinating Speech” in *Speech and Harm: Controversies over Free Speech*, eds., Ishani Maitra and Mary Kate McGowan: 94–120. Oxford: Oxford University Press.
- Maitra, Ishani & McGowan, Mary Kate. (2009). “On Silencing, Rape, and Responsibility”. *Australasian Journal of Philosophy*. 88(1): 167–172.
- Marmor, Andrei. (2009). *Social Conventions*. Princeton: Princeton University Press.
- . (2011a). “An institutional Conception of Authority.” *Philosophy and Public Affairs*, 39(3): 238–261.
- . (2011b). “The Dilemma of Authority.” *Jurisprudence* 2: 121–141.
- Mason-Grant, J. (2004). *Pornography Embodied: From Speech to Sexual Practice*. Lanham: Rowman & Littlefield Publishers.
- Matsuda, Mari J., Lawrence, Charles R., Delgado Richard, & Williams Crenshaw, Kimberle. (1993). *Words That Wound: Critical Race Theory, Assaultive Speech, and the First Amendment*. Boulder: Westview Press.
- McGowan, Mary Kate. (2003). “Conversational Exercitives and the Force of Pornography.” *Philosophy and Public Affairs* 31(2): 155–189.
- . (2009). “Oppressive Speech.” *Australasian Journal of Philosophy* 87(3): 389–407.
- . (2009b). “Debate: On Silencing and Sexual Refusal.” *The Journal of Political Philosophy*. 17(4): 487–494.
- . (2012). “On ‘Whites Only’ Signs and Racist Hate Speech: Verbal Acts of Racial Discrimination” in *Speech and Harm: Controversies over Free Speech*, eds., Ishani Maitra and Mary Kate McGowan: 121–147. Oxford: Oxford University Press.

- Michelman, Frank. (1988). "Conceptions of Democracy in American Constitutional Argument: The Case of Pornography Regulation." *Tennessee Law Review*. 56: 291–319.
- Miller, Seumas. (2001). *Social Action: A Teleological Account*. Cambridge: Cambridge University Press.
- Parent, William A. (1990). "A Second Look at Pornography and the Subordination of Women." *Journal of Philosophy*. 87(4):205–11.
- Petit, Philip. (1990). "Virtus Normativa: Rational Choice Perspectives." *Ethics*. 100(4): 725–755.
- Ransdall, Joseph. (1971). "Constitutive Rules and Speech Act-Analysis." *The Journal of Philosophy*. 68(13): 385–400.
- Sciaraffa, Stefan. (2009). "Identification, Meaning, and the Normativity of Social Roles" *European Journal of Philosophy*, 19(1): 107–128.
- Searle, John. (1969). *Speech Acts*. Cambridge: Cambridge University Press.
- . (1995). *The Construction of Social Reality*. New York: The Free Press.
- . (2005). "What Is an Institution?" *Journal of Institutional Economics*. 1(1): 1–22.
- . (2010). *Making the World Social*. Oxford University Press.
- Sundstrom, Ronald R. (2002). "Race as a Human Kind." *Philosophy and Social Criticism*. 28(1): 91–115.
- Tuomela, Raimo. (2007). *The Philosophy of Sociality*. Oxford: Oxford University Press.
- . (2002). *The Philosophy of Social Practices: A Collective Acceptance View*. Cambridge: Cambridge University Press.
- Witt, Charlotte. (2011). *The Metaphysics of Gender*. Oxford: Oxford University Press.
- Young, Iris Marion. (1990). *Justice and the Politics of Difference*. Princeton: Princeton University Press.