



# Recognition, Authority Relations, and Rejecting Hate Speech

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## Abstract

A key focus in many debates surrounding the harm in hate speech centres on the subordinating impact hate speech has on its victims. Under such a view, and provided there exists a requisite level of speaker authority a particular speech situation, hate speech can be conceived as something which directly impact's the victim's status, and can be contrasted to the view that such speech merely expresses hateful ideas. Missing from these conceptions, however, are the ways in which intersubjective, recognition-sensitive relations influence the kind of harm likely to result from such an act. Understanding the central role of first-person experience is crucial, as, while a victim may have little influence in how their social status is impacted by such an act, the possibility for 'speaking back' requires that individuals are equipped with the conditions necessary to reject the authority claims of the speaker. On such a view, this paper aims to use this feature of intersubjectivity to explore the potential ways in which an act of hate speech can be 'robbed' of some of its harm by having its authority claims rejected by the victim. Utilizing this enhanced understanding, I reflect upon one particular real-world example of hate speech, in which the target rejects the status-undermining claims made upon her. In the last section, I propose a general institutional outlook aimed towards aiding would-be victims of hate speech to respond to such attempts at normative authority exertion.

**Keywords** Hate speech · Recognition · Authority · Langton · Racism · Speech-act theory

## 1 Introduction

Recent scholarship in hate speech theory considers the role authority relations play in the resultant impact of certain forms of speech on some of the most vulnerable members of society (Langton 2012; Maitra 2012; Crenshaw et al. 1993). Operating under an abstract definition of

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'hate' speech, as opposed to the more narrowly-defined conceptions found in legal definition, these accounts focus on the kind of expression that directly impacts the status of a defined identity group<sup>1</sup> by "constituting norms that help to construct social reality for the subordinated group" (Maitra 2012: 99). With such a definition in mind, these debates have attempted to unpack the nature and harm of acts as diverse as cross-burning, pornography, pamphleteering, newspaper headlines, and words published on social media.<sup>2</sup> Utilising a speech-act theoretical framework, and taking inspiration from the work of Austin (1962), such works also aim to address the central position speaker authority holds in contributing to the harmful impact of acts of these kinds. The range of potential harms experienced by victims is vast, and includes, among other things, an immediate threat to social status (Langton 1993, 1998, 2006), the perpetuation of disparaging social stereotypes (Matsuda 1989), the emotional and physiological impact of fear and threat to physical self (Delgado 1993), the contribution to a hostile living environment (Waldron 2012),<sup>3</sup> and the associated 'silencing' effect, which threatens an affected individual's capacity to respond or speak out against her attacker (Langton 1993: 299). Of particular significance, however, is the way in which the illocutionary impact of hate speech actually *constitutes* an act of subordination (Hornsby 1994; Tirrell 2012; West 2012; Langton and West 1999; Mackinnon 1993; McGowan 2012; Maitra and McGowan 2007). It does so, according to Maitra, by "constituting norms that help to construct social reality for the subordinated group" (2012: 99). So, rather than 'merely' causing secondary harmful effects in its utterance, hate speech can be directly compared to an act of discrimination, by enacting subordination in its expression. It is this particular harm, according to the theorists above, that provides serious cause for concern. It is also by employing the speech-act framework that such arguments are used to dispel the notion that hate speech does not have the potential to bring about an immediate change in states of affairs in the same way as, say, a violent assault on

<sup>1</sup> Here, we can put aside definitions that depend solely on identifying certain characteristics of the speech involved. Some theorists, lawmakers, and medical practitioners identify hate speech by tracking complaints by a victim, usually through defining the harm in terms of psychological damage. Others, however, are concerned with hateful intent on the part of the speaker. Though these features often accompany the status-denigrating described in this paper, they are not by themselves sufficient markers of an instance of hate speech.

<sup>2</sup> In-keeping with common-usage in the field, this paper is not aimed at providing a definition of hate speech, nor is it aimed at identifying criteria of certain speech-acts which make them worthy of legal restriction. Instead, the term 'hate speech' is used as a 'catch-all' term to describe those forms of speech that perform the function of subordination, in the manner described by the Langton/critical race theory perspective.

<sup>3</sup> Though he doesn't use the same speech-act language as Langton et al., it would be imprudent not to mention the relative absence of Waldron's work in the present discussion. Concerned largely with how certain publishable forms of hate propaganda contribute to the toxic visual climate of society, and how the existence of such a social landscape contributes to the second-class citizenship and threat to assurance of affected groups, Waldron's approach reveals a timely gap in the US jurisprudence literature. However, as we will see in this paper, Waldron's analysis, in a similar fashion to Langton's, fails to offer a concrete framework capable of identifying and distinguishing between those 'grey area' cases of harmful speech act, most particularly those which may be categorized as offensive, yet non-regulable forms of identity-based expression. Utilising common usage of the concept of offensive in this context, we can place under this heading those cases that continue to receive a great deal of public attention, such as racially-insensitive comedy, religious satire, quasi-political allusions to certain prominent global issues such as immigration or terrorism, and the kind of sexist tropes commonly associated with the popular music industry. Under a close reading of both Langton and Waldron, such cases would not fit the criteria generally associated with an act of hate speech. What the increased consciousness-raising around such forms of expression reveals, however, is that something harmful may be going on in some of these cases, in particular in their capacity to inform and perpetuate certain kinds of behaviour towards members of oppressed groups. Under the analysis considered here, then, we must take a broader approach towards examining the wider social and normative context of expressive conduct, and consider how such contexts can lend certain generally blithe expressions of bias authority depending on their position within these contexts themselves.

another. Often used as a critique of First Amendment ‘absolutism’, which places racist and discriminatory expression firmly within the protected class of ‘ideas’, exposing the shortcomings of a strict speech-action separation thus aims to highlight the very real dangers of certain forms of speech on a vulnerable group’s status in society, thereby making the case for a shift in perceptions of the harm suffered through certain forms of expression.

In order to distinguish an act of subordinating hate speech from other sorts of speech, and in-keeping with the Austinian typology, it is argued that an act of hate speech must be accompanied by certain ‘felicity conditions’, most crucially a level of speaker authority (Langton 1993: 306). As the commonly-cited speech-act theory example shows, a registrar requires the relevant authority in order to pronounce a couple as legally married, and a suitably-appointed individual must hold the requisite authority required in order to christen a ship (Langton 1993: 317). As we will see, however, attributing the relevant speaker authority in more ‘informal’ acts of potentially harmful speech remains difficult to discern, and as such exposes the limits of the speech-act theoretical framework for understanding the complexity of harm present in acts of hate speech. Along such lines, theorists such as Judith Butler (1997) have questioned the categorization of hate speech as an illocutionary act of subordination. Here, the complex cultural and social relations involved in an act of ‘hate’ speech render such acts unpredictable and fluid in nature (1997: 15). This unpredictability, however, opens up opportunities for emancipation. As compared to the formal authority involved in the christening of a ship, Butler argues that the informal authority involved in the dissemination of hate speech acts opens up myriad possibilities for response on the part of the victim. Though Butler’s poststructuralist conclusions remain open to debate (Lovell 2003), her argument regarding the indefinite result of certain acts of hate speech reveals the potential for victims to utilise the unpredictable nature of such acts for the purposes of speaking back. In other words, if we can unpack the kinds of recognitive conditions required in order for an act of hate speech to fail to misrecognize its targets, then we are better equipped to construct a suitable response that fulfils these aims effectively.

As this paper argues, then, we must consider a further dimension to the already-considered felicity conditions outlined by the speech-act typology: the forms of intersubjective, recognitive exchange at play during an act of harmful speech. So, while the speech-act typology provides a fruitful set of tools with which to measure the effect to social status that hate speech occasions, the first-person rejection of normative authority of a hate speaker from the part of the victim provides one way in which the harmful, recognition-impacting effects of such an act can be challenged. Through unpacking a particular real-world example, we can uncover those recognition-sensitive authority relations that are currently absent in the Langton/critical race approach to understanding the impact of hate speech.

With these considerations in mind, this paper will be structured as follows. Beginning with a background exploration of the role of speaker authority in the dissemination of a hate-speech-act, we will consider how such relations inform and perpetuate certain status-undermining, subordinating norms regarding treatment of oppressed groups. As we will see, this approach reveals certain crucial insights into how such speech-acts operate in our social relations. Similarly, it will be shown how an examination of the recognition of speaker authority in the analysis of the resultant harm of hate-speech-acts remains an invaluable part of the practice of hate-speech theory, and must be adopted if we are to truly understand its effects and solutions. Following this, I will outline one as-yet underdeveloped aspect of the speech-act framework, that is, a consideration of the key role that surrounding recognition of normative expectations and standards of behaviour play in the expression of certain speech-

acts. Along such lines, the forthcoming analysis will outline the possible contextual differences between speaker authority as it contributes to the wider social status of affected individuals, and speaker authority as it aligns with the normative expectations of a victim. Building on the extensive work undertaken by the speech-act understanding of hate speech, the aim of this paper is thus to draw out the nuances of relationship between recognition and speaker authority, towards the aim of exposing a potential source of response for the victim.

This nuance will be further examined through the lens of a particular case study, which will then be unpacked from a recognition-sensitive, first-person perspective. Examining the authority relations and norm-governed nature of an act of hate-speech allows us to consider how such experiences play out within a particular social and cultural context, and reveals how the resultant subordinating effects are heavily dependent upon this complex interplay of social rules, expectations, and the communication of reactive attitudes between individuals in society. To round off this exploration, I make a preliminary attempt to sketch potential practical solutions to the perpetuation of harmful, subordinating norms by supporting the rejection of authority claims made upon victims by hate-speakers.

## 2 Speech-Act Theory, Authority Relations, and the Status-Undermining Effects of Hate Speech

In addition to the psychological and physiological impact experienced by victims of hate-speech-acts, many theorists cite the *subordinating harm* certain kinds of expression has on victims<sup>4</sup> (Langton 1993, 2018; McGowan 1993, 2009; Delgado and Stefancic 2004; Matsuda 1993). Such speech-acts, along these lines, directly reinforce and perpetuate the norms surrounding the relative social status of individuals from oppressed identity groups. The harm, then, lies in this direct ‘ranking’ or subordination of status and the perpetuation of a negative and hostile climate for those affected (Waldron 2012: 52). As a consequence, victims must contend with living in a world in which they are viewed as second-class citizens in the eyes of others. Conceptualizing this particular harm using the language of recognition, we can refer to this loss of status as a denial of “recognition respect,” where recognition in this sense refers to an individual’s experience when they “have other persons take seriously and weigh appropriately the fact that they are persons in deliberating about what to do” (Darwall 1977: 38). The expression of hate speech, then, can be considered as a clear act of misrecognition.<sup>5</sup> The hate-speaker is expressing to his victim that he does not consider him of equal worth in his deliberations, and that he does not tailor his actions in light of their claims. In short, he is letting victims know through his speech that they are not worthy of respect, and as such do not hold equal status as human beings in receipt of moral consideration. This status-undermining effect of misrecognition is thus a key feature of harm-focused accounts of hate speech, and, though often not expressed specifically in the language of recognition, is a central issue for those concerned with eradicating the ills of hate speech in society.

<sup>4</sup> While Catherine MacKinnon does not in her work focus on hate speech specifically, her work on the subordinating impact of pornography on the equal status of women is considered to be highly influential in the use of the Austinian typology in our understanding of harmful expression. For more on this influence see Langton and Hornsby (1998) ‘Freedom of Illocution? Response to Daniel Jacobson’.

<sup>5</sup> For another theorist who conceptualises hate speech in terms of its effect on recognitive status, see Thompson (2012).

To Langton and others, then, the significant impact hate speech has on victims can be conceptualized not merely as expression but as a speech-act, and one that reinforces and perpetuates certain kinds of harm in a comparable way to more ‘tangible’ forms of discrimination or identity-based violence. Making use of J. L. Austin’s speech-act theory (1962), we see how such hate-speech-acts operate according to the distinction between illocutionary and perlocutionary speech-acts. Under such a typology, we see how an illocutionary act *does something* in its expression (Tsohatzidis 1994). To use several commonly-visited examples, we see how stating ‘I do’ in a wedding ceremony actually constitutes the legal act of marrying, the statements made by a judge in the courtroom comprise the act of sentencing a defendant, and the swearing of an oath during a citizenship ceremony constitute a tangible and definitive act aimed towards a particular legally-binding outcome (Langton 1993: 317). In contrast, we can identify certain perlocutionary effects of a speech-act, where these effects relate to the potential secondary outcomes of an illocutionary act. So, for instance, the perlocutionary effect of saying ‘I now sentence you to five years in prison’ is likely to be the shocking and saddening of the defendant. These secondary perlocutionary effects are thus dependent upon the nature of the illocutionary act in question. The strength and shape of the perlocutionary effects of such a speech-act, therefore, rely on the constitutive nature of the speech-act, how it impacts those who are subject to it, and, consequently, how the hearer responds to and interprets the force of the act itself. It is with this Austinian typology in mind that Langton (1993: 320, 2009) describes the harm suffered to the normative status of women through the widespread prevalence of pornography. According to such a view, not only does pornography provide a visual representation of the subordination of women, which in turn delivers certain perlocutionary outcomes in the form of increased gender-based violence and sexual assault, but the expression involved in the pornography *itself* actually constitutes an act of subordination. Contrary to preceding discussions surrounding the harm of hate speech, then, this framework considers not only the ‘propaganda’ impact of such speech, in which others are recruited or encouraged to engage in discriminatory practices, but the immediate subordinating impact of an act of hate speech. This view, then, marks a clear difference between those who believe that hate-speech has the potential to produce harmful effects in future, and those who hold that the act itself actually subordinates those affected.

What kind of felicity conditions, then, are required in order for an act of hate speech to constitute subordination in the way described above? According to the speech-act typology, an act of hate speech subordinates when certain surrounding contextual conditions hold. For instance, saying ‘I do’ during a wedding ceremony depends on displaying a clear understanding of the semantic content of the words spoken, as well as an intention to use them to perform the act of marrying. Second, certain specific surrounding norms must be present in order to provide the felicity conditions necessary for my statement to be successful. In the very specific circumstances of a wedding ceremony, then, this involves the presence and prompt of a registrar at a specified time in the proceedings, my relevant role occupation as one part of a couple known by the registrar to be taking part in this particular wedding ceremony, as well as the legal conditions required for my statement to have effect, such as my informed consent to marry, the non-married status of myself and my partner, and the official status and authority of the registrar to oversee and register the ceremony. Were any of these conditions absent during my statement, the illocutionary act of marrying would not be successful. When considering an illocutionary act of hate speech, then, we must examine the appropriate felicity conditions required to supply the act with subordinating force.

This proves relatively simple to discern in cases where, like the pronouncements of the judge or registrar, the utterance directly correlates with a formal change in states of affairs, such as when a new law is passed that directly subordinates a particular group. Using the example of an apartheid-era South African legislator, Langton (2012) examines the illocutionary impact of an act of racist hate-speech. When the legislator makes a public statement that ‘Blacks are not permitted to vote’ they are not merely expressing their racist sentiments concerning black citizens of South African society, but are actually *committing an act* of subordination. As an illocutionary act, the legislator is thus directly placing black citizens within a diminutive social status. Like an overt act of discrimination found in the racially-motivated refusal of service to a black citizen, the statement made by the legislator also constitutes a subordinating act, this time through the medium of discourse. The felicity conditions here, then, depend largely upon the legislator holding the relevant formal authority to create such a change in the law. What about cases, then, where the utterance does not result in the same changes in the law?

Here, Langton notes how ‘non-official’ hate-speech can also subordinate in a way similar to that of the racist legislator (Langton 2012: 86). In terms of what hate speech does in its execution in such cases, then, it can inform and justify existing norms that remind citizens of the unequal status of black individuals. According to such a view, a racist is not simply expressing his hateful views through his speech, but is actually placing black people in a diminutive social position through his expression. The perlocutionary effects of such an act, then, involve persuading or encouraging others to treat blacks with less respect than those afforded to whites. Such speech thus appears to strengthen norms of racism by method of ‘ranking’. When we see others making a statement about the inferiority of a particular group, we may come to include such thoughts in our deliberations about how we should act and treat the group in question (Langton 2012: 82). This is only strengthened, as Langton notes, when the speaker holds the relevant authority to make such a judgement about the norms in question. So, although the South African legislator does hold the requisite authority required to actually change voting laws, we might imagine a circumstance in which a local community leader makes a statement condoning the unequal treatment of blacks. If, for example, the leader publicly declares that ‘black people cannot be trusted’, we can see how, despite the inability of the leader to actually change the law himself, his statement no doubt is accompanied by a great deal of speaker authority in regard to the justification of certain attitudes and treatment of blacks in society. In addition, and apart from the assaultive impact of disparaging messages and perpetuation of stereotypes, hate-speech thus is also directed towards those outside of the relevant identity group, in the form of propaganda (Tirrell 2012: 208). The aim of such acts, then, is to reinforce a status hierarchy to the detriment of the hated group. So, although the distribution of an anti-Semitic publication such as *Der Stürmer* served to remind Jewish citizens of their second-class status, a central goal of such works was to further entrench anti-Jewish sentiment among the rest of the population, thus further reinforcing both an ‘Us and Them’ binary and contributing to the deeply hierarchical nature of Nazi German society (Stanley 2015: 251).

In the next section, I will contrast this understanding of authority as a felicity condition as it is understood in the speech-act typology used by Langton, and authority as it pertains to the recognition of speaker by victim of an act of harmful speech. Exposing this distinction will provide an alternative framing with which to understand the harm involved, and reveals the conditions required for a victim to reject the authority claims made upon them by a potential hate-speaker.

### 3 Intersubjective Recognition, Authority Relations, and Hate Speech

As per the tradition propounded by theorists as varied as Axel Honneth (1995, 2007, 2012) and Charles Taylor (1989, 1994), among others, recognition theory draws our attention towards the value of our intersubjective relations in the development of individual autonomy and the positive self-formation of agents. As a “vital human need,” (Taylor 1994) recognition theory argues that, without an adequate and suitably enriched experience of recognition from others, we suffer a profound harm to the equal status we enjoy as members of the moral community. Absent recognition from others, then, we experience the effects of deep disrespect, something which impacts all areas of our lives, from our capacity to engage with others as equal participants in the exchange of claims-making, to our self-understanding as persons worthy of certain treatment from others (Taylor 1995; Darwall 2006, 2010; Honneth 2014). For the aims of this paper, then, we will consider this first-person conception of intersubjective recognition over other, group-identity based forms of recognition.<sup>6</sup> Though the two are related, this paper focuses on the status-undermining harm to individuals at the hands of hate speech, and so we will, for present purposes, be putting to one side questions of group-centred forms of recognition.

With the central role of recognition in mind, we can see how this dialogical aspect of identity-formation leaves much of the responsibility for our sense of self in the hands of the surrounding community. Our access to a healthy recognitive status is thus dependent upon the background structures and normative conditions shaping the social backdrop of our interactions. Persistent exposure to negative stereotypes and representations regarding our membership of a particular identity group, then, has a direct negative impact on our recognitive status and sense of self. In the kind of subordination found in both explicit forms of hate speech and in more implicit attempts of hierarchy entrenchment, victims must consistently fight to hold on to their sense of self-respect, without which they may struggle to demand certain treatment from others effectively. As in our discussion regarding the legitimation of authority described in the first section of this paper, however, we also find that intersubjective relations play an indispensable role. For, as is a key notion in theories of recognition, we must recognize others as holding the relevant authority to make claims or judgements upon us as they pertain to our relative social status. It is with this consideration in mind that Darwall (2006) extends his conception of recognition respect to include the notion of ‘second-personal respect’, in which we must consider our reciprocal, claims-making relationship with others when we engage in moral address. Under such a view, we each recognize all others as having certain claims upon us, where those claims relate to the mutual recognition of our standing as equal members of the moral community. Darwall thus extends Austin’s typology to include certain “normative felicity conditions,” where these concern “what must be true for second-personal reasons actually to exist and be successfully given through second-personal address” (Darwall 2006: 4). Fundamentally, second-personal respect requires that we recognize others as holding the normative authority to make moral claims upon us. It is in this capacity that we are thus held accountable for our actions towards others, and must consider ourselves answerable to any moral claim made against us.

With this understanding of second-personal respect in mind, we can contrast the kind of harm to social status described by Langton et al with the harm of misrecognition that certain

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<sup>6</sup> I refer here to those who utilise the theory of recognition to describe struggles for recognition of cultural groups. For more on this see Taylor (1994).

kinds of speech give rise to. While subordination under Langton's understanding depends on felicity conditions which are beyond the control of the victim, understanding the harm to recognitive status offers greater scope for response. In particular, a recognitive account appears to offer the theoretical tools necessary to understand the conditions required for victims to 'speak back'<sup>7</sup> or respond to misrecognition by others. On this view, a healthy recognitive self equips individuals in a way that allows them to reject the authority of those who attempt to misrecognize them via speech exchange. How, then, do such forms of interpersonal address operate in the exchange that takes place between hate-speaker and victim? On a basic level, we can identify a minimal level of recognition that the hate-speaker has for a victim. For one, a hate-speaker intent on harming the recognitive status of a victim must recognize the victim as having the capacity for moral address. This requires that they are capable of understanding the claims made against them, and that they are aware of the conventions surrounding the semantic content of the utterance. However, in order for the misrecognition of the hate-speech-act to take effect, the victim must also recognize the speaker's words as being authoritative in some way when they make their claims upon them.

This, as we shall see, depends on the nature of the roles of the individuals involved, as well as the practices surrounding that particular role. Along such lines, we can make use of Hershovitz's definition of authority as "a feature of roles embedded in practices" (2011: 25). Under such a conception, we can understand the mutual expectations at play in, for example, a student-teacher relationship, where the student recognizes the authority of the teacher as legitimate when they make certain claims upon them. Under the relevant conditions of the classroom situation, then, the student recognizes the authority of the teacher to make certain states-of-affairs changes in the classroom that would not be appropriate in most other contexts. It is thus the nature of the student-teacher relationship, the relative role functions, and the surrounding practices, that provide the teacher with the requisite authority to make certain demands upon her students. The kinds of demands involved in the student-teacher relationship, however, differ from the demands involved in the second-personal exchange outlined by Darwall. For, apart from the role-dependent authority relations of the student-teacher relationship, the student and teacher are both equally in demand of second-personal respect to one another. This means that, were the teacher to act in a way that undermined the basic respect afforded to the student, the student has the right to hold the teacher to account for her actions in the form of a reactive attitude, where reactive attitudes "presuppose the authority to demand and hold one another responsible for compliance with moral obligations" (Darwall 2006: 17).

In cases of hate speech, then, we must consider how the relevant roles and practices operate to provide the act with authority, itself essential for the act to have a misrecognizing effect. This is even more important to discern in cases of informal speaker authority, where the hate-speaker holds no 'official' power to enact legal changes that may impact the relative social status of a victim. For the misrecognizing impact of a hate speech act to be successful, then, victims must recognize the speaker as having the legitimate authority to make such claims upon them, despite the lack of formal changes in states of affairs. The central role the victim's experience plays in the resultant misrecognizing effect of an act of harmful speech can thus be contrasted to the relative lack of influence a victim has over the subordinating impact of speech

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<sup>7</sup> The 'speaking back' or 'more speech' response to harmful speech is generally considered to be a way in which individuals or groups counter such speech by being equipped with the institutional or social support required to refute would-be hate-speakers. It is often considered to be a preferable alternative to criminalisation or censorship due to its (purported) minimal impact on the right to free speech. For an interesting analysis on the speaking back phenomenon see Gelber (2002).



described by Langton. That is, while an individual may be able to reject the speaker's attempt at misrecognition from the perspective of one's view of oneself, the subordination enacted by Langton's understanding of hate speech depends on the views of surrounding hearers, and as such escapes the control of the victim.

To illustrate this point, we are reminded of the non-official, informal statement made by the community leader in the previous section of this paper. When he claims that 'black people cannot be trusted', he is making a claim from his position of informal authority in the community. If we consider the process of claims-making described above, we can consider the roles at play as involving an exchange between the leader himself, the surrounding white population, and the black population of the community. He is making his statement in his capacity as a representative, and this role provides him with the authority required in order for his statement to have meaning. However, is it necessarily the case that the speech he uses is misrecognizing in nature? Here, it is clear that the leader has some sort of standing, and so his words will most likely influence the norms of the surrounding society. His fellow white racists, moreover, will clearly recognize this man's authority to speak for the community. The relation between leader and community members thus dictates the capacity for which the leader has authority in making his statement. However, it is not so clear that the same applies to the black population, as these are the individuals who are considered victims of the immediate subordination of the leader's words. For his words to be recognized as legitimate, the black population must recognize the legitimacy of the role the leader holds as a community representative. They (presumably) do not recognize him in this capacity, and so do not see his words as authoritative. It is thus not so clear that the words spoken, though they clearly produce harmful effects for the relative social standing of black individuals, are directly misrecognizing in nature, provided the collective black community reject the legitimacy of the leader's authority. This highlights the idea that satisfaction of the felicity conditions required for misrecognition is not a forgone conclusion, but is highly dependent on how victims recognize the relevant normative authority to make certain claims upon them and their status.

One possible rejoinder to this claim against the misrecognizing nature of hate speech lies in Langton's discussion of 'presupposition accommodation' (1993), wherein speaker authority is acquired through the relative non-intervention of the surrounding others in a speech situation. Borrowing the concept from Lewis's notion of 'language games' (Lewis 1979), we find here how racial superiority can seep into the common consciousness of society through lack of 'pushback' or retaliation whenever hateful words or statements are introduced into public discourse. This is a common tactic used by tabloid newspapers, whose use of thinly-veiled prejudices is often used to induce emotive and fear-driven associations concerning certain sections of the population. The increased prevalence of unquestioned assumptions regarding the targeted group thus become part of the social landscape of the community. It becomes the 'norm' to view blacks through the lens of criminality and distrust, and to be fearful and suspicious of Muslims (Stanley 2015: 139). This leads to what is referred to as a 'norm cascade', in which certain attitudes towards a particular group feed off the assumption that everyone else in the surrounding community also holds those fears (Sunstein 1996). This phenomenon often leads to the proliferation of profound identity-based divisions in society, and as thus is a well-established tool of those seeking to further divide communities along such lines (Sunstein 2009). The slow-burn effect of constant derogation of this sort thus has similar effects to more explicit acts of hate speech, yet, unlike explicit verbal assaults, cannot as easily be targeted by legal measures to ensure its prevention. Similarly, both the exercise of authority

in explicit forms of hate speech and in the ‘slow-burn’ kind of propaganda both depend upon certain existing sentiments regarding the targeted group in question. And, unlike an explicit attempt at misrecognition like that found in an act of hate speech, the pervasive impact of this ‘slow burn’ kind of hate appears to be more difficult for individual victims to reject effectively. While not concerned with hate speech specifically, one prominent example of this form of misrecognition at work comes from the culture of sexism in the film and industry that led to the rise of the #metoo movement. Here, despite enjoying formal recognition of equal status in the form of equality law, those who suffered abuse in the industry were prevented from speaking through the existence of pervasive norms of sexism. Here, the structural form of domination stemming from such norms inhibited victims in their ability to speak out against abuse. Pervasive misrecognition thus inhibits victims in their ability to ‘speak back’ effectively in a way that closely aligns with the silencing illocutionary effect described by Langton. Harnessing the emancipatory potential of the rejection of authority claims thus requires that we examine closely the conditions necessary to ensure that victims can speak back effectively.

However, though this phenomenon plainly exerts very real harmful effects on the social position of targeted groups, it is still not clear that these forms of expression constitute an act of misrecognition in all cases. In fact, the very incremental nature of such forms of speech appear to be directly correlative to perlocutionary effects found in the persuading and inspiring of hearers regarding the relative social status of the targeted group. In terms of the non-intervention of other individuals in the surrounding speech situation, this again needs to take into consideration the relevant roles and practices present. Again, we need not consider hate speech to be necessarily misrecognizing in nature. Though the effects remain harmful, understanding more clearly this ambiguity serves to construct possible solutions to the norm-influencing effects of hate speech. To illustrate this point further, I now consider how such authority relations, intersubjective recognition, and harm operate in the case of a real-world example. Doing so will expose the myriad ways in which speaker authority remains open to interpretation, thereby rejecting the claim that silence instills hate speech with informal authority and thus necessarily results in a harmful act of misrecognition.

#### 4 The Example

In February 2017, Scottish-Pakistani woman Sanaa Shahid and her four-year-old son were subjected to a racist attack on the London-Glasgow train by Alexander Mackinnon, a white UKIP supporter and former public schoolboy (*Daily Record* 2017). Expressing anger at encountering Shahid in the first-class carriage of the train, he went on the following tirade, stating:

How did you get into first class? You don’t deserve to be in first class... You should be in common class. In fact, you shouldn’t be in this country at all.

He then went on to say that,

You don’t deserve to be here. Bloody foreigners. Where were you even born?

During the attack, Shahid reported that none of the other train passengers intervened. In response to Mackinnon, however, she filmed the encounter on her mobile phone, before calling the train manager and making a report to the police. The train manager, according to Shahid, was extremely helpful, as were the police who dealt with the case. PC Mark

Mellenthin, the officer investigating the case, noted how Ms. Shahid was “visibly distressed and shaken,” with Shahid herself noting how the attack left her wary of using the train in future, and that her son was scared of future attacks. Following an appearance in court, Mackinnon was convicted of a racially aggravated public order offence and was fined £1154 plus legal costs for the attack (*BBC News* 2017).

Unpacking this example using the speech-act framework described above, we encounter several different ways in which authority relations inform and perpetuate the subordination of Shahid and her son at the hands of Mackinnon. As noted at the beginning of this paper, the felicity conditions for a potential speech-act to have certain illocutionary effects involve both the semantic content of the words of the speaker and the surrounding conventions or norms of the speech-situation itself. Under Langton’s understanding, the attacker’s words actually *constitute* the subordination of Shahid and her son, provided these particular felicity conditions are in place. This includes a shared understanding of the semantic content of the tirade, the relevant authority of the speaker in making his statement, and the surrounding conventions regarding the meaning of the words he uses. Here, it is clear that Shahid and the speaker both share an understanding regarding the speaker’s views. It is clear from his words that he is targeting Shahid on the basis of her ethnicity and religion, that he is expressing his view that she does not belong in the same social space as him, and that he disrespects her on account of her perceived ethnicity. Considering the surrounding conventions, we can look towards the unfortunately common occurrences of hate speech of this kind that take place on public transport. In contrast to the wedding ceremony example, in which certain highly specific circumstances were required to satisfy the requirements of the act’s felicity conditions, the conditions required for an act of hate speech to subordinate need not be so specific. At the time of the attack, the UK was suffering from an increase in the number of reported instances of racially and religiously aggravated offences, with a large proportion of those recorded taking place on public transport. As a close-quarters site of public interaction, in which individuals encounter and share a comparably intimate social space with strangers from all walks-of-life, public transport remains an unfortunately common location for racial and religious harassment. It is clear, then, that Shahid understood the expression of Alexander Mackinnon, that she knew that it was racially motivated, and that she felt upset and scared by the attack. Depending on the effects of the abuse on the surrounding hearers, the act could have potentially enacted the relative social subordination of Shadid by ranking Shadid as inferior on account of her perceived ethnicity. However, determining whether or not Mackinnon was successful in *misrecognizing* Shadid requires unpacking a rather different set of features of the act. Here, then, we must examine more closely the authority relations at play in this exchange, in particular how Shahid recognizes and responds to the authority of Mackinnon in her understanding of the act.

As mentioned above, reports suggest that Shahid and her son were both emotionally impacted at the time of the assault, but in order for the harmful effects of misrecognition to occur, certain other conditions need apply than the ones we have so far mentioned. The mutual understanding of the sentiments of Mackinnon reveals that Shahid recognizes the authority of Mackinnon in some basic way. That is, she recognizes him as a fellow person who makes claims on the basis of their status as a human being of equal moral worth. She thus may recognize the authority of Mackinnon to make claims on others, no matter what those may be. However, it is not clear that Shahid may necessarily recognize Mackinnon’s claims upon her as authoritative. The claims made by Mackinnon did not imply any such official authority. Instead, he is intending to assert his authority in his role as a white, British person, and

possibly even his authority in terms of class status. His words, including the statement that Shahid is a ‘foreigner’ who ‘doesn’t deserve to be here’ both express the view that those outside his identity group are not welcome in the shared social space and imply that such views are shared by his fellow citizens. He is thus attempting to exert authority in the form of communicating to Shahid that those of Pakistani origin are not welcome in Britain, as well as practical authority in the form of telling her she must leave the carriage.

From the perspective of Shahid, then, she may come to believe certain things from this attempt at authority-exertion. She may take at face value the claims made by Mackinnon, accepting his authority regarding the general stance of the surrounding British community. She may also accept Mackinnon’s authority when he expresses his anger at her presence in the carriage, and she may have chosen to move carriages. It seems, then, that for the conditions to be satisfied regarding the classification of Mackinnon’s abuse as an act of misrecognition, Shahid must recognize the authority of Mackinnon in attempting to recognize and make claims upon her in this way. As we saw in the apartheid legislator example, speaker authority need not be ‘formal’ in the legal sense in order to be interpreted as representative of wider society in a way that can be harmful to one’s sense of self. However, there seems to be more going on here in terms of the recognition of authority claims that we must consider before we can say for certain that Mackinnon’s words can be categorized as an act of misrecognition. Here, we can remind ourselves of Langton’s discussion of presupposition accommodation, in which a speaker is granted informal authority through the ‘default adjustment’ of a particular communicative exchange. Crucial in this context, then, is the way in which the surrounding persons at the time of the attack respond to the abuse. According to Shahid, there were “10–12” people present who were witness to the abuse, though none of them intervened. This lack of response is, according to the notion of presupposition accommodation, a perfect example of an instance in which informal speaker authority is acquired, and the intent of the speaker to enforce subordination is legitimized through omission. From this omission, it would be reasonable for Shahid to presume that the entire carriage, and perhaps a large proportion of the British population, disapproved of her presence in British society as a member of a particular non-white ethnic group. However, for this to have the effect of misrecognition, it nonetheless remains the case that Shahid must recognize Mackinnon’s claims upon her as authoritative, a consideration that is missing from Langton’s account. Along such lines, there may be several reasons why Shahid would not recognize Mackinnon’s claims as authoritative. For example, she may have perceived that he was under the influence of alcohol and thereby ‘didn’t mean’ what he said. Shahid may have also interpreted the situation as one in which fellow passengers were, rightly or wrongly, simply ‘minding their own business’.<sup>8</sup> While not a moral defense for their non-intervention, this appears to be a common occurrence for many. So, while the passengers may have considered Mackinnon’s words highly objectionable, they may have been afraid of intervening for fear of becoming a target of abuse themselves. Non-intervention on the part of fellow train-goers, then, does not appear here to necessarily amount to endorsed adjustment.

Further, several other features of the surrounding context provide rival authority claims in the opposite direction to the one Mackinnon ascribed to himself and the surrounding community. First, Shahid, as a British-born citizen, later told the media that “I’ve lived in Scotland all my life and nothing of this nature has ever happened to me” (*Daily Record* 2017), suggesting that she had not suffered this sort of racist attack before. This somewhat de-legitimizes the

<sup>8</sup> For more on the norm of ‘minding one’s own business’ see Buss (1999).

attempt at the hands of Mackinnon to assert his authority as a white, British person. In addition, the intervention of the train manager, who told Mackinnon to leave the train at the next stop, presents a rival authority regarding the social status of Shahid in this scenario. The zero-tolerance train policy against racism clearly exerts a substantial form of formal authority over the correct interpretation of the norms of the surrounding community. Here, then, both the train policy itself, and the following police investigation and conviction, act as the overarching authority regarding the relative social status of those of Pakistani origin in British society. From the perspective of Shadid, then, it appears that the substantial countervailing perspectives to those of Mackinnon render his words far less authoritative than they first appeared. So, while they may contribute to the entrenchment of norms of racism in the way described by Langton's understanding of ranking and subordination of social status, it also appears that Shadid fails to accept Mackinnon as holding normative authority in this particular scenario. In other words, Shadid rejects the attempt made by Mackinnon to make claims upon her in this misrecognizing way.

It is here where the distinction between the harm of hate speech on one's wider place in society and on one's sense of self becomes clear. In addition, and using Hershovitz's terminology, we can consider Shadid's recognition of the relevant role occupied by Mackinnon, as well as its associated practices, to determine whether or not Shadid considers Mackinnon's authority as legitimate. Here, as mentioned above, Shadid probably holds a minimal level of recognition for Mackinnon as an equal member of the moral community. This means that she recognizes him as having a certain reciprocal standing in relation to herself, as an individual who has the normative authority to make certain second-personal claims on all others. Based on the nature of the train carriage situation, and on her response to the attack, this is the only relevant role Shadid is likely to recognize as legitimate. She need not accept his attempt at exerting additional authority in regard to his self-assigned role as a white, British, upper-class male, as this requires a non-normative acceptance of a particular role relationship that she is not morally obligated to partake in. As such, Shadid here rejects Mackinnon's attempt at enforcing a particular role relation with her, thus de-legitimizing his authority and not supplying the relevant conditions required to satisfy the misrecognizing categorization of his utterances.

With these considerations in mind, the next section will consider whether we can utilize these findings towards the aim of reducing the harmful misrecognizing effects of hate-speech through undermining the attempts of hate-speakers to exert this authority over a particular speech situation.

## **5 Providing Counter-Narratives as a Response to the Struggle for Normative Authority**

As we have seen so far, hate-speech need not necessarily result in the misrecognition of its targets. This possibility for refutation of the authority claims made by hate speakers opens up possibilities for institutional and individual intervention. What this brief section does, then, is to highlight the way in which we must provide substantial institutional responses to a hate-speaker's attempt at exerting normative authority over a speech situation. Of particular interest, as we can see from the example highlighted above, are the ways in which counter-narratives appear to empower victims to reject the authority claims made upon them.

In response to the discussions in this paper, then, we can ascertain the following claims regarding the link between speaker authority, role recognition, and the subordinating harm of hate speech: i) In cases in which a hate-speaker holds the relevant ‘formal’ authority to legally change states of affairs regarding the relative social status of targeted individuals, we can correctly state that the felicity conditions required for the act to be considered illocutionary in nature are satisfied; ii) In those cases in which legal authority is absent, but authority exists as a function of the speaker’s role, then subordination can still occur in the presence of certain informal felicity conditions; and iii) Where a victim rejects the claims made upon her, she can attempt to ‘speak back’ against potential misrecognition in a way that may also counter subordination as an illocutionary act. This rejection seems more fruitful where a ‘counter-narrative’ exists that re-affirms the equal status of the affected group. What institutions and individuals must do, then, is to undermine the misrecognition of victims made by hate-speakers by providing these counter-narratives which can then themselves be viewed as authoritative.

First, and as we saw in the example shown above, we see how Shahid was able to easily report her attack to the authorities, where she then received swift and sufficient attention in response to her case. The intervention of the train driver, the police taking seriously her claim, and the conviction of Mackinnon for his abuse all provide a counter-narrative regarding the legitimacy of the authority of Mackinnon in British society. What this shows us, then, and paraphrasing Waldron (2012), is that individuals must be provided with the *assurance* that they are considered equals in society and that their status is protected by the state. Departing from Waldron, however, we can consider those other harmful attempts at exerting normative authority that move beyond the grasp of the law. Here, I refer again to those ‘slow’ forms of status-ranking that proliferate online forums and the mass media. And, following the recent rise in reported cases of hate crimes against minority individuals, it is clear that we must attempt to combat these if we are to provide the assurance owed to all citizens on account of their equal status.

One attractive response lies in combating the emergence of ‘echo chambers’ described in the work of Sunstein (2001, 2009, 2017). According to this view, individuals are drawn to and congregate around those groups that shield them from the worldviews of others, potentially performing a dangerous function of nurturing partisan and paranoid thinking. It is within these closed groups that a struggle for normative authority often reveals itself, and so we must make a concerted effort to establish and nurture those forms of common-ground media in order to avoid the growth of harmful and socially debilitating factions. Providing a highly-public media platform in which all citizens are welcome re-asserts the equal status of all individuals, and strengthens the will of victims against repeated attempts at subordination. Common-ground media plus provides a rival normative authority to the kind offered by a highly-partisan echo chamber, encouraging individuals to relate to and engage with one another over their shared experiences in society, rather than choosing to divide over perceived differences. Over time, the norm-changing nature of decreased social division will further equip vulnerable individuals with the psychological tools required to engage in counter-speech effectively, as the closely-available and highly-visible common authority regarding the equal status of all individuals will provide a much-needed assurance against attempts at exerting harmful normative claims upon them.

As a further response to the struggle for normative authority described above, we can also invoke Brettschneider’s (2012) work on the expressive power of the state. Aware of the various practical shortcomings of European-style hate speech legislation, as well as the inadequacy of

the US ‘libertarian’ approach to hate speech, Brettschneider’s proposed method of ‘democratic persuasion’ offers a compelling response to the struggle of normative authority described above. Here, he rejects the notion that the First Amendment value neutrality principle best serves the liberal goals of equality and freedom of conscience. Aware that state silence in response to the proliferation of hateful ideas can often legitimize those viewpoints to the wider public, his method of persuasion calls for public disavowal of hateful ideas, though without the force of criminal sanction. Formulated as a method of ‘speaking back’, Brettschneider outlines several examples of the kind of state response that could be used to ‘rob’ hate speech of its power to subordinate certain individuals. Attempts to target the status of African Americans in US society, for instance, must contend with expressions made by the state reminding black individuals that their civil rights are considered worthy of protection. As such, public holidays and memorials commemorating the work of Martin Luther King Jr. aim to express the state’s concern for the historical struggle of the black civil rights movement. Rather than potentially drawing attention to, and possibly creating martyrs out of, racist hate-speakers by introducing hate-speech laws, providing an alternative authority in the form of public recognition aims to re-assert the equal status of African American individuals. This method of democratic persuasion thus “robs hateful viewpoints of their possible outlaw allure, and instead publicly refutes them” (Brettschneider 2012: 24). This method of public condemnation of hate alongside the official reminder of equal status is therefore especially relevant to the kind of case-study outlined in the previous section. The authority-related conditions necessary for an act of speech to misrecognize can, without the use of criminal sanction, face intervention in the form of competing authority claims. In this highly-connected age of social media, and despite increased exposure to hateful points of view, we can also see the potential for both state and non-state actors to provide a competing, status-affirming counterweight to the views of would-be hate-speakers. As such, we see the internet as a space where individuals from historically-marginalised groups can have their voices heard and supported by like-minded others. This democratization of the public sphere also places additional pressure on public representatives to ‘comment on’ or respond to instances of hate speech, thereby reminding citizens from vulnerable groups that the discrimination they face is not widely-accepted and will not be tolerated in a society dedicated to securing the free and equal status of all its citizens.

## 6 Conclusion

The harmful potential impact of hate speech on victims is impossible to ignore. As this paper illustrates, while the speech-act theoretical perspective offers a substantive set of tools with which to understand the impact certain kinds of speech have on the social status of affected groups, we require another theoretical framework in order to determine what kinds of obstacles inhibit individuals themselves from refuting the claims made upon them. Here, when we consider the ways in which role recognition can make certain claims authoritative, we open up possibilities for providing a robust set of ‘counter narratives’ to the authority claims made by hate speakers. Not only does this draw out the distinction between the individual experience of misrecognition and the wider social harm to affected groups, but also highlights the ways in which we might equip individuals with the tools required to respond effectively.

Moreover, and beyond Waldron, the need to continually re-affirm equal status extends beyond the reaches of the criminal law, as these struggles for normative authority permeate all areas of social life. It is here where states must ensure an equal space for all to engage in communicative exchange with others, provided such spaces are accompanied by the reminder of the equal standing of all who choose to participate.

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