11 Discursive Injustice and the Speech of Indigenous Communities

Leo Townsend

1 Introduction

An important strand in recent feminist philosophy of language has been guided by the thought that speech is social action, and more specifically that the performance of speech acts requires not only a contribution from a suitably competent and entitled speaker but also that the speaker's contribution be given a suitable reception or social uptake. Put somewhat crudely, the idea is that, in order to perform a speech act of, say, promising, or telling, or warning, a speaker must be taken by others as doing so. In this way, speakers are thought to depend profoundly on the competence, goodwill, and receptiveness of others—their audiences and other relevant parties—in order to exercise their linguistic agency.

The idea that speakers are profoundly dependent in this way on others has prompted a lot of discussion about what could be called *the politics of uptake*. In particular, feminist philosophers of language working within this tradition have highlighted various kinds of injustice that occur in speech situations. Certain speakers from are said to be "silenced," or to be the victims of "discursive injustice," on account of the social reception their acts routinely receive.[1]

Though the philosophers working in this field acknowledge the broad significance and applicability of this theoretical framework, the overwhelming focus of the extant literature is on the ways in which the speech of women, in particular, is unjustly disempowered. In this chapter, my aim is to explore how unjust uptake impedes the speech of a different kind of speaker—Indigenous communities. This involves looking focusing on Indigeneity rather than gender as the salient social identity, and looking at the ways that group speech, rather than only individual speech, can be unjustly impeded. I argue that, just as the speech of women is often heard in ways that tend to reinforce their disempowerment, so too is the speech of Indigenous communities routinely taken in ways that contribute toward their ongoing marginalization and disenfranchisement.

In order to make this argument, I adopt a "social normativist" approach to speech acts. After briefly outlining the framework (Section 2),

I show how it has been used by Quill Kukla (writing then as Rebecca Kukla) to identify a distinctive phenomenon that they call "discursive injustice" (Section 3). I then quite briefly explain how group speech can be accommodated within the social normativist framework (Section 4), before describing in detail three examples of how discursive injustice can effectively derail the speech of Indigenous communities (Section 5).

2 Social Normativism

There are a number of established theoretical frameworks for individuating speech acts, describing what it takes to perform them, and highlighting the various ways in which their successful performance can be impeded. One that has attracted a lot of attention in recent times is the social normativist framework, which has been developed by Robert Brandom, Quill Kukla and Mark Lance, and John MacFarlane.[2] In this chapter, I operate within this framework, drawing primarily on the version of it developed by Kukla and Lance (2009).

A key claim of the framework developed by Kukla and Lance is that different speech acts can be distinguished on the basis of their normative functional profiles: their normative "inputs" or entitlement conditions, and their normative "outputs," i.e., what normative effects they have. The inputs are the various conventionally required prequalifications and preconditions that must be in place in order for the act to be performed by a given speaker in a given set of circumstances. (Does this speaker have the authority needed to perform this kind of act? Is this the right audience and the right setting for this kind of act?) The outputs are the ways the speech act changes the normative situation and statuses of the speaker, the audience, and others. (What permissions or obligations has the performance of the speech act imposed on the audience? In what ways has the speaker made herself accountable and answerable to the audience?)

To see how this works, consider the speech act of naming or baptism. A normative "input" for the speech act of naming something is that it must be performed by a suitably entitled speaker—one who stands in the right relation to the object being named—while its primary normative "output" is that it licenses others to refer to the object by that name. Similarly, the speech act of enacting legislation can only be performed in a certain setting by a suitably authorized body, and its chief normative import is to impose various duties and entitlements on the citizenry. Other speech acts do not require any special authority on the part of the speaker, yet they shift normative statuses by licensing certain attitudes and behaviors on the part of the audience, and making the speaker answerable to the audience in various ways.

If this combination of normative inputs and outputs of a speech act—its normative profile or "pragmatic topography"—is what determines the sort of speech act it is, this raises the question of what, in turn, the

normative statuses that characterize those inputs and outputs depend on. Different social normativists spell this out differently, but according to Kukla and Lance, the normative functions of language "essentially depend on the concrete ways in which speakers are enmeshed in social communities and environments" (Kukla and Lance 2009, 2). In others words, the force of a speech act depends on the *concrete social difference* it characteristically makes—the way the performance of the act affects the attitudes and behavioral dispositions of relevant members of the speech community. For a speech act to license certain behaviors, for example, it must dispose people to act as though such behaviors are licensed. If my attempt to re-name my potplant "Greg" does not have the effect of getting others to call it "Greg," and on the contrary everyone continues to call it "Jermaine," then my act has not had the characteristic normative effect of a naming, and so something has gone wrong with my attempt to re-name the potplant. Kukla calls this "materialism" about normative statuses:

> normative statuses are *material social statuses*. They cannot exist unless they have practical social cash value. Normative statuses supervene on concrete, materially implemented dispositions to act. A speech act that does not *make a difference* to how people are actually disposed to behave does not succeed in having a normative output at all. A basic commitment to normative status materialism implies that speech acts have their performative force only in virtue of the *concrete social difference that they make*, or *how they are taken up in practice*.
>
> (Kukla 2014, 443, emphasis in original)

According to the social normativist, then, the illocutionary status (or "performative force") of a speech act depends to a large extent on the act's social reception. For an act to be an act of naming, say, it needs to be socially taken as one, where this "social uptake" is a matter of a "concrete social difference" that goes beyond simply recognizing that the speaker meant to name something. This marks a sharp contrast with intentionalist speech act theoretic frameworks, according to which the speaker's intentions and their recognition by the audience play the decisive role in determining the sort of act she performs, if any. On the social normativist framework, the speaker is not a god-like authority when it comes to the speech she performs. Instead, the nature of the speaker's act is partly constituted by the uptake it receives.

3 Discursive Injustice

One of the attractive features of this social normativist framework is that it is an especially powerful tool for identifying a variety of ways that

speech can be unjustly interfered with or impeded. In particular, and in contrast to other frameworks that have been used to highlight forms of "illocutionary disablement" (Langton 1993), the social normativist framework can accommodate cases in which the uptake a speaker's act receives constitutes it as a *different* kind of act from the act the speaker intended.

Traditionally, silencing has been understood in broadly intentionalist terms, as something that happens when an audience fails to recognize the intentions of the speaker—where such recognition is seen as necessary for the successful performance of an illocutionary act.[3] So, for example, a woman may utter the word "No" with the intention to thereby *refuse* a man's sexual advances, but because the man is in the grip of a stereotype about women (e.g., that they "play coy") he fails to recognize this intention, and so the woman is prevented from successfully performing the illocutionary act of refusal. When stereotypes about certain speakers reliably produce this kind of uptake failure (the failure of their hearers to recognize their illocutionary intentions), the result is a systematic kind of illocutionary disablement: certain speech acts become "unspeakable" (Langton 1993) for certain speakers in certain situations.

The social normativist framework goes beyond this traditional approach to silencing, because it construes "uptake" more broadly than simply as the recognition by the audience of what the speaker is trying to do. As we have seen, for the social normativist, the uptake a speech act receives is the way it gets responded to in social practice—the way it affects how people are disposed to think and act—and it is this "concrete social difference" that plays a key role in constituting a linguistic performance as a speech act of one kind or another. This has an important consequence for thinking about how speech can go awry or be unjustly impeded. It means that what act a speaker performs is not up to her alone: she may attempt to perform an act of type A and find, because of the uptake her act receives, that she has performed an act of type B.

Kukla (2014) uses this aspect of social normativist framework to illuminate a distinctive phenomenon that they call "discursive injustice." Discursive injustice occurs when speakers with certain social identities have their speech systematically distorted in a way that is socially disempowering. They illustrate this with several compelling examples of how the speech acts of women in certain contexts are taken as—and so constituted as—different acts from those they intended. I will describe these examples in some detail later on, but for now what is important to note is that, for Kukla, what makes these kinds of pragmatic breakdowns *injustices* rather than simply *misfortunes*, is that they have a systematic connection to the speaker's disempowered social identity. That is, they track and exacerbate the social disempowerment of the salient social identity—here, the speaker's gender identity.

4 Group Speech

In the next section, I argue that Indigenous communities are sometimes subjected to discursive injustice, especially when they attempt to make claims or assert their rights in connection with their traditional land. In doing so, I focus on a quite different sort of speaker from the kind that Kukla focuses on. Not only is there a different social identity in play (Indigeneity instead of gender), but my focus here is on *group speech*, rather than individual speech. Before discussing these examples, then, it may be worth briefly explaining what I take group speech to be, and how I think it can be accommodated within a social normativist theoretical framework.

By group speech, I mean speech acts that are performed either collectively or via a spokesperson, such that the group itself can be identified in the role of the speaker. In our discursive practice we routinely ascribe speech acts of various kinds to various kinds of groups. We say that the company *announced* its new product line; that the protest group *demanded* equal pay; that the church *apologized* for past injustices; that the research team *asserted* that the polar caps are melting, etc. In such cases, the speech acts of announcing, demanding, apologizing, and asserting are understood as acts that represent and normatively commit the whole group. It is *the company* that needs to follow through on its announcement; *the protest group* that needs to demonstrate entitlement to its demands; *the research team* that needs to justify its assertion, and so on.

Group speech acts can be performed in different ways. One way is for the people in the group to coordinate their efforts in the production of a unified message or utterance. This is what happens, for example, when protestors chant their demands in unison; or when the guests at a birthday party sing "happy birthday" to the host. In these cases, the various individuals are marshaling their own linguistic know-how, but in the performance of a collective act, based on a shared intention. Aside from such collectively performed utterances, a different mechanism of group speech involves the group recruiting an individual person to speak in their collective name. The words of this "spokesperson" are then to be *counted as* the words of the group.[4]

Recently, several philosophers have explored the phenomenon of group speech from within a broadly normativist framework. For example, Jennifer Lackey (2018) has argued that an assertion made in the name of a group by an authorized spokesperson should be attributed to the group rather than the spokesperson—since it is the group, rather than the spokesperson, that must satisfy the relevant entitlement conditions. More recently, Grace Paterson (2019) has argued that reflection on group speech acts should lead us to embrace "speaker responsibilism"—the view that the speaker of an act is whoever is made normatively

responsible by it. And in a similar vein, Deborah Tollefsen (2020), focusing on group assertion, suggests that group assertion essentially involves a distinctive kind of collective commitment, through which the group makes itself responsible for answering epistemic challenges.

Regardless of exactly how the details are worked out, I think it is clear that a social normativist framework can fairly easily accommodate group speech acts. Indeed, in contrast to some other speech act theoretic frameworks, such as intentionalism, it appears to have the advantage of not placing onerous requirements on the psychological capacities of the group. That is, it does not require a group to have a range of mental states—intentions, beliefs, or knowledge—in order to perform speech acts. Instead, the main requirement is that the group makes use of conventionally recognized arrangements, such as the use of a spokesperson, that mark the speech in question as group speech, and that the utterances performed in this way receive a certain social uptake, i.e., that they are treated in practice as having the relevant sort of normative significance. In what follows, I focus on examples of group speech that involve the use of an authorized spokesperson.

5 Discursive Injustice and Indigenous Speech

5.1 Imperatives vs. Requests: Nganana Tatintja Wiya

I am now, at last, in a position to describe some of the ways in which Indigenous communities suffer discursive injustice. To do this, I will follow Kukla (2014), who gives three detailed examples of discursive injustice, each involving a slightly different dynamic. I will briefly describe Kukla's three examples, and then show that similar dynamics sometimes affect the speech of Indigenous communities.

Kukla's first example of discursive injustice is of a female factory floor manager, Celia, who is both authorized and required by her job to issue *orders* to her predominantly male subordinates. Celia seeks to do this using standard linguistic conventions, but she finds that her workers generally do not comply, and moreover think she is ungrateful and a "bitch." Kukla suggests that what is going on in this case is that "even though Celia is entitled to issue orders in this context, and however much she follows the conventions that typically would mark her speech acts as orders, because of her gender her workers take her as issuing *requests* instead" (Kukla 2014, 445–446).

As Kukla points out, there is a key difference between the pragmatic structure of requests and orders. An order, when it is entitled and legitimate (e.g., issued by a proper authority), imposes *obligations* on the addressee, whereas requests do not: "acknowledging [a request's] legitimacy leaves the one requested *free* to grant or refuse the request. Granting a request is never obligatory" (Kukla 2014, 446).[5] As we have seen, on

Kukla's social normativist approach, whether someone has performed an order or a request depends in considerable part on the uptake her act receives—on whether it is taken up in practice as something that purports to impose obligations, or instead as something that the addressee is free to grant or refuse. The problem for Celia is that, because her workers are not used to being given orders in this context by a women, they do not hear and respond to them as orders, but rather as requests. For instance, they may fail to comply with what she has told them to do without explaining or excusing themselves, and, on the rare occasions that they do comply, they may be annoyed that Celia is not grateful (the fulfillment of requests, but not orders, calls for gratitude). The result is that Celia's speech in this arena is radically disempowered, with obvious material costs:

> No matter how carefully she cleaves to what would normally be the conventions for ordering, the local context and discursive practices surrounding her speech acts—which will always include the workers' uptake of and response to the acts—will in fact turn them into requests instead.
>
> (Kukla 2014, 446)

A structurally analogous pragmatic breakdown sometimes undermines the speech of Indigenous communities, when they attempt to issue orders or make rules about activities on their traditional land. Even in cases when these communities are acknowledged as the rightful owners or custodians of the land, their efforts to forbid certain activities are sometimes taken up as gentle requests or pleas to "respect the local culture"—pleas which the addressee may decide for himself whether to grant or refuse—rather than firm, binding orders issued from a proper authority.

By way of example, consider "the Climb," a controversial hiking and climbing route on Uluṟu, the sandstone monolith in central Australia (referred to as "Ayers Rock" by colonial settlers).[6] Uluṟu is considered sacred by the local Aṉangu Aboriginal community, who since the 1985 "handback" have been legally and publicly recognized as the owners of Uluṟu and the surrounding land. The Climb was located within the Uluṟu-Kata Tjuta National Park (UKTNP), a park that is jointly managed by the Aṉangu community and the Australian government agency, Parks Australia.

From the time of its construction in 1958 to its closure in 2019, the Climb was an extremely popular recreational activity for Australians and international tourists. According to the law and traditions of the Aṉangu community, however, Uluṟu is a sacred place and visitors are strictly forbidden from climbing upon it. Even before the closure of the Climb, this was made clear on park signage, as well as other materials such as tickets and brochures that bear the message *Nganana Tatintja Wiya*, meaning "We Never Climb." A particularly clear statement of the

community's stance on visitor climbing was featured in a park visitors guide from 2004, in the form of the following statement from an elder of the community, Kunmanara:

> This is Aṉangu land and we welcome you [...] We want our visitors to learn about our place and listen to us Aṉangu. Now a lot of visitors are only looking at sunset and climbing Uluṟu. That rock is really important and sacred. You shouldn't climb it! Climbing is not a proper tradition for this place.
>
> (Uluṟu-Kata Tjuta National Park Visitor Guide, quoted in James 2007, 399)

Arguably, this statement meets conventional standards for, and was indeed meant as, a group imperative. It was spoken by an authorized elder of the community, has the surface form of a typical imperative, and it expresses an article of Indigenous law (*Tjukurpa*). The community, speaking through an authorized spokesperson, was saying: *don't climb*. Moreover, this imperative appears to be perfectly entitled. This is made clear in the statement itself: *this is our land and you are our visitors—and as such you should listen to us*. Normatively speaking, this is right: the Aṉangu are indeed the owners of Uluṟu, and as such should have the standing to determine which activities are allowed on it.

Yet what is striking in this case is that this speech act (and similar ones) of the community was not really treated as an imperative within the relevant discursive practice. Instead it seems to have been taken as something far weaker—as a gentle request to "respect the local culture." Such a request does not impose obligations on tourists to refrain from climbing; rather, tourists may decide for themselves whether to fulfill it.

It is fairly clear that until the recent closure of the Climb, the Aṉangu community's claims were taken up as gentle requests by the community's most important interlocutors—including Parks Australia, tour operators, and tourists themselves. For instance, the fact that Parks Australia actively maintained the infrastructure dedicated to the climb—including securing the steel handrails, and placing a massive car park at its starting point, not to mention a large sign that, weather permitting, simply announced "Climb Open"[7]—strongly suggests that it considered the Aṉangu's claim more as a request for tourists to consider than a binding order.[8] Moreover, tour operating companies serving Uluṟu would inform tourists of the Aṉangu's stance vis-à-vis the climb, but tended to frame the issue as a question of personal choice about which "people should be allowed to make up their own mind" (James 2007, 404). Indeed, certain tourist marketing materials even sought to cash in further, by "promot[ing] the sacredness of the site to Aṉangu as an enhancement of the visitor experience, rather than a governing Law to which visitors should adhere" (James 2007, 404).

Perhaps the most striking evidence of the way the Aṉangu's attempted imperative was taken up as a gentle request can be found in the testimony of visitors to Uluṟu. For instance, some visitors questioned the authority of the Aṉangu to so much as *request* that tourists refrain from climbing ("I think it's a crock of shit that they ask you not to climb. It's our country too"[9]; "It's Australia's rock, not theirs […] I'll climb the bloody rock if I want to"[10]). Others, such as Mike, a non-indigenous Australian visual artist in his 20s, acknowledged the Aṉangu's "perspective" and the fact that they "say you're not supposed to climb," but evidently did not think any of this should govern his own behavior:

[INTERVIEWER]: How did the Aboriginal wishes and signage fit into your desire to climb?

MIKE: I think the fact they let you climb if you want is unto itself, is enough permission for me to be able to climb it, because I can acknowledge it as a sacred site […] Actually standing on it, and feeling the energy gave me an appreciation for their perspective a bit more, even though they say you're not supposed to climb it. I climbed it anyway. But, that's just the way I am. I'm not going to not climb it.

(Figueroa and Waitt 2010, 151)

Kukla's social normativism about speech acts, and the notion of discursive injustice that it brings into view, provides a powerful framework for understanding what was going on in this case. What we see is that a speaker (in this case a group speaker, the Aṉangu community) is attempting to perform a particular kind of speech act (here, an imperative), by means of a conventional arrangement that really *should* get the job done (they have the authority to perform the act, and in attempting to perform it, put the right words in the right mouths). But something about their disempowered social identity (their status as an Indigenous community) affects the uptake their speech receives, with the result that the potency of their speech is radically undermined. In this case, they find that despite being the recognized owners of the land in question they are only able to make gentle requests, rather than issue binding orders, about activities on their land.

5.2 Entreaties to Speak: The Endorois Case

Kukla's second example of discursive injustice involves not so much a misrecognition of the speaker's act as a misrecognition of the status of the speaker herself. More specifically, it concerns situations in which a speaker attempts to perform an act *within* a given "discursive game" but is not recognized by the other participants as a fellow participant, that is, as someone entitled to make moves in that game. The result is that

the speaker's attempt to make a move within a certain discursive game is taken up instead as the speaker petitioning for entry into the game—as what Kukla (2014) calls an "entreaty to speak."

Kukla argues that this form of discursive injustice routinely affects women when they attempt to speak as experts within fields dominated by men. That is, despite meeting the relevant standards for counting as an expert in such a field, and therefore presuming to already have that status, women routinely find that "[their] speech is taken as an entreaty to speak as an expert rather than as expert speech" (Kukla 2014, 449). As Kukla notes, this can produce a potentially damaging pragmatic breakdown, since a speaker who takes herself to be speaking as an expert may speak in a manner that does "not do [her] any discursive favours"—the hard-earned confidence of the expert may seem unbecoming when the speaker is cast in the role of a humble supplicant.

Here too, I think it is possible to identify a broadly similar phenomenon that undermines the speech of certain Indigenous communities. What I have in mind is cases in which these communities attempt to make claims and demands in terms of particular laws and legal instruments—but their claims and demands are treated as petitions for the very legal standing or recognition those claims presume. Hence in attempting to make moves as a participant within a discursive game, they are treated instead as seeking recognition as a participant with the standing to make those moves.

This phenomenon is well illustrated in a landmark legal case, *Endorois Community v. Kenya*[11] that went to the African Commission on Human and Peoples' Rights. The case concerned the displacement of the Endorois community from their traditional territory at Lake Bogoria in the Rift Valley by the Kenyan government, in order to make way for the establishment of a national park. Prior to their forced removal, the Endorois community had occupied and used the land around Lake Bogoria for over 300 years, and they were recognized by all neighboring communities and tribes as the owners of that land. The land was key to their farming practices, and integral to their cultural and religious ceremonies (*Endorois v. Kenya*, par. 7).

The Endorois contended that a number of the collective rights they enjoy in terms of the African Charter had been violated when they were displaced from their traditional territory—specifically, the right to practice their religion (Article 8 of the African Charter), the right to property (Article 14), the right to culture (Article 17), the right to free disposition of natural resources (Article 21), and the right to development (Article 22).

What is especially interesting about this case is that the centerpiece of Kenya's response was not so much to answer or dispute the Endorois complaints on their own terms, but rather to challenge the Endorois community's standing to make those complaints before the African

Commission. This is because the rights that the community claimed were violated were *collective rights*, and the standing to claim them before the African Commission is held by complainants only in virtue of their status as "a people." So the State of Kenya challenged their status as a people, claiming that they were not "distinct" from other tribes in the area:

> The Respondent State disputes that the Endorois are indeed a community / sub-tribe or clan on their own, and it argues that it is incumbent on the Complainants to prove that the Endorois are distinct from the other Tugen sub-tribe or indeed the larger Kalenjin tribe before they can proceed to make a case before the African Commission.
>
> (*Endorois v. Kenya*, par. 142).

Here too I think the notion of discursive injustice can help to illuminate a distinctive way in which the speech of Indigenous communities is sometimes undermined. What is particularly interesting in this case is that the speech of the community is undermined *qua group speech*, since it is precisely their status as a group with its own collective identity—a status which entitles them to make certain speech acts this context—that is challenged. Like Kukla's example of women who attempt to speak as experts but are heard instead as making entreaties, here the Endorois community attempt to make a number of substantive legal claims, only to have their entitlement as a (group) speaker called into question. There are a number of disanalogies between Kukla's example and this case,[12] but the common element is that, for certain speakers, their standing to participate in certain discursive practices is always treated as in doubt, and open to challenge, with the result that their participation in those practices is seldom straightforward and seamless. Just as women experts need to constantly entreat others for recognition as experts before their expert speech can be recognized as such, so too must Indigenous communities prove their collective identity and their Indigenous bona fides (their "cultural distinctiveness," etc.) before their legal claims will be properly heard.

5.3 Assertives vs. Expressives: The Sarayaku Case

The third example of discursive injustice that Kukla describes involves cases in which speakers' attempts to make *assertions*—that is, claims about how things are objectively, in the world—are heard instead as *expressives*, i.e., as purely subjective expressions of the speaker's emotional state or feelings. As Kukla argues, the key pragmatic difference between assertives and expressives is the epistemic import they have for others. An assertion is a claim about how things are in the objective, shared

world. When such a claim is justified, it gives reason for others to believe its content; when it is not entitled, or when its entitlement is in question, it calls for reasoned denial or rational challenge. In these ways it makes a distinctive kind of *epistemic claim* on others. By contrast, an expressive may call for sympathy or toleration, but it does not call for agreement or challenge in the same way:

> [an expressive] makes no particular epistemic claim on me. It doesn't even make sense for me to ask whether I agree or disagree with it, or whether it reflects the world correctly. There is no point in my arguing with you about whether you should have it; it is merely an expression of feelings, disconnected from rational discourse.
>
> (Kukla 2014, 451)

According to Kukla, this kind of discursive injustice often affects the speech of women when they attempt to call out sexist behavior. Kukla gives the example of a female employee who makes a report of sexual harassment, i.e., makes a claim about certain facts in the world, namely that certain inappropriate behavior occurred, and yet is heard instead as making wholly subjective claim: "'My boss is inappropriately flirtatious with me' is received as some kind of expression of a feeling of discomfort" (Kukla 2014, 452). This kind of discursive injustice is particularly pernicious, since it not only undermines the particular speaker on each occasion, but also, as Kukla indicates, it shields from view the problem that should be revealed by their claims taken *collectively*:

> when women point out the same kinds of incidents over and again, the evidence ought to build that we have systematic sexism on our hands. Instead, the case seems to need to be made from scratch on each occasion [...] in part because women's claims to sexist treatment aren't taken as building on one another as part of a shared picture of the world in the way that they should be.
>
> (Kukla 2014, 452)

Here too, I think a similar phenomenon affects the speech of Indigenous communities. The phenomenon is especially noticeable in a number of legal cases concerning industrial development on traditional Indigenous territory. In the cases I have in mind, Indigenous communities appear to attempt to make assertions—claims about how things really are—but are heard instead as making a different kind of claim, claims about their cultural beliefs or "worldview." For instance, in a case that went to the US Supreme Court, *Lyng v. Northwest Indian Cemetery Protective Association*,[13] Indigenous groups objected to the construction of a logging road, which they claimed would desecrate sacred land.[14] The Court decided that the road could nonetheless be constructed, since its

construction would not interfere with the Indigenous people's cultural *belief* that the land was sacred. Like the expressives discussed by Kukla, such claims of cultural belief or worldview stand in sharp contrast to straightforward assertions, since they, like expressives, make no general epistemic claim on others—they can simply be tolerated without need for agreement or rational challenge.

A good example of the way Indigenous communities sometimes attempt to make direct assertions but are heard instead as making statements of cultural belief or worldview can be found in a case that went to the Inter-American Court of Human Rights, *Kichwa People of Sarayaku vs. State of Ecuador*.[15] The case was about Ecuador's award of an oil exploration concession on the traditional territory of the Kichwa community of Sarayaku. The Kichwa community claimed they had not been properly consulted in accordance with international law before the concession was awarded, and, ultimately, the Court agreed, finding in their favor.[16]

In the course of the proceedings, the Court took the unusual step of conducting a site visit, traveling to the Sarayaku region to *themselves* consult with the Kichwa community. It is the way the Court hears the testimony of community leaders given during this site visit that is worth highlighting. During the site visit, the *yachak* of the Kichwa people, Sabino Gualinga, stated that, "Sarayaku is a living land, a living jungle; there are trees, medicinal plants and other types of beings there." In other testimony he had described different "pachas" of the world, including one at a subterranean level: "Beneath the ground, *ucupacha*, there are people living as they do here. There are beautiful towns down there, and there are trees, lakes and mountains."[17] The president of the Kichwa community, José Gualinga, emphasized the importance of the forest to the community, claiming that "[the forest] gives us the power, potential and energy that is vital to our survival and life. And everything is interconnected with the lagoons, the mountains, the trees, the beings and also us as an exterior living being."[18]

These claims appear to be both conventionally marked and intended as group assertions—that is, as the Kichwa community's assertions about the state of their natural environment. They are made by authorized spokespersons for the Kichwa people, who were being called upon by the Court to speak in the name of their community, and both their content and the conversational context in which they are made (i.e., explaining the Kichwa people's opposition to drilling under the ground and destroying parts of the forest) suggest that they are apt to be interpreted as claims about the natural environment.

Yet, strikingly, the Court does not take up these claims in this way. Instead, it takes them up as claims about the Kichwa's cultural beliefs. This is evident from the section of the Court's judgment in which the testimony of the Kichwa elders is featured. Without appearing to evaluate

the truth of their testimony—without accepting or denying that there are mountains and lakes under the ground, that everything in the forest is interconnected, etc.—it simply concludes that:

> the Kichwa people have a profound and special relationship with their ancestral territory, which […] encompasses their own worldview and cultural and spiritual identity.
>
> (*Sarayaku v. Ecuador*, par. 155)

As in Kukla's example, this case seems to involve a speaker's would-be assertions being taken in a way that strips them of their epistemic import. In this case, the community's attempts to assert are not taken up as acts that make an epistemic claim on others, calling for "agreement or rational challenge," but only as expressions of the community's worldview—of what is, as it were, "true for them." Although the Court in this case goes to great lengths to give the community a say, this way of hearing Indigenous speech is not empowering but marginalizing—it treats Indigenous communities as profoundly "other" and outside the space of reasons.

6 Conclusion

Recent feminist philosophy of language has drawn attention to the politics of uptake—to the way the social reception of speech can sometimes be unjust and disempowering to the speaker. My modest aim in this chapter has been to apply some recent thinking in this broad tradition to some recent treatments of Indigenous speech. More specifically, I have sought to show how the social normativist framework developed by Kukla and Lance—and especially the concept of "discursive injustice" that it brings into view—can help to illuminate some of the ways that the speech of Indigenous communities is given unjust uptake. I think the three examples I have given exemplify more widespread practices whose causes, character and consequences deserve close and sustained attention—but I leave a fuller treatment for future work.[19]

Notes

1 The notion of silencing has been developed extensively within a broadly Austinian framework by Jennifer Hornsby and Rae Langton (see Langton 1993, Hornsby 1995, Hornsby & Langton 1998). See also more recent work by Ishani Maitra (2009), Kristie Dotson (2011), Mary Kate McGowan (2019), and Laura Caponetto (2020). The notion of discursive injustice, which is my primary focus here, has been developed by Kukla (2014), as well as Tannesini (2016, 2020).

2 See, e.g., Brandom (1994), Kukla and Lance (2009, 2013), MacFarlane (2011).

3 See, esp. Langton (1993) and Hornsby (1995).
4 See Lackey (2018) and Tollefsen (2020) for discussion of both of these forms of group speech.
5 See also Lance and Kukla (2013).
6 Thanks to Trystan Goetze for bringing this example to my attention.
7 For discussion of the "Climb open" sign and contradictory messaging it created, see Hueneke and Baker (2009, 486).
8 As Figueroa and Waitt (2010, 144) put it: "The material and cultural resources sacrificed for the climb are quite exceptional given the primary principle to 'Never Climb'. Indeed, any visitor passing the foot of the climb is confronted with a moral contradiction foregrounded by the billboard declaring, in many languages, the Tjurkurpa law against climbing and backgrounded by the evidence of ceaseless colonial habits sketched across the spine of Uluru in the shape of a singular scar left as a legacy for the present and (unfortunately) future climbers to endeavor."
9 James (2007, 401).
10 Hueneke and Baker (2009, 484).
11 *Centre for Minority Rights Development & Minority Rights Group International on behalf of the Endorois Community v. The Republic of Keny*a [2009] 276/2003.
12 One key difference is that the "discursive game" in question has a different structure. The participants in this game (the African Commission, the State of Kenya, and the Endorois Community) have quite different roles, responsibilities and entitlements from one another, and in seeking to make claims within this discursive game, the Endorois are not presuming to have the same authority as the other participants.
13 *Lyng v. Northwest Indian Cemetery Protective Association* [1988] 485 US 439 (Supreme Court of the USA).
14 This case, and a few others featuring similar judicial reasoning, is discussed by Tsosie (2017).
15 *Kichwa People of Sarayaku vs. State of Ecuador* [2012] Series C No. 245.
16 In previous work (Townsend 2020; Townsend & Townsend 2020), I have discussed this case with reference to the notion of 'silencing'.
17 *Sarayaku v. Ecuador*, par 150.
18 *Sarayaku v. Ecuador*, par 152.
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