

Governmental Speech Acts and National Security

Dear discussants: Below is a tentative introduction followed by a bullet-pointed map of some of the key points I want to explore. In short, what I'd like to do is a deeper dive on the relationship between government speech/communication and speech-act theory, especially as it's connected to consequential speech acts like the declaration of a national emergency (in response to a perceived or designated threat to national security). My jumping off point for this is J.L. Austin's work on performative utterances/speech acts and the Copenhagen School's approach to "securitization" as a speech act. What I'm hoping to do is something along the lines of what Lene Hansen says the Copenhagen School itself needs to do: "a more thorough and critical investigation of the speech act." The deeper I've dug in on this, the more it seems like speech-act theory can help pinpoint the precise ways in which government speech and private speech differ, and I wonder if that is worth highlighting through the dramatic example of national security declarations. (This piece has been commissioned as part of a volume on the concept of national security; it is therefore topically fixed in a loose way, and free from the typical constraints of being easy for student editors to grasp and contextualize.) I am eager for all manner of input, but especially keen to hear thoughts about fruitful directions to take this project and sources I should consult.

J.L. Austin famously explored "cases and senses . . . in which to *say* something is to *do* something."¹ His analysis began from utterances that appear, grammatically, to be mere statements, but which cannot readily be interpreted as true or false.² Such utterances, he concluded, are in fact *performative* because speakers utter them to "perform[] an action" rather than "just [to say] something."³ Examples include the statement "I bet you sixpence it will rain tomorrow," and uttering the phrase "I name this ship the *Queen Elizabeth*" while "smashing [a] bottle against the stem."⁴

Austin's work has proved influential in theorizing about a broader category of speech that functions as action: the speech act.⁵ Many, but not all, performative utterances are speech acts; I might unconsciously utter "I promise to refill the birdfeeder" in my sleep, and in doing so make no promise at all. But speech acts also encompass certain communicative conduct that is less direct and declarative than a performative utterance. Speech acts are typically understood as communicative acts—perhaps counterintuitively, even wordless ones—that a communicator can undertake under the proper conditions by meaning to do so.⁶ A speaker need not utter the words

¹ J.L. Austin, *HOW TO DO THINGS WITH WORDS* 12 (1962) (emphasis in original).

² *Id.* at 4-6.

³ *Id.* at 6-7.

⁴ *Id.* at 5.

⁵ See <https://plato.stanford.edu/entries/speech-acts/> (citing Austin heavily throughout, including in the introduction). I will discuss the definition of a speech act in more detail below, but a definition that works for framing purposes is "a type of act that can be performed by speaker meaning that one is doing so." *Id.* at Section 2. "Speaker meaning," in turn, is a contested philosophical notion that, at least arguably, encompasses the content and force of the communication as determined by the communicative intentions of the speaker or (perhaps her broader state of mind). *Id.* at Section 5.

⁶ FN TK on later discussion of "speaker meaning".

“I threaten you” to threaten you; in fact, conventions may make the direct declaration of one’s intentions so peculiar that declaring them—that is, attempting to use a performative utterance—interferes with (rather than clarifying) those intentions. In the case of many speech acts, the speaker will lean on context to supply evidence for how a particular act or statement should be taken, such as whether to understand the common sentence “I hope your family is well” as a routine display of social grace or a menacing reminder of the speaker’s access to your loved ones.

The notion of the speech act now features in many areas outside of philosophy of language (or philosophy more broadly⁷), including in security studies.⁸ For instance, Barry Buzan, Ole Wæver and Jaap de Wilde have theorized that “securitization”—the process of elevating an issue to the sphere of security, where it acquires the distinctive urgency of existential threat—arises from speech acts bearing a “specific rhetorical structure.”⁹ More specifically, they label acts bearing this rhetorical structure as “security speech acts,”¹⁰ polemical moves undertaken by “securitizing actors” (like government officials or interest groups), which cast a force or incident as throwing some “referent object” (like a state or nation) into existential jeopardy.¹¹ Other actors are important in dictating the success of such “securitizing moves,” including the audience for the speech act¹² and “functional actors” that shape the dynamics of the relevant sector.¹³

Buzan, Wæver, and de Wilde attempt to “mov[e] beyond classical security complex theory,” which used states as the “traditional unit of analysis.”¹⁴ They explicitly contemplate that securitizing actors need not be government officials, for instance.¹⁵ But, of course, governments *do* stand in a privileged position in shaping security discourse and invoking the concept of security to legal effect. Governments also stand in a unique position in undertaking speech acts because many speech acts can only be undertaken by those with a relevant form of authority.¹⁶ To the extent that government actors operate on the basis of authority delegated to them to make certain factual determinations or exercise certain powers, they frequently operate as “the particular persons . . . appropriate for the invocation of the particular procedure” at the heart of consequential speech acts.¹⁷

⁷ See <https://plato.stanford.edu/entries/speech-acts/> (noting that “‘speech act theory’ has become influential not only within philosophy, but also in linguistics, psychology, legal theory, artificial intelligence, literary theory, and feminist thought among other scholarly disciplines).

⁸ See Barry Buzan, Ole Wæver & Jaap de Wilde, *SECURITY: A NEW FRAMEWORK ANALYSIS* 33 (1998) (purporting to “approach[] security from a speech act perspective”); Lene Hansen, *The Little Mermaid’s Silent Security Dilemma and the Absence of Gender in the Copenhagen School*, 29.2 *Millennium: Journal of International Studies* 285, 306 (criticizing Buzan et al. for lacking a “more thorough and critical investigation of the speech act”).

⁹ Buzan, *supra* note __ at 26.

¹⁰ More specifically, this is the label for the rhetorical dimension of securitization that appears in the index to their book. See Buzan, *supra* note __ at 236.

¹¹ See Buzan, *supra* note __ at 36 (summarizing these elements).

¹² See Buzan, *supra* note __ at 30-31 (noting that “[s]uccessful securitization is not decided by the securitizer but by the audience of the security speech act”).

¹³ See Buzan, *supra* note __ at 36 (defining this term).

¹⁴ Buzan, *supra* note __ at 15.

¹⁵ Buzan citation TK.

¹⁶ See <https://plato.stanford.edu/entries/speech-acts/>, Section 2.2 (noting the importance of possessing the appropriate authority to pull off speech acts such as appointing someone to an office or naming a ship).

¹⁷ Austin, *supra* note __ at 15. For Austin, provisionally at least, being the “right” person operating in the proper circumstances is one of the key criteria for executing a felicitous speech act. See *id.* at 14-15.

Elsewhere I have argued that government communication differs in deep and important ways from the speech of private citizens, at least for purposes of constitutional law.¹⁸ One reason for this difference is that government actors stand in a distinctive position vis-à-vis the execution of speech acts—especially the most consequential of speech acts, such as the invocation of national security exigencies that might justify derogating from governmental obligations to respect certain rights or activate dormant governmental powers. It is this difference I wish to explore here.

- Austin made an effort to categorize speech acts, and he observed a category that would seem to include executive (or even legislative) emergency declarations: exercitives.¹⁹
 - Exercitives are similar in key ways to verdictives, where government officials like judges render a formal determination based on some body of evidence, but the discretion of officials issuing exercitives may be wider.²⁰
 - In any case, Austin does not analyze exercitives in much depth, and he does not appear to contend with government speech as categorically distinctive.
 - The absence of a deeper analysis along these lines could plausibly be one manifestation of a more general critique of much of speech-act theory, which is that it tends to isolate sentences and analyze them almost logically, treating them as intended parsimoniously to convey information from one speaker to one listener in a way that renders a lot of ordinary uses of language anomalous.²¹
 - Like private speech, government speech is about a lot more than conveying information, but there is much about government speech that is distinctive.
- One apparent difference between a private speech act (like betting or promising) and a public one (like an exercitive or verdictive) is that, in the latter, a person exercises authority delegated to them and exercised in trust for those who delegated it.
 - Public speech acts feature a gap between the person undertaking the act (whose sincerity may affect whether the speech acts are felicitous) and the office or branch of government they represent.
 - There is a gap between the two, and that creates the possibility of conceptual slippage that appears worth exploring.
- Deference to governmental actors by the public and by other branches of government—even when defensible as a practical matter—may insulate government actors from consequences of violating some of the sincerity conditions that Austin attached to felicitous speech acts
 - A government official can make a hollow or fake declaration of a national security emergency in the way that a private party can make a hollow or fake promise (with no intent to keep it), and both of these might arguably be deemed abuses of the underlying conventions.

¹⁸ See G. Alex Sinha, *The End of Government Speech*, Cardozo L. Rev. (forthcoming 2023) (pincite TK).

¹⁹ Austin, 154-56 (elaborating on exercitives).

²⁰ *Id.* at 152-56.

²¹ See generally Mary Louise Pratt, *Ideology and Speech-Act Theory*.

- But the latter can carry legal effect even if its propositional value (“there is an actual emergency here,” or perhaps “the president believes there is an actual emergency here”) is false.
 - One reason for this might be that the stakes trigger deference that puts declarations largely beyond effective second-guessing.
 - Another could be that governments hold a great deal of data about the state of the world that private citizens do not, and governments also ostensibly operate on behalf of the private citizen, so their determinations on consequential matter presumptively stand in for the judgments we would make if we were better informed and more powerful.
 - In other words, governmental determinations about the state of the world stand—perhaps even *should* stand—to influence our beliefs about the state of the world, whether conveyed through speech acts or through ordinary statements.
- One further dimension of speech-act theory along which executive determinations of national security exigency may be especially interesting is the notion of *direction of fit*.
 - Direction of fit is a philosophical concept originally introduced to capture an interesting difference between certain states of mind. Beliefs about the world aim to reflect the state of the world and, it is generally thought, should be discarded when they fail at that task. Desires aim, aspirationally as it were, at a state of affairs in the world that doesn’t exist; they reflect a preference of their holder to bring the world into alignment with some appealing verbal description of a state of affairs (or some similar mental image).²²
 - That distinction has been coopted by speech-act theory largely through G.E.M. Anscombe’s work on intention.²³ Anscombe offered the example of a man who goes to the store with a shopping list given to him by his wife. While the man is shopping, his activities are being recorded by an investigator who is surreptitiously following him through the store and recording the items he puts into his shopping cart.²⁴
 - Although Anscombe’s purpose in deploying the example is not primarily about speech acts, theorists have adopted the example to highlight the difference between shopper’s list and the investigator’s list: although both possess the same semantic content—the same items—the shopper’s list has world-to-word fit while the investigator’s has word-to-world fit. As one philosopher has described it, “It is, so to speak, the job of the items in his cart to conform to what is on his [wife’s] list. By contrast, it is the job of the detective’s list to conform with the world, in particular to what is in the husband’s cart.”²⁵

²² Humberstone, *Direction of Fit* at 59 (quoting Platts).

²³ See Anscombe, *Intention* at 56.

²⁴ *Id.*

²⁵ Mitch Green, *Speech Acts*, SEP Section 3.1.

- In this way, the shopper’s list mirrors a dimension of speech acts like commands, while the investigator’s list mirrors a dimension of speech acts like assertions and predictions.²⁶
- Notably, national security declarations appear to have *both directions of fit at the same time*.
 - If the power to make them is exercised competently and in good faith, those declarations will actually track a state of affairs in the world (word-to-world fit), but they will always function to trigger dormant governmental powers and thus change the world at the same time (world-to-word fit).
 - Moreover, they carry perlocutionary force (that is, influence over an audience) because of the status of the “speaker” and the urgency of the subject matter.
 - As a result, they move the needle of public opinion, another respect in which they will tend to have world-to-word fit.
 - Perhaps another way of putting this point is that consequential government speech acts often seem to contain *both* an “act” element *and* propositional value (that is, bear truth or falsity in a meaningful sense)
 - Declarations of national security emergencies implicitly communicate the existence of the factual bases that justify them.
 - They are widely influential both as a legal matter and as a persuasive matter.
- In drawing out some of these features of government speech and national security declarations, I would intend to incorporate examples such as: certain invocations of dormant government power by the Bush administration during the early days of the War on Terror; Trump’s invocation of “emergency” language in connection with a “caravan” of migrants traveling from Central American toward the southern border of the United States; and Biden’s invocation of emergency powers to contend with COVID.
- I suspect the result of thinking these matters over more carefully would be to complicate the Copenhagen School’s approach to securitization.
 - This is partly because the CS does not leave a lot of room for the relevance of the objective risk posed by any particular force or event that becomes securitized, which seems implausible and difficult to maintain if governmental speech acts also bear significant truth value.
 - It is also partly because there appears to be a qualitative difference between the role and power of governmental versus non-governmental actors in the process of securitization.

²⁶ Mitch Green, *Speech Acts*, SEP Section 3.1.