

## AUSTIN AND SAME-SEX MARRIAGE

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J. L. AUSTIN CLAIMED, IN *HOW TO DO THINGS WITH WORDS*, (1975) that there are types of sentences of philosophical interest other than the statement. His lectures argued that the **performative utterance** is such a sentence type. While not explicitly defined in his book, He treated the performative as language which performs other-than-linguistic acts. Such acts might be finding a defendant guilty or not guilty at the end of a trial, placing a bet, or getting married. Austin (ibid:7) did not explain what he meant by performing an act but assumed, apparently, the ordinary meaning of the phrase. He also assumed that it is exclusively or primarily the words that perform the act, i.e. that the acts cannot be performed without the words. He mentioned that the words must be uttered in the **proper circumstances** (ibid:16, 34) but spent very little time discussing what he meant by circumstances or what effects the circumstances have. When Austin mentioned circumstances, he often referred to the physical or social surroundings of a communicative act (**context**) to mean something like the social milieu of the utterance. Traditional linguistic theories do not have the apparatus to elucidate the role of Austin's proper circumstances or context in human communication. Some linguists use the term context to refer to the grammatical or spatial relations between words or some other parts of a grammatical theory. Austin did not use this meaning of context and, in fact, never defined context or circumstances in his lectures.<sup>1</sup> Context is not be used in such a way in this paper. When the term context is used here, it is used informally.

We wish to test whether Austin's claim that the words of a performative utterance are sufficient, by themselves, to perform an act. Austin (ibid:6) cited the utterance ('I do') of a bride and a groom in response to the traditional question 'Do you take X to be your lawfully wedded husband/wife?' as a performative utterance. While he was not specific, he would probably have said that these responses perform the act of marrying two people. In this paper, these responses are called Austin's **wedding performative**. It is not clear when the wedding act takes place. It may seem as though it takes place when the religious or civil celebrant pronounces the couple married, but this assumes that marriage is something that is being done to or for the couple. In Roman Catholicism, for example, the couple is said to marry themselves. The priest is the church's witness to that act and blesses it. The couple's decision to marry occurs before the ceremony. The ceremony itself is a social or public acknowledgment of that decision, and it takes place after the couple has a period of time to reconsider their decision, if necessary.

To test Austin's claim, we hypothesize that when any two people (the **couple**) appear before a person societally empowered to perform marriages (the **celebrant**), with witnesses and other societally mandated accompaniments (e.g. a marriage license) and utter Austin's

wedding performative, that they are married, i.e. the wedding act has been performed. If this hypothesis proves true, we say that the utterance of Austin's wedding performative is sufficient to perform the act of wedding. If it proves false, we say that the utterance of Austin's wedding performative is, by itself, insufficient to perform the act of wedding.

We use only one variable whose value may differ from wedding ceremony to wedding ceremony: the gender of each member of the couple that wishes to be married. We use the term **traditional marriage** for a marriage in which the couple is composed of two persons, one male and one female. In a **same-sex** or **gay marriage** (the terms will be used interchangeably), the couple is also composed of two persons, but both persons have the same gender, i.e. either two males or two females. We only admit marriage ceremonies that have no defects, i.e. we will assume that the parties are of appropriate age, the celebrant is authorized to perform marriages, the marriage certificate was properly issued, etc. This study will not argue either for or against the institution of gay marriage. The purpose of this study is to determine the limits of the notion of performative utterances (and thereby speech acts) by using gay marriage as a test case.

1. A MODEL OF AUSTIN'S WEDDING PERFORMATIVE. Hard Science Linguistics (HSL) (Yngve 1996) uses **surroundings** rather than **context** (not a technical term in HSL):

We not only have the group of people involved but their linguistically relevant **surroundings**, that is, all the other real-world objects including the energy flows that are involved in the communicative behavior. (ibid:86.)

Surroundings refers to physical surroundings (ibid:fn 43). HSL has another useful concept: **assemblage**. An assemblage is a group of people together with their linguistically relevant surroundings involved in a particular communicative behavior (ibid:86). **Group** is not a technical term for HSL and should be understood with its ordinary meaning. The HSL apparatus is sufficient to explain the interaction of people and their physical surroundings. HSL workers have already begun exploring some of these interactions, (cf. Sypniewski 2004a and chapters by others in Yngve & Wąsik 2004).

In order to see more clearly what happens communicatively during a wedding ceremony, we create a linkage (Yngve 1996:126) called [wedding] to model the wedding ceremony of two people and provide a partial expansion in the Appendix. Formal notations, referred to as {n}, appear in the Appendix as number n. We only need to look at the role parts, prop parts, properties, and procedures which are relevant to Austin's wedding performative; much will be left out that would be included in a full model of a wedding ceremony. To model three persons, we create the role parts [person<sub>1</sub>], [person<sub>2</sub>], and [wedding official], see {1}. [person<sub>2</sub>] and [person<sub>1</sub>] each have the properties <married> initially set negative [person<sub>2</sub>] <married/no> and [person<sub>1</sub>] <married/no>. There are linkage tasks called <ceremony> and <exchange vows> and a linkage property <ceremony done> initially set to <ceremony done/no>. [wedding official] has the tasks <ask person<sub>1</sub>>, <ask person<sub>2</sub>>, and <pronounce>. [person<sub>1</sub>] has the task <affirm person<sub>2</sub>> and [person<sub>2</sub>] has the task <affirm

person<sub>1</sub>>. [wedding official]'s task <pronounce> sets the <married> properties of [person<sub>2</sub>] and [person<sub>1</sub>] from negative to positive.

The linkage models that portion of a wedding ceremony in which the wedding official asks the bride and groom whether they take each other as husband and wife, <exchange vows>. Upon affirmative responses from both <affirm person<sub>2</sub>> and <affirm person<sub>1</sub>>, the wedding official declares them to be married, <pronounce>. The linkage task <ceremony> consists of the following in this order: [wedding official]<exchange vows> → [wedding official]<pronounce>, where '→' is read 'and then execute'; {3}. <pronounce> sets <ceremony done/no> to <ceremony done/yes> and [person<sub>1</sub>]<married/no> and [person<sub>2</sub>]<married/no> to [person<sub>1</sub>]<married/yes> and [person<sub>2</sub>]<married/yes>. We can say that Austin's wedding performative is a combination of tasks and a setting procedure which changes the value of properties [person<sub>1</sub>]<married> and [person<sub>2</sub>]<married> from their initial state of negative to positive.

2. THE PROBLEM WITH AUSTIN'S WEDDING PERFORMATIVE. We might think that the description above is satisfactory to model a traditional wedding. However, the moment we begin modeling any aspect of gay marriage, we realize that the model given above is inadequate for our needs. Recall the instance of gay marriages in San Francisco where the mayor authorized the registrar to issue marriage licenses to gay and lesbian couples who then went through wedding ceremonies. After a challenge, a court said that over 3500 gay couples who went through wedding ceremonies in San Francisco were not legally married.

If we look at the proposed model of Austin's wedding performative, we see that we could not use the same linkage to model gay marriage. Austin says that after the ceremony or, perhaps even during the ceremony (after the 'I do's) the couple is married, i.e. the value of <married> changes from negative to positive in the model. Many jurisdictions disagree with Austin when it comes to same-sex marriages. There is more of communicative importance going on in a wedding ceremony than Austin appreciated. A wedding is a social act, not simply an act in which the bride and groom participate. If the gay marriage controversy has shown us anything, it is that society at large claims a stake in the wedding. This stake must be reflected in our model.

3. REWORKING THE TRADITIONAL MARRIAGE MODEL. A couple does not enter into a marriage by simply walking up to a wedding official and performing a ceremony. Prior to a wedding, the couple must get a marriage license. The issuance of a license is society's approval of a marriage. The refusal to issue a license is society's way of disapproving a marriage.<sup>2</sup> Just because two people are legally eligible to marry, they are not automatically eligible to marry each other. For example, consanguinity prevents a widowed mother and her adult son from marrying each other even though each might be otherwise eligible to marry (someone). Every jurisdiction that issues marriage licenses has certain standards (age, degree of consanguinity, current marital status,<sup>3</sup> etc.) that must be met before a license is issued. In an HSL model, [person<sub>2</sub>] and [person<sub>1</sub>] must have certain properties with certain values. Among other properties, each must have a property reflecting their gender. One must have the property <male> and the other <female> (say, [person<sub>1</sub>]<male> and

[person2]<female>) in a model of a traditional marriage. Until the gay marriage controversy, these properties were assumed to be present and rarely acknowledged consciously. This is why Austin did not consider them.

We create a linkage with four role parts: the three previously mentioned and one called [registrar] and a prop part [marriage license] {2}. The [registrar] has a task we call <review qualifications> and another called <issue marriage license>. In order for [registrar] to begin this task, [person2] and [person1] must have certain properties with certain values. [person1]<marriageable age> and [person2]<marriageable age> model the jurisdictionally required age for marriage, if the values are positive. Otherwise, a marriage would not be allowed to occur because the bride and/or groom are underage; in our model, the linkage tasks could not proceed unless this property, and other properties, had the appropriate value. In traditional marriages, [person2]'s gender must be female and [person1]'s gender must be male: [person2]<female>, [person1]<male>. If the bride and groom satisfy the jurisdictional requirements, i.e., if [person2] and [person1] have certain property values that meet the requirements modeled by a setting procedure, the registrar will issue a marriage license, modeled by [registrar] completing <issue marriage license>. Initially, [person2] and [person1] have properties called <eligible to marry> both of which are set negative. In <review qualifications>, if [person2] and [person1]'s properties meet certain qualifications, <eligible to marry> is set positive. Only then can <issue marriage license> be performed. No marriage license is issued if <eligible to marry> is negative, i.e. <issue marriage license> cannot be performed when <eligible to marry/no> {7}.

In the <issue marriage license> task, a setting procedure changes the [marriage license] prop's <issued> property from <issued/no> to <issued/yes>. It is only when this property change takes place that <ceremony> can be performed {4}. If <issued/no>, <ceremony> cannot be performed. If [person2] and [person1]'s pertinent properties do not satisfy <review qualifications>,<sup>4</sup> our model shows that no marriage ceremony can take place, which is what we observe in the real world.

4. MODELING A GAY WEDDING. In traditional marriage, <review qualifications> includes [person1]<male> and [person2]<female> {5}. In a same-sex marriage, we have either set of properties: [person1]<male> and [person2]<male> or [person1]<female> and [person2]<female>. Neither set satisfies <review qualifications>, if it contains the traditional marriage gender standards. We see that [person1]<eligible to marry> and [person2]<eligible to marry> can never be set from negative to positive. When we model a same-sex marriage, we must use a different model for <review qualifications> {6}. We eliminate any reference to a <gender> property, allowing [person1]<eligible to marry> and [person2]<eligible to marry> to be set positive regardless of the genders of the persons being married. We do not need anything else to model the difference between traditional marriage and same-sex marriage but a setting procedure in <review qualifications>. Even a court ruling reversing or affirming the legality of gay marriage may be modeled as tasks, procedures, etc. that determine the setting procedure to be used.<sup>5</sup> What we see is that a model of the California court ruling rejecting San Francisco's issuance of marriage licenses to gay couples would effect the properties of the role parts [person1] and [person2],

specifically [person<sub>1</sub>] <eligible to marry> and [person<sub>2</sub>] <eligible to marry>. They would be set negative after a task that might be called <ruling> in a model of the court ruling. Without further details, I note only that the [wedding] could be a subordinate linkage to the linkage modeling the court's decision. Neither <issue license> nor <ceremony> can execute if either [person<sub>1</sub>] <eligible to marry/no> and [person<sub>2</sub>] <eligible to marry/no> are reset to negative.

4. DISCUSSION. Our examination of Austin's wedding performative using HSL techniques leads us to say that his hypothesis, that words alone are sufficient to perform the wedding act, is false. Two couples, one traditional and one same-sex, could utter the same words in proper circumstances and achieve different results. The gender variable alone accounts for this in some legal jurisdictions. We must also reject the hypothesis because it may be true or false due to accidents of time or geography. Austin isolated the performative from society and did not sufficiently account for the rather simple observation that the wedding performative is the end-product of a chain of events rather than the sole trigger for the wedding act. There is something unreal about a performative utterance when context is not considered. Two of the differences between the HSL reconstitution of the wedding performative and Austin's claims are that the HSL model is much broader in scope and includes the relevant parts of the social milieu of the wedding. Indeed, HSL challenges the notion that objects of philosophical or linguistic interest can be properly studied in isolation from their social milieu, and says that our studies should and must consider context in a way and to a greater extent than Austin did. Furthermore, Austin did not consider the possibility that a speech act may be reversed. For him, once a speech act is performed, it is completed. Folk wisdom says that once words are spoken, they cannot be taken back. Like much folk wisdom, a scientific review shows that this is not always the case. The effects of communicative behavior on people may be reversed by appropriate actions, even the actions of third parties. In HSL terms, this means that property values can be reset. When property values are reset, tasks need to be re-executed with those new property values.

Austin created a closed world; Austin's model is, therefore, brittle. HSL insists on an open world. A speech act has no semantic meaning for Austin. Austin's study was certainly an advance over the simplistic view of the statement as the sole interest for philosophers by arguing that words can not only state but do. While this may appear to create dynamism where previously there was only stasis, the dynamism of Austin's claims is more apparent than real. The less context is considered, the more static an utterance becomes. Without considering context, a performative utterance becomes just another type of sentence or text alongside of the statement, a matter of, shall we say, philosophical interest only.

Austin never said what he meant by words doing something. Doing what? Communicating? Affecting something? HSL shows that communicative behavior, a term broader than speech, alters other types of behavior. In our models, property values are changed, tasks are performed, and procedures are executed. HSL is truly, not apparently, as dynamic as life because it concentrates on people. If the researcher claims that a property value is changed, he or she must show it clearly in the model. HSL models have the attribute of clarity; HSL models need no interpretation. All is there to see, on the surface.

If we look at what happened in California when a court reviewed the San Francisco situation, we see that at the time of the ruling the court rendered certain previously uttered phrases meaningless. Phrases like 'I now pronounce you spouses forever', often used in gay weddings to replace 'I now pronounce you man and wife', had no meaning after the court ruling or, at best, a lingering social meaning rather than a legal one. There was a temporal limit to the semantics of the ceremonial language used in these weddings. The court ruled that there were *no wedding acts performed despite the language used*.

This judicial behavior is not unusual or limited to the gay marriage situation. While a divorce is the most common way of terminating a marriage, most jurisdictions also permit annulments. Assuming that the plaintiff proves certain things, a court will rule not just that there is no marriage now, i.e. at the time of the ruling, but that there was no marriage then, i.e. at the time of the wedding ceremony.<sup>6</sup> The ability to reverse a decision has important linguistic implications, especially for semantics. Meaning, however defined, should not be static, like Austin's performative utterances, but must be dynamic, like HSL's reconstitution of them. Reversing a decision may also reverse or nullify meaning. The utterance 'I now pronounce you spouses forever' uttered prior to the California court ruling is not wrong (whatever that might mean) once the court ruling was handed down. The wedding official was not incorrect. The court ruling retroactively made the utterance meaningless or, in HSL models, without effect. Meaning has a duration which may be long or short depending on circumstances. HSL can model time delays, (Yngve 1996:262 et seq.). The effects of time play an increasingly important role in our research.

The reader may wonder why HSL terms such as *surroundings* and *assemblage* are limited to physical objects. Surely, the qualifications for obtaining a marriage license are social in nature and are not real things. The answer is simple if not obvious: there is no need to distinguish between *real* and *social* objects in our models. We can model social matters and concerns by creating setting procedures and the like which refer to the properties of participants, role part, prop parts, or linkages. As properties, they are testable. Real world objects have properties which are testable for existence and attributive qualities. Our target is not to create theory; our target is to create testable models of the real world. Austin's model as stated in his terms is not testable. Austin (1975:13) tried to create a hierarchy of errors or, as he called them, 'infelicities' for performative utterances and used terms such as 'happy' and 'felicitous' for properly formed and uttered performatives. These are not enough to make his theory testable. His terms are too vague to provide standards for us to gauge the correctness of models. Testability is important to HSL. Testability means that we do not create our models from whole cloth. We must show that our models accurately reflect our observations of people in the real world. If, after testing, our model does not predict what we see or measure, our models fail. New ones must be built or old ones corrected. HSL does not permit unworkable models to linger about the margins.

5. CONCLUSION. Our brief examination of Austin's wedding performative in light of the current gay marriage controversy shows us that words do not perform acts in the way that Austin suggests. Words do not perform acts at all. People perform acts. The present paper does not discuss Austin's felicity conditions because they are irrelevant. People cannot be

seen as part of a condition to make words do something. This is backwards. To account for a wedding properly, we must construct a model of the societal as well as the individual aspects of the ceremony. The actual proper circumstances of a wedding ceremony are much broader than the circumstances Austin considered. We can be much more precise in our models than he could and we should do so.

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- <sup>1</sup> While this grammatical sense of context is beyond the scope of this paper, HSL can have something to say about it. See Burazer 2004.
  - <sup>2</sup> There are many reasons to disallow a marriage: age, physical condition (a person with a sexually transmitted disease can't marry until it is cured), currently valid marriage, etc. The exact impediments, as they are called, vary from jurisdiction to jurisdiction.
  - <sup>3</sup> Not all marriages involve only one male and one female. In traditional Islam, a man may marry up to four women at a time. Until a nineteenth-century Supreme Court ruling, Mormons in America could be polygamous.
  - <sup>4</sup> In a more complete model of [wedding], the qualifications would be modeled as linkage properties. <review qualifications> would contain a matching procedure to compare the relevant linkage properties with the properties of [person<sub>1</sub>] and [person<sub>2</sub>]. The reader should consider the description of <review qualifications> presented in this paper as a sort of shorthand.
  - <sup>5</sup> Of course, here we are talking about the model of the events in the real world, not about the real world events themselves. The setting procedure is a model of the qualifications necessary for two people to get a marriage license. The court rules on the qualifications, not on the setting procedure, which is an object of theory.
  - <sup>6</sup> The legal term is void *ab initio* 'void from the beginning'.

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## APPENDIX

1. [wedding]=[person<sub>2</sub>] + [person<sub>1</sub>] + [wedding official]
2. [wedding]=[person<sub>2</sub>] + [person<sub>1</sub>] + [wedding official] + [registrar] + [marriage license]

3. <ceremony>=[person<sub>1</sub>]<married/no> x [person<sub>2</sub>]<married/no> x  
 <exchange vows> x [wedding official]<pronounce> :: [person<sub>1</sub>]<married/yes> x  
 [person<sub>2</sub>]<married/yes>
- a. [wedding]<exchange vows> = [wedding official]<ask person<sub>1</sub>> ->  
 [person<sub>1</sub>]<affirm person<sub>2</sub>> -> [wedding official]<ask person<sub>2</sub>> ->  
 [person<sub>2</sub>]<affirm person<sub>1</sub>>
4. [wedding]<ceremony> = [person<sub>1</sub>]<married/no> x [person<sub>2</sub>]<married/no> x  
 [marriage license]<issued> x <exchange vows> x [wedding official]<pronounce>  
 :: [person<sub>1</sub>]<married/yes> x [person<sub>2</sub>]<married/yes>
5. [registrar]<review qualifications> = [person<sub>1</sub>]<male> x [person<sub>1</sub>]<marriageable  
 age/yes> x ... :: [person<sub>1</sub>]<eligible to marry/yes>  
 [person<sub>2</sub>]<female> x [person<sub>2</sub>]<marriageable age/yes> x ... :: [person<sub>2</sub>]<eligible  
 to marry/yes>
6. [registrar]<review qualifications> = [person<sub>1</sub>]<marriageable age/yes> x ... ::  
 [person<sub>1</sub>]<eligible to marry/yes>  
 [person<sub>2</sub>]<marriageable age/yes> x ... :: [person<sub>2</sub>]<eligible to marry/yes>
7. [registrar]<issue marriage license> = [person<sub>1</sub>]<eligible to marry/yes> x  
 [person<sub>2</sub>]<eligible to marry/yes> :: [marriage license]<issued/yes>

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