



Justice

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CHAPTER

8 Should Epistemic Injustices Be Redressed by the “Corrective Virtues”?

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Abstract

This chapter examines the kind of wrongdoing of a person involved in cases of epistemic injustice and whether or not epistemic injustice, so understood, is better remedied by state action or by what Miranda Fricker calls the “corrective virtues.” It is argued that there is a trade off between arguing that such injustices are very pervasive, or identifying what it is distinctively to wrong a person in their capacity as a knower. Focusing on the idea of an epistemic capacity, it is argued that the core sense of the concept involves cases where a person attempts to disqualify another from the status of being an epistemic subject at all. It is a form of expressively injurious speech or conduct that attack a person’s status thereby indirectly undermining their rights. This attempt to introduce stratification into the standing of free and equal citizens explains why both Fricker and her critics are partially correct. There is an ethos inherent to liberal democracy that requires that citizens refrain from interfering in the legitimate projects of others. When the state speaks in its expressive capacity it both exemplifies, and seeks to entrench, such an ethos at the level of individual conduct.

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This chapter considers whether or not so-called epistemic injustices are to be remedied either by the cultivation of individual virtues of redress or via the capacities of the state.¹ As British philosopher Bernard Williams once remarked, the word *virtue* has acquired “comic or other undesirable associations,” and no one but philosophers use it.² Yet, as Williams also remarked, since the revival of virtue ethics, the concept now seems indispensable. Philosophers have put the concept to work not only in thinking about the features of ethically admirable people but also in other domains of philosophy. In particular, the theory of knowledge has found an important role for the concept of a virtuous knower in the development of virtue epistemology, a discipline that has shadowed its ethical counterpart. In her groundbreaking book *Epistemic Injustice: Ethics and the Power of*

p. 210 *Knowing*, Miranda Fricker took this epistemic discussion in a novel and fruitful direction by asking about everyday cases of the injustices that we ↪ impose on each other as knowers.³ This completed the circle; it brought the discussion in epistemology back into connection with the discussions in ethics and politics where the term *virtue* has its home.

In this chapter, I focus on a particular aspect of Fricker's treatment of the class of cases that she calls instances of "epistemic injustice," namely, her claim that the way to redress such injustice is by cultivating what she calls "corrective virtues." Fricker believes that the two virtues of hermeneutic and testimonial justice are necessary in order to redress the injustices that she has identified.⁴ This aspect of her view has been criticized in two of the most thoughtful responses to her book: if the origin of these injustices is structural, then how can an individualistic response centered on the virtues—given that the latter are primarily properties of individuals—be our most effective response?⁵

There is certainly some pressure toward the conclusion that corrective virtue is not enough. However, there is a counterpressure, too: given the connection between knowing and asserting, we are discussing a phenomenon that is pervasive in human life and regulated by social norms that are often informal and beyond the scope of direct legal regulation. Certainly, we would prefer to be in a social world where no one was derogated or silenced, but how can a liberal democratic state legislate to bring about such a world without constant and ongoing intrusion into the micro-interactions of daily life?⁶ This is not a pragmatic issue about scope or scale; rather, it is centered on the constraints that can reasonably be placed on the liberal right of privacy. These constraints are overridden in what Corey Brettschneider has called an "Invasive State":

p. 211 | The dystopia of the Invasive State evokes the liberal fear of a government that seeks to promote equality at any expense, with no respect for the boundary between the public and the private. ↪ The Invasive State would spy on the family and civil society, intervening whenever it would be necessary to protect an ideal of equality.⁷

How do we address epistemic injustice, given its constitutive involvement in assertoric speech, without invoking the invasive state—the liberal, secular equivalent of a confessional society that exemplifies "one of the most effective forms of invasion of privacy—the demand that everyone stand up and be counted"?⁸ Answering this question is part of a broader attempt to understand what it is to become just in our dealings with one another as thinkers, speakers, and testifiers who are bound up, in all kinds of ways, with the concept of knowledge. I will begin with a very basic question: what is epistemic injustice supposed to be?

The first section of this chapter sets out Fricker's conception of epistemic injustice. The second section addresses the question of how, in this context, one distinguishes injustices from the broader class of ways in which we can wrong one another. The third section examines what I take to be a basic case of epistemic injustice, namely, the attempt to disqualify a person from the status of knower. The fourth section explains this kind of injustice as a species of expressive injury through speech. The conclusion is that the redress for such injustices lies in the state's promotion of a democratic ethos—political speech that the state engages in in its own right.

The Idea of Epistemic Injustice

p. 212 Fricker claimed that as thinkers and speakers concerned with identifying those who know, and who rely heavily on testimony from others, we can identify certain kinds of wrongs that we do to one another that are sufficiently serious to count as injustices.⁹ Those wrongs bear on our capacity to engage in these activities: to speak knowledgeably and to rely on the testimony of others. As social animals, this latter kind of dependence is both extensive and deep. We know, from Solomon Asch's famous conformity experiment in psychology, that a third of experimental subjects will override the evidence of their own visual perception to conform with the judgments of a peer group.¹⁰ Such conformity can, in some contexts, be a vice, but it is a tacit acknowledgment of the virtue of knowing when to defer to group judgment and the importance of the latter in the social acquisition and use of knowledge.¹¹

Fricker divided this class of wrongs into two types: in cases of *hermeneutic injustice*, a social group is cut off from the interpretative resources that it needs in order even to conceptualize the harms imposed on it. Fricker gives the example of a woman in the late 1960s who is unable to conceive of her experience as sexual harassment as she lacks the concepts to do so.¹²

In cases of *testimonial injustice*, people receive either too much or too little credit for what they say because of an identity prejudice grounded on their membership in a certain group. An apposite example is the African American female doctor who was one of three who volunteered to help a fellow passenger on an airline flight in the United States in 2016.¹³ Her offer to help was at first dismissed; later, her credentials were checked before she was permitted to approach the patient. In the meantime, a white male doctor who presented himself at the same time was allowed to treat the sick person, with no checking of his credentials.

p. 213 The stereotypes that we rely on in our reasoning as “quick and dirty” heuristics carry hidden dangers of stereotyping: the white male who presented himself on the flight met a stereotype of a “typical doctor,” while the African American female did not. Once again, a recognition of the importance of stereotypes and other heuristics in our reasoning acknowledges that our reasonableness is embedded in an ecology; but that which typically helps us to be more effective decision makers in the face of potentially overwhelming informational complexity carries its own risks of error.¹⁴

I will restrict myself to three questions about Fricker's account of epistemic injustice. First, if it is true that we can wrong one another as knowers, then what merits calling these wrongings of individuals injustices? (Do we need to look more deeply into the nature of justice and, for that matter, the nature of epistemology to answer this question?)

The second question follows naturally from the first. If these are cases of injustice, how do we separate their identification and correction from the domain of state action? (If in a liberal society such action is limited by privacy rights, then how ought we to address epistemic injustices if we have agreed that such injustices can occur?)

This allows us to formulate the third, summative question, from which I began. In suggesting that the appropriate response to these cases is the cultivation by the individual of corrective virtues, is Fricker guilty of a misplaced individualism, of attempting to solve problems caused by structural power with an appeal to individual virtues?

Wrongs versus Injustices

In thinking about knowledge, it is undoubtedly insightful to think about the characteristics of admirable people in this domain, just as the virtue ethicist does in the domain of morality. Fricker's insight was that it is equally insightful to think about ways in which we act unjustly in this domain. But why, of all the critical terms of appraisal to which she could have appealed, did Fricker use *injustice* as her central term? I focus here on this question solely in regard to testimonial injustice, setting aside hermeneutical injustice for another occasion.

p. 214 We need an example to fix ideas. Suppose that one of Thomas Jefferson's female slaves, Isabel Hern, tells Jefferson not to go into the woodshed because he risks being bitten by a snake hidden there. Failing to take this testimony seriously, Jefferson goes into the woodshed and is promptly bitten by the snake. Fricker is explicit that we are not to construe the situation this way: that Jefferson comes to an assignment of the credibility of the speaker, an assignment of probability to the claim, and then revises down his first judgment of speaker credibility because he is talking to a slave (and a woman). Jefferson's judgment is, indeed, a judgment of the trustworthiness of his interlocutor across the two dimensions of sincerity and competence. However, a social stereotype affects the determination of this credibility directly: the work of prejudice is not that it lowers a *prior* estimate of credibility.

So Hern is the subject of a derogatory judgment in the way in which Jefferson fails to take her testimony seriously, tracking her across a range of social situations. This is because this derogation is rooted in a social stereotype operative among a dominant group and imposed on a dominated group. Fricker wants to say more, that these judgments harm a person in the dominated group in her capacity as a knower. Hern is simply, by virtue of her identity, not taken to be credible, in a way that constitutes a harm to her. It will prove important in what follows to ask what significance attaches to the word *capacity* in this diagnosis. It seems to me that a "one-off" case of injustice cannot remove a capacity. That is why we are to see this stereotype as tracking an individual across a range of situations, such that a capacity is diminished or damaged. In what way can repeatedly being silenced or ignored result in this outcome?

Fricker suggests three separate explanations that need not, it seems to me, be mutually exclusive. The first simply appeals to repeated derogation itself, a repeated wronging of a person in his or her role as an epistemic agent.¹⁵ The second appeals to the way in which being repeatedly subject to such treatment leads to the person thus derogated losing confidence in his or her ability to participate in our ordinary practices surrounding knowledge. The third, most ambitious explanation is taken from Bernard Williams: that sociability does not simply enter into the stabilization of the dispositions involved in knowledge but serves also to stabilize the very idea of the mental state that is appropriately the expression of knowledge.

Williams claims that in testimonial exchange, our interlocutor must have sufficient diachronic continuity of character to allow us to apply a distinction between changes in the evidence shared between us and changes in the dispositions that make up that person's character. Sociability, in the guise of epistemic virtue, helps to stabilize the very idea of an individual character. Williams takes as his central example the protagonist of Denis Diderot's *Rameau's Nephew*. He is committed to the idea of total transparency in his epistemic dealings with others while, unfortunately, he presents himself under the guise of a different person every time we encounter him. He is a conversational "shape shifter." An equally appropriate literary example is the eponymous character—or characters—who reappears throughout Herman Melville's suggestively titled *The Confidence Man*. Is there one confidence man or many? Williams concludes that stability of character is mutually interdependent with the idea of generalized social trust of the kind essential to the social relations of a modern commercial republic.¹⁶ So sociability enters not only into the stabilization of knowledge but also into whether we are dealing with knowledge at all, as opposed to fantasy or wishful thinking.

Like Fricker, I am most drawn to the truth of this third explanation, but I will also parallel her own discussion by not treating it at any length. This is for two reasons. The first is that I have discussed Williams's explanation

p. 216 —and tried to make a case for its truth—elsewhere.¹⁷ The second is that making it the primary explanation of epistemic injustice makes the latter a hostage to ↵ fortune. The ambitiousness of Williams’s claim makes it inherently controversial—more controversial, one might think, than the clear instances of epistemic injustice that ground it. I therefore restrict my focus in this chapter to a consideration of Fricker’s first two explanations and look at the advantages and disadvantages of each.

The first explanation, then, is that people very often suffer from testimonial injustice when they are either given too little or too much epistemic credit. One advantage of this explanation—which Fricker emphasizes—is that it makes epistemic injustice widespread. People are pervasively interrupted, ignored, or silenced, and this treatment is grounded on identity prejudice. But I do not think this is, in fact, the better explanation of epistemic injustice, for two reasons.

I concede that we could use the word *justice* very broadly, as John Stuart Mill does, basically to apply to any very serious wrong to an individual that gives rise to strong feelings of disapprobation—differentiated by some further features of the case.¹⁸ Any such example can be brought within the domain of justice in this broad use of the term. But this capacious use makes it difficult to see why these are cases of injustice as opposed to, simply, very widespread and repeated wrongings of a person. It also makes it hard to see the function of the word *capacity* in Fricker’s diagnosis that we are wronging one another in our *capacity* as knowers. This seems to mean only that in every exercise of this capacity, there is the opportunity for being wronged—instance by instance, as it were. So the mention of the capacity is redundant in explaining what distinctive kind of harm this is to the agent.

p. 217 We gain the pervasiveness of epistemic injustice, then, at the cost of a loss of distinctiveness. It is not clear, if we do not follow Mill’s capacious use of the terms *justice* and *injustice*, why these are injustices at all. However, I concede that this point can be addressed by examining an ambiguity inherent in our use of the term *justice*. All parties agree that we are not in this discussion directly appealing ↵ to socioeconomic justice or injustice; assigning credibility to an interlocutor is not a scarce good that we need to distribute to one person with a weather eye on its availability to any other person of some designated class. If this epistemic issue is a matter of justice, then it is a matter of what Joel Feinberg called “noncomparative justice.”¹⁹

We might describe both comparative and noncomparative justice as instances of giving each person his or her due. However, in the case of comparative justice, we must treat an individual as a member of a class defined for the relevant project of justice; distributing child benefits, for example, is sensitive to the recipient having childcare responsibilities. By contrast, in the case of noncomparative justice, we give each person his or her due without regard for how we treat others in the relevant class in the same way; there is no such relevant comparator class.²⁰

Which of these two conceptions of the concept of justice does Fricker have in mind? Take the basic case of refusing to take you to *be* someone who knows something, as in the Jefferson/Hern case—a case prior to judging whether to accept testimony from you. In such a case, there would be a refusal to grant you credit: the credit owed to you as a person who had exercised epistemic virtues in a creditworthy way.²¹ I would argue that this refusal to grant you credit is a form of derogatory judgment, one of the characteristic vices of noncomparative injustice.

Consider now an extension to the testimonial case: in normal cases, epistemically responsible belief on the part of the person getting told is to accept an assurance from the teller in a context marked by an appropriate degree of interpersonal trust. There is a transfer of credit. By contrast, derogatory judgment involves a refusal to accept such a transfer from a person of a certain social kind. So the broader class of epistemic wrongs is also a form of derogatory judgment.

p. 218 If we draw this distinction, then we can vindicate Fricker’s appeal to the concept of justice; we can interpret her as referring to noncomparative justice. (She does not use the term, but it is a natural further specification of her

position.) This isolates, from within the very broad class of wrongings of a person as an epistemic agent, one very specific way in which an injustice is done to someone. It is a denial of epistemic credit that is due to the person. This is wholly separate from any appeal to socioeconomic justice, because epistemic credit is an indivisible good: by handing out some, I do not reduce its availability for anyone else. (Relatedly, there is no properly defined class of recipients.) But I have noted that a problem remains with this explanation: Fricker's reference to a *capacity* is still redundant. Repeated denials of credit may or may not remove a capacity to know.²² This is for several reasons, each of which is of independent interest.

First, there is the complexity of social identity. A range of categories and associated identifications can reinforce or counteract one another. For example, novelist Virginia Woolf was discriminated against as a woman, but she was both upper-class and wealthy and enjoyed a degree of social privilege in light of these latter facts (something of which she was entirely self-aware). By contrast, the slave on Jefferson's plantation is discriminated against as a woman, as a slave, as poor, and as uneducated. If Woolf is disbelieved by a person whom she takes to be of lower social standing, will she subsequently lose her confidence or her intellectual courage? Perhaps—or perhaps not; she has other resources to resist being “silenced” that prevent a series of derogatory judgments leading to a loss of a capacity.

The second problem for the “loss of confidence” explanation is related to the first. David Owen has noted that if one's social setting can either reinforce or undermine one's confidence, it is also true that one's social setting can be real or imaginary.²³ Imagined communities can play a role in bolstering a person's confidence; consider a deep-seated religious identification with a transcendent community that bolsters one's confidence in the face of a hostile social environment. Once again, the point is that a person may be able to draw on compensatory social resources to counteract identity-based prejudice.

A third problem for the confidence/courage explanation is what we mean in this context by a capacity for knowledge. As Michael Williams has pointed out, the idea of such a capacity is ambivalent between two distinct phenomena that Wilfrid Sellars labeled “actions” and “acts”:

Actions are done on purpose . . . acts are actualizations of a capacity. . . [S]eeing—which is a way of knowing—is a mental act, not an action. Seeing that there is, say, a rabbit in the garden, involves the actualization of a trained recognitional capacity which means that seeing is not the sort of thing one does “on purpose” . . . lots of ordinary knowledge depends only on the unself-conscious exercise of basic cognitive abilities.²⁴

If this is an insight, and I believe it is, then it would seriously limit the potential scope of Fricker's explanation that a loss of confidence will see the loss of a capacity for knowledge. Michael Williams and Sellars are reminding us that for a broad swathe of knowledge, it is not clear that a loss of confidence, or loss of intellectual courage, could undermine our claims to know. That is precisely because such claims are the product of Sellarsian “acts” as opposed to “actions” that are by their nature immune to being undermined in this kind of way.²⁵ It is true that a range of background conditions have to hold for any given exercise of a capacity for knowledge to be successful. However, it is not clear how an agent's loss of confidence, or intellectual courage, could undermine such fundamental kinds of knowledge as perceptual or memory-based beliefs. This is particularly pertinent to Fricker's cases of testimonial injustice if, in the tradition inaugurated by Thomas Reid, our a priori entitlement to take testimony at face value is of the same generic class as our a priori entitlement to take perception and memory at face value.²⁶

I have canvassed two explanations of what Fricker could mean by epistemic injustice. The first is very broad and can be called an injustice of a noncomparative kind, but it seems to make Fricker's mention of one's capacities as a knower redundant. The second mentions a capacity and appeals to a loss of confidence in explaining the loss of this capacity, but this explanation can, I think, take one only so far. My concern is that it greatly restricts the class of cases.

Perhaps we do not need to choose here. I noted that these diagnoses of epistemic injustice need not be mutually exclusive. Fricker's book was path-breaking and open to both interpretation and further development; perhaps both classes of cases ought to be conjoined to acknowledge a broad class of epistemic wrongs and some cases where epistemic capacity is diminished. I am sympathetic to this argument but would like to explore one more explanation of why epistemic injustice marks off an important and distinctive kind of case. The proposal is that epistemic injustice is to be viewed as putative *disqualification* from epistemic status. I purport, by how I treat you, to deny you epistemic credit in a special sense, namely, by implying that you were never in a position to receive it in the first place.

The Idea of Status and Its “Denial”

p. 221 There is at least one sense of the term *egalitarian* in which we are all egalitarians now, which makes it an effort of historical imagination to recapture what the Haitian, French, and American revolutions signified in the history of the modern West.²⁷ It is the task of this section to specify this sense while also solving a further problem: that it is difficult to understand the nature of epistemic injustice, as we find it difficult to believe that the unjust can, in this case, really mean what they say.

In trying to specify the sense of the term *egalitarian* at issue, we can begin with a historical example to fix ideas. French historian and political theorist Pierre Rosanvallon cites a document that the Abbé Sieyès appended to his “Essai sur les privilèges.”²⁸ Under the ancien régime, society was “represented” by three estates: the clergy, the nobility, and representatives of the common people. Representation is a very thin notion here, given that the deliberations of all three estates had a merely advisory role for the monarch and no independent legislative power. The document, titled “A Petition to the King,” is a response from the French nobility in 1614 to the request that the third estate’s deputies be treated with more respect by the aristocratic deputies of the second, as if they were brothers. The tone of the aristocratic response, as it appeals to the monarch, is one of outrage and scorn:

I am ashamed, Sire, to tell you of the offensive terms in which we have once again been addressed. They compare your state to a family consisting of three brothers. . . . How can the nobility have been linked with the vulgar in the closest society that exists among men, which is brotherhood. . . . Render judgement, Sire, and in a declaration steeped in your justice remind them of their duty and order them to recognize what we are, what difference exists between us, and tell them *that they can in no way compare themselves to us*.²⁹

p. 222 We are resistant even to trying imaginatively to occupy a world view in which the human species is divided into stratified classes, not all of whose members count as fully human. To be an egalitarian in the modern sense, then, is to be unable to take this claim seriously in one particular way, namely, by taking it literally.

One cannot really imagine that inegalitarians of the past literally believed that their conspecifics were not all members of the species *Homo sapiens*. Indeed, if we take the language of “dehumanization” literally, then we inadvertently exonerate inegalitarian treatment from the perspective of the perpetrator. If the wrongdoer literally believes that there exists a categorical difference between himself and a social inferior—as if the latter were indeed vermin of a different species—then treating people as vermin may be morally outrageous from our perspective but nonculpably ignorant from the perpetrator’s perspective. That does seem a very undesirable diagnosis of the error involved.

David Owen tries to resolve this interpretative puzzle by appealing to Stanley Cavell’s notion of “soul blindness.”³⁰ Cavell interprets the thoughts of a slave owner who claims that his slaves are “not human beings”:

This is a definite state of mind. He means, indefinitely, that they are not purely human. He means, indefinitely, that *there are kinds of humans*. . . . He means, indefinitely, that slaves are different, primarily different from him, secondarily perhaps different from you and me. . . . In the end he will appeal to history, to a form, or rather to a way, of life: this is what he does. . . . It could be said that what he denies is that the slave is “other,” i.e., other to his one. They are, as it were, merely other; not simply separate, but different. It could also be said that he takes himself to be private with respect to them, in the end unknowable by them.³¹

p. 223 Cavell is directing us to a better interpretation of inegalitarian claims from the past: they are an attempt to reinsert categorical difference into the category of equal status. Equality of status turns out to be, ↪ for the inegalitarian, an internally differentiated idea grounded on a class-based categorization of “forms of life.” (I do not restrict the term *class* to socioeconomic class but rather extend it to gender, sexual orientation, and race.) In his own work, Owen further connects epistemic injustice to the class of what he calls “dignitary harms.” They do not simply impinge on one’s rights; they target the very status that underpins them:

We can come at the same point in a slightly different way by distinguishing what Michael Rosen calls “respect as observance” and “respect as respectfulness.” The former denotes simply observing your human or civic rights. So we may say that I recognize the dignity of your person by not breaching these rights. The second refers to an attitude with which I interact with you. Thus we may say that I acknowledge the dignity in your person by engaging respectfully with you.³²

Epistemic injustices, on this account, turn out to be one way to attack a person’s status as free and equal: by an attack on his or her dignity that is detachable from a breach of that person’s rights. I think this is an insightful diagnosis of the paradigmatic case of epistemic injustice as opposed to a broader class of epistemic wronging of a person. In this interpretation, the epistemically unjust have the putative aim of disqualifying a person from epistemic status, but the actual expressive content of their action is subtly different. After all, they have no power to disqualify from status, but by acting as if they do, they purport to introduce segregation of rank into epistemic status. Some people need not be listened to because, to use the language of the seventeenth-century aristocrat, “they can in no way compare themselves to us.”

p. 224 One might wonder, at this point, how I can be less enthusiastic about an explanation of epistemic injustice that appeals to a loss of ↪ confidence as eroding a person’s capacity to know yet more enthusiastic about a view in which a speaker attempts the impossible by speaking falsely. You cannot really, by your words, disqualify a person as a knower; you cannot really mean, if you imply that a person has less than fully human status, that they do. Why is this, then, a better explanation of epistemic injustice?

It is a better explanation because it does not focus on the effect of speech as action—that which it seeks to bring about—as does the “loss of capacity” explanation. Instead, it focuses on the expressive injury *in* what is said, not what one aims to bring about by saying it, its illocutionary effect, not its perlocutionary effect.³³ The putative expression of a disqualification from status is itself injurious because of the kind of speech that it is. It may not secure what it seeks to bring about, but the very attempt expresses an attitude of contemptuous indifference toward another person. Epistemic silencing need not, of course, be speech; this is a case of expressive inaction just as Jefferson’s failure to take the testimony of a female slave seriously is an expressive inaction. Not taking a person seriously can be an expression of a contemptuous attitude toward him or her.

Furthermore, the agent who silences another *may* succeed in recruiting others to his or her cause: if the agent implies that you are a person not to be taken seriously, maybe others will follow in that belief. What is being invoked here is the power of social ostracism, an attempt to sever the connections of mutual acknowledgment. Once again turning to the historical example, the radical inegalitarians of the past were interested not merely in classifying people in stratified classes—like rearranging a butterfly collection—but in grounding rights to

dominate and a correlative obligation to obey on this stratification in “forms of life.” Categorization is at the service of domination.

p. 225 As I have noted, perhaps a range of wrongs fall under the heading of epistemic injustices. But is the correction of any of the wrongs I have identified the business of the state? I think this point about ↪ the expressive wrongs involved in this third, paradigmatic case of epistemic injustice helps us to approach this issue.

Epistemic Injustice and the Limits of State Action

How can Fricker discuss justice and injustice when it comes to knowledge while not placing these issues within the domain of action by the liberal state? If we are dealing with the everyday norms of knowledge in thought and speech, do not structural causes call for structural remedies and not, as Fricker implies, the exercise of corrective virtue by individuals?³⁴ Both Elizabeth Anderson (2012) and James Bohman (2012) share this concern about Fricker’s individualistic, virtue-focused approach to correcting for testimonial injustice. Their concern is that this remedy fails to address the structural sources in the nature of social power of the plausible cases of individual domination that Fricker captures so well in her examples. How could the remedy *not* lie in state action?

My own view is that both parties to this dispute can claim part of the truth. Fricker is right that an important class of cases falls outside the remedial action of the state; this is so even if such a state has fully implemented the principles of justice to produce a society well ordered by justice. However, Anderson and Bohman are also right that these cases of epistemic injustice are also cases of domination. How can both views be partly true?

p. 226 My answer is that any liberal view has to assign three kinds of normative status to people. There is the liberty to express the values that constitute your personal point of view (an “option”). There are the rights that both constrain you in your ability to block the expression of other people’s points of view and hence to constrain their ability to constrain you (a “constraint”). Then there is an important third ↪ category, an ethos that enjoins you not to exploit the nuisance value of your own protected status—a status protected by the first two kinds of rights.

I take the concept of nuisance from the theory of private tort—civil wrongs—but my aim here is to apply it more broadly as an ethical category. You need not be acting illegally, but you may be acting immorally, when you exploit the fact that while acting within your rights, you may still impinge on the legitimate interests of others. Any ethical outlook that accommodates rights has to concede that this third category of interference exists. When we are protected by a moral right, our freedom of action is impinged upon by the compossibility constraint, namely, that all others have received the same protection as we have. Yet we also expose ourselves to a further potential impingement on our interests, namely, that others can interfere with us by creating a nuisance while acting within their rights. To adapt an example suggested by Thomas Christiano, suppose you and a group of friends want to play a competitive game of cards—bridge or poker—but one of the players keeps flouting the rules in trivial ways that nevertheless ruin the game for everyone. A shared project has been subject to vexatious interference—a nuisance.

Extending this analogy, both Christiano and David Estlund have argued that the authority of democratic legislation places individuals under a moral obligation to respect majoritarian decisions that do not violate constitutional rights (provided that doing so is not excessively burdensome to the person concerned).³⁵ Christiano has also extended this account to address the question of whether a person who is fully entitled to a greater share of legitimately assigned social power can use that power to frustrate the ends of democratic legislation by interfering with those ends so as to reduce the class of feasible goals? Note the use of the word *interfering*: such a person is fully within his or her legal and moral rights but is exploiting the nuisance value of his or her protected status. Christiano’s insightful answer is ↪ that any stable liberal state is going to require a

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democratic ethos to constrain such behavior. If it is not unduly burdensome, this person ought to exercise restraint, not exploit his or her nuisance value, and comply with the obligation to respect the will of the majority.

I think there are interesting structural analogies between this kind of case and cases of epistemic injustice. I have diagnosed a core case of epistemic injustice as when a dominating agent behaves *as if* another person has been disqualified from the status of knower. Since we are dealing here with an essential role for epistemic community in sustaining this status by mutual recognition, it is, of course, not up to an individual to withdraw status in this way; but that person proceeds as though he or she can. If successful, the individual may recruit others to the cause, including the person who is silenced—and henceforth silences himself or herself. But once again, we can see two aspects to this domination: (1) an obstruction of a persons' legitimate right to speak by (2) the expressive injury of the implication that they are not properly members of the class entitled to be heard. I would argue that these kinds of injustice, too, require an ethos to constrain them in a manner that strictly parallels the role that Christiano has identified; hence Fricker's emphasis on the role of corrective virtues located outside the formal ambit of the state.

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My basic point, then, is that on *any* liberal view of justice or domination, the limitations of state action have to be complemented by a democratic ethos sustained by democratic virtues. So Fricker need not appeal to any idea to which we are not already committed as liberals. This ethos forms part of the bundle of liberties attached to the status of citizen. Beyond the application of the principles of justice to the basic structure of society, there are cases where domination can nevertheless arise unless citizens not only respect others but also positively refrain from exploiting their own liberty to interfere with the legitimate projects of others. Located within this range, cases of ↪ epistemic injustice are indeed properly both viewed as instances of domination *and* as the focus for a corrective exercise of virtue.

I noted that liberal states operate with some conception of fairness, yet they are also regarded as aiming to be neutral among different, controversial ideals about how people ought to lead their lives. Does a democratic ethos violate this ideal of neutrality? I do not believe it does, because the liberal democratic state has its own values.³⁶ It can promote *those* without violating neutrality. I do not mean that any state, no matter how objectionable, will seek to preserve itself (even though that seems true). Liberal democratic states seek to preserve themselves in the right ways and for the right reasons, by transmitting their democratic values through all the expressive means at their disposal. For example, in his discussion of how the liberal state ought to approach hate speech, Brettschneider has argued:

the state should actively pursue democratic persuasion, given the problem of complicity that can accompany neutralist protections for free speech. . . . By criticizing hate groups and promoting the ideal of free and equal citizenship, the state can clarify that its protection of groups from coercive intervention is not tantamount to approval of their message.³⁷

There are clear differences between cases of epistemic injustice and cases of hate speech; my aim is not to assimilate them but merely to point out that similar issues arise when we consider how to deal with them in either case.

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As I have also noted, the expressive injury of testimonial injustice is not the same as hate speech, as it can be a form of action—even inaction—that expresses a contemptuous attitude toward another person's status as free and equal. It need not be speech, and the attitude it expresses is not hate (though it does not follow that it need be less injurious). What matters here is not the expressed emotion but ↪ the belief that it presupposes, as in Brettschneider's distinction between the emotion of hate and "hateful viewpoints."³⁸ The latter are beliefs: "expressing an idea or ideology that opposes free and equal citizenship."³⁹ Here, too, I think in our response to epistemic injustices, we ought to develop a parallel to Brettschneider's response to hateful viewpoints, developed in the service of his own "value democracy." In his proposal, we do not coercively ban hate speech,

but we use the expressive resources of the state—as “educator, speaker and spender”—to match it with more and better nonhate speech that undercuts the effects of hate speech by subjecting it to relentless criticism.⁴⁰

In my view, Brettschneider’s proposal maps onto the trichotomy among liberties, constraints, and an ethos of restraint. (Brettschneider at one point characterizes his view as appealing to “an ethos in liberal democracy.”)⁴¹ His discussion is solely concerned with hate speech; many liberal societies take a very different approach to such speech from that of US First Amendment jurisprudence. Such societies remove the right to free expression so that we do not even reach the stage of asking proponents of hate speech to refrain from speaking that way; they are coercively required not to do so. In Brettschneider’s alternative approach, we concede the right to express hateful viewpoints but are not complicit with it. That is because our collective agent, the liberal state, is not neutral in its advocacy of the values of free and equal citizenship themselves (neither need individuals abstain from such advocacy). The state is under a positive obligation to bring about an ethos of democracy.⁴²

How would this work in the analogous case of epistemic justice? There is at least one direct connection running from the idea of democratic persuasion to epistemic justice, namely, that the former places demands on the education system, including the demand not to use epistemic injustice as one of its own methods.

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Brettschneider’s example is that teachers challenging hateful viewpoints expressed by students ought not simply silence them.⁴³ What Brettschneider calls “democratic persuasion” itself, then, is constrained by epistemic justice. But does the analogy run more deeply?

I believe it does. In seeking to counter those who would derogate others in the strongest sense—by purporting to disqualify them from epistemic status—a corrective ethos of restraint, centered on individual corrective virtue, is reinforced by the expressive capacity of the state. We cannot expect state intervention in every case, at the level of informal social norms, of testimonial injustice between individuals.⁴⁴ But we can expect the public resources of our social world—via the education system, the informal regulation of truthfulness in speech, or norms of respect in public institutions and civic discourse—to seek to drown out testimonial injustice with examples of more and better testimonial justice. We are not relying solely on faith in the idea that “good speech always drives out the bad” in some “free” marketplace of ideas; on this issue, the state is not neutral.

Thus, we can agree both with Fricker and with Anderson, noting in the latter case that there is no incompatibility between corrective virtue and political policy per se. Anderson is explicit that her focus on the structural basis of domination is complementary to the corrective virtues, aimed at putting in place background conditions that “enable individual virtue to work.”⁴⁵ These background conditions are the responsibility of the liberal democratic state even if what they enable must necessarily fall beyond this domain. Public reinforcement of the norms of epistemic justice can reasonably be expected to have pervasive effects beyond the necessarily limited site of their implementation.⁴⁶

Conclusion

p. 231 In this chapter, I addressed the question of what it is to become a virtuous thinker and speaker who participates in our ordinary practices of knowledge justly as opposed to unjustly. Fricker ↵ invites us to take up a perspective from which each of us cultivates corrective virtues to provide redress for the everyday epistemic injustices represented by hermeneutic and testimonial injustice. Her critics point instead to the need to challenge the structural sources of such domination. I suggest that both parties capture part of the truth. I agree with Fricker that there are certain identifiable wrongs of a hybrid ethical and epistemological nature that are sufficiently serious to count as forms of epistemic injustice. In seeking to redress them, the liberal state plays an enabling role for corrective virtue. That is because the neutrality characteristic of liberal societies when it comes to comprehensive views of how people ought to live does not extend to the honoring of those very values which makes a liberal society possible. In its expressive dimension, a liberal democratic state can act so as to facilitate the exercise of corrective virtue on the part of individuals who seek to become just in their epistemic dealings with others.⁴⁷

Notes

1. Fricker 2007.
2. Williams 1985, 9.
3. Fricker 2007.
4. Fricker 2007, chaps. 4 and 7.
5. Anderson 2012; Bohman 2012.
6. Nagel 1998; Brettschneider 2012, 10–11.
7. Brettschneider 2012, 168.
8. Nagel 1998, 24.
9. The target notion, then, as Chris Hookway helpfully puts it, is “distinctive forms of personal wrong that are both epistemological and an injustice.” Hookway 2010, 151.
10. Asch 1951.
11. Welbourne 1986; Morton 2012.
12. Fricker 2007, 148–150.
13. Hauser 2016. Cited also by Owen 2016.
- p. 232 14. Gigerenzer and Selten 2001. Specifically, in the case of stereotypes, the risk is that they will be assumed to be representative in the absence of knowledge of the prior probabilities that underpin this representativeness.
15. Mark LeBar has suggested to me a fourth, alternative line of explanation: that the harm to Isabel Hern is not epistemic but an undermining judgment regarding her authority to speak. This diagnosis of the case requires a fuller response than I can give here. I would note, however, that one might reasonably treat cases of testimonial authority as grounded on a prior entitlement to that authority. Further, in this kind of case, one might ground an authority to speak on a track record of reliability in getting things right (of the kind that is at the kernel of David Estlund’s theory of democratic authority in which the moral authority of democratic legislation presupposes the answer to a prior epistemic question of reliability). So in any appeal to authority, an epistemic question is deferred but not wholly avoided. Estlund 2009.
16. Williams 2002, chap. 8.

17. Thomas 2015.
18. Specifically, in the case of Millian rights, that they be assignable to a specific individual and that the responsibility for rectifying breaches of rights has broad scope and is applicable to anyone.
19. Feinberg 1974.
20. Thomas 2012.
21. Greco 2003; Greco 2008.
22. For a very interesting analysis of cases where it does, see Jones 2012.
23. Owen 2016.
24. Williams 2009, 12. Williams continues: “To be sure, the normative rules in play cannot, in the first instance, be imperatival in form: they cannot be what Sellars calls ‘ought-to-do’ rules. But not all rules are ‘ought to do.’”
25. Williams, following Sellars, argues that the former are subject to “ought to be” not “ought to do” rules: they can be challenged in such a way that the default entitlement that they establish can be undermined. “Default entitlements only accrue to accredited epistemic subjects. The status of epistemic subject, along with that of moral agent, is earned through training and acculturation” (Williams 2009, 13). They are subject to what Williams calls “external authorizing conditions” (2009, 16), and some of these may be enablers and not reasons, considerations that allow other considerations to play the reason-giving role (2009, 17).
26. Burge 1993; Stevenson 1993.
27. Rosanvallon 2013, 10–11.
28. Rosanvallon 2013, 12–13.
29. Sieyès 1982, 26; emphasis added.
30. Owen 2016.
31. Cavell 1999, 376–377; emphasis added.
- p. 233 32. Owen 2016; Rosen 2012, 57–58.
33. Austin 1962.
34. For some of the relevant complexities in the appeal to “structure” here, see Pettit 2012, 43–44, 63; Hayward 2011, 484–487.
35. Estlund 2009; Christiano 2010; Thomas 2017, chap. 12.
36. Brettschneider 2012.
37. Brettschneider 2012, 109.
38. Brettschneider 2012, 75. In Brettschneider’s account, they are at the limit of a broader class of “discriminatory viewpoints” that “oppose or are inconsistent with the ideal of free and equal citizenship” (2012, 4).
39. Brettschneider 2012, 1.
40. Brettschneider 2012, 7, 22. In the light of values that are, reflexively, justified as public reasons (Brettschneider, 2012, 14.) Another noteworthy aspect of Brettschneider’s account of “democratic persuasion” is that it is intended to go beyond presenting counterarguments and actually to win them.
41. Brettschneider 2012, 45.
42. Brettschneider’s view (2012, 47) is that this is most effectively brought about by promulgating the reasons for rights, namely, the ideal of freedom and equality itself.

43. Brettschneider 2012, 101.
44. Brettschneider calls this the illiberal dystopia of an invasive state but focused on defending not a state's illiberal values but liberal values; it uses "coercion to enforce the values of free and equal citizenship" with no further constraints on that intervention (2012, 10–11).
45. Anderson 2012, 168.
46. Thomas 2017, chap. 3.
47. For very helpful comments on this chapter, I am grateful to Kathryn Brown, Machteld Geuskens, and Mark LeBar.

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