



## Epistemic injustice, judiciary reasoning and stereotypes: from narrow, to broad, to broader

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### ABSTRACT

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This essay deals with the role of epistemic injustice in pointing out stereotypes in legal reasoning. The Author discusses the proposal of Janaina Matida and Alessia Farano to expand the concept of witness injustice and concludes with a proposal for an even broader version of the concept.

**Keywords:** epistemic injustice; stereotypes; truth; testimony; credibility.

Questo saggio considera il ruolo dell'ingiustizia epistemica nel segnalare gli stereotipi nel ragionamento giuridico. Discute la proposta di Janaina Matida e Alessia Farano di ampliare il concetto di ingiustizia testimoniale e conclude con una proposta per una versione ancora più ampia del concetto.

**Parole chiave:** ingiustizia epistemica; stereotipi; verità; testimonianza; credibilità.



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# Epistemic injustice, judiciary reasoning and stereotypes: from narrow, to broad, to broader

SUMMARY: 1. Introduction – 2. Stereotypes and a General Theory of Evidence – 3. Testimonial and hermeneutical injustice: narrow and broad – 4. Institutional remedies – 5. Epistemic injustice: broadening the concept? – 6. Epistemic injustice as a tool for assessing discriminatory practices – 7. Conclusion: Is hermeneutical injustice more promising as an analytical tool than testimonial injustice?

## 1. Introduction

The subject of this brief essay is the role of epistemic injustice in legal reasoning, which, according to Miranda Fricker, who coined the term, can be identified with the idea that we may be unfairly discriminated against in our capacity as knowers, based on prejudices about the speaker, such as gender, social background, ethnicity, race, sexuality, tone of voice, accent, and so on<sup>1</sup>.

Drawing on Fricker's distinction between different forms of epistemic injustice, Janaina Matida --, in the <sup>2</sup> -- editorial of the dossier "Epistemic Injustice in Criminal Procedure" by Andreas Páez, co-authored with Andreas Páez --, suggests broadening the concept to include both implicit and explicit biases. Alessia Farano offers an insightful focus on gender epistemic injustice<sup>3</sup>.

My aim will be to take Matida and Farano's intelligent call for a broader version of epistemic injustice a little further by proposing an even broader application. My remarks should be taken as preliminary proposals, or even less as preliminary comments.

## 2. Stereotypes and a General Theory of Evidence

Prejudices and stereotypes threaten the epistemic dimension of the trial<sup>4</sup>. This is not the place to review the vast literature on the peculiar and sometimes ambivalent relationship between the process and the truth. Suffice it to say that, despite the anti-epistemic character of some of the rules governing evidence in the

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<sup>1</sup> M. Fricker, *Epistemic injustice: Power and the ethics of knowing*, Oxford University Press, Oxford, 2007.

<sup>2</sup> A. Páez, & J. Matida, *Epistemic injustice in criminal procedure*, in *Revista Brasileira de Direito Processual Penal*, 2023, vol. 9 (1), pp. 11-38.

<sup>3</sup> A. Farano, *Discussing epistemic injustice: expertise at trial and feminist science*, in this volume MLR.

<sup>4</sup> M. Taruffo, *Verità processuale, ad vocem*, in *Enciclopedia Treccani*, Appendice, 2015.

trial<sup>5</sup>, i.e. rules that exclude the admissibility of relevant evidence and rules that impose limits on the gathering of evidence, the ideological option chosen by most contemporary theorists of the trial is to apply the relevance principle as broadly as possible in order to give the trial access to as much information about the facts of the case as possible<sup>6</sup>. The broader the application of the relevance principle, the greater the epistemic capacity of the trial.<sup>7</sup> While some deviation from the truth is tolerated, for example when the standard of proof is not met, prejudices and stereotypes are not easily reconciled with the principles of fairness and impartiality that underpin both civil and criminal trials.

Prejudice and stereotyping can adversely affect a trial at any stage. However, stereotypes are particularly linked to the evidence-gathering and evaluation stage<sup>8</sup>.

The very definition of stereotypes, as opposed to the more neutral concept of heuristics, has to do with evidence. In his essay on heuristics and stereotypes in legal reasoning, Chris Kramer argues that heuristics are stereotypes when quick and dirty decisions are not amended in the face of counter-evidence to a judgment<sup>9</sup>. Kramer goes on explaining that “[T]his is typically the case because the individual has a commitment, at some level, to the “truth” of the rule of thumb that socially benefits them, and implicitly prunes away further paths of investigation that run counter to the rule, or, as is the case with heuristics generally, successes in the past override mitigating circumstances in a current case, and any relevant counter-evidence is “frugally” ignored”<sup>10</sup>.

Heuristics offer “frames”<sup>11</sup> of reference usually allowing one to successfully navigate her surroundings. Their frugality<sup>12</sup> makes judgements possible. On the contrary, stereotypes are not merely logical errors or epistemic flaws resulting from a lack of relevant information. In fact, they are epistemic lacunae that are caused by willful ignorance that immunizes the listener from the discomfort of doubts.

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<sup>5</sup> L. Passanante, *Motivazione della sentenza e accertamento della verità nel pensiero di Michele Taruffo*, in *Revista Ítalo-española De Derecho Procesal*, 2021, vol 1, pp. 75–88.

<sup>6</sup> *Ibidem*, p. 76

<sup>7</sup> *Ibidem*, p. 78.

<sup>8</sup> J. Lackey, *Eyewitness testimony and epistemic agency*, in *Noûs*, 2022, vol. 56, p. 696-715; see also F. Schauer, *Profiles, Probabilities and Stereotypes*, Harvard University Press, Cambridge, Mass., 2003.

<sup>9</sup> C. Kramer, *Heuristics and Stereotyping in Legal Reasoning*, Working Paper 2016, p. 4.

<sup>10</sup> *Ibidem*, p. 4.

<sup>11</sup> M. Minsky, *Jokes and the Logic of the Cognitive Unconscious*, in L. Vaina and J. Hintikka (eds.), *Cognitive Constraints on Communication – representations and process*, D. Reidel, Dordrecht, NL, 1984, pp. 175-200.

<sup>12</sup> G. Gigerenzer, *Why Heuristics Work*, in *Perspectives on Psychological Science*. Vol. 3(1), 2008, pp. 20-29; see also ID, *Rationality for Mortals: How People Cope with Uncertainty*, Oxford University Press, Oxford, 2008.

As Jonathan Haidt has argued, stereotypes are tools to adjust wrong decisions to the just world hypothesis that is sustained by motivated reasoning<sup>13</sup>. Blum adds that “[w]hat we normally think of as stereotypes involve not just any generalization about or image of a group, but widely-held and widely-recognized images of socially salient groups--Jews as greedy, wealthy, scholarly; blacks as violent, musical, lazy, athletic, unintelligent; women as emotional, nurturant, irrational, and so forth”<sup>14</sup>.

In a similar vein, Michele Taruffo uses the broad concept of the judges’ or juror’s *stock of knowledge* to refer to that “cultural heritage” of the average man, which includes prejudices of all kinds (sexual, racial, religious, ethnic, professional) and those stereotypes that, although highly unreliable due to the fact that they are based on gross generalizations, are nevertheless often particularly effective and suggestive. In this regard, Taruffo cites some examples, such as 'the faithful wife', 'the unfaithful husband', 'the corrupt policeman', 'the black rapist', 'the South American drug smuggler', 'the Islamic terrorist', and so on<sup>15</sup>.

Strategies for dealing with prejudices and stereotypes in legal reasoning can be of various kinds. The most typical is the obligation to base the decision on logical reasoning. Taruffo argues that the stricter the logic required, the lower the risk of fallacies based on prejudices and stereotypes. Hence Taruffo's scepticism towards those theories that characterise legal reasoning mainly as a rhetorical-argumentative practice<sup>16</sup>.

Other strategies are more directly directed against the act of stereotyping, such as peremptory challenges of potential jurors, or even the Implicit Attitude Test (IAT) used to detect a stable trait in the listener, or the motion to disqualify a judge.

The concept of epistemic injustice is not only a theoretical tool for detecting forms of bias that may be easily overlooked<sup>17</sup>, but also, as Paez and Matida contend, a pragmatic instrument to promote the effectiveness of access to justice and of rights enforcement<sup>18</sup>.

### 3. Testimonial and hermeneutical injustice: narrow and broad

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<sup>13</sup> J. Haidt, *The Emotional Dog and Its Rational Tail: A Social Intuitionist Approach to Moral Judgment*. in *Psychological Review*. Vol. 108(4), 2001, pp. 814- 834, at 821.

<sup>14</sup> L. Blum, *Stereotypes and Stereotyping: A Moral Analysis*, in *Philosophical Papers*. Vol. 33(3), 2004, pp. 251-289, at 252.

<sup>15</sup> M. Taruffo, *Senso comune, esperienza e scienza nel ragionamento del giudice*, in Id., *Sui confini. Scritti sulla giustizia civile*, Bologna, 2002, p. 121 ss.

<sup>16</sup> M. Taruffo, *La semplice verità. Il giudice e la ricostruzione dei fatti*, Laterza, Roma, 2009; see also ID, *Addio alla motivazione?*, in *Riv. trim. dir. e proc. civ.*, 2014, p. 376 ss.

<sup>17</sup> M. Fricker, *Evolving concepts of epistemic injustice*, in J.J. Kidd, J. Medina and G. JR. Pohlhaus. (eds.), *Routledge handbook of epistemic injustice*, Routledge, New York 2017, pp. 53-60, at 54.

<sup>18</sup> See also A. Farano, *Discussing epistemic injustice: expertise at trial and feminist science*, cit.

Within the umbrella concept of epistemic injustice, Miranda Fricker makes a distinction between testimonial injustice, which occurs when a person's words are either ignored or receive reduced credibility due to an identity prejudice in the hearer, and hermeneutical injustice, which results from gap in our collective hermeneutical resources which puts someone at an unfair disadvantage when it comes to making sense of their social experiences"<sup>19</sup>.

Fricker has later restricted the concept of testimonial injustice to the discriminatory effects of *implicit* prejudice, thereby establishing a clear difference between testimonial injustice and explicit discrimination. Fricker's explicit intention is to provide instruments for those cases that are "easy to miss"<sup>20</sup>. Under this narrower conception, to prove that testimonial injustice has occurred, three elements have to be assessed. First, that the hearer has in fact an identity prejudice. Second, that the prejudice is the cause of the credibility deficit; and that a credibility deficit has in fact occurred. None of these facts can be established with certainty and are easy to ascertain. Identity prejudice implies a stable personal trait that can be measured by attitude tests such as the Implicit Association Test (IAT). However, judges are reluctant to rely on measures that may prove unreliable. Causality is difficult to prove.

Given these practical obstacles, Pàez and Matida have proposed that the concept of testimonial injustice be broadened to include not only explicit bias, but also other cases such as agential epistemic injustice and credibility excess. Agential epistemic injustice refers to a type of testimonial injustice that occurs because the epistemic agency of the speaker is neutralised through the use of techniques such as psychological manipulation, coercion, degrading treatment or torture<sup>21</sup>. Coerced confessions are a typical example<sup>22</sup>.

With regard to the credibility excess, Miranda Fricker denies that it amounts to a form of injustice because the subject who is given a credibility excess normally suffers no harm. Paez and Matida disagree with this view. They argue that credibility excess can result in harm, for example, when a black man is seen as a drug expert simply because of his race<sup>23</sup>. However, they go on to argue that the credibility excess implies an inequitable distribution of credibility among the key actors in a trial. If one witness is given more credibility simply because of his or her cultural, social or racial background, other witnesses will be given less credibility for the same reason.

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<sup>19</sup> Fricker, *Epistemic Injustice*, cit., p. 1.

<sup>20</sup> *Ibidem*, p. 54.

<sup>21</sup> Paez & Matida, cit, p. 22.

<sup>22</sup> J. Lackey, *False confessions and testimonial injustice*, in *Journal of Criminal Law & Criminology*, vol. 110, 2020, pp. 43–68.

<sup>23</sup> Paez & Matida, cit., p. 20, see also J. Lackey, *Credibility and the distribution of epistemic goods*, in K McCain (eds.), *Believing in accordance with the evidence. New essays on evidentialism*. Springer, Cham, 2018, pp. 145-168, at 153.

#### 4. Institutional remedies

Paez and Matida argue that in the case of epistemic injustice, only institutional remedies can be effective. Individual responses - such as the IAT or appeals against individual decisions - may be unsuccessful in addressing what they see as a structural problem. Paez and Matida's proposal for a structural response draws on recent contributions to the debate, such as: Lackey's evaluation of the notion of credibility excess, and the subsequent notion of "agential epistemic injustice"<sup>24</sup>; Medina's "epistemic activism"<sup>25</sup>; Anderson's idea of "virtuous institutions"<sup>26</sup>. Such structural remedies can be seen as virtue-based remedies for collective agents. Among the areas that are ripe for structural intervention are: differential access to markers of credibility such as high-quality education and the use of standardized grammar; ingroup favoritism, or bias in favor of groups to which one belongs; and the shared reality bias, which is the tendency of individuals who interact frequently to converge in their perspectives about the world. Both ingroup favoritism and the shared reality bias "will tend to insulate members of advantaged groups from the perspectives of the systematically disadvantaged"<sup>27</sup>.

Alessia Farano also suggests that methodology can play an important role. She argues that, in addition to institutional remedies, feminist standpoint theory can help in the task of opening the mind (and ear) of the listener. Her remarks echo Medina's assertion that members of privileged groups who cannot understand the experiences of less privileged members of society have an obligation to leave their comfort zones and seek "epistemic friction" that will sensitise them to the experiences of the disadvantaged<sup>28</sup>.

#### 5. Epistemic injustice: broadening the concept?

Epistemic injustice results from the injustice of being denied credibility without a significant reason<sup>29</sup>. The condition of being disbelieved without reason is in itself a form of injustice. It can be a very painful experience, especially when the lack of belief can be identified as a form of denial or lack of recognition. It refers

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<sup>24</sup> Lackey, *False confessions and testimonial injustice*, in *Journal of Criminal Law & Criminology*, 2020, vol. 110, p. 43-68.

<sup>25</sup> J. Medina and M.S. Whitt, *Epistemic activism and the politics of credibility. Testimonial injustice inside/outside a North Carolina jail*, in H. Grasswick, N.A. Mchugh (eds.), *Making the case: Feminist and critical race philosophers engage case studies*, SUNY Press, Albany, 2021, p. 293-324.

<sup>26</sup> E. Anderson, *Epistemic justice as a virtue of social institutions*, in *Social Epistemology*, 2012, vol. 26, n. 2, p. 163-173.

<sup>27</sup> Paez and Medina, *cit.*, p. 32.

<sup>28</sup> J. Medina, *The epistemology of resistance: Gender and racial oppression, epistemic injustice, and resistant imaginations*, Oxford University Press, Oxford, 2013, pp. 25-26.

<sup>29</sup> M.F. Byskov, *What Makes Epistemic Injustice an "Injustice?"*, in *J. Soc. Philos.*, vol. 52, 2021, pp. 114-131.

to situations that are very different, from the trivial case of the student who is not credited for an assignment well done because he is falsely accused of plagiarism, to the tragic example of the concentration camp survivor whose stories are not believed. The repeated experience of not being believed can lead to silence. We may even accept the existence of a right to be believed in the absence of strong reasons to the contrary. Such a claim is to some extent intertwined with the desire for social relations within a given political community to develop in a web of trustworthy expectations<sup>30</sup>.

The right to be believed is massively violated in totalitarian regimes, where suspicion is the default rule. As Hannah Arendt has magnificently argued, citizens of totalitarian regimes, often confronted with imaginary accusations and forced to confess fabricated faults, lose the ability to distinguish between true and false facts. They lose their grip on reality.

Other causes may include widespread epistemic injustice. Ideology is often at the root of a gross distortion of reality, and propaganda can exacerbate this state of affairs.

But we do not need an Orwellian world for epistemic injustice to spread. Common psychological mechanisms can lead to the denial of credibility to people who crave approval and recognition. For example, the common and profound discomfort of human beings in the face of what has been described as radical evil<sup>31</sup> often leads the listener to turn away when confronted with tragic experiences (such as stories of gulags, concentration camps, sadistic experiences of migrants on their way to Europe, etc.). In these cases, denial mechanisms, such as Holocaust denial, are not necessarily linked to stereotypes. This may explain why they persist in the face of proactive policies against forms of discrimination.

Thus, epistemic injustice can be a tool that goes beyond stereotyping. It can be used as a tool to assess elements of authoritarianism in a given regime and, more generally, the well-being of a political community. An equation can be proposed: the more epistemic injustice is perpetrated, the more the society has elements of dysfunctionality; and probably the more exposed it is to the risk of tipping towards forms of authoritarianism.

## **6. Epistemic injustice as a tool for assessing discriminatory practices**

Fricker, Matida, Paez, however, propose the use of epistemic injustice primarily as a tool for assessing discrimination. This is particularly relevant in the context of litigation.

As a general principle, what we have defined as the right to be believed faces significant exceptions when it comes to legal reasoning. For example, according to the principle of the burden of proof, the prosecution has no right to

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<sup>30</sup> T. Greco, *La legge della fiducia. Alle radici del diritto*, Laterza, Roma, 2021.

<sup>31</sup>A. Heller, *Il male radicale. Genocidio, olocausto e terrore totalitario*, Castelvecchi editore, Roma, 2023.

be believed unless it presents strong evidence. Similarly, in civil cases, the plaintiff cannot expect to be awarded damages if she does not meet the standard of proof. Even witnesses in a trial cannot be said to have a right to be believed. Cross-examination can be intrusive and sometimes manipulative. The witness on the stand may feel intimidated by the ceremony of the trial and may recount facts in a broken voice<sup>32</sup>. The judge retains a certain degree of freedom in assessing the credibility of witnesses, in accordance with article 192, paragraph 1, of the Italian Penal Code. Other legal systems have similar provisions<sup>33</sup>.

In addition, the judge may explicitly refer to certain frames of knowledge in order to explain and justify her opinion on the testimony. The Italian Court of Cassation has held that, in accordance with the provisions of Article 192 of the Italian Code of Criminal Procedure, the judge must first resolve the problem of the declarant's credibility, in relation to, among other things, his personality, his socio-economic and family conditions, his past, his relations with co-defendants and the remote and immediate genesis of his decision to confess and accuse co-authors and accomplices; secondly, the judge must examine the intrinsic consistency and the characteristics of the statements made by the accused, in the light of criteria such as, *inter alia*, those of precision, coherence, consistency and spontaneity; finally, he must examine the so-called external evidence<sup>34</sup>.

Miranda Fricker proposes to limit the concept of epistemic injustice to those cases where the lack of credibility is linked to some form of discrimination, and hence to stereotypes of the listener in terms of gender, ethnicity, race, and so on. As we have seen, Fricker has narrowed the concept in relation to testimonial injustice.

Although the suggestion to set some limits to the concept of epistemic injustice is understandable from an analytical point of view, I believe that efforts can be made to extend the concept to include other forms of systematic denial of credibility, even in the context of legal reasoning.

In the first place, the injustice of denying the credibility of a relevant actor is not limited to the speaker. In some cases, it may not affect the speaker at all. For example, a female witness - such as a bystander - who is denied credibility because she is deemed too emotional because of her gender may not suffer significant harm if she has no interest in the outcome of the trial. Therefore, in order to assess

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<sup>32</sup> Yet, the judge has assessed the limits of this intimidation, see for example, ECHR, Sec. I, 27 May 2021, *J.L. c. Italy*, n. 5671/16.

<sup>33</sup> M. Damaška, *Free Proof and Its Detractors*, in *The American Journal of Comparative Law*, vol. 43(3), 1995, pp. 343–57.

<sup>34</sup> Cass., sez. un., 21 October 1992, n. 1653, in *CED Cass.* n. 192465. See also, Cass., sez. II, 7 May 2013, n. 21171, in *CED Cass.* n. 255553; Cass., sez. VI, 20 December 2011, n. 16939, in *CED Cass.* n. 252630; Cass., sez. II, 3 May 2005, n. 21998, in *Guida dir.*, 2005, 31, p. 71; Cass., sez. II, 21 December 2004, n. 2350, in *CED Cass.* n. 230716; Cass., sez. IV, 10 December 2004, n. 5821, in *Guida dir.*, 2005, 9, p. 99; Cass., sez. I, 26 January 2004, n. 8415, in *Guida dir.*, 2004, 19, p. 83; Cass., sez. II, 10 April, 2003, n. 24097, in *Guida dir.*, 2003, 36, p. 93.

whether an injustice has occurred, it is necessary to establish a connection between the speaker and one of the parties to the trial. Secondly, prejudices and stereotypes are not necessarily linked to some form of discrimination. Consider the common prejudice of the criminal judge against the accused. It cannot be said to amount to a form of discrimination, and yet it may be relevant to the assessment that an injustice has occurred in particular cases. For example, if the judge has already decided part of the case - i.e. a preliminary stage - she is prevented from deciding the final stage of the trial.

In other words, in relation to legal reasoning, epistemic injustice can affect the justice of a trial either directly or indirectly. The first case occurs when the knower who is denied credibility is a party to the trial, for example the woman who claims to have been the victim of sexual harassment, or the woman who claims to have suffered violence and abuse at the hands of her partner. The act of denying credibility on the basis of certain elements of the facts, for example a certain behaviour of the victim, can amount to a form of epistemic injustice. The European Court of Human Rights (ECtHR) held in *D.M. e N.c. Italia* that inferring a ground for denying credibility from the failure to report abuse amounted to a violation of the Convention on Human Rights. As a result, Italian mothers who had not denounced abuse still deserved to be believed. In fact, the Court emphasised that the behaviour of mothers in a state of vulnerability must be interpreted in the light of their fear of the repercussions that such denunciation might have had on their children<sup>35</sup>.

Indirect epistemic injustice occurs when testimony sought by one of the parties is not given credence because of a stereotype at play, and that party loses the case as a result. Although this hypothesis is part of the physiology of a trial, if the discrediting of the testimony is based on stereotypes (and identity stereotypes in particular), it could be said that epistemic injustice negatively influenced the decision. And thus, indirectly determined an unjust outcome.

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<sup>35</sup> Ric. n. 60083/19, 20 January 2022. the Court ruled against Italy for a violation of art. 8 of the European Convention on Human Rights which guarantees the right to respect for private and family life. The case concerned an alleged violation of the right to respect for family life of the applicant, who was also acting on behalf of her daughter, on account of the latter's subsequent adoption. The Court pointed out that the fact that a child might benefit from being transferred into an environment more conducive to her upbringing did not, per se, justify taking her away from her biological parents. The Court considered that it would have been desirable, before launching a procedure for the adoption of the applicant's daughter, for the courts to order an expert assessment of the mother's parental capacities, the child's psychological functioning and developmental needs, and the mother's functional capacities for meeting those needs. The Court held that the arguments advanced by the domestic courts to justify the adoption procedure had been insufficient. It noted that no reasons had been given, apart from the time it would have taken for the mother to recover her parental capacities, to explain how such a radical measure as adoption could actually be in the child's interests.

If we admit that epistemic injustice may indirectly affect the outcome of the trial, some distinctions lose their relevance. For example, credibility excess may be a form of injustice not only when the speaker is harmed. Credibility excess based on prejudice may harm a party to the trial independently of the harm suffered by the speaker.

Alessia Farano rightly argues that forensic science can be interpreted as a tool for perpetuating gender stereotypes through the epistemic validation of science<sup>36</sup>. She makes the example of the Parental Alienation Syndrome, only recently recognized as scientifically unreliable by the Italian Supreme Court<sup>37</sup>. Allegedly, parental alienation syndrome occurs when one parent - often involved in a harsh separation from a former partner - alienates the other parent from the child. The syndrome has mainly been developed by experts (psychologists) in child custody disputes, while all attempts to legislate on the basis of this assumption have failed (fortunately, I believe). If an expert's bias can be demonstrated (for example, an anti-maternal bias), then the epistemic injustice resulting from an excess of credibility affects the litigant, but not the speaker.

### **7. Conclusion: Is hermeneutical injustice more promising as an analytical tool than testimonial injustice?**

Hermeneutical injustice occurs wherein someone has a significant area of their social experience obscured from understanding because of prejudicial flaws in shared resources for social interpretation.

Hermeneutical injustice is often associated with a particular attitude on the part of the speaker. Repeated disconfirmations have the effect of either silencing the speaker or depriving her of an effective language. Hermeneutical injustice signals the circularity of the situation. The act of denying credibility tends to deprive the speaker of the ability to give voice to her suffering, which in turn threatens her credibility even more.

We have tried to argue that epistemic injustice raises concerns whenever it is associated with some form of disconfirmation, and thus whenever it results in a lack of recognition.

The party who loses a case as a result of epistemic injustice is doubly harmed. Not only does he suffer the injustice of the decision, but he also suffers the humiliation of not being heard.

In this respect, epistemic injustice is problematic in a number of ways. First, because it is a departure from the commitment of the process to a certain degree of truth; and second, because it inflicts a personal injury on the party to the process who is denied credibility. Any party can be the victim of epistemic injustice: both

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<sup>36</sup> A. Farano, *Discussing epistemic injustice: expertise at trial and feminist science*, cit.; See also D. Anderson, *Conceptual competence injustice*, in *Social Epistemology*, vol. 31, 2017, pp. 210–223.

<sup>37</sup> Corte di Cassazione, I sez. civ., 24 March 2022, ord. 9691.

the party who claims to have suffered an injury and who is further deprived of recognition; and the accused, whose reputation and life can be shattered by a false conviction resulting from the denial of credibility to his or her words or the words of their witness.

While Fricker and Matida differ on the remedies to be provided for testimonial injustice, they agree that hermeneutical injustice can only be addressed through structural and systemic change<sup>38</sup>.

These changes concern not only the institutions, but also the men and women who make them work. Virtue theory, as a theory that focuses on the particular virtues of those who hold certain public offices, can make a major contribution. The content and extent of this contribution cannot be discussed here. However, one small observation can be made. Epistemic injustice results from a kind of epistemic closure. To borrow from Lewis Gordon, stereotypes and prejudices are driven by "a particular attitude to evidence [where] the evidence is presented for the fulfilment of desire."<sup>39</sup> Prejudices imply a rigidity of thought<sup>40</sup>.

The humility of the listener thus appears to be the primary route to a more epistemically just world. Humility, in turn, implies the listener's willingness to acknowledge his or her own mistakes and to undo his or her wrong decisions.

## References

- E. Anderson, *Epistemic justice as a virtue of social institutions*, in *Social Epistemology*, vol. 26(2), 2012, p. 163-173.
- D. Anderson, *Conceptual competence injustice*, in *Social Epistemology*, vol. 31, 2017, pp. 210–223.
- L. Blum, *Stereotypes and Stereotyping: A Moral Analysis*, in *Philosophical Papers*. Vol. 33(3), 2004, pp. 251-289.
- M.F. Byskov, *What Makes Epistemic Injustice an "Injustice?"* In *J. Soc, Philos*, vol. 52, 2021, pp. 114-131.
- M. Damaška, *Free Proof and Its Detractors*, in *The American Journal of Comparative Law*, vol. 43(3), 1995, pp. 343–57.

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<sup>38</sup> M. Fricker, *Can there be institutional virtues?* in T.Z. Gendler and J. Hawthorne, (eds.). *Oxford studies in epistemology*. Volume 3, Oxford University Press, Oxford, 2010, p. 235-252.

<sup>39</sup> L.R. Gordon, *What Fanon said: A philosophical introduction to his life and thought*, Fordham University Press, New York, 2015.

<sup>40</sup> L.R. Gordon, *Existential Africana: Understanding Africana Existential Thought*, Routledge, New York, 2000; J.M.C., Kwong, *Epistemic Injustice and Open-Mindedness in Hypatia*, vol. 30, 2015, pp. 337-351.

- A. Farano, *Discussing epistemic injustice: expertise at trial and feminist science*, in this volume MLR.
- M. Fricker, *Epistemic injustice: Power and the ethics of knowing*, Oxford University Press, Oxford, 2007.
- M. Fricker, *Can there be institutional virtues?* in T.Z. Gendler and J.Hawthorne, (eds.). *Oxford studies in epistemology*. Volume 3, Oxford University Press, Oxford, 2010, p. 235-252.
- M. Fricker, *Evolving concepts of epistemic injustice*, in J.J. Kidd, J. Medina and G. JR Pohlhaus. (eds.), *Routledge handbook of epistemic injustice*, Routledge, New York 2017, pp. 53-60.
- G. Gigerenzer, *Why Heuristics Work*, in *Perspectives on Psychological Science*. Vol. 3(1), 2008, pp. 20-29.
- G. Gigerenzer, *Rationality for Mortals: How People Cope with Uncertainty*, Oxford University Press, Oxford, 2008.
- L.R Gordon, *Existential Africana: Understanding African Existential Thought*, Routledge, New York, 2000.
- L.R. Gordon, *What Fanon said: A philosophical introduction to his life and thought*, Fordham University Press, New York, 2015.
- T. Greco, *La legge della fiducia. Alle radici del diritto*, Laterza, Roma, 2021.
- J. Haidt, *The Emotional Dog and Its Rational Tail: A Social Intuitionist Approach to Moral Judgment*. in *Psychological Review*. Vol. 108(4), 2001, pp. 814- 834.
- A. Heller, *Il male radicale. Genocidio, olocausto e terrore totalitario*, Castelvecchi editore, Roma, 2023.
- C. Kramer, *Heuristics and Stereotyping in Legal Reasoning*, Working Paper 2016.
- J.M.C., Kwong, *Epistemic Injustice and Open-Mindedness in Hypatia*, vol. 30, 2015, pp. 337-351.
- J. Lackey, *Credibility and the distribution of epistemic goods*, in K McCain (eds.), *Believing in accordance with the evidence. New essays on evidentialism*. Springer, Cham, 2018, pp. 145-168.
- J. Lackey, *False confessions and testimonial injustice*, in *Journal of Criminal Law & Criminology*, vol. 110, 2020, pp. 43–68.
- J. Lackey, *Eyewitness testimony and epistemic agency*, in *Noûs*, 2022, vol, 56, pp. 696– 715.
- J. Medina, *The epistemology of resistance: Gender and racial oppression, epistemic injustice, and resistant imaginations*, Oxford University Press, Oxford, 2013, pp. 25-26.

- J. Medina and M.S. Whitt, *Epistemic activism and the politics of credibility. Testimonial injustice inside/outside a North Carolina jail*, in H. Grasswick, N.A. Mchugh (eds.), *Making the case: Feminist and critical race philosophers engage case studies*, SUNY Press, Albany, 2021, p. 293-324.
- M. Minsky, *Jokes and the Logic of the Cognitive Unconscious*, in L. Vaina and J. Hintikka (eds.), *Cognitive Constraints on Communication – representations and process*, D. Reidel, Dordrecht, NL, 1984, pp. 175-200.
- L. Passanante, *Motivazione della sentenza e accertamento della verità nel pensiero di Michele Taruffo*, in *Revista Ítalo-española De Derecho Procesal*, 2021, vol 1, pp. 75–88.
- A. Páez, & J. Matida, *Epistemic injustice in criminal procedure*, in *Revista Brasileira de Direito Processual Penal*, 2023, vol. 9 (1), pp. 11-38.
- F. Schauer, *Profiles, Probabilities and Stereotypes*, Harvard University Press, Cambridge, Mass., 2003.
- M. Taruffo, *Verità processuale, ad vocem*, in *Enciclopedia Treccani*, Appendice, 2015.
- M. Taruffo, *Senso comune, esperienza e scienza nel ragionamento del giudice*, in Id., *Sui confini. Scritti sulla giustizia civile*, Bologna, 2002, p. 121 ss.
- M. Taruffo, *La semplice verità. Il giudice e la ricostruzione dei fatti*, Laterza, Roma, 2009.
- M. Taruffo, *Addio alla motivazione?*, in *Riv. trim. dir. e proc. civ.*, 2014, p. 376 ss.