

What is the characteristic wrong of testimonial injustice?*

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1 Introducing the concept

Cal, a visitor from Edinburgh, stands in front of Glasgow Queen Street train station, poring over a map and looking confused. Elspeth, a local Glaswegian, approaches him and asks where he is trying to go. 'Glasgow Central train station,' he replies, 'but I can't tell whether it's to the left or to the right.' 'To the right,' Elspeth tells him, gestures in that direction, and heads off to where she was going.

Before she told him this, Cal was 50% confident the station is to his right and 50% confident it is to his left. Upon receipt of Elspeth's testimony, he becomes 70% confident it's to his right and 30% confident it's to his left. However, Cal's background evidence demands a higher confidence the station is to his right, conditional on Elspeth telling him it is: it demands that he is 85% confident. Cal fails to award that higher level of confidence because his beliefs are not wholly determined by his evidence in the required way; they are also partly determined by a prejudice he harbours that women are less competent at giving directions than they in fact are, less competent than his evidence tells him they are, and less competent than he takes men to be. Had a man approached him outside the train station and told him Glasgow Central is to his right, he'd have become 85% confident that it is, just as his evidence demands. In this case, which expands an example given by Mona Simion (2023), Cal commits what Miranda Fricker (2007) calls a *testimonial injustice* against Elspeth.

Fricker introduces this concept through two examples. In the film version of Patricia Highsmith's novel, *The Talented Mr Ripley*, when Marge

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Sherwood tells her fiancé's father that she thinks Tom Ripley killed Dickie Greenleaf, he dismisses the suggestion: 'Marge, there's female intuition, and then there are facts,' he says. He thereby commits a testimonial injustice against her. In Harper Lee's *To Kill A Mockingbird*, when Tom Robinson tells the jury that he befriended Mayella Ewell because he felt sorry for her, the members of the all-white Maycomb County jury do not believe him. They thereby commit a testimonial injustice against him.

According to Fricker, what connects these cases is that one person (the testifier) tells another person (the hearer) something; the hearer then treats this testimony as less credible than their background evidence tells them it is, giving rise to what Fricker calls a *credibility deficit*; and the reason they treat it as less credible than they should is that they harbour a prejudice based on the testifier's membership in some demographic group—the group of women, in Marge's case; the group of Black people, or perhaps young Black men, specifically, in Tom Robinson's—and the prejudice says that people in that group are less reliable testifiers than the speaker's evidence says they are. And of course Cal's treatment of Elspeth also has these features, as do many many interactions in our society: doctors who don't give due credence to the testimony of certain groups of patients because of prejudice against them (Carel & Kidd, 2014); immigration officials who don't give due credence to the testimony of the asylum seekers (Govindarajan, 2022); police officers who don't give due credence to reports of sexual assault and rape (MacKenzie, 2022; Tilton, 2022); and so on.

It is worth noting here, since we will return to this below, that there are many ways in which you might come to treat someone as a less reliable testifier than they in fact are. (1) You might consider them as competent at producing accurate beliefs as they in fact are, but consider them more likely to lie and therefore give false testimony. In the case of Tom Robinson, for instance, the jury treats him as a liar, not as someone incompetent at producing true beliefs about the situation. (2) On the other hand, you might consider a testifier truthful and trustworthy, but less competent than they in fact are at producing accurate beliefs. In the case of Marge Sherwood, for instance, Herbert Greenleaf makes a prejudiced assumption about Marge's method for forming beliefs—'women's intuition'—and considers that imagined method less reliable than Marge's true method. But even within this category of cases in which the testifier is treated as truthful but less competent than they are, there is a variety of ways this might happen. (2a) We've just seen the case in which you impugn the testifier's methods without justification. (2b) Another possibility is that you think their methods are as good as they in fact are, but you think they execute them less competently than they in fact do. That's probably what's going on in the case of Cal and Elspeth—Cal thinks she's using the correct method by which to determine the direction of Glasgow Central, but he thinks she executes it less well than his evidence tells him she does. (2c) And another

still is that you think they use reliable methods and execute them competently, but you believe they have been less able to gather relevant evidence than they have been. For instance, if I have an unwarranted prejudiced belief about a country's level of internet access and therefore come to think that a person I meet there is less likely to have gathered certain evidence available only on the internet, I treat them as a less reliable testifier about topics to which that evidence is relevant than they in fact are. It is worth bearing this variety in mind in what follows.

2 Introducing the puzzle

My aim in this paper is to identify the wrong that is done in all cases of testimonial injustice, if there is one. Of course, it might turn out that there are many different wrongs and, in each case of testimonial injustice, one or more is present, but there is no wrong that is present in all cases—and indeed the variety of ways in which one might treat a person as a less reliable testifier than your evidence tells you they are, some of which I just enumerated, might give you reason to think there will be different wrongs corresponding to these different cases. As I'll explain at the end of the paper, I don't think that happens: there is a wrong present in all cases of testimonial injustice.

Fricker (2007) proposes one account of this distinctive wrong, and Gaile Pohlhaus Jr. (2014) offers another. I think neither works. Nor does an account based on giving due respect to the testifier's epistemic competence. Nor does an account based on exposing the testifier to substantial risk of harm. Rachel Fraser (2023) describes a further account, and the proposal I favour is a slight amendment of this.

Before we begin in earnest, perhaps it will be helpful to say why this question is puzzling. Take the case of Cal and Elspeth. In it, Elspeth starts with an epistemic good that Cal lacks, namely, accurate beliefs about something useful. Elspeth offers Cal the opportunity to have this epistemic good too, and he declines the offer because of his prejudice. So, Elspeth ends with as much of the epistemic good as she had at the start, and Cal ends up with less than he might have had. And yet we think Elspeth has been wronged in this exchange, rather than merely that Cal has been thwarted by his own bigotry. That's puzzling.

It might seem less puzzling when we attend to the original cases of Marge Sherwood and Tom Robinson, which show how much harm can result from a situation in which another person refuses the epistemic good offered to them: Tom Ripley, who did indeed murder Marge's fiancé, escapes justice; Tom Robinson is convicted and then murdered as he tries to escape the prison where he's unjustly held. When someone is in a position of power over you, you often need them to have accurate beliefs that only

your testimony can reliably supply. And so there is no doubt that harms to the testifier can follow on the back of an epistemic injustice. But good things can as well: suppose Cal has come to town to murder Elspeth's partner and needs to get to Glasgow Central station to get to them; disregarding Elspeth's testimony, he fails and Elspeth ends up better off than she'd have been if she'd been believed. Moreover, sometimes neither benefit nor harm results because the hearer acts exactly as they would have acted if they had given due credence to the testimony: consider a police officer who listens as a woman reports her husband physically threatening her, dismisses it because of a prejudice that women misread these situations and overreact, but sends officers to assess the situation all the same because that is the protocol and he fears the consequences if he's discovered to have breached it. In these cases, we can't locate the wrong of the testimonial injustices in the harms to which they give rise, for they give rise to none.

3 Aside: a point of methodology

One last point before we turn to the various accounts. It concerns methodology. 'Testimonial injustice' is a technical term, not a pre-theoretic one. Fricker (2007, Chapter 1) introduces it initially by ostension when she presents the cases of Marge Sherwood and Tom Robinson, and then draws out features present in both examples that she takes to characterise the concept she hopes to pick out: credibility deficit due to identity prejudice. But since she introduced the term, others have argued that she circumscribes its extension too narrowly. For instance, Emmalon Davis (2016) and Jennifer Lackey (2018) argue that it's possible for a hearer to commit a testimonial injustice by treating the testimony as *more* credible than their evidence says it is, as when a hearer sets a *higher* credence in what a young Black man tells them about drugs than they would have set if it had been a young white man, or when they become *more* confident in an answer to a maths problem when it is given by an Asian-American student than when it is given by a white student. So, testimonial injustice can sometimes result from credibility *excess* as a result of identity prejudice, and not just credibility *deficit*. And Lackey argues that it can occur when the hearer responds exactly as they should to a woman's testimony, if they would give greater credibility than they should to a man's on the same issue. And indeed I'll present a case below, which is close to one that Katherine Hawley (2017) and Aidan McGlynn (2023) have described, in which you treat everyone's testimony exactly as you should and yet nonetheless commit a testimonial injustice.

On the face of it, something strange is happening here. Fricker introduces a technical term of art, partly by ostension but also by definition, and yet there is debate over whether it's the correct definition. How can that be? Is it not like the following conversation? I say: '3 is a prime number and

so is 7, and the prime numbers are all those, except 1, whose only divisors are themselves and 1.' You reply: 'You're defining that too narrowly—38 is prime too. Indeed, we need to include all numbers whose only divisors are themselves and 1, but also all numbers whose only divisors are themselves, 1, 2, and half of themselves.' In this case, I'd be inclined to respond: 'That's also a perfectly legitimate and well-defined concept, but it's not the one I'm defining; we can introduce your concept too, but we'd better give it a different name. And there isn't really any sense in asking which is 'correct'.' Why shouldn't Fricker simply respond like this to Davis and Lackey?

I think it's because we feel that, in the case of testimonial injustice unlike in the case of primeness, we are trying to pick out the most natural or unified or useful concept in the vicinity of the one that Fricker specifies with her definition, and what Davis, Lackey, and Hawley are really pointing out is that a concept that includes their cases as well is more natural or unified or useful.

There are advantages to be gained by expanding a concept's extension, after all. One thing that concepts do is help us to see genuine similarities between cases, which can help us to understand the world better and react to it appropriately. Think of Fricker's (2007, Chapter 7) treatment of the concept of sexual harassment in the hermeneutical injustice section of her book, for instance, where it was precisely the ability to recognise all the disparate instances of it as instances of the same phenomenon that allowed people to campaign against it, call it out when it occurred, and document the wrong that it involves. And so there is a case for making the concept of testimonial injustice broad enough that it draws together all genuinely similar instances.

But genuinely similar in what way? When we hear Davis's and Lackey's examples, I think we want to count them as instances of the same phenomena as the ones Fricker's definition picks out because we feel that the same wrong is done by hearer to testifier in all cases. And so the question of the distinctive wrong of testimonial injustice is entangled with the question of the concept's extension: we settle both together. This makes the methodology tricky. After all, as we will see below, there are accounts of the wrong of testimonial injustice that are present in the Marge Sherwood example and the Tom Robinson one, but are absent in the case of Cal and Elspeth. Should we then use such an account to draw the boundaries of the concept and thereby exclude Cal's treatment of Elspeth? Or should we include Cal's treatment of Elspeth and look for a wrong that is present in that case as well as the cases of Marge Sherwood and Tom Robinson?

4 Wrongs of improper treatment

I noted above that we can't locate the distinctive wrong of testimonial injustices in the harms to which they give rise, for in many cases they give rise to none. So, where might we look for an account of the wrong done to someone by an action that does not ground its wrongness in its consequences? If I cheat on my partner, then I wrong them even if they never discover my infidelity, and even if it has no discernible effect on our relationship. In that case, it's natural to say I wrong them by failing to treat their needs and wants with the respect I owe them. If I am the care-giver for someone with a moderately severe cognitive disability, who is unable to make certain complex choices for themselves, but is quite capable in other domains—such as choosing what food they'd like to eat, what music they'd like to listen to, where they'd like to go for a holiday or a day trip, whom they'd like to spend time with, and so on—but I make all of their decisions on their behalf, and do so in a way that brings them joy, then I wrong them all the same not by harming them but by failing to treat them still as partially autonomous agents with a certain degree of decision-making power. In this section, I'll run through three different accounts that locate the wrong of testimonial injustice in this way: the hearer wrongs the testifier by failing to treat them in the way they should.

4.1 The wrong of epistemic objectification

Let's begin with Fricker's account. Using Edward Craig's (1999) terminology, as she does, when a hearer commits a testimonial injustice, Fricker argues, they treat the testifier merely as a source of information and not also as an informant. Fricker then connects this to Kant's doctrine that you do wrong when you treat someone merely as a means to your ends and not also as an end in themselves, and to Martha Nussbaum's (1995) account of the wrong of sexual objectification.

What is it to treat someone merely as a source of information and not also as an informant? Here is Craig:

What I have in mind is the special flavour of situations in which human beings treat each other as subjects with a common purpose, rather than as objects from which services, in this case true belief, can be extracted. (Craig, 1999)

I think we can imagine what it might be like to treat someone merely as a source of information and not as an informant, and even to do so because of identity prejudice. Perhaps I am researching my family history and I ask my grandmother a string of questions about her parents' line of work, their living conditions, their religious beliefs and practices, and so on. I glean a lot of useful information from her, but because of a prejudice I

have, I don't imagine that a woman like her without a university education and born into the working classes would have any interest in the historical project I'm pursuing, and so I don't include her in it fully, don't consult her on how to conduct it, don't invite her to join me in working through it, don't share my interim findings with her. Or perhaps I'm an anthropologist designing an ethnographic study of a particular group that doesn't itself practice modern science, and I design the study without consulting with them or inviting them to join in with the process because I have a prejudice that they would not be interested in how it goes. In both of these cases, you might think, I wrong the people by using them merely as a means to my end of gaining information, rather than as epistemic subjects with epistemic interests we share in common; that is, I treat them merely as epistemic means, rather than also as epistemic ends in themselves.

However, this just isn't what happens either in the case of Marge Sherwood or in the case of Tom Robinson; nor is it what happens in the case of Cal and Elspeth. In these, the hearer fails to treat the testifier *either* as an informant *or* as a source of information. Even if Herbert Greenleaf treated Marge only as a source of information, he'd have come to suspect Tom Ripley; even if Cal were to treat Elspeth merely as a source of information, he'd have come to have the appropriate credence that the station is where she says it is. What goes wrong, at least in the case of Marge and Elspeth, is that they are treated as less competent in the relevant cognitive sphere than the hearer's evidence suggests they are. But the extent to which you treat someone as epistemically competent is entirely independent of the extent to which you treat them as an epistemic subject or informant. I can treat someone as a very competent source of information or a very incompetent one; and I can recognise that someone else has a common epistemic purpose with me while treating them as a competent partner in our shared epistemic enterprise or as an incompetent one.

To be a subject is to be the seat of a distinct perspective on the world; it is to receive inputs from the world, to have the experiences to which they give rise, and to go some way to making sense of those experiences, perhaps fitting them within a conceptual scheme, perhaps giving order to them and building a picture of the world on that basis; it is to set and have goals of your own. Cal treats Elspeth as having all of those things. He just thinks she isn't as good at determining directions as his evidence tells him she is.

We can drive this point home in two ways. First, imagine someone who is genuinely as competent at giving directions as Cal wrongly takes Elspeth to be. Then judging that person to be as competent as they in fact are would surely not involve treating them as anything less than a subject. Secondly, consider a variation on the case of Cal and Elspeth. Suppose that, as Elspeth approaches Cal, he notices that she is wearing the badge of the Scottish Mountaineering Society. Mountaineers, he knows,

have an above-average sense of direction. His evidence is such that, if a person with no further distinguishing features approaches him in a city and offers directions, he should become 85% confident they're right, but if he knows further that the person is a mountaineer, he should be 99% confident. Nonetheless, again due to prejudice, he becomes less confident that Elspeth's right than he should. He becomes 90% confident, though he would have become 99% confident had she been a mountaineering man. So he treats her as extremely competent at giving directions. Indeed, we might assume that he takes himself to be considerably less competent than this. And so he is treating her as more competent than himself. Nonetheless he commits a testimonial injustice against her. But it is just not plausible to say that he treats her as less than a full subject, or as less of a full subject than himself.

The case of Tom Robinson is a little different. I take it the jury does not question his competence but rather his trustworthiness. Now, for sure, it is difficult to see how we might treat someone as a partner in our common epistemic purpose while also considering them untrustworthy. But in a courtroom, where a defendant is on trial for a terrible crime, one of the problems facing the jury is exactly that they don't know whether the defendant is a partner in their common epistemic purpose—which is usually true if they're innocent—or not—which is usually true if they're guilty. So the jury in the Maycomb County courthouse doesn't wrong Tom Robinson by not treating him as someone with a common epistemic purpose with them. That is a perfectly legitimate way to treat someone on the stand—indeed, you might think it involves a sort of scepticism or suspension of judgment that is demanded of juries. Their wrong lies in assuming that he is lying and Mayella Ewell is telling the truth without any evidence that supports that judgment—and indeed, as Fricker points out, with the physical evidence against it that Atticus Finch as presented. So I think Fricker's account must be wrong.

4.2 The wrong of epistemic derivatization

Gaile Pohlhaus Jr. (2014) recognises something close to this issue with Fricker's proposal and offers an alternative account. Where Fricker thinks the hearer wrongs the testifier by treating them as an epistemic object, rather than an epistemic subject, and draws on Nussbaum's account of sexual objectification to illustrate analogous wrongs, Pohlhaus thinks the hearer wrongs by treating the testifier as an epistemic *other* or *derivatised subject* and not as a full subject, and draws on Simone de Beauvoir's account of othering and Ann Cahill's (2011) account of derivatizing. Treating someone as a derivatized subject lies somewhere between treating them as an object and treating them as a full subject on a par with oneself. Here is Cahill:

The derivatized subject becomes reducible in all relevant ways to the derivatizing subject's existence—other elements of her [...] being or subjectivity are disregarded, ignored, or undervalued. Should the derivatized subject dare to demonstrate aspects of her subjectivity that fall outside of the derivatizer's being—assuming such a demonstration can even be perceived (it may well be so incomprehensible so as to be beyond the perceptual range of the derivatizer)—she will be perceived as arrogant, treasonous, and dangerously rebellious. (Cahill, 2011, 32)

Now, I think it's possible to read Herbert Greenleaf's treatment of Marge Sherwood and the jury's treatment of Tom Robinson in this way. Greenleaf only respects Marge's testimony to the extent it doesn't clash with his self-conception as a good judge of character. Since he judged Ripley trustworthy and indeed entrusted him with a great deal of money and a mission close to his heart based on that judgment, he dismisses Marge's counter-evidence because to accept it would be to call into question much about himself. Robinson's testimony is only respected to the extent it doesn't clash with the view of society favoured by the white jury members, a view that cannot accommodate a Black man having cause to feel pity for a white woman, and so they reject it.

However, the success of Pohlhaus's account is very specific to these two cases. It doesn't cover other cases that fall under Fricker's definition of testimonial injustice as credibility deficit caused by identity prejudice, such as Cal's treatment of Elspeth. Cal doesn't treat Elspeth's testimony as less reliable than his evidence tells him it is because to do so would challenge his self-conception, or require him to give up his more deep-seated beliefs, or alter his view of the world. He simply treats her as less competent than his evidence tells him she is because of a prejudice that women are less competent. Indeed, as we saw in the case of mountaineering Elspeth, Cal can treat her as considerably more competent than he treats himself, and nonetheless commit an epistemic injustice. In this case, were their judgments to clash, Cal would defer to Elspeth as the one with the better sense of direction. But he nonetheless wrongs her because he gives less credence to her judgment than he should, even though he gives a great deal more credence to her judgment than to his own.

At this point, we run into the methodological issue I mentioned above. Pohlhaus has identified a wrong that arguably is present in the cases of Marge Sherwood and Tom Robinson, but not in the case of Cal and Elspeth. So we might take Fricker's two prototypical examples seriously, reject her definition—which includes Cal and Elspeth's case as well—and decide to circumscribe the concept of testimonial injustice narrowly enough that it includes all and only cases in which the hearer treats the testifier as a deriva-

tized epistemic subject. If we do that, we'll have identified the distinctive wrong, but of course we'll have a very narrow concept. My sense is that we should seek something broader than this.

4.3 The wrong of not treating with due respect

In some ways, my discussion has taken a rather strange route, since I did not begin with the account of the wrong of testimonial injustice that I think most naturally occurs to us when we hear the examples and the definition. Instead, I began with Fricker's account, since this was the first one proposed. On the more natural account, the hearer wrongs the testifier by not treating her with the epistemic respect his evidence tells him she is owed, and does so because of an identity prejudice towards a group to which she belongs. The idea is that someone's reliability as a testifier entitles them to a certain amount of epistemic respect, that is, respect for them as a reliable testifier. If the hearer treats her as less reliable than his evidence says she is, he doesn't treat her with due respect in this epistemic domain.

I think there are a couple of problems with this. To appreciate the first, recall our example above in which a prejudice about another country's internet infrastructure led the hearer to believe the testifier had access to less evidence relevant to the topic on which they are testifying than they in fact had, and less that the hearer's testimony suggests they had. It is implausible to say that the hearer treats the testifier without due respect in this case. Perhaps they treated the country in which the testifier lives with less than due respect, considering it technologically or civically less advanced than it in fact is. But they seem to treat the testifier themselves with the respect they're owed.

I don't want to rest too much on this argument, though, because I think it would be quite reasonable to say that this is just not a case of testimonial injustice, and perhaps because it doesn't fundamentally involve a negative assessment of any aspect of the situation that is within the control of the testifier themselves. The negative assessment of the testifier's reliability is really a downstream consequence of the negative assessment of the country where they live, which is not really an epistemic assessment. I think something close to this myself, as I will explain below.

In any case, let us turn instead to the second problem with the respect account, which I think is much more serious. It draws on a variant on the case of Cal and Elspeth that has a similar structure to that which Aidan McGlynn (2023, 12) discerns in an example by Katherine Hawley (2017, 76-77).

In the original example, I assumed that Cal's background evidence is such that there is a unique credence he should have that Glasgow Central is to his right upon hearing Elspeth say that it is. But often our evidence is messy and various; it comes from many different sources, and there are

many permissible ways to weigh these against each other; it pulls in different directions, and there are many permissible ways to resolve these tensions. And so, in such cases, there is a range of credences that rationality permits as a response to that evidence, rather than a single credence it demands. Or so says the epistemic permissivist about credences, at least, and I'll assume they're correct in what follows.

So, let's suppose that Cal's background evidence is such that, if someone approaches him to give directions, his credence that the directions are accurate should lie between 80% and 90%, and any credence within that range is permissible. And suppose that, whenever it is a woman who gives the directions, Cal becomes 81% confident she's right, but whenever it's a man, he becomes 89% confident he's right. In this case, it seems to me, Cal wrongs Elspeth, and indeed any woman who gives him directions, and yet no-one receives either credibility deficit or credibility excess. And so we cannot say that Cal wrongs Elspeth by not treating her with the epistemic respect she is due. He does treat her with due respect; and he treats the men who give him directions with due respect as well. But nonetheless he wrongs the women.

In response to this example, you might try to locate the wrong of testimonial injustice by drawing an analogy with a more standard, material form of distributive injustice. To do this, you need a situation in which (i) there is a material good to be distributed, which will be analogous to the good of credibility, (ii) there's more than enough of this good to go around, as there is with credibility, but (iii) there is a range of the amount of this good such that every person deserves to receive some amount within that range, and each quantity within that range is a permissible amount for a given person, as there is for credibility in the variation on the Cal and Elspeth example just sketched. Here's such a case. Each person has produced an artwork and deserves some monetary reward for this, but there is no precise objective measure of the quality of each artwork and so there is a range of permissible rewards for each person: perhaps they all deserve between £5 and £10. And now suppose that everyone gets a quantity in that range, but women always get quantities towards the lower end, while men always get quantities towards the upper end. Then surely this is a clear distributive injustice; and surely we can understand the injustice committed by Cal above in the same way? Surely there's a principle of egalitarian distributive injustice that says that we should distribute goods as equitably as possible within the constraints imposed by desert, if there are any.

I think this is on the right track, but we will meet a more plausible egalitarian proposal below when we consider Rachel Fraser's account. The problem with the current proposal is that a distributive account of testimonial injustice like this one has implausible consequences. If credibility is simply a good that we distribute within a permissible range, and if it is a good that is not in limited supply, it seems that considerations of good-

ness, if not of fairness or justice, require that we should distribute as much of it as we are permitted to distribute to each individual. Take the monetary case again: if money is not in limited supply, surely considerations of goodness suggest we should give the maximum permissible amount of £10 to everyone. And so, in the case above, Cal should assign the highest permissible credence to a proposition about which he has heard testimony: if the range is 80% to 90%, he should assign credence 90% (assuming that doing so for every proposition is compatible with the laws of probability). That is, he should be maximally trusting of testimony in all cases. But that just seems implausible; he surely does no wrong by assigning credence 87% in all cases, for instance.

5 Wrongs of exposure to a risk of harm

As I noted above, one way in which Fricker's original examples of Marge Sherwood and Tom Robinson mislead is that, in both cases, serious harms result from the testimonial injustices involved: in Marge's case, Tom Ripley goes free to kill again; in Tom Robinson's case, he is wrongly convicted and then murdered as he tries to escape prison. But there are cases in which the testimonial injustice has a good effect—the variation on the Cal and Elspeth case described above in which Cal doesn't form the beliefs he needs to locate Elspeth's partner and murder them—and cases in which it has neither good nor bad effect because other circumstances ensure that the hearer acts exactly as they would have done if they had given appropriate credence to the testimony—the misogynist police officer described above who nonetheless investigates a report of domestic abuse because of a protocol he is afraid to break. And so we can't locate the wrong of testimonial injustice in the harms it does.

However, there are other ways in which harms might figure into an account of a wrong. If I am driving and you are the passenger, and I hit 90mph on a country road in Somerset, even if we arrive at our destination unscathed, we might nonetheless say I wronged you by exposing you to an unacceptable risk of serious harm. Perhaps the same is true of testimonial injustices? Perhaps they too carry a substantial risk of harm, even if no harm follows from them, and that risk is the source of the wrong they do?

I think there are reasons to doubt this. Here's one. One idiosyncratic feature of the Marge Sherwood and Tom Robinson cases is that they are harmed because of the testimonial injustices they suffer, but another is that the hearers are in positions of significant power over the testifiers: Herbert Greenleaf is a very wealthy man in a patriarchal world while Sherwood is not; the Maycomb jury will deliver a verdict that might cost Robinson his life. But that needn't be the case. I can commit a testimonial injustice against someone whose life I have no power to affect. Perhaps I watch

someone from a far away country give testimony on television and give them less than their due credence because of a prejudice about a group to which I can tell they belong; their name isn't given and I miss where precisely the report comes from; the risk of harming them as a result of this testimonial injustice is negligible, but I wrong them all the same.

Of course, you might say instead that, while individual testimonial injustices need not always run this risk of harm, the disposition I have to commit them, which is based on my prejudice against a group, does expose members of that group to unacceptable risk of harm.¹ And so, even in cases in which there is little risk of harm, I nonetheless commit a wrong because I am driven by the same prejudiced disposition that, in other circumstances, does impose too much risk. But again, it seems that someone in a position of very little power runs very little risk of causing harm through any of their testimonial injustices, and yet nonetheless wrongs the hearer when they commit them—think of a man imprisoned in a maximum security unit who doesn't give due credence to the testimony of the women guards.

What's more, if this is a wrong I do when I commit a testimonial injustice, it isn't distinctive to such injustices. If adopting credences that don't match your evidence runs a risk of harming someone, this will hold of any sort of evidence, and not just evidence gleaned from testimony. Thus, for instance, a doctor runs the risk of harming you if they respond incorrectly to the evidence provided by your medical file, whether or not any of that evidence comes from what you have said. And, moreover, treating someone as more credible than they are often risks as much harm as treating them as less credible than they are. Given that dentists know that tooth pain is often not felt at the place in the mouth where the true problem lies, they would do you harm to give too much credence to your report that there is a problem with this or that tooth, especially if that meant they didn't take x-rays and just started drilling where you pointed. And so, if it is risk of harm that grounds the wrong of testimonial injustice, it isn't clear why testimonial injustice is an interesting concept: exactly the same wrong occurs in many other cases that don't concern testimony of the person wronged, and don't concern identity prejudice against them.

6 Wrongs of relational inequality

For the remainder of the paper, I turn to what I think is the best existing account of the wrong of testimonial injustice. Recall the variation on the case of Cal and Elspeth from above, where Cal's background evidence is too messy to pick out a particular credence he must have that Glasgow Central is to his right after Elspeth tells him it is; instead, it picks out a range of permissible credences, and Cal assigns a low credence in that range when

¹Thanks to Rosa Vince and Luca Barlassina for pushing me to think about this possibility.

Elspeth gives him the directions, but would have assigned a high credence in the range had it been a man who did so. In that case, it is very clearly the inequality between Cal's treatment of men and women that lies at the heart of the wrong. But, as we saw in Section 4.3, a distributive account of that inequality has implausible consequences. In light of that, the natural place to look is in non-distributive accounts of inequality, such as the relational egalitarian accounts proposed by Michael Walzer (1983), Elizabeth Anderson (1999, 2012), and Samuel Scheffler (2010). While this is not her reason for doing so, and while she proposes her account primarily as an account of the wrong of *aesthetic injustice* rather than *epistemic injustice*, this is exactly what Rachel Fraser (2023) does.

6.1 Testimonial injustice as relational egalitarian injustice

Drawing particularly on Elizabeth Anderson's version of relational egalitarianism, Fraser's account runs as follows:

Egalitarian justice requires that citizens meet as equals. Social hierarchies impair citizens' ability to so meet. Two citizens meet as equals only so long as neither party treats the other as his social inferior. *A* treats *B* as his social inferior if *A*'s conduct towards *B* is expressive of a relevant social hierarchy, viz., a hierarchy with respect to which *A* is advantaged relative to *B*. (Fraser, 2023)

Fraser enumerates at least two ways in which *A*'s conduct might be expressive of a hierarchy: it might be guided by norms related to that hierarchy, and it might express hierarchical meanings. Only the former is really relevant here. What are the norms in question? Fraser says:

A's conduct towards *B* is guided by relevantly hierarchical norms and assumptions if *A*'s conduct towards *B* is guided by norms and assumptions which play a role in marking or constituting *B* as *A*'s social inferior. (Fraser, 2023)

Translating all of this to the question of testimonial injustice, I think we can understand Fraser's claim as follows: According to the relational egalitarian, justice requires that citizens meet as equals, and social hierarchies preclude that. The social hierarchy that treats women as inferior to men is constituted by a range of norms and assumptions: norms governing appropriate work for men and for women and appropriate division of domestic labour; assumptions about what women and men want and what is the appropriate weight to give to each; norms governing sexual conduct; and so on. But among them is the prejudice that women are less reliable testifiers in various ways and on various topics: they are less competent scientists, mathematicians, and abstract thinkers; their spatial awareness,

geographical knowledge, and sense of direction is poorer; they are more susceptible to biases caused by emotional attachments and less able to rectify them; they are hysterical; and so on. So, if *A*'s credences in response to *B*'s testimony in these areas is guided by such prejudices, then that is expressive of a social hierarchy with respect to which *A* is advantaged relative to *B*, and so *A* thereby treats *B* as his social inferior, and in virtue of that *A* commits a relational injustice against *B*—*A*'s treatment of *B* prevents them from meeting as equals. According to Fraser, this is the distinctive wrong of testimonial injustice.

Before we proceed, I think we need to make one reasonably minor adjustment. When Elizabeth Anderson discusses relational equality, she talks of three sorts of hierarchy: *hierarchies of domination or command*, in which members of one group are subject to arbitrary and unaccountable treatment by members of another; *hierarchies of esteem*, in which members of one group are considered less honourable and more deserving of contempt or disgust than those in another group; and *hierarchies of standing*, in which the concerns of one group's members are considered more important, and so given greater weight, than the concerns of another group's members. Now take the hierarchies of esteem. One might think that some people simply are less honourable than others, and some people simply are more deserving of contempt or disgust. Someone who tells a murderous authoritarian regime the identities and whereabouts of its political enemies just is dishonourable; someone who profits by kidnapping and trafficking women for forced prostitution simply is deserving of contempt; a journalist who personally profits from stirring up hatred against a persecuted minority group truly is worthy of our disgust. And so a hierarchy of esteem that places the group of such people lower than the group of people who haven't committed horrors of this kind does not constitute a relational egalitarian injustice, for those at the lower level have earned their place in the hierarchy. And so what really gives rise to such an injustice is not simply that *A* treats *B* as their social inferior and thereby prevents them from meeting as equals; it is that *A* treats *B* as their social inferior *without warrant*, and thereby *unjustifiably* prevents them from meeting as equals.

6.2 Successes of the relational egalitarian account

Let's begin with what this account gets right. It certainly gives the right verdict in the case of Marge Sherwood and gives a plausible account of the wrong committed there: Herbert Greenleaf doesn't treat Marge as an equal because his conduct is guided by an assumption—the prejudice that women can't dispassionately amass and assess evidence—that partly constitute the hierarchy in which women are men's inferiors; and, what's more, that treatment is unjustified by his evidence. And the same goes for the original case of Cal and Elspeth: Cal is guided by an unwarranted assumption—

the prejudice that women have poorer geographical knowledge or sense of direction than men—that partly constitutes the same hierarchy. And again for the variation on Cal and Elspeth’s case in which Cal’s background evidence permits a range of credal responses to Elspeth’s testimony, and he goes for the bottom of the range in response to women’s testimony and the top in response to men’s: again, Cal is guided by the unwarranted assumption that partly constitutes the sexist hierarchy. And it gets right the cases of credibility excess described by Emmalon Davis (2016) and Jennifer Lackey (2018): if a white person who treats a young Black man as more credible on the topic of drugs that their evidence tells them he is, they are guided by an unjustified assumption that partly constitutes the racist hierarchy that places white people above Black.

I think Fraser’s account ends up disagreeing with Fricker about Tom Robinson, but I want to argue that this is a point in its favour. As I mentioned above, the courtroom setting of this example is crucial. It is not unreasonable for the jury to believe that, if Robinson is innocent, he’ll be telling the truth, and if he’s guilty he’ll be lying. And that requires no prejudice about the trustworthiness of Black men. Since Robinson says he’s innocent and Ewell says he’s guilty, the jury’s credence in Robinson’s guilt ends up determined almost entirely by their *prior* credence that the version of events he tells would be true and their *prior* credence that the version that Ewell tells would be true, conditional on the strong physical evidence in Robinson’s favour that Finch presents. And it is here, I think, that their prejudice enters: they give higher credence to the sort of event that Ewell describes than to the sort of event that Robinson describes because they are guided by a prejudice that Black men are very likely to be rapists and very unlikely to want a platonic friendship with a white woman; and indeed so likely to be rapists that this prejudice overwhelms the strong physical evidence against Ewell’s version of events. So, while they do end up treating Robinson as less trustworthy than he is, this is because of their prior beliefs about the sort of situation he describes, and not because he describes them and they antecedently think him an untrustworthy person. Epistemically, they treat him like any other defendant: likely to lie if guilty and likely to tell the truth if innocent. Their prejudice towards him is not a prejudice that he’s less trustworthy but a prejudice that he’s more likely to rape than he is. And so the jury does commit an injustice against Tom Robinson in this case, and it is a relational egalitarian injustice. They are guided by a prejudice that partly constitutes Black men as inferior to white women in this period in US history. But the prejudice is not an epistemic one; it is an ethical prejudice that Black men are more likely to rape than they are. Of course, they likely do also have the prejudice that Black men are untrustworthy; the point is just that it needn’t be mobilised to explain their verdict. So, in the end, I think Fraser’s account gives the correct verdict: a relational injustice occurs in this case, but it isn’t epistemic.

This is a very striking instance of the methodological point I raised earlier. In this case, if we adopt Fraser's account of the wrong of testimonial injustice and carefully try to identify the wrong done to Robinson, we see that it is not epistemic and that leads us to exclude from the concept's extension one of the central examples Fricker used to motivate it.

For analogous reasons, I think Fraser's account must declare one of my earlier examples not a case of testimonial injustice either. In that example, the hearer gives less credence to what the testifier tells them because they think the testifier is less likely to have had access to all the evidence they need to make a confident pronouncement about the issue, and they think the testifier is less likely to have had access to that evidence because of a prejudiced belief about the internet infrastructure in the country where the testifier lives. In that case, as in the Robinson case, the prejudice that leads them to disbelieve the testifier is not an epistemic prejudice: in Robinson's case, it was a moral prejudice about how likely he is to commit rape; in the current case, it's a prejudice about how advanced the home country of the testifier is. And indeed, in the current case, the prejudice isn't even concerned with the testifier themselves directly, but with the country in which they live. And so it's plausible in this case that the wrong done by the speaker isn't even done to the testifier, but rather to their country.

6.3 Questions for the relational egalitarian account

Let's turn now to a trickier case for Fraser's account: the case of Elspeth the mountaineer. Recall: as Elspeth approaches Cal, he notices that she's wearing a badge of the Scottish Mountaineering society. This, together with his background evidence and Elspeth's testimony, requires him to give credence 99% to what Elspeth told him, but he gives only 90%, because, while he recognises that women mountaineers are more competent at giving directions than the average person, he is still guided sufficiently by his prejudice that they aren't as good as his evidence tells him they are. What's more, Cal thinks of himself as having a pretty average sense of direction: he certainly wouldn't be 99% reliable or even 90%. So, at least in a standard colloquial sense, Cal treats Elspeth as his superior, not as his inferior, in this interaction. Nonetheless, Cal's behaviour is guided by a false assumption that partly constitutes the hierarchy in which women are men's inferiors. And so, by Fraser's lights, he commits a relational egalitarian injustice. And yet it doesn't seem that Cal's behaviour impairs the abilities of him and Elspeth to meet as equals, which is supposed to be the source of the injustice to which relational egalitarians draw attention. So there's a puzzle here.

Before trying to solve that puzzle, it's worth noting something about Fraser's view to which this case draws attention. When relational egalitarians like Anderson (1999) introduce their view and the notion of social hier-

archy to which it adverts—hierarchies that mark some as social superiors and some as social inferiors—they often give as examples what we might call *categorical hierarchies*, such as the British nobility system, the caste system in India during the British Raj, and the racial hierarchy present in the Jim Crow South. In such a hierarchy, all members of a higher group are considered the superiors of all members of a lower group. Every duchess, however impoverished or ostracized, is the superior of every commoner, however wealthy or powerful; every vaishya is the superior of every dalit; and as the case of Mayella Ewell shows, every white person in the South, however despised by the other whites, is the superior of every Black person.

However, the example of Cal and Elspeth shows that there is another sort of hierarchy. It is not the case that all men are considered the superiors of all women within the current social hierarchy, and not only because of intersectional considerations. Even if we restrict attention to women and men of the same race, economic class, sexuality, religion, and so on, it is not the case that all women are considered the inferior of all men. Rather, in this case, I think we have something more like a *statistical hierarchy*.² In such a hierarchy, one group is treated as in some sense superior to the other *on average*. Perhaps it is recognized that there are women with high levels of scientific and mathematical abilities, good spatial awareness, dispassionate reasoning, and so on, but it is thought that they are much rarer than men with those abilities; and perhaps it is recognized that there are men with very poor scientific and mathematical abilities, poor sense of direction, inability to reason carefully and dispassionately, and so on, but again it is thought that they are much rarer than women functioning at that level. And indeed such a claim is often cited by people who wish to argue that the enormous gender imbalance in academic citation counts, senior scientific, political, and corporate positions, and so on are not the effect of discrimination or bias.

Now, there is an interesting question about when an assumption about the distribution of competences divided up by social group constitutes a hierarchy of esteem in which one group is considered superior to another. Is it when the mean competence in the distribution of the first is greater than the mean competence in the distribution of the second? Or the median? Or some other statistical feature? For instance, what of two distributions in which the mean and median are the same, but one has much longer tails than the other, so that it says that there are many more highly competent people of this group, but also many more highly incompetent people, whereas the other group considered is thought to be much more concen-

²A more accurate term would be *distributional hierarchy*, but in this context, where we're talking about relational egalitarianism as distinct from distributive egalitarianism, 'distributional' has connotations we don't want.

trated around the middle? Do we say that these two groups are considered equal in the hierarchy or not?

These are interesting questions, but we must park them in the interest of space. So let us suppose that, in the case we're considering, it is quite clear that the assumption about the distributions of competences that drives Cal's behaviour clearly helps constitute a statistical hierarchy in which men are superior to women: perhaps the mean *and* median competences of men are higher; the distribution does say that there are some very competent women, among them members of mountaineering societies, but it nonetheless says that, among mountaineers, women are still on average less competent than men. Then, as I said above, Cal's behaviour is guided by this prejudiced assumption, the assumption partly constitutes a social hierarchy, and yet there seems no way in which Cal treats Elspeth as his inferior; and, in any case, however you describe his treatment, it doesn't seem to impair their abilities to meet as equals. The point is that, being a member of a group that you believe is, on average, better at something than another group does not mean that you take yourself to be superior to a member of that other group. Indeed, it doesn't even mean you take yourself to be superior to the average member of that group, for you might know yourself to have well below average competence. In these cases, the distribution of competences among fellow members of your group does not bear at all on your interaction with a member of the other group.

6.4 A variation on the relational egalitarian account

So what's going on? Do we want to say that there is no testimonial injustice in the cases just described, because the ability to meet as equals is unimpaired? We might, but I think that would be drastic, since many many cases of testimonial injustice are like this. When a member of the public gives less credence to the testimony of a scientist or a doctor or a aircraft pilot or a politician or an engineer who is a woman than to one who is a man, they will typically recognise that the woman is their superior in this area, but they nonetheless commit a testimonial injustice.

Instead, perhaps we need to change the focus. Here's a proposal. For *A* to commit a relational egalitarian injustice in the course of an interaction with *B*, it is not necessary for *A* to behave in a way that impairs their ability meet *B* as equals: they can behave in a way that impairs the ability of *others* to meet as equals. What's more, to avoid a relational egalitarian injustice, it is not sufficient that *A* and *B* regard each other as equals; it is also necessary that the wider society in which they live regard them in that way: for instance, partners in an mixed-race relationship cannot meet as equals, however fully they treat one another as equals, while society treats one as the superior of the other. And perhaps it is this that sits at the heart of testimonial injustices. The problem with statistical hierarchies

of esteem based on assumptions about the distribution of competence is that they affect those interactions between members of groups ranked differently in the hierarchy in which the parties' actual level of competence is not known; either not known to one another or not known to observers. It is in these encounters that a hearer appeals to the distribution to set their credences in the competence of the parties. So, when two scientists present their findings, one a man, one a woman, and the audience knows no more about their competence than that both are scientists, they will appeal to the distribution to set their credences conditional on the individuals' testimony. And if they appeal to a sexist distribution on which scientists who are women are, on average, less competent than scientists who are men, then they will give less credence to the woman's testimony and more to the man's. But it is the two scientists who are less able to meet as equals in this situation; the person committing the testimonial injustice might treat both as their superior on the topic in question. And we might say that something like this is going on in the case of Cal and Elspeth the mountaineer: Cal's behaviour does not impair his ability to meet with Elspeth as equals, nor her ability to so meet with him; but it does impair the ability of others to meet as equals, since it expresses a hierarchy that ensures that, when the relevant competence of an individual is unknown, that individual will be treated as less competent if they're a woman than they would be if they were a man because the distribution to which Cal appeals, which partly constitutes that hierarchy, takes them to be less competent on average than it takes men to be; and that impairs the ability of a man and woman whose level of competence is unknown to their audience to meet as equals.

One nice feature of this account is that it solves another problem with Fraser's original account. As Fraser states it in the main text of her article, it would be impossible for *A* to commit a relational egalitarian injustice against *B* if *A* belonged to a group that occupies the same or lower level of the social hierarchy than the group to which *B* belongs. So, for instance, a woman would not be able to commit a testimonial injustice against another woman of the same race, class, sexuality, etc. And yet we often do think this is possible. Fraser addresses this problem briefly in a footnote, where she says that, in such a case, while *A* doesn't treat *B* as her social inferior, she does treat *B* as *someone's* social inferior. But of course that doesn't explain how doing so impairs *A* and *B*'s ability to meet each other as equals. As the account just given suggests, in such a case, *A* impairs the ability of others to meet as equals by expressing a social hierarchy that leads to unequal treatment in situations in which the audience doesn't know the competence levels of the individuals.

7 Conclusion

With this amendment to Rachel Fraser's account of the sort of relational egalitarian injustice that occurs in cases of testimonial injustice, I think we do have an account that gives the correct verdict in the cases we've considered. For some, it will fail because it identifies the wrong done to Tom Robinson as ethical instead of epistemic, but I submit this is actually a virtue of the account. Using it to evaluate that case leads us to a better understanding of the nature of the wrongs present there, and leads us to categorise them differently. Crucially, Fraser's account allows us to see that the wrongs done by testimonial injustice arise because of unwarranted unequal treatment.

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