

Popular Music and Art-interpretive Injustice

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To appear in *Inquiry* – please cite published version.

Abstract. It has been over two decades since Miranda Fricker labeled epistemic injustice, in which an agent is wronged in their capacity as a knower. The philosophical literature has proliferated with variants and related concepts. By considering cases in popular music, we argue that it is worth distinguishing a parallel phenomenon of art-interpretive injustice, in which an agent is wronged in their creative capacity as a possible artist. In section 1, we consider the prosecutorial use of rap lyrics in court as a central case of this injustice. In section 2, we distinguish art-interpretive injustice from other categories already discussed in recent literature. In section 3, we discuss the relationship between genre discourse and identity prejudice. The case for recognizing the category of art-interpretive injustice is that it allows one to recognize a class of harms as being importantly related in ways that one would otherwise overlook.

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1. Rap on trial as a central case of art-interpretive injustice:

In 2013, Alex Medina was put on trial for murder. The crime had occurred three years earlier, when he was 14 years old. Medina was an aspiring rapper, and his lyrics were used as evidence of his involvement in the crime. After playing a recording of Medina rapping, the prosecuting attorney told the jury, “Ladies and gentlemen, you have just heard in the defendant’s own words what this case is about — the gang mentality” (Hernandez 2013a). The prosecutor went on to describe the rap

recordings as autobiographical journals (Hernandez 2013b). The prosecutors also presented handwritten lyrics from the time Medina was in jail, connecting lyrics about murder and gangs to the crimes Medina was charged with. As Erik Nielson and Andrea Dennis point out, however, the later handwritten lyrics were “word-for-word transcriptions” of songs by another rapper that Medina liked (2019, 136). Not only were they not autobiographical journals, the handwritten pages were not even Medina’s own lyrics. The lyrics in question were art— both the ones that Medina devised himself and the ones he merely wrote down— but they were taken by the prosecutors to be testimonial evidence. This was part of a larger legal strategy which led to Medina being convicted. He was given the maximum possible sentence, and the judge described him as a “psychopath” (Nielson&Dennis 2019, 14).

Medina’s case is not an isolated instance. It is common for prosecutors to treat rap lyrics differently than they would rock or pop lyrics. Nielson and Dennis call it the *rap on trial* mentality.¹ It centrally involves the assumption “that rap music, unlike any other musical genre, somehow reflects the true thoughts, beliefs, and character of the person performing it” (2019, 79). This has occurred in dozens of cases.² Sometimes rap lyrics are taken not just to be evidence of a crime but to be part of the crime itself, as when prosecutors argued that lyrics by the rapper Young Thug were “overt acts” which formed part of a conspiracy “protecting and enhancing the reputation” of a criminal enterprise (Zaru 2022).

If the outcome of Medina’s trial would have been different if the lyrics were not treated as evidence, then Medina suffered a procedural injustice.³ However, there is a separate injustice simply in the judicial system regarding his art as testimony. Listeners inclined to treat rap lyrics as testimonial do not have the same reaction to murder ballads in rock and country music. For example, there is no inclination to hear Axl Rose singing “I used to love her, but I had to kill her” (in the Guns N’ Roses

¹ The label is used by Nielson in earlier work with Charis Kubrin (Kubrin&Nielson 2014), where they cite earlier work in which Dennis discusses the phenomenon without using the “rap on trial” label (Dennis 2007).

² Nielsen himself has been an expert witness, arguing against the rap on trial mentality, in almost a hundred cases (Zaru 2022).

³ There is pending legislation in New York which would limit the practice in the state (Dillon 2021, Zaru 2022).

song “Used to Love Her”) and think that he is testifying to things he has actually done. He sings “She’s buried right in my backyard”, but no judge would issue a warrant to search his property just on that basis. This murder ballad tradition includes Louvin Brothers’ “Knoxville Girl”, Violent Femme’s “Country Death Song”, and countless others. Without further reason to think that the works of rappers are testimony, it is unjust to not afford them the same range of possible interpretations that we do for (white) balladeers.

This larger trend— rap on trial— involves black artists and a genre which is coded as black, but given this coding, the prejudice against rap can spill over to non-black rappers. Beyond being used in court cases, gangster rap lyrics are frequently taken as testimony in the popular imagination in a way that has contributed to increased over-policing in minority communities. When audiences refuse to consider black artists or black-coded artforms as capable of the kind of artistic sophistication that they routinely ascribe to white artists, this is itself an injustice. For instance, one might instead see gangster rap as drawing on the precedent of the trickster archetype passed down through African and then African-American folklore (McCann 2017). The folklore tradition is a matter of storytelling, not providing testimony. On the basis of identity prejudice, however, listeners fail to consider this possibility and fail to recognize rappers as full artistic agents capable of satire, irony, fiction, allegory, or anything beyond boasting about actual crimes.

To be clear, rappers might write autobiographical lyrics in the same way that they might make works of satire or fiction. Our obligation as listeners is not to interpret all lyrics in the same way, but to recognize the work as open to interpretation and not make assumptions about it simply on the basis of prejudice (even if that assumption is implicit). This means that Medina was wronged even if the prosecutors happened to be correct in their accusations— their being correct would merely be a matter of dumb, prejudiced luck.

We take the Medina case in particular and rap on trial in general as our first example of what we will call *art-interpretive injustice*. In its general form, an art-interpretive injustice is one in which an agent is wronged in their creative capacity as a possible artist. The primary harm is when audiences do

not extend the usual range of interpretive possibilities to works by the agent. In cases like Medina's, the rapper is either not deemed to have produced a work of art at all or deemed presumptively to have produced art which is confessional. The possibility that he might be an artist employing artistic license was not considered. It may seem as if the artistic dimension of the harm is relatively minor in comparison to the political injustice, but there are also secondary harms which are distinctively artistic. Michael Render (who raps under the moniker Killer Mike) suggests that the rap on trial mentality has a silencing effect on "aspiring rap artists" who are forced "to balance their right to free speech— and their desire to push the envelope of free speech— with the reality that the police are watching" (Nielson&Dennis 2019, xi). In the next section, we talk about how art-interpretive injustice relates to forms of injustice distinguished in recent social epistemology. After that, we consider how it relates to genre discourse.

2. Epistemic injustice and art-interpretive injustice:

The case we have been discussing is closely related to *epistemic injustice*. Especially following Miranda Fricker, that category has been much discussed in recent literature.⁴ Fricker distinguishes two kinds of epistemic injustice.

First, *testimonial injustice* occurs when listeners extend a speaker the wrong degree of credibility. More specifically, she argues that injustice occurs primarily when listeners trust too little for reasons that are systematically connected to the identity of the speaker. In Fricker's terminology, this is an "identity-prejudicial credibility deficit." Although not exhausting testimonial injustice, for her it provides "the central case" of it (2007, 28). However, what has gone wrong in the case of Alex Medina is not a testimonial injustice. He was not a victim of a credibility *deficit*, because his lyrics were taken as credible evidence. Asking about the appropriate degree of credibility at all is already to commit the injustice of interpreting his lyrics as *testimony*, rather than as artistic expression or figurative language.

⁴ The phrase "epistemic injustice" is introduced in Fricker (1998) and developed at greater length in Fricker (2007). For a review of ensuing literature, see McKinnon (2016).

Making any credibility judgment presumes that the words on offer are testimony. Unjustly treating words which are not testimony as if they were is thus an injustice arising before the question of testimonial injustice can even be posed.

Perhaps a connection to testimonial injustice could be made if Medina were asked whether his song lyrics genuinely reflected his attitude and intentions, or whether they were just cool things to rap. If he answered the latter and prosecutors refused to believe him, then he would suffer a credibility deficit because of his social identity. That would be a case of testimonial injustice. This would be unjust, but it seems like a secondary issue. If he were never asked about his lyrics, there would not have been the testimonial injustice of not believing him— but there would still be the injustice of taking his lyrics themselves as testimony. The primary injustice is about how the lyrics themselves are interpreted, even though that has consequences for how his claims *about* the lyrics would be understood.

Second, *hermeneutical injustice* occurs when someone's own experience is obscured because the available concepts distort it or render it inscrutable.⁵ It involves, as Fricker puts it, having “a significant area of one's social experience obscured from collective understanding owing to a structural identity prejudice in the collective hermeneutical resource” (2007, 155). By *collective hermeneutical resource* she means the set of categories we all have which can be used in interpreting, understanding, and explaining. Describing one of her central examples, Fricker writes, “The primary epistemic harm done to her was that a patch of her social experience which it was very much in her interests to understand was not collectively understood and so remained barely intelligible, even to [the victim] her[self]” (2007, 162). What has gone wrong in the case of Medina is not a hermeneutical injustice in this sense. The collective hermeneutical resource includes the category of artistic lyrics. That is a concept available both to him and to the prosecutors. The injustice is not that his experience is inscrutable, but instead that prosecutors misdescribe it. They refuse to apply the category which they have available, instead treating the lyrics as if they were testimony.

⁵ The phrase was introduced in Fricker (1999).

In subsequent work, however, Fricker extends the category to include cases like this. She calls them “midway cases” of hermeneutic injustice, because “there are sophisticated interpretive practices” which are “not shared with at least one out-group with whom communication is needed” (Fricker 2016, 167). Unlike hermeneutical injustice in her original sense, the victims have no trouble understanding their own experience. The problem instead is that their experience is misunderstood by members of another group. Medina might perfectly well understand his own writings as artistic lyrics in a typical style, but the problem is how prosecutors and the court understood them. Even so, there are cases of art-interpretive injustice which are not hermeneutic injustices in even this sense— see the next section.

In the wake of Fricker’s work, philosophers have given names to numerous related flavors of injustice. Consider a few.

First, perhaps rap on trial can be seen as an instance of what Andrew Peet dubs *interpretative injustice*, “whereby a hearer’s employment of prejudicial stereotypes results in the hearer attributing a message to the speaker when the speaker never intended to convey that message” (Peet 2017, 3423). All of the examples Peet offers, however, are ones in which a speaker intends to assert one proposition but is misunderstood to be asserting another. So the stereotype leads the listener to misconstrue the content of the assertion, not to misconstrue some other act as an act of assertion— as in Medina’s case.

Second, perhaps it can be seen instead as an instance of what Quill Kukla calls *discursive injustice*. This occurs when “members of any disadvantaged group face a systematic inability to produce certain kinds of speech acts that they ought, but for their social identity, to be able to produce” (2014, 2). For example, claims by women are often taken not as assertions (which make claims about the world) but instead as expressions of emotion (which merely report feelings). The problem of interpreting rap lyrics as testimony is the opposite of this— taking something as an assertion which is not intended as one.

Third, the phenomenon we are describing is related to what Gustavo Dalaqua calls *aesthetic injustice*. Dalaqua gives the example of a German woman in 19th-century Brazil who writes of her

experience listening to a Brazilian woman playing piano. She writes, “Some people had told me she played masterfully and hence I allowed myself to listen to her attentively. *Ach!* ... Am I too Germanic that I can’t find these Latinos talented or interesting?” (quoted in Dalaqua 2020, 3). She explicitly recognizes that her failure to appreciate the piano playing is on the basis of an identity prejudice, but she imagines herself justified. Her refusal to recognize the pianist as even possibly an artist is to refuse to recognize the pianist as fully human, fitting our characterization of an art-interpretive injustice.

Dalaqua’s interest in the case is somewhat different. He conceives of the aesthetic broadly, in terms of “our abilities to feel and imagine something” (2020, 1). Oppression, he writes, has the power to “ossify the aesthetic perception of the oppressed and make it difficult for them to diagnose the oppression they suffer” (2020, 4). Although this general feature of oppression can relate to how art is interpreted, it is also realized in other aspects of culture and political life. Moreover, it addresses just one of the problems with the interpretation of art. Dalaqua writes that the “oppressed become uninterested in and numb to the art and knowledge produced by their own people, which in turn arrests the development of their cognitive and aesthetic capacities” (2020, 2). The problematic interpretations of art which are our central examples can occur without this alienation. They wrong the artist even if the artist themselves is completely clear about what is going on. Although the rap on trial legal strategy might result in aesthetic numbness, the defendant is wronged qua artist even if it does not. Even in Dalaqua’s example, we do not know if or how the Brazilian pianist herself was affected.⁶

We do not deny that some aspects of the injustice of rap on trial can be captured in these other terms. However, the categories of testimonial, interpretive, and discursive injustice all focus on speech acts which are misunderstood or misconstrued due to prejudice. A major wrong in Medina’s case and in rap on trial generally is the reverse of this: an artistic act is misconstrued as a speech act. Aesthetic injustice (in Dalaqua’s sense) is defined in terms of numbness and arrested development which might but need not be present in these cases. Recognizing the additional category of art-interpretive injustice allows us to track the aspects which are related to the interpretive understanding of art rather than

⁶ Dalaqua’s discussion is independent of earlier discussions of so-called aesthetic justice and injustice. Beardsley (1973) and Mattila (2002) consider aesthetic justice to be the fair distribution of opportunities to experience art, so the question for them is focussed on the audience rather than on the artist.

assertion or the aesthetics of oppression. Leaving cases under separate headings would be to understand them as disparate wrongs rather than as ones connected by this common feature.

The common feature identified by art-interpretive injustice corresponds to a particular kind of wrong. Fricker argues that the primary harm of epistemic injustice is that the victim is wronged in their capacity as a knower. She claims that this is an “intrinsic injustice” because it wrongs the victim in “a capacity essential to human value” (Fricker 2007, 44). Although some of the cases we discuss do engage with the victim as a knower, the primary harm we have been discussing is that the victim has been wronged in their capacity as a creative agent— a possible artist. This wrongs them in a distinct capacity essential to human value, so it is a different kind of injustice.

Thinking about these cases in terms of art-interpretive injustice allows us to see these problems as issuing from a single, common cause: the failure to recognize an artist or genre according to their earned artistic category. Recognizing this hopefully enhances our ability to solve the root problem rather than merely wrestling with its various manifestations. At least, it enables us to see how the hermeneutics of art categories allow those committing prejudiced injustices to launder their prejudice. A gatekeeper can deny their prejudice in providing access to awards and social esteem on the basis that the work or artist simply is not making art or is not making art of the right kind. This serves as a kind of shell game by which prejudice avoids confrontation. The level at which the prejudice is actually occurring is the one where people are applying or are withholding honorific art concepts which license artists to downstream benefits like awards, access to certain platforms and audiences, and social esteem. So both for the practical problem of addressing the root cause and the descriptive problem of identifying the locus of the prejudice, art-interpretive injustice provides us leverage we otherwise would lack.

Of course, identifying instances as art-interpretive injustice does not preclude their being instances of other kinds of injustice as well. Just as epistemic injustice interacts with and reinforces political and social injustice, art-interpretive injustice interacts with and can reinforce other forms of injustice.

In the next section, we explore some other examples of art-interpretive injustice that arise in popular music.

3. Unjust categories and unjust categorization:

In discussing hermeneutical injustice, Fricker considers one musical case. She writes, “If we imagine early-Sixties teenagers trying and failing to convey to their parents what was so great about rock’n’roll and everything it stood for, maybe we confront a case of hermeneutical injustice...” (2016, 176). In the early days of rock’n’roll, parents failed to see how their children could possibly like it. Yet Fricker suggests that this is non-oppressive, both because “nobody is a teenager for very long” and because inter-generational struggle is “part and parcel of ongoing historical change” (2016, 177).⁷ The kind of musical misunderstanding Fricker describes can happen on a shorter timescale than a generation. When hardcore punk came to be replaced by emo, some fans were mystified. As Kelefa Sanneh writes, “emo taught generations of bands that one way to be punk was to emphasize and even exaggerate the emotion in your music”— even while other fans might insist that it just was not punk (2021, ch. 4). A key feature of punk as a genre is dispute about what is and is not punk. That kind of conversation is a negotiation about (to use Fricker’s phrase) a collective hermeneutical resource. Since such disagreements do not typically reflect structural identity prejudice, although they are *hermeneutical*, they are not *injustices*.

By considering two related examples, we suggest that injustice in genre categorization is possible.

Start by considering the punk subgenre of Nazi Punk, which is explicitly white supremacist. Fans of the genre might refuse to recognize artists as Nazi Punk on the basis of race, and there would be an obvious identity prejudice involved in doing so. Racial exclusion from the Nazi Punk category is not

⁷ One might argue that identity prejudice is at work here after all, because the intergenerational concerns were mediated by race and fears of white teenagers engaging in ‘race mixing’. Early rock’n’roll was a black-coded genre; see e.g. Martinez (2015).

an instance of hermeneutical disagreement but instead due to the identity discrimination built into the genre itself. So this is not a hermeneutical injustice in Fricker's sense, but it is still some kind of injustice.

Contrast this with the punk subgenre of Riot Grrrl, which was explicitly feminist and dominated by female artists. If a punk fan were to refuse to count Riot Grrrl bands like Bikini Kill as punk, it might be on the basis of mere prejudice— that girls cannot play punk. This would be a hermeneutical injustice, because it would apply genre categories in a way that reflected a structural identity prejudice.

On the face of it, this illustrates two ways in which the application of genre categories could be unjust: if the categories themselves incorporate structural identity prejudice (as in the case of Nazi Punk) or if fair categories are applied in prejudicial ways (as in the case of refusing to count Riot Grrrl as punk).

However, the difference can become somewhat murky. Imagine the fan dismissive of Riot Grrrl were to argue that the membership criteria for the category *punk* is sensitive to gender the same way that the criteria for *Nazi Punk* is sensitive to race. If this argument were successful, then they would not be strictly-speaking wrong in saying that Bikini Kill is not punk. However, this amounts to merely moving the identity prejudice up a level— instead of selectively enforcing an otherwise permissible conception, they would be consistently enforcing an unjust conception. That is, they would not be technically wrong (because they would be employing the concept correctly) but they would still be morally wrong (because they would be committed to an immoral concept).

One might counter, instead, that their argument fails. Riot Grrrl won the day and artists like Bikini Kill are now generally recognized as punk, showing that the criteria for what counts as punk do not select for gender. This illustrates how, in the case of genre, questions of hermeneutical injustice must be understood in the context of what the artists, fans, and others recognize as normative or take

as reasons within that social, aesthetic practice.⁸ The matter is complicated further because a genre may change over time. A supporter of Riot Grrrl might accept that early punk did use gender as a criterion for inclusion and was a consistently-applied albeit unjust concept, seeing the Riot Grrrl movement as a reaction against sexism which changed what could count as punk.

So the exclusion of Riot Grrrl might be understood as straightforwardly applying an unjust aesthetic concept or as unjustly applying an otherwise permissible aesthetic concept. Regardless, the difference-maker is identity prejudice and the matter at issue is the application of shared art concepts. As such, it is an art-interpretive injustice in either case. The fact that it is only a hermeneutic injustice taken in one of the two ways suggests that the category of art-interpretive injustice captures something which is both distinct and significant; it captures what is wrong in either case.

Someone who refuses to recognize Riot Grrrl as punk need not explicitly say that it is because they think women cannot play punk. They may instead appeal to aesthetic features of the music as the basis of their exclusion, applying those aesthetic criteria unevenly between male and female artists. Similar exclusion can happen in other genres and on the basis of other prejudices. For example, in 2019 Lil Nas X's "Old Town Road" was removed from Billboard's country charts. Proponents of the view that it was not a country song did attempt to justify this claim by appealing to musical features and genre standards, but these concerns were prejudicially applied to Lil Nas X's work and not to that of musically-similar white artists like Florida Georgia Line.

Importantly, failure to place a work or genre under the appropriate art category can matter. As Elizabeth Cantalamessa has argued, "to categorize something as a work of art is in some sense to elevate its social value. We preserve, promote, and admire works of art in a way that we don't for other artifacts..." (2018). When rap and rock'n'roll are not considered music, it is a short step to saying that they are mere noise— that is, not art. Thus, a prejudicial failure to recognize works or genres according to their earned art category means a denial of the promotion, preservation, and social esteem that those works deserve on account of their real aesthetic merit.

⁸ For more discussion of genres as practices and of conceptual negotiation within genres, see Malone (2022 and forthcoming).

Art-interpretive injustice in the application of genre can also result from prejudice along lines of class. In the 1920s, the music of lower-class Southern whites came to be marketed as hill-billy music. A story in a 1926 issue of *Variety* magazine described the hill-billy as “[i]lliterate and ignorant” with “the intelligence of morons” (quoted in Green 1965, 221).⁹ The word “hill-billy” was at once a term of derision and the name for a genre of music. It was not until the 1940s that *Billboard* magazine abandoned the label and introduced charts which came to be labeled *country and western*. Even today, there are many people who claim to be broad-minded listeners, fans of all kinds of music, but who are quick to add— all kinds except for country. As Nadine Hubbs argues, “country music’s message, relevance, and value vary dramatically when perceived through the lenses of middle-class and working-class culture and subjectivity, respectively. The middle-class ear, so to speak, is ill attuned to country music and is often as deaf to its virtues as to its genuine flaws” (Hubbs 2014, 50). As a result of this, works of country music can often also be denied the full range of interpretive possibilities.¹⁰ Country music benefits from being recognized as music, yet it is, at the same time, denied equal status with other forms of music on the basis of class prejudice. The upper and middle class audience regards it the way that the parents of Fricker’s example regarded rock’n’roll; as art in a minimal descriptive sense, but not worthy of the benefits and esteem that society affords art.

4. Conclusion

In this paper, we have argued for a conception of art-interpretive injustice wherein a person is wronged in their capacity as a creative agent— a possible artist or creator. Our examples have all been

⁹ Note that the word “moron” here seems to be intended in its original sense of someone with a diagnosable mental defect.

¹⁰ This poor attunement to the aesthetics of country music can lead middle-class and upper-class listeners to fail to attribute art categories like *satire* to works that might qualify, on the basis of prejudicial beliefs about the relative sophistication of lower-class audiences and artists. This arguably happens with Merle Haggard’s “Okie From Muskogee.” Sanneh describes it as a “teasing critique of hippies” and notes that Richard Nixon requested that it be performed at the White House (2021, ch. 3). Tyler Mahan Coe acknowledges that it was taken up as a “conservative anthem” but convincingly argues that the lyrics are most naturally read as satire, that the song is inconsistent and confused if read as sincere (Coe 2017).

from popular music, but there is no reason that art-interpretive injustices cannot arise for other kinds of works and other kinds of artists.

We hope the examples we have given make an initial case for adding to the already crowded field of philosophical terms that take the form “*some adjective* injustice.” We do not pretend to have established that art-interpretive injustice is an indispensable concept. We merely hope to have shown that it can helpfully organize what might otherwise appear to be disparate wrongs, which suggests that the category might be useful for guiding ethical aesthetic practice and further inquiry in philosophy of art.

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