



Epistemic Transitional Justice: The Recognition of Testimonial Injustice in the Context of Reproductive Rights

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ABSTRACT

This article focuses on the epistemic transition to testimonial justice. It argues that the recognition of testimonial injustice in the context of reproductive rights may play a central role in this transition. First, I show how testimonial injustice undermines women's legal protection against sexual violence and rights triggered by it such as the right to abortion. Second, I argue that the epistemic transition initiated by the #MeToo and #YoSiTeCreo movements call for transitional justice. In support, I review the circumstances of transitional justice for cases like the transition to testimonial justice. Finally, I focus on the area of reproductive rights. I argue that policies of recognition contribute to epistemic transitional justice and complement other strategies aimed to overcome testimonial injustice such as the virtue of the responsible hearer and institutional compensatory virtues.

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I—INTRODUCTION

The movements *#MeToo* and *#YoSiTeCreo* were the beginning of a transition to overcome the structural sexual violence suffered by women. In the past and in the present, systematic sexual violence against women was and is possible partially because of a deficit of credibility that affects them. This deficit, on the one hand, has made it difficult to report sexual offences in turn hindering access to judicial system protection. On the other hand, it has contributed to the impunity of perpetrators of sexual violence. Moreover, it undermines the deterrence effect of punishment in offences such as rape, sexual abuse and harassment. Amongst their goals, the *#MeToo* and *#YoSiTeCreo* movements have promoted the building of a new audience or epistemic forum for correcting the deficit of credibility that makes women vulnerable to systematic sexual violence. Their political strategies include virtual campaigns, the creation of groups of women who hear testimonies and accompany victims, public accusations and *escraches*.¹ These initiatives and solidarity movements offer symmetrical cognitive environments in which testimonial justice is possible (Giladi 2018).

The deficit of credibility grounded in the identity of the speaker was conceptualized as epistemic injustice by the philosopher Miranda Fricker. According to her conceptualization, epistemic injustice is ‘a wrong done to someone in their capacity as a knower’ (Fricker 2007: 1). It may adopt two modalities: testimonial injustice or hermeneutical injustice. The first modality, testimonial injustice, takes place ‘when prejudice causes a hearer to give a deflated level of credibility to a speaker’s word’ (ibid.). The second modality, hermeneutic injustice, takes place ‘when a gap in collective interpretive resources puts someone at an unfair disadvantage when it comes to making sense of their social experiences’ (ibid.). In this article, I focus on testimonial injustice regarding sexual violence and its repercussions on access to reproductive rights, especially the right to abortion. In many jurisdictions, testimonial injustice is a factor that increases the number of false negatives in recognizing victims of rape and, subsequently, the number of unjustified denials of permissible abortion and criminal convictions. After U.S. Supreme Court overturned *Roe v. Wade*, for instance, this scenario is expected, at least in many states where rape is an exception to the abortion total or partial legal ban.²

The *#MeToo* movement can be described as a process of recognition aimed to denounce and overcome the epistemic injustice suffered by victims of sexual harassment and sexual assault (Jackson 2018). When victims join ‘me too’, they are claiming their status as knowers of their experiences of sexual violence and a new epistemic subject emerges (Jackson 2018: 3). In this context, recognition and transitional justice play a central role and complement each other. This connection is emphasized when Giladi (2018) argues that ‘(t)he practice of overcoming epistemic unsociability and realizing our epistemic sociability seems to share much in common with the process of transitioning from asymmetrical recognition orders to genuinely symmetrical recognition orders, since true sociality does not merely consist in interacting with others simpliciter, but rather in interacting with others in a way that enables self-realization’ (149).

1 *Escrache* is a type of demonstration which involves publicly harassing public figures, usually by congregating around their homes, chanting and publicly ‘shaming’ them. In Argentina the term was coined in 1995 by the human rights group HIJOS, to condemn the genocides committed by members of the government during the dictatorship who were amnestied.

2 U.S. Supreme Court, *Dobbs v. Jackson Women’s Health Organization*, decided June 24, 2022 https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf.

How should we design and evaluate the paths toward testimonial justice? In responding to this question, I intend to connect the epistemic justice agenda with the transitional justice debate. The debate about how to overcome testimonial injustice has focused on epistemic justice and epistemic action. Authors have concentrated either on the remedies to epistemic injustice or its outcomes (Fricker 2007, 2017; Anderson 2012) or the most effective ways to denounce it and engage the public (Medina 2021). Less attention has been paid to the just paths to achieve epistemic justice or to design epistemic action. In that sense, I am assuming that we can differentiate what epistemic justice requires from what epistemic transitional justice requires.

On the side of transitional justice, epistemic injustices are considered in the work of authors that have studied the testimony and meta-testimonies of victims of sexual violence during political tragedies (Macón 2016). Concurrently, feminist approaches to transitional justice have been developed (Fineman & Zinsstag 2013). Nevertheless, these works adopt genocide, crimes against humanity, and post-conflict scenarios as the relevant contexts for talking of transitional justice. Here, I explore what transitional justice may offer in a different context examining transitions aimed at overcoming testimonial injustice suffered by victims of sexual violence outside the contexts that transitional justice scholars have focused on.

Transitional justice is frequently defined as a particular type of justice for periods of political change (Teitel 2015: 116). In the context of an ongoing transition, which can be described as a radical, non-linear, structural and desirable change (Hölscher, Wittmayer, & Loorbach 2018), transitional justice aims to identify the just paths to overcome an unjust regime or to achieve a just order that allows a justice ideal to emerge. Traditional transitional justice conceptions emerged from a historical background of transitions from illegitimate to legitimate regimes in the twentieth century, such as dictatorships in Latin America, communist regimes in Eastern Europe, and the Apartheid regime in South Africa. This may have favoured considering transitional justice as a problem-responsive value (Murphy 2017: 38–82); i.e. a type of justice only necessary and possible under concrete circumstances.

One particularity of #MeToo and #YoSiTeCreo lies in the structural character of testimonial injustice besides its transactional and interactional manifestations. Another particularity lies in the absence of a previous social and political conflict. This is a consequence of the normalized character of the epistemic injustice. Unlike historical transitions, this is not a post-conflict transition, but the very transition introduces the conflict in a highly normalized unjust epistemic order. The differences between both types of transitions are accompanied by strong connections. Wexler, Robbennolt and Murphy (2019) established the insights of transitional justice for dealing with sexual misconduct by documenting the restorative origins of #MeToo. They focused on the role of acknowledgment, responsibility-taking, harm repair, non-repetition and reintegration in the context of overcoming sexual harassment and assault.

This article is structured as follows. Section 1 shows how testimonial injustice has undermined women's legal protection against sexual violence. Section 2 argues that the epistemic transition initiated by the #MeToo and #YoSiTeCreo movements calls for transitional justice. Section 3 contends that the recognition of testimonial injustice plays a central role in the epistemic transition. Focusing on the area of reproductive rights, this section argues that politics of recognition contribute to epistemic transitional justice complementing other strategies aimed to overcome testimonial injustice such as the virtue of the responsible hearer (Fricker 2007) and the institutional compensatory virtues (Anderson 2012).

II—TESTIMONIAL INJUSTICE AND SEXUAL VIOLENCE

According to Miranda Fricker, epistemic injustice is a wrong done to someone as a knower (Fricker 2007: 1). She differentiates epistemic injustice from distributive injustice of epistemic goods such as information and education. Unlike the latter, epistemic injustice implies a credibility deficit associated with the identity of the speaker. Epistemic injustice can adopt two modalities. First, testimonial injustice involves the assignment of a lower level of credibility than the one would be assigned if the identity of the speaker were different. Fricker characterizes this as ‘the injustice that a speaker suffers in receiving deflated credibility from the hearer owing to identity prejudice on the hearer’s part, as in the case where the police don’t believe someone because he is black’ (ibid.). In recent years, wide scholarship has explored testimonial injustice from the conceptual, moral, and empirical perspectives.³

Testimonial injustice occurs as a result of a bias in the credibility economy associated with the identity of the speaker. In this sense, the central case of testimonial injustice presupposes the existence of prejudice or a negative stereotype about the identity of the speaker (Jenkins & Davidson 1990). In the #MeToo and #YoSiTeCreo cases, because of the existence of the negative stereotype, the hearer assigns, in a more or less conscious way, a lower level of credibility than if her gender identity had been different.

Prejudices are typically incorporated into the credibility judgement of the hearer as a social imaginary. Many studies show how prejudicial and false beliefs about rape affect jurors’ decision-making in rape cases (Leverick 2020). We can consider the social image of women as tending to exaggerate their descriptions, or with views strongly influenced by uncontrolled and non-cognitive emotions. In this example, the stereotype works to deny credibility sometimes because of the markedly emotional nature of the testimonies and other times because of their absence. Thus, hearers consider emotions to be synonymous with distortion and exaggeration of reality, while at the same time they consider the absence of an emotional testimony as the absence of the denounced sexual offence. These judgements seem contradictory but, in judicial practice, for example, they are accommodated and rationalized as part of a coherent system of beliefs, thanks to the service prejudices provide.

The second modality of epistemic injustice, hermeneutic injustice, involves an interpretive resource gap that puts members of some groups at a disadvantage when it comes to making sense of their social experiences (Fricker 2007: 1). The cause of hermeneutical injustice lies in the low level of influence that some groups have in the social construction of the interpretative concepts and resources that are necessary to make sense of an experience and communicate it in an intelligible way. Here, we can take the concept of gaslighting as an example. Until the concept was recognized and accepted in psychiatry and other disciplines, hermeneutical injustice meant that victims of gaslighting could not understand and communicate the wrong they suffered when they were manipulated into questioning their own reality, memory or perceptions.⁴

³ Currently, the study on epistemic injustice focuses on three axes. First, what epistemic injustice is (Fricker, 2007; Dotson, 2011, 2014; Hookway, 2010; Pohlhaus, 2012). Second, what dominant knowers should do individually or structurally (Fricker, 2007; Anderson, 2012, Alfano, 2015). Finally, the capabilities of the oppressed (Pohlhaus, 2012; Medina, 2013).

⁴ Gaslighting is a type of psychological abuse aimed at making victims seem or feel “crazy,” creating a “surreal” interpersonal environment. See Sweet, PL. (2019). The sociology of gaslighting. *American Sociological Review*, 84(5): 851–875.

When hermeneutical injustice is in place, says Fricker, the victim ‘cannot properly comprehend her own experience, let alone render it communicatively intelligible to others’ (Fricker 2007: 6). Although both types of epistemic injustice are differentiable wrongdoings whose rectification demands different answers, phenomenologically hermeneutical injustice may frequently imply a variety of testimonial injustice. In this sense, the inability of the victim to communicate intelligibly her experience could impact the level of credibility assigned to her by the hearer.

The impact of testimonial injustice is significant in the field of sexual violence since, given the characteristics of this type of violence, the victim’s testimony is in many cases the main source of knowledge about the offence and key in determining criminal responsibilities. Testimonial injustice has causal and constitutive effects on women’s rights protection. Its effects are causal when it creates the possibility or increases the probability of a rights violation or an arbitrary interference in sexual autonomy. Amongst the *causal effects* of testimonial injustice, it hinders access to the judicial system protections for victims of sexual violence. Here, testimonial injustice operates as an obstacle by discouraging victims from reporting sexual offences given the low probability of their testimony being considered for opening an investigation and the high social costs associated with reporting. It also prevents the reception of reports of sexual violence when the police or prosecutors dismiss them because they give a low level of credibility to the testimony of women. Finally, it favours misinterpretation of the victim’s testimonies during criminal trials because of the influence of negative stereotypes that undermine the level of credibility that should be assigned to any testimony.

Another causal effect of testimonial injustice is the reduction of the criminal deterrence effect of sexual violence punishment. Perpetrators take advantage of the credibility deficit of women as a factor that guarantees or makes them more likely to remain unpunished for their offences. The connection between testimonial injustice and the impunity of sexual offences is denounced in feminist slogans like ‘you will never again have the comfort of our silence’. These causal effects can be intersected by other relevant factors and identities that exacerbate testimonial injustice such as being an illegal migrant or a member of a native people. The overlooking of these factors is a common criticism of #MeToo, arguing that the movement focuses too heavily on the experiences of heterosexual, white, cis women.⁵

Furthermore, testimonial injustice has a *constitutive effect* of compromising the basic liberties of the members of the collective whose identity is captured by the negative stereotype. If we consider that basic liberties require robust protection, they should be protected in a set of possible worlds in which some contingent characteristics, such as gender identity, change (Pettit 2015, 2016). Even when under current circumstances a woman is not suffering the causal effects of testimonial injustice, this is a contingent situation and her basic liberties are compromised *per se* as a result of testimonial injustice. In addition, those who, at a given time, are not directly harmed by the stereotype do not enjoy robust protection of their basic liberties since the contents of stereotypes are contingent.

The causal and constitutive effects of testimonial injustice also constrain reproductive rights. In many jurisdictions, the right to abortion depends on the status of the victim of rape or other forms of reproductive violence. Here, the causal effects of testimonial

5 See Angela Onwuachi-Willig, What About #UsToo?: The Invisibility of Race in the #MeToo Movement, 128 *YALE L.J.F.* 105 (2018).

injustice are verified in the obstacles that victims of sexual violence must face to exercise their right to abortion. Testimonial injustice influences medical practice, but also judicial practice when a case is brought to court, preventing rape victims from accessing legal abortions in safe clinics and hospitals. Moreover, testimonial injustice constitutes the right to abortion as a non-robust right conditioned by epistemic prejudice.

In the epistemic transition to testimonial justice, we should consider three forms of testimonial injustice and three remedies to them. First, we can consider *structural* forms of testimonial injustice. Under this form, the deficit of credibility constitutes women in an unjust position of vulnerability regarding sexual violence and reproductive rights. They are constituted in this position of vulnerability regardless of the probability of suffering an actual violation of sexual autonomy by the fact of being less credible. Second, we can consider *transactional* forms of testimonial injustice. Here, we can mention the way police officers, prosecutors, lawyers and judges address women's testimony under testimonial injustice conditions. Finally, we can consider interactional injustices enabled by testimonial injustice. In these cases, testimonial injustice enables and facilitates interactional forms of sexual violence. Following the terminology developed by Lu (2017), we can call the latter *structural-based interactional* sexual and reproductive violence. Amongst these interactional injustices are both sexual offences and the hindrance to reproductive rights.

Each of the three forms of testimonial injustice requires different remedies. The virtue of the responsible hearer can be considered among the responses to structural forms of testimonial injustice (Fricker 2007: 67–86). According to Pettit (2015: 43–72), virtues can have a constitutive effect that, in the case we are analysing, would imply the constitution of women in the status of equal credible agents. The constitutive effect of epistemic virtues can be differentiated from its causal effect, for example, a decrease in the probability of transactional forms of testimonial injustice. Second, the implementation of compensatory institutional virtues can address transactional forms of testimonial injustice and their unjust outcomes (Anderson 2012: 165). Finally, for addressing the structural-based interactional injustices, like sexual offences enabled by testimonial injustice, we need the framework offered by corrective justice interactional approaches. However, as I am going to suggest in Section 3, recognition policies can be implemented for reducing interactional injustices in the area of reproductive rights.

These remedies can be framed as an aspect of the process of mutual recognition initiated by the #MeToo and #YoSiTeCreo movements. They aim to make visible and overcome epistemic injustice suffered by victims of sexual harassment and sexual assault (Jackson 2018). This target is more explicit in the case of the #YoSiTeCreo movement which in Spanish means 'I do believe you'. This process of recognition triggered an epistemic transition in which the treatment of the past injustices, past cases of sexual harassment and assault, plays a central role. Frequently, the way we respond to past injustices conditions the transition feasibility. In a different historical context, the punishment of perpetrators compromised the feasibility of transition and amnesty or true commissions appeared as strategies to guarantee it (Elster 2004: 107). At the same time, the recognition and condemnation of past injustices are a condition for victims not to live alienated lives under the new order (Lu 2017: 188–193).

Until these strategies are implemented and effective, nevertheless, we should prevent the outcomes of the ongoing testimonial injustice. Here, transitional justice could offer us guidance for recognizing ongoing testimonial injustice and its outcomes. Amongst

these outcomes we can count, as I already suggested, the hindrance of access to legal abortion for victims of rape due to the fact that testimonial injustice prevents the recognition of their victim status. As I mentioned in the introduction, transitional justice can be considered a problem-responsive value (Murphy 2017: 38–82). As a problem-responsive value, transitional justice is necessary and possible only under particular circumstances. In the next section, I explore how the circumstances of transitional justice identified from post-conflict transitions should be reviewed if we think transitional justice can offer a service to the epistemic transition we are considering.

III—THE CIRCUMSTANCES OF TRANSITIONAL JUSTICE IN STRUCTURAL TRANSITIONS

Wexler, Robbennolt and Murphy (2019) identified several characteristics of *transitional societies* that are present in the #MeToo setting such as widespread patterns of misconduct, structural inequalities, a history of denial, the normalization of wrongful behaviour and uncertainty about the way forward. I suggested, however, to distinguish the concept of transitions or transitional societies from the conceptions of transitional justice. The conceptions of transitional justice, nevertheless, seem to restrict their application to a more limited context. As a field of theory inquiry, as well as a political practice, it usually focuses on the aftermath of conflict and large-scale human rights abuses. Theorists and practitioners of transitional justice generally try to identify effective and legitimate ways of addressing past wrongs and find ways of moving towards a just civil order (Eisikovits 2017). In the second part of the last century, these normative problems prompted rich theoretical and political debates linked to the concrete experiences of post-war, post-totalitarian, post-genocidal or post-dictatorial regime transitions.

When we face different transitional scenarios, like the one generated by the #MeToo movement, some *prima facie* reasons call for consideration of transitional justice. First, an epistemic transition implies structural reforms that normally involve deviation from valuable legal and political norms and principles that we wish to ground and legitimate the new order (Teitel 2015: XII). Then, we need to establish the normative and temporal limits of those deviations and the fair distribution of costs involved in the transition. Second, transition normally involves the frustration of several expectations that emerged under the previous order, some of which are legitimate (Meyer & Truccone-Borgogno 2022). Legitimate expectations, such as the expectation of a person accused of sexual assault to be protected by the rule of law, should be weighted and their frustration compensated. On the contrary, illegitimate expectations can be frustrated without being morally considered, although they may be weighted for the feasibility of the transition. An example of an illegitimate expectation is the expectation of continue living under a legal regime that allows marital rape.

If we considered transitional justice a problem-responsive value, what are the conditions that make it necessary and possible? Since Hume, the conditions that make a theory of justice necessary and possible have been conceptualized as *circumstances of justice*. According to Hume, the circumstances of justice identify the conditions that should be verified for a theory of justice and its principles to be necessary and possible (Hume 1978, 1998). In the Rawlsian theory of justice, these conditions are a moderate amount of goods and limited altruism (Rawls 1999 [1971]: 109–110). In a utopian world with unlimited goods, principles of justice that regulate our actions

or institutions are not *necessary*. And in a dystopian world with absolute scarcity, it is not *possible* to adopt principles of justice since they would not be enforceable. We can also find the circumstances of politics in Waldron's (1999) theory of democracy. Waldron argues that the condition that makes a theory of democracy necessary is the persistent disagreement and the condition that makes it possible is the desire for continuity of the community (Waldron 1999: 188–208).

In the same direction, Colleen Murphy's (2017) conception of transitional justice is developed from the identification of the circumstances of transitional justice. For Murphy, the conditions that make transitional justice necessary and possible are: (1) generalized structural inequality, (2) generalized political and collective injustices, (3) serious existential uncertainty and (4) fundamental uncertainty about authority (Murphy 2017: 38–82). In what follows, my objective is to revisit each of these circumstances and to review them considering the particularities of a transition like the epistemic transition to testimonial justice.

Generalized structural inequality is the first circumstance (idem.: 41). In the case of testimonial injustice, inequality is implicated in the credibility deficit that affects some agents based on their gender identity. This deficit constitutes affected women, for example, in unjust positions regardless of causal outcomes. For Murphy, 'the subject matter of this circumstance is the basic terms shaping the general interaction among citizens and between citizens and officials' (idem.: 43). As we saw, both testimonial and hermeneutic injustice manifest themselves in epistemic transactions, for example, when a judge hears or weighs a testimony improperly. Regardless of the specific unjust transactions and interactions that express the credibility deficit that affects women, both types of epistemic injustice count as structural phenomena that deprive those affected of the basic capacity to testify and transmit experiences in an intelligible manner.

In the same way, the credibility deficit that affects women compromises their sexual autonomy regardless of the actual interference they suffer. The criminal threat that constrains sexual violence is less effective in relation to the group that suffers testimonial injustice. The lower effectiveness of protection against sexual violence is independent of the effective interference, the probability of being a victim of any of these offences, and the unjust epistemic interaction in the denouncing, the criminal trial and the judicial sentence. Women are unprotected against sexual violence simply by being reached by the stereotype on which unjust epistemic judgement is based.

In Murphy's characterization, the structural character of inequality is verified in a systematic number of interactions, while the structural character of testimonial injustice refers to the conceptual and normative independence of the interactions in which it manifests. Hence, to differentiate the circumstances of transitional justice as post-conflict justice from the circumstances of epistemic transitional justice, it is worth introducing the distinction between structured inequality and structural inequality (Lu 2017: 23). *Structured inequality* is established through the imposition of a structure such as apartheid in South Africa. Structured inequality also includes the wrongdoings that some minorities suffer when these wrongdoings are executed through and on account of structure. This is the kind of inequality that made necessary the transitions of the last century that overcame totalitarian governments and dictatorships. In this sense, when Murphy refers to the structural nature of inequality, she draws on the Rawlsian structure that is formed only by coercive and public institutions (idem.: 44).

In examining *structured inequality*, it is possible to identify responsible agents, although with different degrees of responsibility, for the establishment, maintenance, use and exploitation of a structure such as apartheid. This is the paradigmatic case that transitional justice approaches had to deal with in the last century. This also explains why the interactional justice approach has played a leading role in theories of transitional justice.

In contrast, the transition to testimonial justice is necessary to overcome a generalized *structural inequality*. In this case, inequality is established as a consequence of impersonal social and political practices, sometimes caused by structured inequality yet regardless of it. According to Lu, structural injustice consists of ‘unintended, generalized, or impersonal harms or wrongs that result from social structural processes in which many individuals and corporate agents may participate’ (2017: 100).

Since testimonial injustice counts as a case of structural injustice, the interactional approach, predominant in the debates of past transitions, is insufficient for capturing what makes transitional justice necessary. Consequently, the first circumstance of transitional justice is verified in our case with the particularity that the inequality that makes the transition necessary is mainly structural rather than structured. This will implicate that the principles of epistemic transitional justice should go beyond the interactional approach of corrective justice. In this context, recognition can inform a policy aimed to reduce the unjust transactional and interactional outcomes caused by testimonial injustice. In addition, institutional reconciliation is demanded to respond to the structural alienation that women suffer as a result of testimonial injustice (idem.: 182–216).

The second circumstance of transitional justice is the presence of normalized political and collective wrongdoings (Murphy 2017: 49). When we think of the denial of civil and political rights to significant portions of society that took place in South Africa under Apartheid, Germany under national socialism, or under Latin American dictatorships, etc., we can easily identify these wrongdoings. In these cases, concrete actions, such as the establishment of a dictatorial, genocidal, totalitarian, or institutional regime, took place, and concrete interactions that involved human rights violations and crimes against humanity were carried out.

When referring to the first circumstance of epistemic transitional justice, and more specifically to testimonial transitional justice, I conceptualized it mainly as a type of structural injustice rather than structured or interactional injustice. The unequal credibility that affects women, simply because of their gender identity, cannot be attributed to the behaviour of an individual or collective agent as in historical transitions. On the contrary, the stereotype informing testimonial injustice is generated through impersonal social processes, although it may later manifest itself in concrete epistemic transactions.

It is precisely its structural character that makes testimonial injustice a clear example of the second circumstance of transitional justice. Furthermore, the structural character of testimonial injustice determines that the level of normalization is radically higher. In the case of structured injustices, such as those performed in totalitarian regimes, an unjust and almost always illegitimate institutional structure replaces another structure. Usually, inside the new structure, there are agents that normalize injustices, for example, through propaganda. In addition, the imposition of such a structure and its normalization is achieved through coercion and punishment of dissidents. In contrast, in the case of structural injustice like testimonial injustice, a moment of irruption in

which an unjust structure replaces the previous one cannot be identified. The structural injustice arises in an impersonal and non-interactional way through social processes that generate stereotypes that support, frequently in an unconscious way, epistemic judgements that deny the equal capacity of women as agents capable of witnessing. While in the case of paradigmatic transitions, order ruptures, and emergences can be identified in the institutional order whose change is one of the objectives of the #MeToo transition, we cannot identify a temporal, historical or spatial milestone as its origin. Nevertheless, the #MeToo movement can be considered a rupture of the previous unjust epistemic order. These particularities determine that the degree of normalization is greater and for that reason transitional justice is necessary.

The third circumstance of transitional justice is a serious existential uncertainty (Murphy 2017: 66). This implies an empirically unclear trajectory of a political community. With this, Murphy refers mainly to the uncertainty affecting the communities threatened by the possibility of a resurgence of the previous regime or dissolution of the political community during the transition. Transitions appear as mechanisms capable of recognizing and correcting the wrongdoings described in the first and second circumstances. At the same time, however, they put at risk the stability, continuity or the ethical aspects of the previous regime that should be preserved.

In the case of the transition to testimonial justice, a possible risk is a backlash that questions the credibility of the testimonies arising within the framework of the #MeToo and #YoSiTeCreo movements as well as within the social recognition and rectification process. Additionally, the epistemic transition may take an inappropriate path that, instead of recognizing and correcting the credibility deficit that affects women, undermines the credibility of the perpetrators or potential perpetrators. The latter would compromise the equal credibility ideal that drove the transition. Finally, the transition can take a punitive direction or promote measures that limit freedom of expression in an unjustified way or that accept paternalism about beliefs (Scanlon 1972). These factors put the equal and free status of community members at risk and move in a direction contrary to the goal of the transition thereby introducing existential uncertainty. In this respect, a theory of epistemic transitional justice can be useful not only to identify the circumstances of the transition and the objective of the transition, as well as its normative and temporal limits but also the acceptable paths to carry out the required structural reforms.

Finally, the fourth circumstance of transitional justice is the fundamental uncertainty about authority (Murphy 2017: 70). In paradigmatic transitions, uncertainty refers to political authority. Beyond recognition, reparation and punishment, one of the objectives of historical transitions has been to establish a stable democratic authority. In the transition to overcome testimonial injustice, distinctively, the authority in question is the epistemic authority. Until now, the epistemic authority represented by judges, officials, the media and public opinion denies the equal credibility of women. This authority started to be disputed when the #MeToo and #YoSiTeCreo generate an epistemic opportunity (Fricker 2017: 53) that strives for moral and conceptual progress (Hänel 2021: 3). The need for transitional justice to provide criteria for identifying a legitimate epistemic authority emerges from that inquiry. In addition, a regulated transition is necessary to prevent the replacement of the current epistemic authority by another biased authority that then operates under the influence of other stereotypes that compromise epistemic equality. Thus, a theory of epistemic transitional justice should offer a conception of epistemic authority compatible with the standard of justice required by the ideal of equal credibility and the recognition of equal capacity as a knower.

So far, I have identified the particularities of the circumstances of epistemic transitional justice focusing especially on testimonial injustice. The verification of these conditions makes necessary and possible transitional justice for epistemic transitions. This section ends by recognizing a debt. Little space has been dedicated to identifying the conditions that make epistemic transitional justice possible. In the next section, I try to square this debt by identifying a strategy for recognizing and correcting testimonial injustice in the area of reproductive rights of victims of sexual and reproductive violence.

IV—THE RECOGNITION OF TESTIMONIAL JUSTICE

Jackson (2018) highlights the important role of recognition in the terrain of epistemic injustice. She relies on views according to which the wrong of epistemic injustice is also a matter of misrecognition that denies one's standing as a knower (Congdon 2017; Giladi 2018). McConkey (2004) reconstructs epistemic injustice as a problem of recognition linked to several forms of oppression that, in the case we are analysing, can intersect with gender identity. Echoing these arguments, Jackson considers a process of mutual recognition, like the one initiated by the #MeToo movement, as an interpersonal and collective restorative response to epistemic injustice (2018: 13).

Recognition has played a key role in transitional justice as well. For post-conflict conceptions, one goal of transitional justice is 'giving due recognition to the pain and humiliation experienced by victims of collective violence' (Haldemann 2008). In the case of the transition to testimonial justice, recognition has a more complex goal. Besides recognizing the past sexual violence enabled by testimonial injustice, this epistemic transition aims to recognize the ongoing testimonial injustice. As mentioned above, the expected effects of the implementation of the three strategies to overcome testimonial injustice are neither immediate nor completely effective in the short and medium term. If we focus on the first strategy, the development of epistemic virtues, the time required for visualizing its outcomes is conditioned by what the development of testimonial sensibility requires. Testimonial sensitivity is 'a form of rational sensitivity that is socially inculcated and trained by countless experiences of testimonial exchange, individual and collective' (Fricker 2017: 5). Currently, and until the epistemic virtues are effective, the subjects of recognition are still subjected to structural and transactional forms of testimonial injustice as well as structural-based sexual and reproductive violence. In this context, the recognition of the current and future outcomes of testimonial injustice plays a central role during the epistemic transition.

Some conceptions of transitional justice assign a broader role to recognition. For these approaches, recognition is not limited to past systematic wrongs. A broader role can be assigned through the recognition of victims as moral agents and members of the political community (Murphy 2017: 175). Here, recognition mainly plays an expressive function (idem.: 199). In our case, this function may be performed by measures to recognize publicly testimonial injustice that affected and affect women through communicational acts in diverse forums. But in addition, recognition can also play an important role in correcting the ongoing outcomes of testimonial injustice. Consequently, during structural transitions, recognition function as a two-speed strategy. Recognition for correcting the current unjust outcomes of testimonial injustice can be considered the highest speed aspect of this strategy. The recognition of testimonial injustice in the field of reproductive rights of victims of sexual and reproductive violence foregrounds this aspect of recognition and testimonial justice.

There are two groups of measures that could be adopted to correct testimonial injustice in the area of reproductive rights of victims of sexual violence. A group of reforms is characterized by their transitory nature. Consequently, its existence, like many affirmative actions, should be limited temporarily to the period until the injustice is corrected. Another group of measures may not be transitory. Besides their non-transitory character, transitional justice arguments can also be offered for implementation.

Within the first group of measures, we can consider the introduction to the criminal process of criteria sensible to testimonial injustice for assessing the unique testimony of victims of sexual violence (Arenas 2019). The adoption of protocols for receiving testimonies of victims of sexual violence should be considered to prevent transactional forms of testimonial injustice.⁶ Another possible transitional and transitory policy would be the decriminalization of offences such as injuries or libels, regarding statements made for reporting or bearing witness in sexual violence cases. Currently, the threat of a defamation lawsuit operates as a mechanism that perpetrators use to discourage the testimony and reports of victims. In some regions, like Latin America, the decriminalization of offences against honour would only require extending the public interest doctrine.⁷

Epistemic transitional justice can also encourage measures that contribute to recognizing the ongoing structural forms of testimonial injustice and to preventing their unjust outcomes in the area of reproductive rights of victims of sexual violence. In many jurisdictions, pregnancy as a consequence of rape or other forms of reproductive violence is a condition for permissible abortion.⁸ After the U.S. Supreme Court decision overturning *Roe v. Wade*, for example, the end of the federal protections of the right to abortion implies that in many states (Georgia, Mississippi, North Dakota, Oklahoma, South Carolina, and Utah) rape is one of the few exceptions to abortion total or partial legal ban.⁹ When this legislation is in force under conditions of testimonial injustice, it hinders access to legal abortion, which counts as an unjust outcome of testimonial injustice.

A legal system in which permissible abortion depends on having been a victim of rape produce false positives and false negatives. Under conditions of epistemic injustice, testimonial injustice distorts these outcomes affecting women's reproductive rights. The false positives refer to cases of pregnancies that are not the result of rape but are treated as such by the state and, consequently, the right to abortion is granted. In these cases, abortions are not permissible by law, but they are granted because of misrepresentation or misinterpretation of the relevant facts. Such system also produces false negatives, i.e., cases of pregnancies caused by rape that are not treated as such and, consequently, are not considered permissible. Depending on other institutional and social circumstances,

6 Two examples are the Argentine guide for the taking of testimonies from victims surviving torture by CELS (<https://www.cels.org.ar/web/publicaciones/guia-para-la-toma-de-testimonios-a-victimas-sobrevivientes-de-tortura/>) and the Argentine Protocol of Intervention for the Treatment of Victim-Witnesses in the framework of Judicial Proceedings of the Supreme Court of Justice of the Nation and the Ministry of Justice and Human Rights of the Nation (http://www.jus.gob.ar/media/1129154/32-protocolo_intervencion_victimas.pdf).

7 Based on the *Kimel Case*, the IACHR ordered Argentina to reform the legislation on insults and slander to protect freedom of expression in the democratic debate <http://www.corteidh.or.cr/cf/jurisprudencia2/ficha_tecnica.cfm?nId_Ficha=291&lang=es> (Accessed: 28 October 2018).

8 See <https://reproductiverights.org/maps/worlds-abortion-laws/>.

9 U.S. Supreme Court, *Dobbs v. Jackson Women's Health Organization*, decided June 24, 2022 https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf

this scenario can lead authorities to prevent abortion or punish women. In this scenario, testimonial injustice increases the number of false negatives and subsequently the number of unjust abortion denials or criminal convictions for abortion.

In the context of the right to abortion, testimonial justice manifests in the three forms we have already considered. The structural form of testimonial injustice constitutes the right to abortion as a non-robust right. Transactional forms of testimonial injustice expressed in medical and legal practices mistreat the testimony of women claiming their right to abortion. Many abortion denials and criminal convictions for abortions can be identified as outcomes of testimonial injustice. They count as structural-based interactional manifestations of testimonial injustice.

In consequence, reproductive rights such as the right to abortion are a terrain for developing recognition strategies of women's equal credibility. Here, we can consider corrective or compensatory measures as transitional justice strategies. In this context, a legislative change in favour of a system of terms for permissible abortion recognizes the ongoing testimonial injustice as a factor that has undermined women's access to safe abortion and limited their reproductive rights.¹⁰ The effects of this recognition strategy are limited to preventing the transactional and structural-based interactional manifestations of testimonial injustice in the area of the right to abortion. It also eliminates the structural form of the right to abortion, at least during the first weeks, due to the fact that it is not conditioned by testimonial injustice. Although testimonial injustice may continue to affect access to abortion after the term and until the ninth month, the unjust forms of testimonial injustice can be significantly reduced. Here, recognition not only has a communicative role but also a preventive role in influencing the outcomes of testimonial injustice.

Furthermore, the adoption of a system of terms in the regulation of abortion is a policy that, based on a transitional justice argument, avoids the common strategy of appealing to the punishment or flexibility of the criminal guarantees of the perpetrators to recognize and correct testimonial injustice. It reduces the influence of the criminal system on social life, particularly, on the reproductive decisions of pregnant women. Additionally, this type of transitional measure, in light of the goals of epistemic transitional justice, is necessary to correct the structural injustice that women suffer when they testify in cases of rape and its unjust outcomes in the area of reproductive autonomy.

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¹⁰ In general, this system implies the legalization of abortion until a certain number of weeks of pregnancy.

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