

Are “Epistemic” and “Communicative” Models of Silencing in Conflict?

Reply to McGlynn

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We are very grateful to Aidan McGlynn for his thoughtful and generous reply to our paper, “Epistemic Injustice and Indigenous Peoples in the Inter-American Human Rights System” (Townsend, D.L. & Townsend, L. 2021). He is right that our primary interest is in the “real examples” described, and that, in this and other papers, we have cast about for a fitting theoretical framework to capture the intuitive injustice involved in these cases—including the very framework McGlynn ultimately recommends to us, of “discursive injustice” (Kukla 2014).¹

As far as this paper goes, McGlynn’s chief complaint is that our invocation of “extreme testimonial injustice” is a misdiagnosis of the injustice involved in the main case we describe. Here we will respond briefly to the reasons he gives for this claim, before stepping back to consider a broader question raised by his comments, namely, the relation between “epistemic” and “communicative” frameworks for thinking about the ways in which the speech of marginalized groups and individuals is stifled, distorted and dismissed.

Extreme Testimonial Injustice

Our central example of testimonial injustice in the paper concerned the treatment of the testimony given by an Indigenous community (the Kichwa people of Sarayaku) to members of the Inter-American Court of Human Rights, who were adjudicating whether this community had been properly consulted in the lead up to the award of an oil drilling concession by the State of Ecuador.² Our understanding of what transpired is that the Community, through its informal and formal spokespersons, made a series of assertions about the impact of the proposed oil drilling on their local environment, but these assertions were not taken up as such, but rather as claims of an altogether different sort. (Note that this understanding of the Sarayaku community’s testimony and its reception is highly defeasible; it is based only on the way these are recorded within the Court’s judgment.)

¹ See our Townsend, L. & Townsend, D.L. (2020) for discussion of these cases within the broadly

² Inter-American Court of Human Rights’ judgment in the case of *Kichwa People of Sarayaku vs. State of Ecuador* [2012] Series C No. 245.

In order to make sense of the intuitive injustice in this case, we invoked Miranda Fricker's (2007, 140-141) idea of "extreme testimonial injustice" (henceforth ETI). ETI is what happens when the speaker's testimony does not register with the "testimonial sensibility" of the hearer, with the result that they are not even recognized as making the sorts of claims for which a specific credibility judgment would be needed. The result is a "radical communicative dysfunction" that Fricker characterizes as a form of "silencing" (Fricker 2007, 140).

McGlynn is doubtful about our attempt to make sense of the Sarayaku case using this notion of ETI, for two reasons. First, he argues that the case as described seems to lack a key feature of ETI, namely, that the speakers on the receiving end of such injustice must have been in some sense "dehumanized." Second, he claims that the features of the case that we do highlight do not support a diagnosis of ETI, but are, instead, simply features of regular (i.e., non-extreme) cases of testimonial injustice. Let us consider these two points briefly in turn.

McGlynn contends that a victim of ETI must be in some sense "dehumanized", yet there is nothing in our description of the Sarayaku case to suggest that this is how the Community is perceived by the Court. We are prepared to grant the latter,³ but would like to question whether ETI really must involve such a perception.

Fricker herself says relatively little about ETI, offering it somewhat tentatively as a rival to the speech act theoretic framework of silencing developed by Jennifer Hornsby and Rae Langton (about which more below). In doing so, she focuses on the canonical scenario of silencing discussed by Langton and Hornsby, namely, the scenario in a woman's attempt to refuse a man's sexual advances is not given appropriate uptake by the man, owing to a pornography-influenced climate of sexual objectification. As far as *this* scenario goes, Fricker does claim that a "dehumanizing sexual ideology" produces a "massive advance credibility deficit", with the result that "the man never really *bears* the woman at all—her utterance simply fails to register with his testimonial sensibility" (Fricker 2007, 140). But it is not obvious, at least not to us, that a similar kind of dehumanization of speaker must lie behind every instance of ETI.

³ Though we concede this here, we want to leave open the possibility that there is indeed something dehumanizing in the Court's treatment of the Community's speech. For it could be that what lies behind the misconstrual of the Community's speech is a particular kind of "positive stereotype" (cf. Davis 2016) about Indigeneity, namely one which exoticises Indigenous individuals and communities as having a special mystical or spiritual connection to their natural environment. Such a stereotype is dehumanizing in the sense that it forces Indigenous speakers to speak with "the voice of distinction":

"Although marginalized knowers are invited to participate in epistemic exchanges, the invitation is extended to the individual only insofar as the individual satisfies a certain description (woman, person of color, sexual minority, and so on). [...] One might say that she—the particular speaker in question—is not really invited to participate anyone who looks like her would do. She—the person—is still epistemically excluded, even as she—the woman, the person of color, the sexual minority—is asked to perform a specific act of epistemic labor." (Davis 2016, 490).

In previous work, McGlynn (2019) has drawn a stronger link between ETI and dehumanization, with reference to the analogy Fricker makes between “testimonial sensibility” and “moral sensibility”. A person’s moral sensibility is their perception of others as deserving of moral consideration and treatment. When another person “registers” within one’s moral sensibility then one is such as to see their welfare, their struggles, their (lack of) access to social resources and institutions, their moral demands, etc, as “inherently motivating and reason-giving” (McGlynn 2021, 24)—one sees them, as Fricker puts it, “in moral colour” (Fricker 2007, 71). In a similar way, as McGlynn explains, a person’s testimonial sensibility is their perception of others as deserving of epistemic consideration and treatment:

“Seeing a person in epistemic colour involves seeing them as more or less credible, where this involves a perceptual judgment which motivates me and gives me reason to respond doxastically in certain ways: believing what they say, forming a particular credence or suspending judgment, and so on.” (McGlynn 2019, 408)

It is relatively easy to see how a failure to see another person in *moral colour* is associated with dehumanization. Indeed, such failures are plausibly both rooted in and productive of a dehumanizing ideology, which depicts members of certain groups as “sub-human.” But the link between seeing someone in *epistemic colour* and dehumanisation is less clear. For one thing, there are groups, such as very young children, as well as people with serious cognitive and communicative impairments, whose humanity is not in question, but whose claims may well not register with one’s testimonial sensibilities. For another, a failure to see someone in epistemic colour is arguably more domain-specific than the failure to see someone in moral colour—and hence may not be happily thought of as an all-or-nothing affair, targeting the person as such (as is implied by the language of dehumanization), but rather as something affecting some segment of the person’s discourse. This is how we tried to construe the Court’s treatment of the Sarayaku community’s testimony in our paper. Within a certain domain of discourse—the domain of scientific facts about the state of the natural environment—the Court fails to see the Community in epistemic colour, in the sense that, in this domain, they fail to see the Community as capable of making claims worthy of epistemic consideration. This need not involve any thoroughly dehumanizing ideology, yet it nonetheless strikes us as an extreme form of testimonial injustice.

This takes us to McGlynn’s second point, which is that the features of the Sarayaku case we claim support a diagnosis of ETI actually do not provide such support, since they are features of regular testimonial injustice. One of these features is that the Court does not entertain questions of truth or falsity with respect to the testimony of the Sarayaku community, because of (as we put it) “a perceived utter lack of credibility in this domain” (Townsend & Townsend 2021, 150).

McGlynn suggests that this is not special to ETI; the same goes for familiar, non-extreme cases of testimonial injustice, such as Fricker's own "central cases" of testimonial injustice: the jury's dismissal of Tom Robinson's testimony in *To Kill a Mockingbird*, and the rejection of Marge Sherwood's suspicions in *The Talented Mr Ripley*. Both Tom Robinson and Marge Sherwood have their testimony rejected precisely because they are viewed by the relevant hearers as utterly lacking in credibility in respect of the content of their testimony.

We want to insist there is an important difference between these latter cases and the Sarayaku case, but we concede that our talk of "a perceived utter lack of credibility" obscures this difference. Tom Robinson's testimony, like Marge Sherwood's, does register with the "testimonial sensibilities" of the relevant hearers, in the sense that the implicit call it makes for epistemic assessment is recognized by them. Indeed, it must be so recognized in order for their testimony to be rejected. The way in which these speakers are not given their epistemic due is that they are assigned too little credibility by their hearers. Although their testimony registers as testimony, they are not believed when they should be—this is the nature of the testimonial injustice they suffer. But the Sarayaku case is different from this, we suggest, because the call for epistemic assessment implicit in the Community's testimony is not even recognized, and so there is no question of their claims receiving deflated credibility. This testimony does not even rise to level at which an assessment of the speaker's credibility is called for—and so it does not even receive the "honour" of being unfairly weighed and rejected. So it is not that Sarayaku community's claims about their environment are systematically and unduly assigned less epistemic weight than they deserve, but rather that they not even recognised as claims to be assessed in that way.

"Epistemic" and "Communicative" Models of Silencing

So much for our response to McGlynn's specific complaint that we may have misdiagnosed the intuitive injustice in the Sarayaku case. A perhaps more substantial and interesting question raised by McGlynn's response to our article concerns the relation between different frameworks for thinking about silencing—and more specifically, whether the "epistemic" model of silencing provided by ETI is in competition with speech act theoretic models of silencing, such as the Austinian framework developed by Hornsby and Langton (Langton 1993, Hornsby 1995, Hornsby & Langton 1998), and the social normativist framework developed by Kukla (2014). Fricker herself clearly sets up ETI as a rival to such "purely communicative conceptions of silencing" (Fricker 2007, 141), so it is worth being clear that although we borrow the notion of ETI from Fricker, we see it as *complementing*, rather than competing with, a speech act theoretic account of silencing. This is why we have previously, without too much embarrassment, discussed the Sarayaku case within the Hornsby-Langton framework, and why we welcome

McGlynn's recommendation that we use Kukla's (2014) framework of "discursive injustice" to bring out certain important features of the case that we have not emphasized here.

Why then does Fricker consider the "epistemic model" silencing of involved in ETI to be a competitor to a speech act theoretic model? The speech act theoretic model she has in mind is the notion of "illocutionary disablement" developed by Rae Langton and Jennifer Hornsby. Langton and Hornsby endorse the Austinian claim that the successful performance of illocutionary acts requires hearer "uptake", in the sense that the hearer must recognise what the speaker is up to—what sort of speech act they mean to perform. Silencing occurs when something (such as a widely held prejudice about members of a certain group) systematically interferes with the ability of hearers to recognize what speakers are up to with their words—when it compromises what Hornsby calls "reciprocity." So, in the canonical example of silencing discussed by Langton and Hornsby, a woman's attempt to *refuse* a man's sexual advances is not given uptake *as refusal*, because the man is in the grip of a stereotype about women, that they do not mean to refuse when saying 'No.' In this way the speech act of refusal can become "unspeakable" (Langton 1993) for certain women in certain situations.

Fricker distinguishes her model of silencing from this one as follows:

"On Hornsby and Langton's account, silencing occurs prior to the moment at which a speaker's credibility is at issue, for the silenced woman's problem is not that her interlocutor regards her word as so worthless that when she says 'No' he doesn't hear her; rather, his stance towards her in the context is such that she is prevented from (fully successfully) performing the illocutionary act of refusal in the first place. His silencing her does not turn on any epistemic attitude he might have towards her, for the whole question of her credibility simply does not arise. On their account, then, silencing does not feature as a form of testimonial injustice. By contrast, on the construal I have put forward, according to which there might be social climates in which women lack credibility so drastically for certain subject matters that their word fails altogether to register in male hearers' testimonial sensibility, we can see how silencing might take the form of an extreme testimonial injustice" (Fricker 2007, 141).

Evidently Fricker wants keep the notion of "registering on a hearer's testimonial sensibility" distinct from the notion of "uptake" as it features in the Hornsby-Langton approach to silencing. But it is not clear to us why these should be kept apart. A failure of someone's words to register on one's testimonial sensibility—that is, a failure to see that person in epistemic colour—seems to be *exactly* the sort of thing that would produce a failure of uptake. If I don't see you as capable of making the sorts of claims that call for epistemic consideration then your attempts to make

such claims will not be recognized as such by me—and so, if my uptake is a condition on your successful performance of those claims, you will find yourself silenced. In this way, silencing of the Hornsby-Langton sort could indeed take the form of (extreme) testimonial injustice, and could indeed “turn on an epistemic attitude” of the hearer towards the speaker, provided we construe “epistemic attitude” broadly enough to include a failure to see the speaker in epistemic colour.

In sum, we see no reason why ETI should not be integrated into a more general communicative framework of silencing, such as the one developed by Hornsby and Langton, or the one developed more recently by Kukla.⁴ This is because a hearer’s testimonial sensibility is intimately connected with their ability to give appropriate uptake.⁵ Returning to our own paper, this allows us embrace McGlynn’s suggestion to explore the Sarayaku case within a more speech act theoretic framework, like that of “discursive injustice,” *without* giving up our diagnosis of ETI. While this is not the place to develop this in full, a characterization of the Sarayaku case along the lines would run roughly as follows. There is a domain-specific insensitivity in the Court’s testimonial sensibility, that prevents them from taking up the Community’s testimony in the way it is meant and deserves to be taken up, and leads them to take it up as claims of an altogether different sort. As a result, the Community’s attempted assertions about the nature of its environment are distorted and transformed into assertions about its culture and world-view. Insofar as this exemplifies a *pattern* of distorted uptake, this contributes to an ongoing form of epistemic marginalization of communities such as the Sarayaku community.

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⁴ We do not wish to imply that these two frameworks (the Hornsby-Langton framework and the Kukla framework) are continuous with one another. In fact, there are major differences between them: they construe “uptake” very differently from one another, and the Hornsby-Langton framework is committed to a distinction between illocutionary and perlocutionary acts, while the Kukla framework disputes that distinction.

⁵ McGlynn himself (2019, 412) has made a similar point, as has Medina (2012, 205-206).

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