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Epistemic Injustice

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One of the great movements in modern ethics is identifying epistemic injustice, the discrediting of certain providers of knowledge or testimony. First articulated by philosopher Miranda Fricker in 2007, the concept describes the undermining of minoritized or marginalized "knowers" by a prejudicial lack of credibility. Leigh Gilmore, one of our distinguished speakers for Tampa 2026, describes this as "the tainted witness" in her book by the same title. Women, in Gilmore's analysis, are not credited when they make accusations of sexual assault because they lack this epistemic standing. Fricker herself uses the film *The Talented Mr. Ripley* to show how a female character's accurate suspicions about the murderous Mr. Ripley are discounted as emotional or intuitive.

This problem of trust is already evident in medical and forensic literature; I've described it previously in the Journal. It is exposed in the language physicians use to document statements by certain patients ("The patient claims" or "insists"), in forensic assessments of people of color (especially their size and strength), and in biased witness recall for associations between race and the use of weapons. We think of people differently depending on who they are, so it should be no surprise that we treat them differently as witnesses and even as authorities on their own experience. Students of epistemic injustice use sexual harassment as the cardinal example of a mistrusted phenomenon when it was first described: there was no framework for challenging an aggressive male workplace culture.

This idea of epistemic or knowledge-based injustice not only harms people as knowers (because their knowledge is not considered authoritative), but also as providers of information (because they are not believed). This construct is critical to forensic assessment because the evidentiary weight assigned to defendants, eyewitnesses, and collateral informants affects forensic opinions and legal outcomes. Valid forensic assessment requires not only attention to the evaluee's context or societal positioning, but also to good forensic practice. Gilmore, in a different book, cites the approach of sex crimes detective Stacey Galbraith who famously investigated the crimes of serial rapist

Marc O'Leary. Her approach of "listen and verify" will resonate with forensic professionals who avoid prejudgments about the credibility of evaluees, witnesses, and collateral informants.

If there is no model for thinking about sexist and racist behavior – or frankly any behavior that falls outside unchallenged norms – there can be no standard for understanding the perspective of non-dominant citizens, reporters, and victims. There can be no method for interpreting or uncovering meaning from one's experience. Fricker calls this hermeneutical injustice, a more profound sense of epistemic injustice that strips meaning from the very experience of minoritized lives. In professional organizations, for example, members and leaders worry about the lack of mentors and models who represent the experience of under-represented people. Without identifying and describing structural racism there is consequently a void where language and communication should be. This injustice extends to the related absence of platforms, news outlets, and resources (e.g., broadband) in rural and other under-resourced communities, places where the very means of knowing are unavailable.

There are methods that overcome epistemic injustice. Forensic and clinical commentators have long advocated for the use of cultural formulation (as found in the DSM; in medical and forensic ethics), for humanizing narratives (as in clinical and forensic practice broadly), for thoroughness (as articulated by Ezra Griffith), and for the anticipatory self-criticism of one's own testimony. Evoking recent human rights-based writings in forensic ethics (most prominently by Alec Buchanan), these forensic approaches approximate what Fricker recognizes as capacities "essential to human value." There is consequently already an anti-prejudicial forensic methodology that acknowledges a person's dignity, one's inherent value as a purveyor of information and experience.

For Fricker, Gilmore, and now others, treating people prejudicially as knowers and testifiers is a form of distortion or silencing. Such victimization precludes people from participating equally in the exercise of power available in courtrooms and other forensic venues. In fact, it excludes them from the community's broader meaning-making activity, the very search for truth. Recognizing this exclusion is a step toward the goals of truth and common purpose that AAPL commentators Susan Hatters Friedman and Richard Martinez have been articulating in recent years. Gathering inclusive, unbiased evidence through rigorous forensic practice may be the best response to this newly elucidated form of forensic inequality.