

Testimonial Injustice and the Disquieting Conclusion: A Critique of the Critical Consciousness Requirement for Moral Culpability

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Abstract: In this paper, I will provide a critique of what I wish to call the “critical consciousness requirement” for moral culpability in Miranda Fricker’s theory of testimonial injustice. In my view, this requirement is stronger than our usual “epistemic requirement” for moral culpability. If this is so, it is more difficult to hold agents morally culpable for their actions using Fricker’s requirement. As I see it, this poses a significant threat to Fricker’s overall theory. One of the key claims that I make in this paper is that the combination of Fricker’s theory of testimonial injustice and her critical consciousness requirement for moral culpability leads to an undesirable outcome: a scenario where an injustice has been committed and yet nobody can be held morally responsible for it. This is problematic for this can be interpreted to mean that the combination mentioned above is committed to what I wish to call the “disquieting conclusion.” Generalizing on the undesirable outcome mentioned above, we can therefore say that some injustices, like the ones entertained by Fricker, are morally permissible. If I am correct, there is only one viable option

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for Fricker: She must drop the critical consciousness requirement and adopt the weaker epistemic requirement for moral culpability.

Keywords: Critical consciousness; disquieting conclusion; Miranda Fricker; quality of will; testimonial injustice.

1. Introduction

In this paper, I will provide a critique of what I wish to call the “critical consciousness requirement” for moral culpability in Miranda Fricker’s theory of testimonial injustice. In my view, this requirement is stronger than our usual “epistemic requirement” for moral culpability. If such is the case, then it is more difficult to hold agents morally culpable for their actions (or inactions) using Fricker’s requirement. As I see it, this poses a significant threat to Fricker’s overall theory. One of the key claims that I make in this paper is that the combination of Fricker’s theory of testimonial injustice and her critical consciousness requirement for moral culpability leads to an undesirable outcome: a scenario where an injustice has been committed and yet nobody can be held morally responsible for it. This is clearly problematic, for in the worst-case scenario, this can be interpreted to mean that the combination mentioned above is committed to what I wish to call the “disquieting conclusion.” Generalizing on the undesirable outcome mentioned above, we can therefore say that some injustices, like the ones entertained by Fricker in articulating her theory of testimonial injustice, are morally permissible (a conclusion that may go against our intuitive notions of blameworthiness and praiseworthiness in the sphere of human actions and interactions with each other (e.g., in testimonial exchanges between speakers and hearers)). If I am correct, there is only one viable option for Fricker. This is to drop the critical consciousness requirement and adopt the weaker, but hopefully more acceptable, epistemic requirement for moral culpability.

Essentially, this means that she should maintain that regardless of the systematic effect of a particular prejudice on individual agents due to their situatedness (i.e., their socio-historical condition), they can still be held morally culpable for the credibility judgments that they make. While this is a substantial concession on Fricker’s part, I maintain that this is the only

way by which she can avoid the disquieting conclusion mentioned above, and thus, save her overall theory from a fatal flaw in its construal of moral culpability.

At the outset, it is important to note that this topic merits further investigation for at least three reasons. First, testimonial injustice is an injustice that harms people not only as epistemic agents (e.g., as givers of knowledge, as worthy participants in the process of creating knowledge) but also as moral agents. Suppose, for example, that we deny someone the right to be heard or the right to explain their position on an important issue based on a prejudice that we have regarding the social group that the person belongs to. By denying them that right, we would have, in effect, denied them as well of an essential part of their own humanity. After all, other things being equal, human beings possess rationality and autonomy, and these characteristics are constitutive of what it means to be a human being. Thus, an injustice of this kind cuts deeply since it affects the very core of what it means to be a human being. Second, as a concept, testimonial injustice provides us with a philosophical position that sheds some light on the intricate relationship between epistemology and ethics, between knowing and doing the right thing. This is so, because testimonial injustice may be seen as the result of an epistemic agent's failure to practice epistemic responsibility in the formation of their credibility judgments. This failure is significant because it harms not only the epistemic agent (e.g., the person who gives a low credibility rating to the other person's testimony because of some prejudice that they have) but also the other party involved. Finally, while Fricker's theory of testimonial injustice is a welcome contribution not only to epistemology, ethics, and politics, it still needs to be refined so that it can avoid being *overly* sympathetic to human beings' *situatedness* to such an extent that widely held prejudices at a particular point in human history can be a sufficient ground for waiving moral culpability.

Within this context, this paper is divided into the following parts. I will initially discuss Fricker's theory of testimonial injustice and along with this, Fricker's usage of the critical consciousness requirement for moral culpability. From there, I will discuss why Fricker's usage of the critical consciousness requirement leads to the disquieting conclusion. Finally, I will end this paper with some brief remarks on how adopting the epistemic requirement

for moral culpability does not lead Fricker to the same problems that arise in her adoption of the critical consciousness requirement for moral culpability.

2. Fricker on testimonial injustice

Let us begin our discussion of Fricker's position by looking at the following scenarios:

(S1) Angus, who has been diagnosed with major depressive disorder, returns to work after taking a medical leave of absence. As he attends their department's monthly meeting, his suggestions for a project that he initiated prior to his leave are always waved away. In the end, his project is assigned to another individual.

(S2) Ozzie, who has been diagnosed with bipolar disorder, informs her psychiatrist that she no longer has suicidal ideations. Her psychiatrist and her primary caregiver nod at her and ignore her as they talk about the new dosage and the effects of her medication.

In both of these cases, each individual experienced what Fricker (2007, 1) refers to as "testimonial injustice." This is so, for they were *undermined* in their capacity as sources of knowledge due to their hearers' *prejudice* towards mentally ill persons. Fricker (2007, 4) also refers to this phenomenon as "identity-prejudicial credibility deficit." Fricker (2007) claims that this occurs when a hearer gives a lowered credibility to a speaker despite the evidence that the latter is offering the truth due to the former's prejudice towards the social group that the speaker belongs to. The source of the prejudice here is a *stereotype* regarding a widely held attribute of a social group. In S1, for example, the stereotype that mentally ill persons are incapable of strenuous cognitive tasks led Angus' department head to disregard his proposals and assign his project to another member of their team. In S2, on the other hand, the stereotype that people with mental illness cannot take care of themselves led Ozzie's psychiatrist and her primary caregiver to continue their discussion without directly explaining to her the effects of her medication.

It is important to note that these two scenarios also show that testimonial injustice involves acts of *silencing* and *objectification*. In S1, we see an instance of silencing since Angus is no longer considered to be a trustworthy source of information. Hence, the members of his department pre-emptively banned him from the inquiry process. In S2, on the other hand, we see a case of objectification. Ozzie is considered as a mere source of knowledge (and not an active epistemic agent) and is not allowed to participate in the testimonial exchange.

At this point, we can already glean the epistemic and ethical components involved in testimonial injustice. Its epistemic component lies in how it is concerned with the exchange of knowledge between a speaker and a hearer. Its ethical component, on the other hand, lies in how it gauges the moral culpability of a hearer when he treats his sources of information in a testimonial exchange. Both components intersect since, as Fricker (Ibid.) states, to be fully recognized as a member of an epistemic community (i.e., to be recognized as an active participant in the exchange of knowledge) is a means of affirming one's humanity. She maintains (Ibid., 44):

The capacity to give knowledge to others is one side of the many-sided capacity so significant in human beings: namely, the capacity for reason. We are long familiar with the idea, played out by the history of philosophy...that our rationality is what lends humanity its distinctive value. No wonder, then, that being insulted, undermined, or otherwise wronged in one's capacity as a giver of knowledge is something that can cut deep... (T)he epistemic wrong bears a social *meaning* to the effect that the subject is less than fully human. When someone suffers a testimonial injustice, they are degraded *qua* knower, and they are symbolically degraded *qua* human.

Given the aforementioned description of the harm caused by testimonial injustice, the question that arises now is how we can prevent this sort of degradation from occurring. Thus, we ask: "How do we prevent cases of testimonial injustice?" To address this, let us now introduce what Fricker (2007, 66) refers to as a "responsible hearer." For Fricker (Ibid.), a responsible hearer is someone who has trained their *testimonial sensibility* in such a way that allows them to check whether their credibility judgment of a

speaker's testimony is a byproduct of identity-prejudice. This involves the process of *habituation* on the part of the hearer so that it can become second nature to them to prevent themselves from committing testimonial injustice. As we can see, this description of how a responsible hearer develops their testimonial sensibility already hints at how Fricker uses the framework of virtue epistemology when she is dealing with cases of testimonial injustice. Such is the case, for as Fricker (2007) envisions it, the correction of testimonial injustice requires continuous socialization so that, in the end, a hearer can unreflectively prevent themselves from committing this form of injustice. With these being said, the prevention and correction of this kind of injustice is only possible if we have a responsible hearer which, in this case, translates into a virtuous hearer (i.e., a hearer who possesses and practices the virtue of testimonial justice).

At this point, it is important to note that Fricker recognizes that it may be impossible to develop the aforementioned virtue in full, or to even develop the virtue at all. It may be the case, for example, that our psychiatrist in S2 encounters patients whose combination of symptoms are unfamiliar to them. The psychiatrist may initially conclude, for instance, that these patients are only perpetuating an elaborate hoax. Yet, they may correct this initial testimonial injustice vis-à-vis a new class of mentally ill persons by further observing their behavior and arriving at the most appropriate plan for their care. Here, we can see how our psychiatrist hones their virtue of testimonial justice by practicing continuous self-monitoring and self-correction.

An instance, on the other hand, where the virtue may not be developed at all can be envisioned in the following scenario that Fricker (2007) uses as one of her examples:

(S3) Marge Sherwood, who recently found her missing fiancé's ring in the possession of Tom Ripley, arrives at the conclusion that Tom killed Dickie. Mr. Greenleaf, Dickie's father, who recently heard from Tom that his son might have committed suicide refuses to believe Marge which eventually leads her to become hysterical.

In this scenario, Marge's suspicion is correct: Tom in fact killed Dickie. She knows this because she found Dickie's ring in Tom's possession. This is

significant since Marge gave Dickie that ring, and the latter promised her that he would never take it off. Thus, for Marge, even if Dickie is known to be an unreliable son to his father, and a known womanizer fiancé to her, she knows well enough about him (having lived with him for quite some time) in order to know some things about him (e.g., that he will not commit suicide). Unfortunately, Greenleaf, Sr. dismisses her suspicion, thinking that women tend to be emotional (and hence, for him, unreasonable) about such things. In this case, Fricker points out that the virtue of testimonial justice may not be developed at all if Greenleaf, Sr.'s socio-historical condition prevents him from being aware that there is gender prejudice involved in his assessment of Marge's testimony. What is interesting to note is that this shows us that for Fricker (2007), the existence of a critical consciousness regarding particular prejudices is required in order for the agent to practice the virtue of testimonial justice.

From the foregoing discussion, we can therefore say that Fricker (2007) adopts what I shall refer to as the critical consciousness requirement (henceforth CCR) for moral culpability. It is important to note that although Fricker herself does not provide us with a definition of critical consciousness, we can easily infer that "critical consciousness" (in CCR) involves the ability of agents to recognize, analyze, and eventually overcome (or correct) various forms of injustices and/or oppressive practices. This involves an overly complex understanding of *social power* in general, and of *identity power* in particular, in relation to various social structures and how they perpetuate various forms of injustices (e.g., pay inequity on the basis of gender, health disparities, educational inequity, testimonial injustice).

Now, what I would like to emphasize at this point is that Fricker would claim that Greenleaf, Sr. cannot be held morally culpable for his credibility judgments regarding Marge's case since the consciousness regarding a prejudice of this kind (i.e., gender prejudice) was not yet available to him at the time. Following Fricker (2007), he cannot be held morally culpable since he was not in a position to know better. Fricker (2007, 89-100) herself states this as she claims:

Greenleaf's prejudiced perception of Marge is ultimately non-culpable because of the historical context...there might be judgments of justice that cannot be made because they require a line of

reflection for which the concepts are not socio-historically available. If there are other virtues of justice...then perhaps their achievement would exhibit the same historical contingency...In the case of Herbert Greenleaf, we see this historical contingency played out in respect of the absence of a critical awareness of gender prejudice in the society in which his ethical and epistemic second nature were formed. While the Herbert Greenleafs of this world were always at fault in failing to exhibit the virtue, I suggest they were not culpably at fault until the requisite critical consciousness of gender became available to them. As we might put it, they were not culpably at fault until they were in a position to know better.

She further claims that in scenarios similar to S3, the hearers are experiencing *epistemic* and *moral bad luck*. It is epistemic since they were in no position to possess or even access a reason to believe Marge's claim (given their socio-historical condition). It is moral since their inability to possess or even access a reason to doubt Marge's claim affects who they are as individuals. Fricker (Ibid.) however notes that even if they are morally non-culpable, we can feel a resentment of *disappointment* towards them which she contrasts from a resentment of *blame*. This is so, for they could have gone beyond the routine discursive moves in their society in order to make exceptional discursive moves, or their counterpart, exceptional credibility judgments as opposed to merely routine credibility judgments.

3. The critical consciousness requirement and the disquieting conclusion

At this point, I hope that it is already clear why Fricker (2007) believes that Greenleaf, Sr. is not morally culpable for silencing and objectifying Marge. To reiterate, the requisite critical consciousness of gender is not yet available to him at the time, and it seems inappropriate for us to put the blame on someone who has no legitimate access to the resources (e.g., concepts, reasons) that they need in order for them to do the right thing (e.g., to neutralize the effect of a particular prejudice on one's credibility judgment, or to practice the virtue of testimonial justice).

As I see it, however, by claiming that Greenleaf, Sr. is not morally culpable for the credibility judgments that he made because of his socio-historical condition, Fricker opens a Pandora's box. As I have mentioned in the introductory part of this paper, Fricker's view leads to an unfortunate scenario where an injustice has been committed, but no one can be held morally responsible for it. This leads us to the view that some injustices, like the ones suffered by Marge in the hands of Greenleaf, Sr., are morally permissible. Let us refer to this consequence of Fricker's position as the "disquieting conclusion" (henceforth DC).

It is important to note that DC arises due to Fricker's adherence to CCR, which, in my view, is a very strong requirement for attributing moral culpability to individual agents. To be clear, adopting CCR leads to DC since no one can be held morally responsible for the *double injustice* that the speaker experiences in these kinds of testimonial exchanges. There is double injustice in these scenarios since the speaker is not merely silenced and objectified by the hearer in the testimonial exchange. In addition, no one can be held morally responsible for the silencing and objectification that the speaker experienced. In S3, we can clearly see how adopting CCR leads Fricker to DC. The speaker, Marge, is silenced and objectified by the hearer, Greenleaf, Sr. due to a prejudice that the latter has regarding Marge's gender. For Fricker, Greenleaf, Sr.'s silencing and objectification of Marge is morally non-culpable because of CCR (i.e., Greenleaf, Sr. lacks the critical consciousness required in order for him to recognize the gender prejudice behind his credibility judgment). In S3 then, the important point is this: The prejudice involved is *systemic* (i.e., societal, and not merely individual in scope), and this greatly constrains the thoughts as well as the reasons that are available to the members of the epistemic community in order to detect the prejudice and thereby correct their credibility judgments. While this is good news for Greenleaf, Sr., this is certainly bad news for Marge. After all, she has been *excluded* from the process of inquiry; she has been judged as an unworthy giver of knowledge. In my view, however, this *exclusion*, by itself, constitutes an undermining of Marge's capacity as a knower, a capacity that Fricker herself considers to be central in what it means to be a human being. To substantiate this, we can argue for the position that Greenleaf, Sr. has an *obligation* to know the truth behind his

son's death. This obligation involves, among other things, that Greenleaf, Sr. gathers as much evidence (e.g., physical, testimonial) as he can regarding his son's death. If we can agree on this point, then perhaps we can also agree that Greenleaf, Sr.'s exclusion of Marge's testimony runs counter to the aforementioned obligation. If this is correct, we can therefore say that Greenleaf, Sr. has a corresponding obligation not to exclude Marge's testimony, and to this extent, we can say that he is morally culpable for his actions and their consequences (e.g., undermining Marge's capacity as a giver of knowledge, and by extension, her humanity).

To balance things out, let us assume that Fricker is correct. If Greenleaf, Sr. is not morally culpable for his exclusion of Marge's testimony due to CCR, essentially, what this means is that Greenleaf, Sr. has no obligation not to exclude Marge's testimony in fulfilling his obligation to know the truth behind his son's death. But this is simply another way of saying that Greenleaf, Sr. is permitted to exclude Marge's testimony. If we agree that there is injustice in S3 and if Greenleaf, Sr. is permitted to exclude Marge's testimony, then DC follows as a result: some injustices, like the ones suffered by Marge in the hands of Greenleaf, Sr. are morally permissible. There is, however, a possible way out of this predicament, but it seems as disquieting as DC. If we agree that Greenleaf, Sr. is permitted to exclude Marge's testimony, then we can argue for the position that no injustice has been committed towards Marge. An important question therefore confronts us at this point: "If such is the case, how then should we make sense of Marge's experience (e.g., the degradation that she experienced by the exclusion of her testimony)?"

The foregoing discussion leads us to the following point: there is an *inconsistency* in Fricker's views regarding moral culpability, on the one hand, and the affirmation of one's humanity, on the other, and this can largely be attributed to her adoption of CCR. A problem with adopting CCR arises if we consider that it conflicts with Fricker's emphasis on how our rationality *defines* our humanity. This is so, for we can claim that an action that disregards our humanity is already a blameworthy action. We can derive this view from *quality of will* theorists such as David Shoemaker (2013) whose position Fernando Rudy-Hiller (2018, np) characterizes in the following way:

(A)n agent is praiseworthy for an action or an attitude that accords with the demands of morality if the performance of the action or the holding of the attitude arises from proper regard or concern for another person's morally significant interest. Conversely, an agent is blameworthy for an action or attitude that conflicts with the demands of morality if the performance of the action or the holding of the attitude arises from lack of proper regard or concern for those same interests.

In this view, Greenleaf Sr. is already morally culpable for his actions towards Marge since in the process of denying her as an epistemic agent who can be the source of truthful information, he already denies her capacity for rationality, and hence, her humanity. A stronger argument that can help explain why there is something wrong with Greenleaf, Sr.'s exclusion of Marge's testimony may be found in Matthew Talbert's (2013, 234) description of agents who are considered blameworthy in the following:

Even if a wrongdoer is ignorant of the fact that her behavior is wrong, and even if this ignorance is not her fault, her actions may still express the contemptuous judgment that certain others do not merit consideration, that their interests do not matter, and that their objections can be overlooked.

To remedy this inconsistency in Fricker's position, we can maintain that instead of adopting CCR, she can simply adopt an epistemic requirement (henceforth ER) for moral culpability. In a very general way, ER simply tells us that moral culpability requires an epistemic condition that an agent must satisfy in order to be considered blameworthy (or praiseworthy) for their actions (Rudy-Hiller 2018). Informally, this condition can be formulated in the form of a question: "Is the agent aware of what they did?" Here, "awareness" could be understood as awareness of several (but less complicated) things (in comparison to the demands of CCR), for example, the *action* itself, the *consequences* of the action, the *moral significance* of the action, the existence of *alternatives* to the action, etc. Based on these initial descriptions of CCR and ER, we have good reasons to believe that it is more difficult to ascribe moral culpability to an agent in the former in comparison to the latter. This poses a serious difficulty for Fricker's overall framework since it can easily *absolve* agents of moral culpability, including

cases where we would normally say that the agents in question deserve to be blamed for what they did.

To substantiate this claim, consider the atrocities committed in Nazi Germany (1933-1945). Wolfgang Bialas (2013, 3), for instance, argues that ordinary Germans, at the time, “became willing executioners of criminal and immoral deeds.” There is, however, a catch: “As perpetrators with a clear conscience they were convinced that the humiliation, persecution, deportation and finally, killing of the Jews was the right thing to do” (Ibid.). At this juncture, the question that confronts us is this: “If they were *perpetrators with a clear conscience*, if they truly believed that they were doing the right thing, how can they be held morally culpable for their actions?” To my mind, this case has a terrifying similarity (structurally) with the situation that agents in S3 find themselves in. In S3, we can also say that Greenleaf, Sr.’s act of silencing and objectifying Marge is typical of men during that time. We can say, for example, that like Bialas’ “perpetrator with a clear conscience,” Greenleaf, Sr., because of his socio-historical condition, genuinely believes things like (but not limited to) the following: (1) that women’s intuition is untrustworthy, (2) that women are emotional, and are thus, prone to hysterics, (3) that women need to be protected from the harsh realities of life, and (4) that women are innocent about some truths about men. If I am correct, the agents in S3 are in important ways similar to Bialas’ perpetrators with a clear conscience due to their socio-historical condition. In particular, we can say, *à la* Fricker, that the requisite critical consciousness of gender (in S3) is not yet available to them at the time. Unlike Fricker however, I do not consider these agents to be morally non-culpable for their actions since we can say that they have factual awareness of their actions. As Rudy-Hiller (2018) points out, they are already aware of what they are doing as well as the probable consequences of their actions.

4. Conclusion

In this paper, I have demonstrated that Fricker’s theory of testimonial injustice is weakened by her adherence to CCR. Such is the case since it leads to DC. Moreover, Fricker’s adoption of CCR reveals an inconsistency

in her theory regarding the relationship between moral culpability and the affirmation of one's humanity. In doing so, I have also shown that the consistency of her theory can be regained if she adopts a weaker requirement for moral culpability, that is, ER. More specifically, I emphasized how her theory would benefit from the views of the quality of will theorists who maintain that awareness is sufficient to hold agents morally culpable for their actions. As I have mentioned in the previous section, this "awareness" involves awareness of several, but less complicated things (e.g., the *action* itself, the *consequences* of the action, the *moral significance* of the action, the existence of *alternatives* to the action, etc.) in comparison to the demands of CCR (e.g., critical consciousness regarding certain prejudices). One advantage of adopting ER is that it does not lead to DC. It also does not lead to the view that in S3 and cases similar to it, no injustice has been committed. By adopting the weaker ER, we can maintain that the speaker, Marge, suffered an injustice and the hearer, Greenleaf, Sr., is morally culpable for it. When this is applied to how we gauge moral culpability in testimonial exchanges, we can say that one is still morally responsible for one's credibility judgments even if one is unaware of the prejudice that taints these judgments. This is so, for what is emphasized in the quality of will theorists' view of moral culpability, aside from the awareness of one's actions, is the moral orientation of the individual. We can connect this to Fricker's view of rationality and humanity by saying that what guides the moral orientation of a person is their recognition that each agent in a testimonial exchange is a rational and autonomous being, and as such, deserving of our full attention and consideration. Perhaps, then, what is needed is not a critical consciousness of some specific prejudice, but the mere recognition that each individual is, to use Fricker's words, "fully human."

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