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Abstract

I start by acquainting the reader with key themes from my 2007 book, *Epistemic Injustice: Power and the Ethics of Knowing*, sketching the background of British academic culture from which it grew. Moving swiftly into the present, and to the social context of the U.S., I then offer some new thoughts concerning institutional epistemic vices and explore, in particular, one important form of *institutionalized epistemic vice* that is exemplified by a standardly recommended police procedure for interrogating suspects.

Keywords

epistemic injustice, institutional testimonial injustice, agential testimonial injustice, false confession, institutional epistemic vice, constitutive social construction, policing, Reid Technique, Lackey, Kassin, Gudjonsson

Institutionalized Testimonial Injustices: The construction of a Confession Myth

It is an honour to be invited to contribute to this special issue on epistemic injustice, and it will be of the greatest interest to read and learn what philosophers in China are doing with the evolving and expanding concept of epistemic injustice and its cognates. In order to set down something of my own efforts in this regard, I will start with some summary comments about what I took myself to be doing in the 2007 book, and then offer some new thoughts concerning institutional epistemic vices and, in particular, one grimly important form of *institutionalized epistemic vice* in the context of standard police procedure and training in the U.S. Jumping off from recent work in social epistemology by Jennifer Lackey, and work in empirical psychology by Gisli Gudjonsson and Saul Kassin, I will argue that certain aspects of these procedures exemplify a three-step series of Institutionalized Testimonial Injustices.

Reintroducing Epistemic Injustice

In British academic philosophy of the broadly anglophone tradition, through the nineteen-nineties and early two-thousands, the intellectual landscape had a curiously debilitating shape for anyone who was both analytically minded and drawn to questions about how inequality of social power might relate to matters of epistemology. While there were multiple debates on such questions within feminist philosophy—notably in standpoint theory, feminist postmodernism, and French psychoanalytic feminism—in analytic epistemology, by contrast, it seemed there was a total lack of theoretical resources even to articulate such questions. European philosophy, under the early historicizing and politicizing influences of Hegel and Marx, had long centred such questions as essential to how we picture ourselves in the world; but the analytic tradition seemed to have entirely by-passed these influences, preferring an ahistoricism that made these themes appear 'merely empirical'—the business of sociology, or feminist politics, but not philosophy. (As a graduate student I was repeatedly asked 'Is your dissertation in sociology of knowledge, then?', or 'What makes it epistemology?'. I didn't yet know how to answer; I wanted to know.) There were vital strands of feminist epistemology pressing the socialized questions, often in terms of debates between feminist empiricism, whose roots were in feminist philosophy of science; feminist standpoint theory whose first roots were in sociology, quickly spreading to philosophy; and feminist postmodernism and post-colonial critique, whose roots were in post-structuralist and postmodernist thinking in the European tradition.[1] It was from the different landscapes of those debates that my own interest grew in the possibility of theorizing—on the apparently island territory of analytic epistemology—what I came to conceive in terms of 'epistemic injustice'. This theoretical territory had provided a good proportion of my philosophical education and sensibility, and it generally worked with a common-sense conception of everyday knowledge (a factive conception) which I shared, and which I also felt was necessary for any realistic kind of theorising about injustice. However, its insistence on a maximally abstracted conception of the knowing subject—a conception resolutely presupposed again and again in its defining questions ('What is it for *S* to know that *p*?', 'What is it for *S* to be justified in believing that *p*?', and so on)—struck me as a grossly restrictive theoretical *choice*, and not at all the quasi hinge proposition of epistemology proper that it was cracked up to be.

[1] For an updated sense of the landscape, see the summaries offered by Anderson (2020) and by Grasswick (2019).

I was also keen to approach the issues from the point of view of the everyday experience of epistemic injustice. (The philosopher of science and feminist standpoint theorist, Sandra Harding, memorably captured this methodological commitment in her slogan 'start thought from marginalized lives'—see, for instance, Harding 1991. The sociologist and feminist standpoint theorist Patricia Hill Collins starts thought from the multiple oppressions of black women's social experience, theorising it, among other things, in terms of living as an 'outsider-within'—see, for instance, Collins 1990.) There are different methodological approaches to starting philosophical thought from the point of view of marginalized experience, but my own was analytical in style and also somewhat literary in orientation, because I believe that novels, screenplays, and memoir can reveal philosophically relevant aspects of life in imaginatively enlivening ways. For this reason, I was interested in the possibility of making a more hybrid kind of philosophical text—a patchwork of substantial excerpts throughout the book, sometimes more than one excerpt from the same novel or screenplay in different chapters, which would inform the philosophy, and provide some helpful borders to the discussion. Using memoir and fiction, I drew from set-piece illustrations which I hoped would furnish the philosophical imagination with some richer textures of lived experience than is generally possible with illustrations of the familiar thought-experiment variety (Fricker 2007, p. 23). By contrast, the State of Nature—a very different sort of fiction which I also made substantial use of—is deliberately wholly lacking in the daily textures of life, being a stripped back, highly abstracted model of the simplest and most universal social-epistemic needs (such as the need to share information). In this way, a number of contrasting kinds of fiction were employed, and a sense of the substantial philosophical implications contained in this or that style of fiction permeated the method of the book as a whole.

An overarching argument of the book concerned the content of the concept of knowledge. The argument was that there is at least one plausible conception of the concept of knowledge—namely the functionalist conception advanced by Edward Craig (Craig 1990) according to which the concept of knowledge has the idea of a 'good informant' at its 'core'—such that feminist philosophical concerns about power and exclusion from epistemic practices turn out to be features of the 'core' of our concept properly understood, and therefore the core business of

analytic epistemology. If the core of our concept of knowledge is functionally understood in terms that require being *recognized* as a 'good informant', then all we need to add to the non-ideal motivational aspects already built into the State of Nature scenario by Craig (motives to lie and to withhold) is a basic proto-prejudice, such as the proto-prejudice that insiders tend to have against outsiders, for instance. This is sufficient to generate the risk that someone (an outsider) is wrongfully prevented from participating in the very practice which, on Craig's picture, generates the 'core' content of our concept of knowledge. This, I argued, makes the risk of *prejudicial credibility deficit*—for instance, being disbelieved merely because one is an outsider to the group—essential to understanding the core content of the concept of knowledge. And it follows that the corrective proto-virtue of Testimonial Justice is equally present in the State of Nature, so that it is revealed as one of the basic 'virtues of truth', in Bernard Williams' phrase.[2] Conceived of in this way, then, such socializing perspectives cannot be regarded as marginal to analytic epistemology; cannot be not regarded as arising from a set of concerns that are exclusively proper to the sociology of knowledge or feminist politics; but should rather be regarded as belonging to a set of concerns located at the heart of the analytic project in epistemology. For the very content of the concept of knowledge turns out to include, at its core, measures to correct for endemic prejudice that would otherwise obstruct the sharing of good information and evidence. In other words, the core content of the concept of knowledge turns out to include measures to pre-empt Testimonial Injustice. In sum, an overarching argument of the book was that if you are concerned with the content and structure of the concept of knowledge, then you are already concerned with the risk of Testimonial Injustice.[3] *Ergo* such feminist epistemological concerns should be understood as central to analytic epistemological concerns.

Of more salient interest to most readers perhaps were the broad definitions of two proposed types of epistemic injustice, in addition to the generic label 'epistemic injustice' itself. I aimed to situate and explain the phenomena they pick out in an integrated theoretical structure, offering an expandable taxonomy of types and sub-types. So, for instance, both Testimonial Injustice and

[2] Matthieu Queloz offers a helpful discussion of this point in chapter 8 of Queloz 2021.) The point was more salient, because more isolated, in Fricker (1998).

[3] That is why the material relating to Testimonial Injustice (prejudice, stereotyped perceptions of testifiers through the operation of heuristics in our testimonial sensibility, the endemic nature of Testimonial Injustice, the virtue epistemological account of testimony, proto-knowledge and good-informing in the State of Nature, and the presence of the proto-virtue of Testimonial Justice even in the State of Nature) took up six out of the seven chapters.

Hermeneutical Injustice are presented as having sub-types that are 'systematic' and 'incidental' respectively. In my scheme of things, this is an important distinction, and one I would highlight again here, because the distinction allows one to differentiate between those forms that are an integral part of a given system of structural injustice and those that are not, while holding constant the intrinsic epistemic wrong. The guiding interest in theorizing the epistemic dimensions of structural injustice led me to cast the systematic forms of epistemic injustice as 'central' from the point of view of the book. It is crucially the systematic aspect—as well as sheer severity and persistence in time—that can make the term *epistemic oppression* apt (Fricker 1999; 2007 pp. 59 & 156).[4]

The category of Testimonial Injustice has been expanded by a number of philosophers, and in this paper I wish to offer a further development of the idea that there can be forms of Testimonial Injustice that involve not prejudicial credibility deficit but rather prejudicial credibility *excess*. My proposal will concern a certain *institutionalized* form of prejudicial credibility excess, and the disastrous contribution it makes to structural and legal injustice when flanked by practices of institutionalized prejudicial credibility deficit. The idea that some kinds of credibility excess should be included in an augmented conception of Testimonial Injustice was first put forward by José Medina as a constructive line of objection to my account. Subsequently papers by Emmalon Davis, Audrey Yap, and Jennifer Lackey represent other constructive and distinctive contributions to the ongoing debate.[5] In my book, after some to and fro on the page, I ultimately came to the conclusion that only a prejudicial deficit amounted to the distinctive wrong I wanted to home in on with the concept of Testimonial Injustice. I came to this conclusion because I was particularly keen, as I have explained above, to isolate the sort of wrongful underestimation of someone as a giver of knowledge that is plausibly understood as endemic in the core epistemic

[4] For a discussion of epistemic oppression, and in particular a distinction between reducible and irreducible forms, see Dotson 2014. An aspect of hermeneutical marginalization, particularly emphasized by Dotson (2012), Mason (2011), Medina (2013), and Pohlhaus (2012), and which is typically part and parcel of systematic cases, is the interest that the powerful have in maintaining the conceptual status quo. This is so in my example of the sexual harasser for whom it obviously suits his purpose that there should be a general absence of a concept apt to capture his conduct in the proper critical light (Fricker 2007 p. 151). But what others have rightly emphasized is the active resistance to new concepts and interpretive tools that this interest will likely produce. This represents the main area of overlap, as I see it, between epistemic injustices as I conceived them and Charles Mills' idea of 'white ignorance' (see Mills 2007 and 2015; I explore this area of overlap in Fricker 2016).

[5] See Medina (2011); Davis (2016); Yap (2017); Lackey (2020).

practice that generates our very concept of knowledge (i.e. good-informing in the State of Nature).

However, if an exploration of the varieties of Testimonial Injustice is conducted separately from that highly specific analytical project, then things become freed up a good deal, and the purposes to which one might put the concept of Testimonial Injustice can obviously broaden out. At any rate, I would like here to contribute a further thought among the various suggestions in the literature, and in particular to pick up on Jennifer Lackey's recent suggestion that there is a distinctive and important kind of Testimonial Injustice she calls 'Agential Testimonial Injustice', which is exemplified in a phenomenon of false confession in the context of police interrogation. This is what I shall build around to advance the idea of Institutionalized Testimonial Injustices, and to show that in the method of police interrogation to which Lackey has drawn our critical epistemological attention, we need to position *both* credibility deficit and credibility excess centre-stage, and, in addition, to script the epistemic drama they play out not primarily in terms of individual judgements of credibility but rather at the level of institutionalized process. Only then, I contend, will we be able to the scale and endemic nature of the epistemic tragedy that is so institutionalized.[6]

Institutionalized Testimonial Injustices

With our summary of the key ethical-epistemic ideas on the table, we can now turn our attention to the political frame. That is, the frame of institutional power. Institutions can embody epistemic virtues and vices in different ways. Broadly speaking, an entrenched institutional habit might take the form of a set of (good or bad) epistemic methods or *processes*, and/or a set of (good or bad) epistemic values that constitute an *ethos*. An example of an epistemically dysfunctional process might be a practice that entails relying on inadequate evidence, or evaluating evidence through a prejudicial lens. An example of an epistemically bad set of values might be caring insufficiently about the truth, or valuing a certain target outcome too highly so that it compromises one's assessment of the evidence and consequently the integrity of inquiry.

[6] For a notion of structural testimonial injustice, see Elizabeth Anderson (2012).

Everyday interactions with various institutional bodies—news outlets, medical practices, advertising, and so on—make us entirely familiar with the idea that an institutional body can involve either or both of these things—good/bad epistemic processes and/or a good/bad epistemic ethos. If processes and/or ethos are temporally and counter-factually stable in the institutional body, then they bear all the hallmarks of an *institutional epistemic character trait*, and therefore of an *institutional epistemic vice or virtue*, depending on the epistemic value or disvalue of the trait.[7] In other work I have argued that we should think of bad epistemic traits as indicating vice only if the bad epistemic conduct is culpable. But here I remain neutral on this issue, and there is of course room for different views on this and other aspects.[8]

Although I put this brief sketch of institutional virtue and vice on the page in order to set up what comes next, there is nothing I will argue for here that depends upon it, for while it is appropriate to conceive of Institutionalized Testimonial Injustice in terms of institutional epistemic vice, it is certainly not compulsory. Some readers may prefer to conceive of it in more theoretically neutral terms of plain institutional epistemic dysfunction, for instance. My aim is to model certain institutionalized epistemic processes with a view to highlighting their significance for epistemic injustice, and, by immediate practical implication, legal injustice, since epistemic injustice functions as a gateway to legal injustice. However, while the theoretical frame of epistemic virtue and vice is not compulsory, still I would urge that when we are concerned with some of our most important values, such as not convicting the innocent, or proportionality in sentencing, the more ethically laden language of institutional virtue and vice is surely apt. This is because regarding at least the primary functions of the institutions of justice, we care not only about the procedures and functional outputs themselves, but also about the institutional values from which they spring. In sum, we care not only about what such institutions *do*, but also about the ethos that *characterizes* them.

[7] For a more detailed account of this model of epistemic virtue and vice in institutional bodies, see Fricker (2021).
[8] I have explored models for institutional virtue and vice in more detail in Fricker (2010) and specifically that of Inferential Inertia in Fricker (2021). For alternative models of epistemic vice in particular, see Battaly (2014), Crerar (2017), and Cassam (2016 and 2019); see also the papers in eds. Battaly, Kidd & Cassam (2021); and Tanesini (2018 and 2021). For another recent discussion, see de Bruin and de Rooij (2022).

We can now explore the contours of a particularly problematic institutionalization of epistemic vice—one which compounds two kinds of testimonial injustice—as it is enshrined in institutionally prescribed norms of criminal investigation in U.S. policing. Currently in the U.S. the police have a legal right in all fifty states to lie to adult suspects when they are held for interrogation, and this right to lie, confuse, and trick the suspect into incriminating themself is widely seen in law enforcement as a legitimate tool for obtaining a confession. (Most states allow it not only in relation to adults but also minors.[9]) Many adults, let alone children, do not appreciate that the police are legally entitled to deceive them in this way, which ignorance renders them especially vulnerable to manipulation under interrogation. To use Carel and Kidd's apt phrase, such a situation exemplifies 'institutional opacity' and this opacity 'epistemically vulnerabilises'[10] those caught up in the institutional processes (Carel and Kidd 2021).

Everyone of course has the right to an attorney in interrogation situations, and a crucial part of an attorney's job is to stop a suspect saying anything that could incriminate them. However, some waive their right to an attorney, and the innocent are especially likely to do so, perhaps in an honest performance of having nothing to hide and of openness to assisting the police with their inquiries. This can be catastrophic, for if one is in fact being treated as a suspect, then interrogations proceed on a presumption of guilt, so that this very openness may lead to self-incrimination, even false confession. As Saul Kassin writes:

> The phenomenology of innocence may be rooted in a generalized and perhaps motivated belief in a just world in which human beings get what they deserve and deserve what they get… It may also stem from…an 'illusion of transparency,' a tendency for people to over-estimate the extent to which their true thoughts, emotions, and other inner states can be seen by others (Kassin 2005, p. 218).[11]

[9] In 2021 Illinois and Oregon banned police lying to minors (under 18) in interrogation, though it remains perfectly legal to lie to adults. See, for instance, https://innocenceproject.org/illinois-first-state-to-ban-police-lying/ and https://prismreports.org/2021/08/30/lying-to-police-suspects-is-banned-in-several-countries-why-is-it-still-legal-in-the-u-s/

[10] 'Vulnerabilises', Carel and Kidd note, is a term borrowed from Shelley Tremain (2021).

[11] On the phenomenology of innocence, see also Jordan & Hartwig (2012).

In recent work and a forthcoming book, Jennifer Lackey explores this terrain, and proposes that employing a concept of Testimonial Injustice as prejudicial credibility *deficit* cannot give a complete picture of what is going wrong with the credibility judgements in these situations. She argues (and I agree) that we should also look at what happens to credibility attributed to the suspect the moment they do confess under interrogation. Lackey proposes an expansion to the idea of Testimonial Injustice so that it should include 'Agential Testimonial Injustice': 'where an unwarranted credibility excess is afforded to speakers when their epistemic agency has been denied or subverted in the obtaining of their testimony' (Lackey 2020, p.43). Besides the special vulnerability of innocence, already mentioned, Lackey describes various 'dispositional factors' that make a suspect particularly and unfairly vulnerable to falsely confessing, citing in particular 'juvenile status' and 'mental impairment, including developmental disabilities and mental illness' (Lackey 2020, p. 48). Being innocent, being young, or having a mental impairment of any kind make one especially vulnerable to police pressures in interrogation, so that when placed under the powerful combination of physical, emotional, and informational distress, one ends up confessing. Some innocent confessors are responding, in visceral desperation, to assurances of short-term relief from the interrogation situation and will generally seek (in vain) to retract their confession soon after; others internalize the idea that they are guilty and tend to embrace the interrogator's narrative.[12]

The Confession Myth

All of this teaches us that (what we might call) the Confession Myth—the popular assumption that people do not confess to crimes they did not commit—is seriously misguided. It is an influential myth which, despite being thoroughly undermined by the findings of over two decades of psychological research, continues to hold sway not only in the popular imagination but also in key institutional procedures of criminal investigation in the U.S. The epic proportions

[12] In the early three-way taxonomy of false confession developed by Kassin and Wrightsman (1985) the first is labelled 'coerced compliant' type of false confession, while the second is 'coerced-internalized'. (Their third type is 'voluntary' which might be explained by the desire to protect another, or by a 'morbid desire for notoriety', or various other possibilities.) See the further discussion in chapter 4 of Gudjonsson (2018), and in Kassin's recent book (Kassin 2022, pp. 11-14).

of the operation of this myth can only be fully appreciated when one factors in the institutional impossibility of *retracting* a confession. A confession, once made, is virtually irreversible, for it is the chief objective of interrogation, and functions as among the very strongest kinds of evidence—the 'gold standard in evidence' as Lackey puts it (Lackey 2020; p. 43). As Kassin explains: 'Once a suspect confesses, police often close the investigation, deem the case solved, and overlook exculpatory information—even if the confession is internally inconsistent, contradicted by external evidence, or the product of coercive interrogation' (Kassin 2012 p. 433).[13]

This norm of overlooking exculpatory information and so on is part and parcel of the Reid Technique, the nine-step method of police interrogation commonly used for police training in the U.S. Among detectives, it seems, there are extraordinarily inflated levels of confidence in their ability to discern, ahead of an interrogation, who is innocent and who is guilty. Or so Kassin recounts:

> Several years ago, I was at a law enforcement conference in Montreal, where Joseph Buckley—president of John E. Reid & Associates – lectured on the influential but controversial Reid technique of interrogation…Afterward, an audience member asked Buckley if he was concerned that his methods might at times cause innocent people to confess. His reply: "No, because we don't interrogate innocent people."
>
> I've lost track of how many detectives I've heard say the same thing (Kassin 2022, p. 55).

What, then, is the Reid Technique, and how does it compare with other forms of police interrogation? We can fruitfully compare the basic tenets of the Reid Technique with the PEACE Model of police procedure in interrogation situations, for as Gudjonsson explains, the PEACE Model was developed and rolled out in the U.K. in 1993 as a national training package for police officers. It was developed as a response to a number of notorious cases of grievous miscarriages

[13]See also Drizin and Leo 2004, as noted by Kassin; and Gudjonsson (2018) for an account, principally with reference to cases in which he was involved in Iceland and the U.K.

of justice from which it was possible to learn and make procedural improvements. It has also been taken up in Norway and New Zealand. Gudjonsson writes:

> The PEACE Model [Preparation and planning, Engage and explain, Account, Closure, and Evaluation] was developed on sound psychological principles, which followed valuable collaborative work between academics, psychologists, police practitioners, and lawyers. It was intended to take into account the vulnerability of some interviewees, with the aim of minimizing the risk of a false confession (Shawyer et al., 2009). The focus is on fairness, openness, workability, accountability, and fact (truth) finding rather than merely obtaining a confession. Leading questions, heavy pressure, and psychological manipulation are avoided, thereby potentially reducing the risk of false confession while still producing true confessions (Shawyer et al, 2009).
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> In contrast to the PEACE Model, the Reid Technique, which is influential in the USA, encourages interviewers to use a two-stage interview process (Gudjonsson & Pearse, 2011; Inbau, Reid, Buckley, & Jayne, 2013). The first stage is a nonaccusatory interview, in which general background information about the suspect is obtained, rapport and trust are built, and a determination is made about whether or not the suspect is lying about the offence. If the suspect is judged to be lying, then the interview progresses to a nine-step accusatory (presumption of guilt) approach, typically referred to as 'interrogation' (Inbau et al., 2013). Kassin and Gudjonsson (2004) argue that the nine-step Reid Technique can be reduced to three general phases: 'custody and isolation' (i.e. the suspect is detained and isolated, anxiety and uncertainty are generated in order to weaken resistance); 'confrontation' (i.e. the suspect's guilt is assumed and he or she is confronted with alleged incriminating evidence that may or may not be genuine, denials are rejected, even if they happen to be true, and the consequence of continued denial is emphasized); and 'minimization' (i.e. the interrogator tries to gain the suspect's trust and provides face-saving excuses for the crime, including suggesting that it was an accident or that the victim deserved it). In contrast to the PEACE Model, the Reid Technique has been associated with increased risk of false confession (Gudjonsson & Pearse, 2011; Pearse & Gudjonsson, 1999; Snook, Luther, & Barron, 2016) (Gudjonsson 2018; p. 47).

I quote Gudjonsson's summary at length, including its incorporated citations, in order to put on the table these basic facts about interview/interrogation techniques and so to make plain how the Reid Technique that is commonly used in police training in the U.S. explicitly has the presumption of guilt built into the interrogation phase as an institutionally embedded methodological prejudice.[14] It constitutes a prejudice insofar as it involves a motivated dislocation from the evidence: the motivation is the predetermined will to get a conviction out of this interrogation, ideally a confession; the dislocation from the evidence is inherent in the approach not being one of open-minded inquiry but rather a direct and self-conscious attempt to solicit something self-incriminating from the suspect.[15] It is notably dislocated from the evidence in the moment of conclusion (confession), insofar as the method licenses interrogators to 'overlook exculpatory information' or other counterevidence. The fact of confession trumps all.

So far so textbook as regards the Reid Technique, shockingly detached from anything that looks like *inquiry* though it plainly is. But what I would like to stress in addition, however, is a further point. The prejudicial presumption of guilt that characterizes the 'interrogation' phase is super-assisted by the power of epistemic manipulation that is inherent in the interrogator's legal entitlement to lie. In the notorious case of Marty Tankleff—the seventeen-year-old who in 1989 was accused of murdering his parents—the police told him, among other lies, that his father had briefly emerged from his coma to name Marty as his assailant (see Lackey 2020, quoting Kassin et al 2010). Convicted on the basis of the confession alone, this teenager, orphaned by a double murder, served nineteen years in prison until his eventual exoneration. Another infamous and tragic case is that of the now exonerated five black and Latino teenagers—Antron McCray, Kevin Richardson, Yusef Salaam, Raymond Santana, and Korey Wise—who were tricked into

[14] It is of course not an exceptionless picture. In 2017, having taught the Reid Technique for more than 30 years, Wicklander-Zulawski & Associates, one of the largest private police training agencies in the world, issued a press release announcing they were discontinuing the technique: https://www.prweb.com/releases/2017/03/prweb14123356.htm I thank Jennifer Lackey for this point.

[15] On my definition, *any* prejudice that depresses credibility produces a Testimonial Injustice. I note that Lackey uses as her foil a view she calls the 'Standard View', according to which the prejudice must be an identity prejudice. The Standard View, then, would be one that took what I call *systematic* Testimonial Injustice as the only kind. From my point of view this would be an unfortunate truncation, since it would precisely rule out cases where, for instance, the sheer dogged will to secure a conviction regardless of counterevidence would constitute a prejudice apt to produce a Testimonial Injustice. At any rate, on my own view it certainly does produce a Testimonial Injustice, which is why, if enshrined in institutional procedures in the manner described here, it produces an Institutional Testimonial Injustice.

falsely confessing to the rape and beating of a white woman who was jogging in New York's Central Park in 1989.[16] As Kassin et al describe:

> Each boy retracted his statement immediately upon arrest, saying he had confessed because he expected to go home afterward. All the boys were convicted and sent to prison only to be exonerated in 2002 when the real rapist gave a confession, accurately detailed, that was confirmed by DNA evidence (Kassin et al 2010, p. 4).

This point about the impossibility of retraction is a crucial part of the picture of institutional epistemic vice. If we look to philosophy to apply the categories of testimonial injustice to this scenario of interrogation, then I suggest that what we need is a diachronic frame that presents three phases. First, a phase of Institutionalized Testimonial Injustice (institutionalized prejudicial credibility deficit) where, at the very least, the institutional methodological presumption of guilt is itself a prejudice built into the prescribed Reid interrogation method. This presumption-of-guilt prejudice may often be compounded with other prejudices, most saliently racism, intensifying the epistemic wrong and introducing others besides that display a systematic structure.[17] The second phase is the one that Lackey categorizes as Agential Testimonial Injustice, in which the suspect's intellectual agency is 'denied or subverted' so that they are rendered maximally susceptible to confusion, suggestibility, misinformed deliberation about the consequences of confession, and/or sheer desperation to get out of there. This phase, as Lackey rightly emphasizes, is one of credibility *excess*, though she prefers not to cast it as inherently the product of prejudice, whereas in my own picture I see the institutional goal of incrimination via the presumption of guilt as itself constituting an institutional prejudice. I would also emphasize the benefits of casting the credibility excess involved in believing an extracted confession not only at the level of individual interrogators' credibility judgements but also—and from the point of view of institutional critique, primarily—at the level of institutional process. For it makes little difference what any given interrogator may or may not personally believe about the confessor if the powerfully tooled up process they are trained to enact is directed at bringing the suspect to

[16] The award-winning dramatization, 'When They See Us', was created and directed by Ava DuVernay in 2019 (Netflix limited series). See also Ken Burns's 2012 documentary 'The Central Park Five'.

[17] The scholarship on mass incarceration in the U.S. is overwhelming in its exposure of the U.S. carceral system as an organizing dimension of structural racism. Among key influential works and perspectives are Alexander (2010)), Coates (2017), Davis (2003), Gilmore (2022). For a poignant memoir see Allen (2017).

count as guilty by the end of the interrogation. Finally, we must add the third phase, which marks the impossibility of retraction, and which ushers in the return of Institutionalized Testimonial Injustice of the prejudicial credibility deficit variety when the suspect reasserts their innocence in vain.

What we are confronted with, then, is a triphasic epistemically vicious institutional process, driven by the methodological prejudice of presumed guilt. The process is characterized by a pattern of functional credibility deficit, then excess, then deficit again, and is the direct upshot of an institutionally prescribed, indeed literally 'textbook', method of interrogation designed to secure confession, or failing that, some weaker form of self-incrimination. It is a three-phase model of different Institutionalized Testimonial Injustices through which we can see forms of epistemic injustice functioning as a disastrous gateway injustice to the legal injustice of extracted confession and wrongful conviction.[18]

A Super-power of Constitutive Social Construction

There is a further feature of this triphasic process worth noticing here, and integrating into our philosophical model. We have seen that the method of interrogation prescribed by the Reid Technique involves the presumption of guilt combined with powerful tools to produce institutionally conclusive evidence of guilt—notably the legal right to epistemically manipulate the suspect. On the basis that this gives the interrogators a massively enhanced ability to secure confessions from the presumed-guilty, then what comes into view, once we dispel the Confession Myth, is that the police thereby have a near super-power of *constitutive social construction*. This kind of social construction involves a power to make someone or something *count as* having a feature F in a context by treating them as if they do have feature F in the context. Here, the social constructive power possessed by the police is to make a suspect *count as* guilty in the legal institutional context, via irreversible confession, by treating them as guilty with a view to bringing them to deliver up the institutionally conclusive evidence that they are

[18] For two perspectives on epistemic injustice in relation to different aspects of the carceral system see, for instance, Medina (2021) and Pitts (2019).

indeed guilty. And the particular institutional context in which a suspect comes to count as guilty by being so treated is the only context that matters, since it is the context in which the relevant authorities will deliver a sentence of imprisonment or worse. This kind of social construction is importantly different from *causal social construction*, which is a power to make something or someone *actually* come to possess feature F in the context. No matter how much legal entitlement the police may possess to use tools apt to produce a confession, even from the innocent, these tools can never make it the case that the innocent are *in fact* guilty of the crime they are supposed to have committed. But there is little comfort in that. We are merely reminded of the grim fact that in some authoritative contexts it is what you *count as* that determines your fate.

To summarize this diachronic philosophical modelling of a standardly prescribed method of police interrogation in the U.S., I have suggested that a first phase is the Institutionalized Testimonial Injustice produced by the method of presumed guilt, represented here as an institutionally entrenched prejudice that produces credibility deficits. Next, I invoke Lackey's conception of Agential Testimonial Injustice (pace the issue of prejudice) as the middle phase wherein the confession of a suspect whose epistemic agency has been actively broken down is instantly taken as credible. Finally, the third phase concerns the irreversibility of confession, another institutionally entrenched prejudice that produces credibility deficits. This norm ushers in a return of the first form of Institutionalized Testimonial Injustice, as a suspect's attempts to recant their confession in renewed affirmations of innocence are, once again, deemed incredible as a matter of institutionalized epistemic prejudice. All these norms and processes are entirely contingent, and could be changed given the political will. At the time of writing, in New York state there is a bill pending, Senate Bill 324, sponsored by Zellnor Myrie, which proposes the banning of police deception in interrogation and would require that courts assess the reliability of confessions prior to their being admissible.[19]

Importantly, let me reiterate that no part of the institutional epistemic critique I offer here stands or falls on accurately reflecting the credibility judgements of individual interrogating officers or

[19] The descriptor is: 'Relates to precluding inadmissible statements made by defendants because of false information and requires data collection of recorded interrogations' https://www.nysenate.gov/legislation/bills/2021/S324

other officials. Institutionalized epistemic norms do not directly govern what individuals may personally believe; they govern what *counts as* credible or not credible in the institutional processes enacted. Maybe an individual interrogator believes the confession, or the attempted retraction, or maybe they don't; maybe they are not sure, or maybe they don't care. It makes no difference to the model, because what we are tracking here is a triphasic institutional epistemic process that determines whether the suspect comes to count as guilty in the eyes of the law. If the system counts you as having confessed, then that is sufficient for guilt, unless and until a DNA exoneration may one day be achieved.[20] Accordingly, the three-phase model is offered as a depiction of something at the level of institutional reality rather than something necessarily representing the propositional attitudes of individuals who are trained to enact the determining processes. The social constructive super-power to make a suspect count as legally guilty is not something any individual possesses. It is a structural power embedded in the entrenched practices of the institutional body—practices that urgently need to be informed by the psychological discoveries that have long exposed the Confession Myth as a complex institutionalized prejudice that serves neither truth nor justice.[21]

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[20] Kassin recalls: 'When Scheck and Neufeld [Barry Scheck and Peter Neufeld founded the Innocence Project in 1992, which became the Innocence Network of nearly 70 legal organizations globally] reported on their first few DNA exonerations, they had the foresight to "autopsy" the case files to determine what caused these wrongful convictions. What they discovered was a predominance of mistaken eyewitness identifications, false confessions, informants who lied, and misapplications of forensic science. These factors were noted, archived, and posted on their web site. To everyone's astonishment, false confessions contributed to 29 percent of these cases. What's more, that number increases to over 60 percent in the IP's subset of homicide cases' (Kassin 2022, p. 24).

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