

The Strangeness of Knowledge-based Injustices against Children

SWAGATANJALI BAURI

Abstract. This paper explores a particular kind of epistemic injustice against children. Following Fricker and Dotson's ideas on epistemic injustice and testimonial smothering respectively, I use the terminology offered by them to examine the Christchurch Civic Creche case (1993).

Introduction

In November 1991, a sexual abuse counselor was informed by her son, who attended the Christchurch Civic Creche, that he did not like his childcare worker's genitalia. She inferred from this statement that Peter Ellis, a childcare worker, had sexually abused her son at the creche.¹

Although initial interviews of children failed to reveal any incriminating allegations, later interviews resulted in charges against Ellis. The charges soon began to escalate, with the nature of the complaints becoming increasingly extreme.² Children reported graphic details of the abuse they experienced. It is noteworthy that during this time, there had been

¹Felicity Goodyear-Smith, "Civic Creche Case, Christchurch." *IPT Journal* - "Civic Creche Case, Christchurch", http://www.ipt-forensics.com/journal/volume5/j5_4_3.htm#en1.

²Allegations of sexual abuse involved elements that seemed fantastical such as "underground tunnels, cages and trapdoors, children being defecated and urinated on, naked children being forced to hurt one another inside a circle of adults, children being forced into a steaming hot oven or buried in coffins" and so on. See Ross Francis, "New Evidence in the Peter Ellis Case," *New Zealand Law Journal*, (2007).

alleged cases of satanic ritualistic child sexual abuse in child care homes in other parts of the world, such as in America.³ The same was implicated in the Christchurch creche.⁴ However, many charges were subsequently dropped as children began recanting. A seven-year-old admitted that she had "learnt"⁵ her story before the interviews, and that the interviewer had "taught [her] what Peter did."⁶ Later independent research and investigations resulted in deeply problematic findings regarding the way the children were interviewed, which will become a focal point in this paper.

Nonetheless, Ellis was convicted of sixteen counts of sexual assault involving seven children in June 1993, and was given a prison sentence.⁷ The allegation of abuse made by a boy that led to Ellis' conviction was itself problematic; there is evidence that the allegation might have been affected by the suggestive questioning used by the interviewers and the boy's parents.⁸ The fairness of the verdict has been widely debated and has been subjected to several commission inquiries, but Ellis died on September 4, 2019 before the hearings of his final appeal began.⁹

This incident involves a host of concerns from a philosophical perspective. However, instead of attempting to give a complete account of the epistemically and morally interesting features of this case, I will focus on children as epistemic agents and the nature of injustices

³For a detailed account of the same, refer to Jeffrey S. Victor, "A Rumor-Panic about a Dangerous Satanic Cult in Western New York," *New York Folklore* 15, 1-2 (1989): 23-49. and "Satanic Cult Rumors as Contemporary Legends," *Western Folklore* 49, no.1 (1990): 51-81.

⁴Investigators had interviewed 116 children, and forty hours of videotaped interviews with twenty children were presented in a closed court during the depositions hearings. Subsequent trials failed to reveal any definite incriminating evidence of the abuse or any medical evidence of injury. See Goodyear-Smith, "Civic Creche Case," http://www.ipt-forensics.com/journal/volume5/j5_4_3.htm#en1.

⁵Goodyear-Smith, "Civic Creche Case," http://www.ipt-forensics.com/journal/volume5/j5_4_3.htm#en1.

⁶Goodyear-Smith, "Civic Creche Case," http://www.ipt-forensics.com/journal/volume5/j5_4_3.htm#en1.

⁷Ellis had pled 'not guilty'. He and his counsel lodged several petitions and appealed to the court, which led to a series of inquiries between 1998 and 2005, which acknowledged the worrisome manner in which the case was prosecuted, but did not overturn the sentence. Many New-Zealanders supported his plea and condemned his sentence as a miscarriage of justice. On July 25, Ellis, diagnosed with terminal bladder cancer, appealed to the Supreme Court of New Zealand, which was accepted by the court. For a detailed overview, see http://www.ipt-forensics.com/journal/volume5/j5_4_3.htm#en1 and <https://www.stuff.co.nz/national/crime/114665914/civic-creche-sexual-abuse-or-abuse-of-justice>.

⁸Ross Francis, "New Evidence in the Peter Ellis Case," *New Zealand Law Journal*, (2007): 400-402.

⁹Goodyear-Smith, "Civic Creche Case," http://www.ipt-forensics.com/journal/volume5/j5_4_3.htm#en1.

they may face.¹⁰ I will use the Christchurch case as an example to support my views. Most of the existing discussion involving knowledge-based injustices revolves around adults as victims of injustices. This paper highlights the importance of including children within the discussion of knowledge-based injustices. I will use concepts developed by Miranda Fricker and Kristie Dotson in their work on epistemic injustice and epistemic violence to examine the treatment of the children's testimonies in the Christchurch case.

I will argue that (i) the knowledge-based injustice against the Christchurch children may have stemmed from the situated ignorance of the adults, (ii) the usage of leading questions can cause knowledge-based injustices that are similar to, yet distinct from Dotson's characterization of testimonial smothering, (iii) we need new conceptual tools to analyze and define practices of knowledge-based injustices against children. To justify my position, I begin by discussing Fricker's concept of epistemic injustice and briefly outline children's status as epistemic agents. Subsequently, I elaborate on Dotson's characterization of testimonial smothering. I then go on to analyze the events at Christchurch and show why it is similar to, but distinct from testimonial smothering. Finally, I highlight the need for new conceptual tools to study the phenomenon of epistemic injustice against children.

Epistemic Injustice and Children

Epistemic Injustice

Much of the information we rely on to navigate through our lives comes from the testimonies of others. Therefore, we need to identify "good informants"¹¹ who reliably communicate information. "[G]ood informants"¹² possess "indicator properties"¹³—exter-

¹⁰One may make the case that the kind of epistemic injustice I go on to discuss may apply to adults as well. Individuals who aren't children may still be vulnerable to similar practices of epistemic injustice and testimonial smothering. However, children are the paradigmatic subjects vulnerable to epistemic injustices. When questioning an adult we need not assume that their memories are impressionable to the same degree as the memories of children are, but we are specially culpable if we do not make such an assumption when questioning children.

¹¹Miranda Fricker, "Rational Authority and Social Power: Towards a Truly Social Epistemology," in *Social Epistemology: Essential Readings*, ed. Alvin I. Goldman and Dennis Whitcomb (New York: Oxford University Press, 2011), 57.

¹²Fricker, "Rational Authority and Social Power," 57.

¹³Fricker, 57.

nally recognizable properties that "signal the presence of both competence and trustworthiness"¹⁴ to the audience. Fricker identifies that an agent has "rational authority"¹⁵ when she is "competent and trustworthy"¹⁶ and has "credibility"¹⁷ when she displays "indicator properties."¹⁸ *Ideally*, those who really have rational authority are also treated as credible. In reality societal norms impact the way we assign credibility. We formulate "working indicator properties"¹⁹ using markers such as credentials and occupation. Such markers are often tied to an individual's social status. An individual in a socially advantageous position in terms of class, gender, and race is likely to have better credentials and occupation. People can have rational authority but may not seem credible, or they can abuse their social power to seem credible and fake rational authority. Since the indicator properties are the only things visible, the connection between credibility and rational authority becomes defeasible.²⁰ Fricker defines "epistemic injustice"²¹ as a prejudice-based disjunction between the credibility and rational authority assigned to an agent, where "the powerful tend to be given mere credibility and/or the powerless tend to be wrongly denied credibility."²²

Children as Epistemic Agents

It appears that children legitimately lack rational authority to a certain degree. Children often lack competence and a viable track record; they also are limited linguistically. Adults may not be able to identify whether a child understands and describes her experiences adequately or not. Havi and Györfy highlight how judging the credibility of children's testimonies is problematic. The fact that children are often incoherent and inconsistent during communication makes adults take their testimonies less seriously. Additionally, their difficulty in using language, their suggestible nature, and their reliance on adults for interpretation makes them more vulnerable to epistemic injustices. At the same time, denying

¹⁴Fricker, 57.

¹⁵Fricker, 60.

¹⁶Fricker, 60.

¹⁷Fricker, 60.

¹⁸Fricker, 60.

¹⁹Fricker, 60.

²⁰Fricker, 60.

²¹Fricker, 62.

²²Fricker, 62.

children credibility due to the lack of indicator properties when they are truthful will cause harm to the child.²³ Though sometimes, this harm might be unavoidable, when the child lacks even reliable indicator properties.

However, in terms of testimony involving sexual abuse, evidence shows that children can, and do, in fact, reliably communicate their experience. Studies investigating practices of interrogation of children reveal that "contrary to popular belief,"²⁴ children need not be "prodded to disclose abuse"²⁵ and are actually "unlikely to deny abuse"²⁶ when questioned appropriately. In fact, "a child's testimony may in some cases turn out to be more reliable than an adult's, because a child [often testifies] more spontaneously"²⁷ than adults do, since they lack the psychological and physiological capacity to fabricate and describe detailed events independently, and certainly not "traumatic and painful experiences"²⁸ like sexual abuse. However, their memories are, unlike adults' memories, extremely vulnerable to alteration by suggestive questioning. As I will discuss in detail later, this means obtaining reliable testimony from children requires special care. Not taking this care can easily amount to an epistemic injustice against the child.

Therefore, the terms and concepts Fricker offers as tools to judge the credibility of testimonies are useful in the analysis of the epistemic injustices that children may face. However, I argue that because of the difference between children and adults, these conceptual tools alone are not yet adequate to fully express the way children are vulnerable to epistemic injustices. I turn to Dotson's concept of testimonial smothering to gain a more nuanced understanding.

²³Carel, Havi, and Gita Györffy, "Seen but Not Heard: Children and Epistemic Injustice," *The Lancet* 384, no. 9950 (2014): 256—257. Also, I elaborate on what consists of 'harm' in such cases, later in my paper; refer to the section on 'Harms from Epistemic Injustice'.

²⁴Francis, "New Evidence in the Peter Ellis Case," 401.

²⁵Francis, 401.

²⁶Francis, 401.

²⁷G. Montanari Vergallo et al, "The Credibility of Testimony from Minors Allegedly Victims of Abuse within the Italian Legislative Framework," *International Journal of Law and Psychiatry* 56, (2018): 60.

²⁸Vergallo et al, "The Credibility of Testimony," 61.

Testimonial Smothering

Dotson introduces a specific kind of epistemic injustice called "testimonial smothering."²⁹ It happens when the speaker truncates her testimony because she perceives her audience as "unable or unwilling to gain the proffered uptake of the testimony."³⁰ This typically happens under three conditions. First, the speaker judges the content of her testimony as being "risky."³¹ Second, the audience displays "testimonial incompetence,"³² they are not only unable to understand the speaker's words, but also, they are unable to realize their failure to follow the speaker's words.³³ Third, the audience's testimonial incompetence must follow from "pernicious ignorance."³⁴ Pernicious ignorance is a reliable or consistent ignorance of the audience due to an epistemic gap in their cognitive resources that causes harm to the speaker in a specific circumstance.³⁵

Dotson shows how the social identities of class, race, gender can become risk factors for experiencing testimonial smothering.³⁶ I argue that age is also such a risk factor and that the children in Christchurch experienced an injustice close to, but not the same as, testimonial smothering.

The Christchurch Civic Creche Case (1993)

Nature of Questioning

I have already established the problematic nature of children's status as epistemic agents. Research shows that the nature of questioning children face as victims of sexual abuse is a crucial determinant of the kind of testimonies they give and the amount of credibility that

²⁹Kristie Dotson, "Tracking Epistemic Violence, Tracking Practices of Silencing," *Hypatia* 26, no. 2 (October 2011): 237-238.

³⁰Dotson, "Tracking Epistemic Violence," 244.

³¹Dotson, 244.

³²Dotson, 244.

³³Dotson, 244.

³⁴Dotson, 244.

³⁵Dotson, 238.

³⁶Dotson, 245-248.

can and should be assigned to them.³⁷ Unlike adults who "recount as they remember,"³⁸ children "remember as they recount,"³⁹ and memories can be altered by suggestive questioning.⁴⁰ Michael Lamb, a Cambridge University professor who has worked extensively on interviewing procedures of child abuse victims, holds that "young children could be competent witnesses but could also be susceptible to errors when interviewed because they: (1) infer that the interviewer wants a particular response; (2) want to help but do not understand the questions; (3) retrieve information recently acquired about the event in question; and (4) become confused as to the source of their memory about the event."⁴¹ Lamb notes that children were rarely asked "free recall, non-leading, open-ended questions"⁴² during the formal interviews at Christchurch, and were asked "suggestive"⁴³ and "leading"⁴⁴ questions. A boy gave a disclosure interview affirming Ellis abusing him, despite denying the same initially. He was known to be "exposed to "highly leading questioning" by [his] parents"⁴⁵ who were convinced that he was abused.⁴⁶ The boy alleged ritual sexual abuse only after talking to his therapist, who "showed him satanic signs and asked him to identify them."⁴⁷ Lamb's affidavit for the case highlights certain "conditions under which suggested information was likely to be adopted [by children]."⁴⁸ They included "[1] details suggested repeatedly; [2] an air of accusation is established; [3] details are rehearsed; [4] conversations with sources of contaminated information [such as parents and counsellors]... proceed unchecked."⁴⁹ Lamb's investigation of the case highlighted how suggestive questioning might have triggered the allegations the children made and explains the considerable extent of recantations afterward.

I will now make the case that the use of suggestive and leading questioning may have

³⁷Vergallo et al, "The Credibility of Testimony," 61.

³⁸Vergallo et al, "The Credibility of Testimony," 61.

³⁹Vergallo et al, 61.

⁴⁰Vergallo et al, 61.

⁴¹Francis, "New Evidence in the Peter Ellis Case," 399.

⁴²Francis, 399.

⁴³Francis, 400.

⁴⁴Francis, 399.

⁴⁵Francis, 400.

⁴⁶Francis, 401-402.

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⁴⁸Francis, 400.

⁴⁹Francis, 400.

caused a kind of knowledge-based injustice akin to smothering, against children in the Christchurch incident.

Leading Questions and Testimonial Smothering

The example of the Christchurch children fits most criteria for Dotson's concept of epistemic smothering, and yet it needs to be recognized as a distinct form of testimonial injustice. Dotson's first condition claims that the speaker must think that the content of the testimony is somewhat "risky."⁵⁰ Although children do not have the ability to cognize the concept of sexual assault, they likely understood that the matter was somewhat grave, given the extent of interrogation they went through.⁵¹ Dotson's second and third conditions require that the audience display testimonial incompetence regarding the speaker's testimony stemming from pernicious ignorance.⁵² The extensive use of leading questions by the parents and interviewers in Christchurch can be interpreted as evidence of both testimonial incompetence and pernicious ignorance. The testimonial incompetence shown here was twofold. Firstly, there was testimonial incompetence stemming from 'confirmation bias' or favouring information that supports one's preconceived beliefs.⁵³ It is likely that when a child seems unsure about some event, the adult takes their uncertainty as confirming what the adult already believes. The bias is likely to be built into the kind of questions that were asked (e.g. "Can you remember any other things happening that you didn't like?... He [Peter] didn't pull his pants down, so you didn't see any of his rude bits?"⁵⁴). This forms one part of the testimonial incompetence, because the questioning adults could not recognize their own bias obscuring the child's testimony.

Secondly, the testimonial incompetence possibly stemmed from the situated ignorance of the adults. Code, as quoted by Dotson, describes the problem as follows: "Because differing

⁵⁰Dotson, "Tracking Epistemic Violence," 237.

⁵¹Francis "New Evidence in the Peter Ellis Case", 403-400.

⁵²Dotson, "Tracking Epistemic Violence," 244.

⁵³These kind of confirmation biases are arguably a manifestation of paternalistic interventions of adults, which intend to benefit children, but may end up causing harm. However, I will not engage with the discussion on paternalism in this paper. For more details on the same see Amy Mullin, "Children, Paternalism and the Development of Autonomy," *Ethical Theory and Moral Practice* 17, (2014): 414.

⁵⁴Francis, "New Evidence in the Peter Ellis case," 401

social positions generate variable constructions of reality and afford differing perspectives on the world [knowers are] at once limited and enabled by the specificities of their locations."⁵⁵ This fits the Christchurch case well: while an adult is advantaged by their age and their increased cognitive capacity to understand the concept of sexual abuse and what that experience may entail, they are disadvantaged with regard to the way a child might understand the same, and may not realize their inadequacy to interpret the concept of 'sexual abuse' from a child's viewpoint. So, the epistemic gap between adults and children not only results in different understandings of the same concept but also restricts the adult's capacity to realize her limitations. "[This] kind of ignorance can be mostly non-culpable and unconscious, but it is also reliable,"⁵⁶ and thus can be classified as pernicious ignorance. Therefore, leading questions reflect testimonial incompetence due to both confirmation bias and situated ignorance. It appears then, that an argument can be made that the use of leading questions to elicit testimonies from children may cause a form of testimonial injustice that resembles testimonial smothering.

What makes it difficult to characterize this scenario as an instance of testimonial smothering, is that, even though most of the conditions for smothering are met, it is impossible to show that all the children were consciously silencing themselves. All the evidence regarding their vulnerability to suggestions, and how leading questions warp their memories, indicate that children are unconscious of the way the suggestions of the adults affects them. Nonetheless, it would not be incorrect to call the treatment of the children in the Christchurch case some form of testimonial injustice, that closely resembles testimonial smothering except that it may lead to changes in memories on the basis of which testimony is given instead of the suppression of testimony. A new conceptual tool is therefore required to make sense of knowledge-based injustices against children.

⁵⁵Dotson, "Tracking Epistemic Violence," 248.

⁵⁶Dotson, "Tracking Epistemic Violence," 248.

Harms from Epistemic Injustice and the Christchurch Case

Epistemic injustices are costly from an epistemic point of view because it deprives the audience and the society of gaining knowledge from the silenced, ignored or warped testimonies, that could have otherwise been a source of knowledge.⁵⁷ The problematic questioning process obscured evidence about the truth of the Christchurch situation. Ellis died maintaining he was innocent, and if that is the truth, then he suffered much humiliation and injustice due to all the false allegations. Knowledge-based injustices cause harm to the victim that is also tremendously costly from a personal standpoint. Epistemic injustices can devastatingly alter one's sense of self-worth.⁵⁸ Fricker mentions that when people are "degraded qua knower[s]," they are "symbolically degraded qua human[s]."⁵⁹ In worst cases, individuals can start adhering to the false prejudices in self-fulfilling ways.⁶⁰ The argument can be extended to children - children may grow up into adults who lack "intellectual courage"⁶¹ because they were never treated as a 'knower' during their developmental period. The Christchurch case exhibits some of the emotional costs of testimonial injustices. The children who "may have come to believe they have been abused"⁶² have apparently shown signs of emotional distress since the trials began, such as "excessive fearfulness"⁶³ and experiencing "nightmares."⁶⁴ Also, these children may actually self-silence as adults if they realise their misguided testimonies caused injustice to an innocent man, and they may lose trust in their own epistemic agency.

⁵⁷Fricker, "Rational Authority and Social Power," 64-65.

⁵⁸Fricker, Epistemic Injustice, 48-47.

⁵⁹Fricker, 44.

⁶⁰Fricker, 48-47.

⁶¹Fricker, 49.

⁶²Goodyear-Smith, "Civic Creche Case," http://www.ipt-forensics.com/journal/volume5/j5_4_3.htm#en1.

⁶³Goodyear-Smith, "Civic Creche Case," http://www.ipt-forensics.com/journal/volume5/j5_4_3.htm#en1.

⁶⁴Goodyear-Smith, "Civic Creche Case," http://www.ipt-forensics.com/journal/volume5/j5_4_3.htm#en1.

A Hermeneutical Lacuna

I think that philosophers presently have a "hermeneutical lacuna,"⁶⁵ or an obscurity in the collective understanding of a particular social experience, namely that of children, due to a gap in the collective hermeneutical resources. We need new conceptual tools that can help us analyze and describe epistemic injustice and violence as experienced by children. Epistemic injustices may take a unique form when the victims are children because their ability to remember and form lasting memories that are relatively robust against outside interference is less developed than in adults. This may not be captured by existing theories in this field. I have already shown how children differ from adults as epistemic agents, and the conceptual tools that apply to adults may not fit children appropriately. Fricker's notion of "indicator properties"⁶⁶ and Dotson's "testimonial smothering"⁶⁷ are instances of such concepts. Nevertheless, the phenomenon at Christchurch is dangerously similar to cases of smothering. The concept of testimonial smothering might therefore be a good starting point for developing much needed new conceptual tools for understanding epistemic injustice when it victimizes children.

Conclusion

This paper posits that (i) the knowledge-based injustice against the Christchurch children may have stemmed from the situated ignorance of the adults, (ii) the usage of leading questions can cause knowledge-based injustices that is similar to, yet distinct from Dotson's characterization of testimonial smothering, (iii) we need new conceptual tools to analyze and define practices of knowledge-based injustices against children. I have outlined the concepts of 'Epistemic Injustice' and 'Testimonial Smothering' as discussed by Fricker and Dotson, respectively. I have also highlighted the problematic status of children as epistemic agents. An examination of the nature of questioning used to interrogate the children in the Christchurch case (1993), showed that the case resembles some form of testimonial injus-

⁶⁵Fricker, *Epistemic Injustice*, 155-150.

⁶⁶Fricker, "Rational Authority and Social Power," 57.

⁶⁷Dotson, "Tracking Epistemic Violence," 244.

tice that is similar to and yet distinct from Dotson's concept of testimonial smothering. The inadequacy of the existing terms and concepts to fully capture the nature of knowledge-based injustice that children face suggests the need for more research and development of new conceptual tools that will fill the existing gap in our collective hermeneutical resources.

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