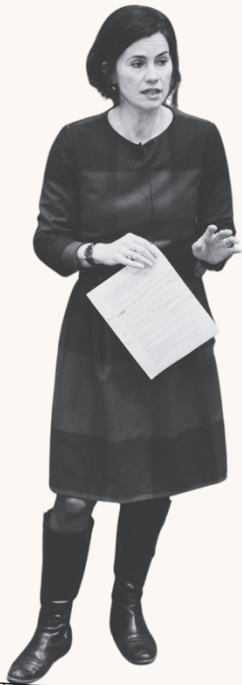


Foucauldian Power for the Ethics of Knowing

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Abstract

In this paper I identify a misunderstanding of Foucauldian theory in Miranda Fricker's work on epistemic justice and suggest a recontextualization of Foucault that strengthens Fricker's analysis of epistemic injustice. I first reject Fricker's claim that postmodernist theoretical space does not serve much purpose in contemporary social activism. Then, I examine the notion of capacity in the writing of both Fricker and Foucault to ultimately conclude that Fricker's definition of power is too narrow in scope to accommodate for power in all its complexity and different forms. I lastly use both Fricker as well as Foucault to analyze multiple different examples from courtrooms to determine how exactly Foucault provides a tangible and accessible route to resistance that can support Fricker's work.

Epistemic Injustice and Foucault: Introduction

Since Miranda Fricker's 2007 book *Epistemic Injustice: Power and the Ethics of Knowing*, there has been much research into this blossoming and valuable field of epistemology. It is becoming widely recognized that we must identify what epistemic resources are and how they should be distributed, with special attention given to those who have historically been disenfranchised and disconnected from such resources. Because Fricker's work is foundational and of great importance to this field, I wish to bring light to an area of her analysis that could be strengthened in favor of her overall aim. In what follows, I focus on the notion of social power that informs Fricker's work. In particular, I am interested in this power's conceptual origin in Foucauldian theory. The main worry is that Fricker's explanation of social power does not consider its inherent and elusive complexity, which can best be seen by recontextualizing it in Foucault's work. Here I offer this recontextualization, and I also explore why this shift is helpful in theorizing about epistemic injustice.

Miranda Fricker introduces the distinctly epistemic concept of injustices, which harm one in one's capacity as a knower.¹ Fricker primarily focuses on two forms of epistemic injustice, namely *testimonial injustice* and *hermeneutical injustice*.² According to Fricker, the central case³ of testimonial injustice occurs when "prejudice causes a hearer to give a deflated level of credibility to a speaker's word."⁴ Hermeneutical injustice takes place when one is unable to properly interpret their social experience due to a gap in their culture's collective knowledge.⁵ Fricker also utilizes the notion of 'social power' throughout her work, which she defines as "a socially situated capacity to control others' actions."⁶ While Fricker's main focus is to describe and diagnose the problem of epistemic injustice, her solutions focus on the development of virtues.⁷

Fricker begins her work by creating a definition for her term "social power," which will prove vital to her later discussions of injustice as this is the collective commodity that she will claim is being unfairly distributed. Fricker claims social power "is a capacity we have as social agents to influence how things go in the social world."⁸ This power, according to Fricker, can operate actively or passively. In her example of a traffic warden, Fricker claims that her power is operating actively when she imposes a fine, but it also operates passively when her capacity to impose a fine influences a citizen's parking behavior.⁹ The fact that the citizens are aware of the officer's capacity to give out a fine influence their behavior, without the officer having to actually act. Fricker crucially posits that

¹ Miranda Fricker, *Epistemic Injustice: Power and the Ethics of Knowing* (NY: Oxford University Press, 2007), 1.

² Fricker, *Epistemic Injustice*, 1.

³ Fricker has been critiqued elsewhere for the embedded claim in her definition that testimonial injustice is a result of a credibility deficit but not excess (Fricker, *Epistemic Injustice*, 18), notably by Emmalon Davis in "Typecasts, tokens, and spokespersons: A case for credibility excess as testimonial injustice." *Hypatia* 31, no. 3 (2016): 485-501. While I agree with Davis' argument, the aim of my paper does not rely on the exact definition of testimonial injustice, and I will continue to use Fricker's original definition hereafter.

⁴ Fricker, *Epistemic Injustice*, 1.

⁵ Fricker, *Epistemic Injustice*, 1.

⁶ Fricker, *Epistemic Injustice*, 4.

⁷ Fricker, *Epistemic Injustice*, 1.

⁸ Fricker, *Epistemic Injustice*, 9.

⁹ Fricker, *Epistemic Injustice*, 9.

“since power is a capacity . . . , power exists even while it is not being realized in action.”¹⁰ We will revisit this notion of capacity in a later section, but it is important to note now that Fricker analyzes power as a socially situated capacity to control others’ actions.¹¹

What exactly does Fricker mean by a *socially situated capacity*? Fricker first uses an example of a police officer who is giving out parking tickets. This officer has power over ordinary citizens as a result of her social situatedness. Because she works in the government and has passed through certain training, courses, etc., she is allotted a kind of capacity (to give or not give a ticket) that other citizens do not possess. Socially situated capacity is also granted through other, sometimes immutable, characteristics, such as race, class, gender, sexuality, etc. For example, a white man might have more social power than a Black woman.

In the above definitions, Fricker is deliberate in her use of the term ‘social power,’ but then continues to just use the general term ‘power’ in the same breath. For instance, after defining ‘social power,’ she then remarks that “a first point to make is that power can operate *actively* or *passively*.”¹² Because Fricker seems to use the terms ‘social power’ and ‘power’ as synonyms, it is difficult to determine if there are meaningful differences between these two notions. While we cannot conclude that Fricker is intending to make broad statements about every form of power through her proposed definition, she does make several claims in response to Foucault that directly counter several key tenets of his theory (specifically the characteristic of capacity and how exactly power can be observed) which suggests that we may be discussing the analysis of power in its broader form. Before investigating her specific rejection of certain Foucauldian claims, I will first reject a preliminary claim she posits in the introduction in order to justify my defense of Foucauldian theory in the first place.

¹⁰ Fricker, *Epistemic Injustice*, 10.

¹¹ Fricker, *Epistemic Injustice*, 4.

¹² Fricker, *Epistemic Injustice*, 9.

A “Vain Hope?”

I begin by exploring Fricker’s dismissal of postmodernist conceptions of power, specifically that of Michel Foucault, as well as her claim that contemporary feminist theorists are disillusioned with postmodernist theory. In the introduction to *Epistemic Justice*, Fricker directly acknowledges that there was a postmodernist theoretical space in which one might investigate the notion of power that was appealing to many feminist philosophers.¹³ However, she also claimed that this space “turned out to be largely a vain hope, for the extremist bent in so much postmodernist writing led too often to reductionism.”¹⁴ She goes on to speak of the “postmodernist buzz” in strictly the past tense, suggesting that feminist theorists have, on the whole, moved on from these reductionist methodologies.¹⁵ I reject Fricker’s claim that postmodernist theoretical space turned out to be “largely a vain hope” for feminist philosophers. I focus specifically on Fricker’s analysis of Foucault’s writings on power. While Fricker uses the term postmodernism in a very broad strokes manner, I will be focusing specifically on her interpretation of Foucault.¹⁶

While this paper aims to support the use of Foucauldian analysis in Fricker’s broader theory of epistemic injustice, I will use Jose Medina and Amy Allen to introduce some of the controversy surrounding the deployment of Foucauldian analytics in such endeavors. José Medina, a writer also interested in epistemic injustice and oppression, employs Foucault throughout his work. He comments that “it is surprising that Foucault is not widely cited and discussed in the epistemologies of ignorance developed in Feminist Standpoint Theory and Critical Race Theory.”¹⁷ Amy Allen, a

¹³ Fricker, *Epistemic Injustice*, 2.

¹⁴ Fricker, *Epistemic Injustice*, 2.

¹⁵ Fricker, *Epistemic Injustice*, 3.

¹⁶ Fricker makes a more fleshed out case against postmodernism in *The Cambridge Companion to Feminism in Philosophy*, eds. Fricker and Hornsby (Cambridge: Cambridge University Press, 2000). I focus on her rejection of Foucault strictly in *Epistemic Justice* because I find the premises of her dismissal inadequate, and I argue that Foucault assists with the aim she hopes to accomplish with this work specifically.

¹⁷ José Medina, *The Epistemology of Resistance: Gender and Racial Oppression, Epistemic Injustice, and Resistant Imaginations* (Oxford University Press, 2012), 293.

feminist philosopher herself, sets out to advocate for use of Foucauldian theory and defends its use by other feminist philosophers. In doing so, she remarks that,

Many of these [feminist] criticisms rest on misunderstandings of Foucault's work, and, thus, fall wide of their mark. Moreover, the criticisms that do hit their mark do not warrant a wholesale dismissal of Foucault's analysis of power but, instead, indicate the necessity of supplementing and extending some of Foucault's insights in order to incorporate them into a feminist conception of power.¹⁸

I do not believe that Fricker intended to claim that no one currently uses postmodernist literature, or that it does not have applicable uses. However, for her to remark that this space presented “largely a vain hope” and then to immediately present Foucauldian theory to supplement her definition of social power appears incongruent. It is unlikely that feminist social theorists entered postmodernist theoretical spaces in the hopes that the dynamics of power and the route to gender equality were fully mapped out, but they rather expected to be able to use parts of theory that proved most useful the feminist aim after thorough analysis.

In this section I aimed to prove that despite Fricker's claim in her introduction, postmodernist theoretical space still applies to contemporary feminist philosophy, with enticing potential to be expanded upon and modified as needed. Next, I will analyze the notion of capacity as a characteristic of power in Fricker and Foucault's work to determine where they differ and ultimately argue that Fricker's definition is unsatisfactorily narrow.

Capacity and the Domains of Power

As a reminder, Fricker defines social power as “a capacity we have as social agents to influence how things go in the social world.”¹⁹ Firstly, we should note that capacity must be conceptualized in relation *to* something. One does not simply have capacity; one has capacity *to* do,

¹⁸ Amy Allen, *The Power of Feminist Theory* (Routledge, 1999), 32.

¹⁹ Fricker, *Epistemic Injustice*, 9.

say, think, act, etc. Because Fricker defines social power as the “capacity *to* influence how things go in the social world” (emphasis added), she argues that power can exist even “when it is not being realized in action.”²⁰ She then references Foucault’s claim that “power exists only when it is put into action.”²¹ Her argument goes roughly as follows: if capacity implies a dormant state of power, Foucault’s claim should be rejected since “it is incompatible with power’s being a capacity.”²² If Foucault believed that power was strictly a matter of capacity, then Fricker’s claim would have more weight; however, Foucault’s notion of power is more nuanced. I will first explain Foucault’s concept of the domains of power and then relate them to Fricker’s own previously mentioned example of a traffic warden, ultimately showing that the notion of capacity does not contradict or discredit Foucault’s analysis of power.

Foucault acknowledges that power can be understood as a capacity but emphasizes that it must also be acknowledged in relation to the nearby concepts of power relations and relationships of communication.²³ In his discussion concerning the question of how power is exercised, and more specifically exerted over others, Foucault says:

It is first necessary to distinguish that [power] which is exerted over things and gives the ability to modify, use, consume, or destroy them—a power that stems from aptitudes directly inherent in the body or relayed by external instruments. Let us say that here it is a question of “capacity.”²⁴

Notice here that Foucault appears to conceptualize capacity as *a form* of power, whereas Fricker considers capacity to be *the* form of power (with the added condition of social situatedness).²⁵ In the above quote, Foucault is discerning the power of capacity from a possible alternative form. As we

²⁰ Fricker, *Epistemic Injustice*, 10.

²¹ Fricker, *Epistemic Injustice*, 10.

²² Fricker, *Epistemic Injustice*, 10.

²³ Michel Foucault, “The Subject and Power,” in *Michel Foucault: Power*, ed. J.D. Faubion (NY: The New Press, 2000), 337.

²⁴ Foucault, “Subject and Power,” 337.

²⁵ Fricker, *Epistemic Injustice*, 4.

will see, careful discriminations such as these allow Foucault to analyze how power might take multiple different forms simultaneously, while Fricker's definition restricts the domains of power to the realms of capacity and social situatedness.

In addition to the "question of capacity," Foucault posits that power is also exercised through the domains of power relations and relationships of communication.²⁶ Power relations characterize relations between individuals, where the term 'power' designates a relationship between partners.²⁷ Relationships of communication "transmit information by means of a language, a system of signs, or any other symbolic medium."²⁸ Importantly, "communicating is always a certain way of acting upon another person or persons,"²⁹ placing the effects of communication in the realm of power as well. These are the domains (objective capacity, power relations and relationships of communication) that Foucault considers power to operate within when we are looking at *how* it is exercised. Foucault emphasizes that these three concepts should not be confused with one another:

this is not to say that there is a question of three separate domains...it is a question of three types of relationships that in fact always overlap one another, support one another reciprocally, and use each other mutually as means to an end.³⁰

As an example, take the police officer that Fricker uses to illustrate her notion of active and passive power. Foucault would disagree that, as Fricker argues, when a police officer's capacity to impose a fine influences a citizen's behavior, this is a form of power operating passively.³¹ It is, in fact, power in an incredibly active form. When a citizen sees an officer parked near a "no parking" zone, power is active in all three domains: The (1) objective capacity of this officer to impose a fine, the (2) power relation of the officer and the citizen, as well as the (3) relationship of communication between the

²⁶ Foucault, "Subject and Power," 337.

²⁷ Foucault, "Subject and Power," 337.

²⁸ Foucault, "Subject and Power," 337.

²⁹ Foucault, "Subject and Power," 337.

³⁰ Foucault, "Subject and Power," 338.

³¹ Fricker, *Epistemic Injustice*, 10.

officer and the citizen (the symbols on the officer's car that distinguish it and make this power relation clear, the parking sign, etc.) all combine to paint an image of power that is by no means passive. There is a string of actions built on actions; the citizen must look at and interpret the symbols on the officer's car, her surroundings, the parking zone, etc., which, once understood, communicate a power relation characterized by a certain capacity the officer possesses.

Fricker contends, in response to Foucault's aforementioned claim that "power exists . . . only when it is put into action,"³² that "the idea that power is not a capacity but rather pops in and out of existence as and when it is actually operative lacks motivation."³³ It should be evident by now that Foucault did not argue that power is *not* a capacity, but that power should not *strictly* be considered as a capacity.³⁴ To consider power only as a socially situated capacity is to define it only in terms of the directly observable domains in which it operates. To say that the vessel through which power acts (objective capacity, relationships of communication, power relations) is itself power is like defining wind as the movement of trees. The definition only concerns itself with the *effects* of the object of analysis, the salient and most visible characteristics of the thing itself. Foucault claims that "power is tolerable only on condition that it mask a substantial part of itself. Its success is proportional to an ability to hide its own mechanisms."³⁵ If we are to assume that the more obvious manifestations of power are representative of power itself, we run the risk of severely underestimating its insidious nature and the methods by which the structures we occupy can be shifted to empower those who may otherwise continue to entertain the entirely repressive, top-down, capacity-motivated notion of power, collected in the hands of a privileged few that leaves the general masses

³² Foucault, "Subject and Power," 340.

³³ Fricker, *Epistemic Injustice*, 10.

³⁴ Foucault, "Subject and Power," 337.

³⁵ Michel Foucault, *The History of Sexuality: An Introduction, Volume I*, trans. Robert Hurley (Random House, 1990), 86.

disenfranchised. One advantage of the Foucauldian analysis of power is that it does not underestimate or dilute power. As I will demonstrate later, when power is respected as being omnipresent and complex, routes toward empowerment become more visible.

Purely Structural Power

Fricker reasoned that since (as she claims) Foucault's theory of power was purely structural, meaning that "there is no particular agent exercising it,"³⁶ it is not useful when evaluating how we might conceptualize power to empower marginalized groups on a local level using agential power, where power is exercised by an agent. Through Fricker's own definitions of agential and purely structural power, the claim that Foucault is investigating purely structural power is demonstrably false, as I will illustrate.

If power is a capacity that an agent possesses, how is it that power can operate in an agentless way, as she claims occurs in the purely structural form of power?³⁷ Is it possible for a structure to possess the capacity that Fricker references? Let us analyze how Foucault reconciles his analysis of power structures with the way it is exercised:

Power exists only as exercised by some on others, only when it is put into action, even though, of course, it is inscribed in a field of sparse available possibilities underpinned by permanent structures...It operates on the field of possibilities in which the behavior of active subjects is able to inscribe itself. It is a set of actions on possible actions...it is always a way of acting upon one or more acting subjects by virtue of their acting or being capable of action.³⁸

While Foucault entertains the notion of a structure that exists external to the agent, it is only through the "behavior of active subjects" that power exists and is exercised.³⁹ Think again of Fricker's police officer. An officer parks her car in view of a no parking zone (action 1). A citizen passes the no

³⁶ Fricker, *Epistemic Injustice*, 10.

³⁷ Fricker, *Epistemic Injustice*, 10.

³⁸ Foucault, "Subject and Power," 341.

³⁹ Foucault, "Subject and Power," 341.

parking zone (action 2) and registers the officer's presence (action 3). The citizen decides to not risk it and finds a different spot (action 4). In every one of these actions, power exists through being exercised in this "field of sparse available opportunities underpinned by permanent structures."⁴⁰ The officer provides herself with an objective capacity to view the parking zone, the citizen becomes cognizant of a power relation dictated by said capacity through symbols of communication, etc.

The Courtroom as a Site of Oppression and Resistance

Now that I have shown Fricker's interpretation of Foucault's analysis of power to be lacking, in this section, I will argue that Fricker's objective, to "bring to light certain ethical aspects of . . . our most everyday epistemic practices"⁴¹ and ultimately provide a route towards empowerment, could be aided by Foucault's analysis of how power both represses and beneficially produces for the marginalized. Because his analysis of power is far from straightforward, misinterpretation can lead to Foucauldian theory being ejected from contemporary discussions regarding social activism. Allen justifies the use of his theory when she remarks that "Foucault's contention that power is at work not just in the state or official economy, but in all arenas of modern social life, echoes feminists' attempts to redefine the scope and bounds of the political."⁴² Foucault positioned much of his work to challenge the pervasive notion of top-down, repressive forms of power concentrated in the hands of a few. By recognizing the much more expansive domains of power and how it is made available to us through local institutions, like the family structure, for example, power becomes more easily recognized and therefore approachable.

⁴⁰ Foucault, "Subject and Power," 341.

⁴¹ Fricker, *Epistemic Injustice*, 1.

⁴² Allen, *The Power of Feminist Theory*, 48.

To illustrate how her analysis of epistemic injustice would benefit from Foucault's analysis of power, let's use her example of testimonial injustice. You may recall that testimonial injustice occurs when a hearer gives a deflated level of credibility to a speaker as a result of prejudice.⁴³ This is a way in which power acts in a *repressive* form (as Foucault would remark), a form of power that censors, prohibits, restricts, and constrains. However, if we recall Foucault's notion of power as "a set of actions upon other actions,"⁴⁴ even this form of power is fundamentally *productive*, in the sense that it produces discourse and action, and "empowers individuals by positioning them as subjects who are endowed with the capacity to act."⁴⁵

Fricker uses the courtroom scene in Harper Lee's *To Kill a Mockingbird* to demonstrate how testimonial injustice occurs.⁴⁶ Due to ample racial prejudice present in the courtroom, the Black male defendant, Tom Robinson, experiences a credibility deficit. His testimony is refuted and mocked by the prosecution and the white onlookers. Fricker analyzes this scene and uses her terminology (social power, testimonial injustice, etc.) to illustrate how Tom Robinson is harmed as a knower, using terms and ideas that were not accessible to him or the Black onlookers at the time. Fricker is using an example of repressive power as a site for her productive discourse, in Foucauldian terms.⁴⁷ Her use of what Foucault would consider the purely *repressive* form of power serves to reinforce her notion of capacity, as the white members of the court possess the capacity to deflate the credibility of Tom Robinson's testimony.⁴⁸ To Fricker, this use of power to deflate his credibility is reprehensible, and it becomes the responsibility of those *with* power to adjust how it is being used (although, of course, the marginalized voices should have influence as to how the use of power is

⁴³ Fricker, *Epistemic Injustice*, 1.

⁴⁴ Foucault, "Subject and Power," 341.

⁴⁵ Allen, *The Power of Feminist Theory*, 51.

⁴⁶ Fricker, *Epistemic Injustice*, 23.

⁴⁷ Fricker, 23.

⁴⁸ Fricker, 25.

being modified). Ultimately, Fricker's analysis presents us with a clear case of testimonial injustice as the result of an unfair deployment of social power.⁴⁹

Foucault and Fricker would diverge on where the analysis, specifically of the power at play in the courtroom, ends. Foucault would also analyze the ways in which the power relations, relations of communication, and objective capacity all work to serve the interests of the predominantly racist courtroom, and how these three domains also produce a site of productive discourse *for those who were the subjects being acted upon*. Through a Foucauldian analysis, prejudice and the presence of power may become more obvious when looking at how slurs were thrown around the courtroom, the power relations between Tom, Atticus, and the prosecutors reveal an unfair disadvantage, and the objective capacity of the court to imprison or hang Tom held threatens his ability to defend himself honestly. In these examples, all three domains of power can be observed in the way Fricker imagines power operating; as a repressive, unjust ability that the privileged few have, and the oppressed others do not. Were the analysis to only yield this result, the solution would require *those with power* to distribute it more fairly.

It could be argued that the use of *To Kill a Mockingbird* is less helpful in practice, as it is easy to perceive racism and power imbalance in a fictional courtroom, but possibly more difficult to detect epistemic injustices in today's world. Randall Kennedy, a contemporary legal scholar, documented the ways in which a white person's use of the N-word can be used to prove, or at the very least urge us to examine, the racial prejudices of defendants or plaintiffs.⁵⁰ For instance, if a Black worker files for discrimination in the workplace because a white supervisor harasses him, the case becomes incredibly more clear if there is undeniable evidence that the supervisor referred to the employee as the N-word, either in front of him or in private. The communication reveals the

⁴⁹ Fricker, 28.

⁵⁰ Randall Kennedy, *Nigger: The Strange Career of a Troublesome Word* (NY: Pantheon Books, 2022).

supervisor's attitude toward his power relation between himself and the worker, and how power is being abused becomes more apparent. The slur, though it is an act and manifestation of oppression, becomes a tool of empowerment for the worker to prove his supervisor's prejudice. This analysis of power and of how relationships of communication interact with objective capacity and power relations, proves more useful to the worker than the simple acknowledgement that the supervisor has a socially situated capacity and the worker does not. This is not to say that Fricker would necessarily miss this piece altogether; the N-word used in a derogatory sense is rather potent. However, her notion of power is too myopic to accommodate the ways in which the N-word acts as an element of power itself, not just an effect of it. When Foucault's different domains of power are analyzed together, the route towards resistance is revealed as being embedded in the forms through which power is deployed. The unfair power relations demand equilibrium, the language used should not reinforce or hint at such unjust relations, minority defendants should have more objective capacity to defend themselves, etc.

Ultimately, Fricker's rejection of Foucault's analysis of power results in a kind of power which is diluted and somewhat stale. It is difficult to move forward when there is only the simple issue of some people having power and some people not. The value in Foucault's understanding of power is that the subjects being unfairly acted upon ultimately end up with opportunities to observe and modify the surrounding power structure. An act of oppression beckons an act of resistance; "actions upon other actions."⁵¹

As we conclude, it is important to keep in mind the scope within which we are operating. This paper only seeks to justify the use of Foucauldian theory for Fricker's analysis of epistemic

⁵¹ Foucault, "Subject and Power," 341.

injustice. It is not necessary that every feminist project adopt such an analysis, but it happens to be the case that Fricker would benefit greatly from it. I echo Allen's claim:

[Feminists] do not 'need' Foucault...many feminists have done and continue to do this kind of analysis just fine without him. However...most feminists have thus far shied away from producing the kind of full-fledged analysis of the concept of power that Foucault presents. My point is that Foucault's theoretical conception of power matches up nicely with the ways in which many feminists have investigated the workings of male power; as a result, his analysis seems useful.⁵²

Foucauldian theory presents itself as a useful tool for the feminist project, but the decision to use it and how it should be used is left at the discretion of the thinkers and writers within the movement. It is simply the case that Foucault has provided modern activists with a thorough analysis of power in its many forms, and the strength of his work should not be disregarded on the grounds of misinterpretation.

If we are to build from the ideas of those that came before us in order to most effectively empower those in need, careful analysis should supplement hasty rejection so that contemporary activism can become progressive instead of regressive. Through my clarification of Foucault's theory and my demonstration of how it can work to reveal areas of empowerment available to those who are often epistemically slighted. Through an expansion of our understanding of the domains of power, I have illustrated how modern-day application of Foucault's theory can serve to benefit the goals shared by Fricker and feminist thinkers alike. I hope that analyses such as this will serve to inform our perception of power in such a way that it might illuminate a myriad of sites for empowerment, and in effect contribute toward increased epistemic justice.

⁵² Allen, *The Power of Feminist Theory*, 48-49.

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