



Responsibility for testimonial injustice

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Abstract In this paper, I examine whether agents who commit testimonial injustice are morally responsible for their wrongdoing, given that they are ignorant of their wrongdoing. Fricker (*Epistemic injustice: power and the ethics of knowing*, Oxford University Press, Oxford, 2007) argues that agents whose social setting lacks the concepts or reasons necessary for them to correct for testimonial injustice are excused. I argue that agents whose social settings have these concepts or reasons available are also typically excused, because they lack the capacity to recognise those concepts or reasons. Attempts to trace this lack of capacity back to an earlier culpable wrongdoing will often fail, due to there being no point at which these perpetrators knowingly chose to develop their prejudices. Attempts to ground culpability under some Attributionist accounts of moral responsibility will also fail. This is because perpetrators' lack of awareness of what they are doing makes it the case that they are not expressing objectionable evaluative judgments in the way required for blameworthiness. Finally, I argue that our temptation to blame agents who commit testimonial injustice is not completely unfounded. Appealing to Watson's (*Philos Top* 24(2):227–248, 1996) attributability/accountability distinction allows us to make sense of how some responses to the jurors are appropriate, despite their being excused.

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1 Introduction

This paper examines whether agents who commit testimonial injustice are blameworthy for their wrongdoing. Testimonial injustice differs to more common forms of wrongdoing in that it is neither an action nor an omission, but a perception. A consequence of this is that wrongdoers are ignorant that they have done anything wrong at all. Given ignorance of wrongdoing is often an excuse, and perceptions are not under one's direct control, assessing the culpability of perpetrators depends greatly on the relationship between moral responsibility, control, knowledge and the capacity to do otherwise.

In *Epistemic Injustice: Power and the Ethics of Knowing* (2007), Fricker compares two perpetrators of testimonial injustice. The first is that of Herbert Greenleaf from *The Talented Mr. Ripley* (Highsmith 1955), who does not believe Margery Sherwood's testimony regarding her fiancé's disappearance. Being a man of 1950's America, Greenleaf fails to see Sherwood's testimony as reliable, and dismisses her claims the fiancé has been killed, despite her being correct. The second case is that of the Maycomb jury who convict Tom Robinson in *To Kill A Mockingbird* (Lee 2006). Robinson, a black man, is accused of beating and raping a white woman, Mayella Ewell. Despite clear evidence to the contrary and persuasive arguments from Robinson's lawyer, Atticus Finch, the jurors convict Robinson. They see Robinson as a lying black man with no self-control.

Fricker argues that Greenleaf is to be excused for his actions, but the jurors are not. Due to the cultural climate in which he lives, Greenleaf lacks any conception of the way in which gender affects social roles and judgments. This concept was necessary in order to suspect that his perceptions were prejudicial. Because he could never suspect that his perceptions were inaccurate, he had no opportunity to correct for his initial assessments of credibility, and was thus literally unable to access the reasons which favored seeing Sherwood as a credible source of knowledge. He does not have any evidence that what he perceives is the result of prejudicial norms and stereotypes. He interprets her anxiety as hysterical, and her 'female intuition' to be baseless. Someone in Greenleaf's position would have to be morally and epistemically exceptional to overcome their default assessments, and perceive Sherwood accurately.

Though the jurors in Maycomb are a product of their time too, Fricker argues they are culpable for their wrongdoing. This is because in being present for the court proceedings, they are directly addressed by Finch, who points out that they may be biased against Robinson's skin color. They are thus given the opportunity to question their initial perceptions. Fricker argues that given this, it would be reasonable to expect the jurors to see Robinson's testimony as credible. The persistence of their prejudicial beliefs in the presence of such counter-evidence reveals the jurors to be ethically and epistemically flawed, and for this we can blame them.

Taking Fricker's account as a starting point for thinking about responsibility for testimonial injustice, I will argue for five conclusions. First, whether an agent has an opportunity to question their perceptions does not determine whether they are

culpable or excused. This is because reasons can also be inaccessible when agents lack the capacity to perceive those reasons. Second, both Greenleaf and the jurors lack the capacity to correct for their prejudiced perceptions, and so will be excused according to a Control account of moral responsibility. Third, attempts to trace the prejudice of wrongdoers such as the jurors back to earlier wrongdoing will often fail, due to there being no point at which people knowingly chose to develop their prejudices. Fourth, attempts to ground culpability under an Attributionist account of responsibility will also fail. This is because the jurors' lack of awareness of what they are doing makes it the case that they are not expressing objectionable evaluative judgments in the way that Attributionism requires for blameworthiness. Finally, I argue that our temptation to blame agents who commit testimonial injustice is not completely unfounded. Appealing to Watson's (1996) attributability/accountability distinction allows us to make sense of how some responses to the jurors are appropriate, despite their being excused.

2 Responsibility and blame

Some preliminary remarks regarding what it means to be moral responsible will be useful. Agents are morally responsible when they are connected to something morally significant (e.g. an action, trait, attitude, or belief) in such a way that licences us to respond to them with certain attitudes or behaviors (all else being equal). If I knock a vase over because someone pushed me into it, then while I may be casually responsible for knocking over the vase, I will not be morally responsible for knocking over the vase. If I deliberately knock over the vase to slight you, however, then it will be appropriate for you to blame me, thereby holding me responsible. This is because in the latter case, I am connected to my action in such a way that I am not in the former. My action reflects on me as a moral agent in some way, for which it is appropriate for you to respond negatively.

Once we've established that an agent is morally responsible for something, the next task is to work out which responses are appropriate. Some responses are appropriate or inappropriate in virtue of *what* we are responding to. If someone gives selflessly to the needy, it is appropriate to respond with praise or gratitude, and inappropriate to respond with resentment. But some responses also can be inappropriate in virtue of the *way* that the agent is connected to whatever we take them to be responsible for. For example, we might think that agents are morally responsible for their characters, in that they are related to their characters in certain ways that license us to respond with certain attitudes. Though the appropriateness of these attitudes will depend on whether their characters are virtuous or vicious, it might also depend on whether the agents had control over the ways in which their characters developed. If an agent lacked control entirely, we might think it is inappropriate or unfair to resent or blame them for their character. We could plausibly still blame them for their actions, however, if actions are something they maintain control over.

A useful distinction for thinking about which responses are appropriate to wrongdoing is between attributability responsibility and accountability

responsibility. Accountability responsibility is the type of moral responsibility that makes agents eligible for praise or blame and sanctions. To say that an agent is accountability responsible is to say that it is appropriate to make moral demands of that agent, and to hold them to account if they fail to meet those demands.¹ By contrast, to say that an agent is attributability responsible for something is to say that thing reflects on them in such a way that licenses moral appraisal or evaluation (Watson 1996). In the case of wrongdoing, the wrong reveals a fault which is attributable to the agent. It reveals something about the agent's 'real self' with possible candidates including the agent's quality of will, cares and commitments (Shoemaker 2015), or judgments about reasons (Talbert 2008). While a psychopath who lacks normative competence might be thought to be excused and thereby not blameworthy for their actions, we can still think that they are fitting targets of negative aretaic evaluation. Their cruel indifference to human suffering distinguishes them in an important way from children, even if children who act wrongly are also excused and thereby not blameworthy. It should be noted that some philosophers believe that if an agent is attributability responsible for something, this is sufficient for that agent being blameworthy. For now, I leave it open what conditions an agent must meet in order to be accountability responsible.

The question for this paper is whether perpetrators of epistemic injustice are accountability responsible for their wrongdoing. Though agents are also accountability responsible when they act well in such a way that makes them deserving of praise, in this paper I am only concerned with the wrongdoing of testimonial injustice. I am thus interested in whether it is appropriate to hold these wrongdoers responsible by blaming them.

Another important distinction regards how we blame wrongdoers for a variety of reasons. This can include discouraging certain behaviors, teaching others that certain actions are wrong, or helping cultivate moral character. These are 'forward-looking' considerations, where our blame is primarily justified by referring to future outcomes. Contrast this with 'backward-looking' considerations, where the primary justification is that someone has committed a wrong, making it the case that they *deserve* to be blamed because they are *blameworthy*. Backward-looking

¹ As a way of motivating this description of accountability and blame, let me say something about a common competing account. I take blame's focus to be perpetrator-centred in that it is addressed to perpetrators for failing to meet moral demands. Some philosophers think that blame is primarily victim-centred, in that blame itself makes demands of the perpetrator in order to protest the meaning of the wrong. This protest need not actually be communicated to the perpetrator, however. It is enough that this blame is communicated to the moral community, or to one's self privately (Hieronymi 2001; Smith 2013; Talbert 2012). These accounts argue that blame is a demand for acknowledgment of wrongdoing, a demand to have acted differently, or a demand for justification. Each characterisation faces an objection. First, blame can't just be a demand for apology, because we often appropriately blame people even when they have acknowledged wrongdoing and apologised, making the supposed content of our blame in these cases infelicitous. Second, blame can't be a demand to have not committed wrongdoing, because the wrongdoing already occurred which makes such demands literally impossible to meet. Third, one can't say blaming involves demands for justification, because in order for the blame to be appropriate one presuppose blameworthiness, that is, that no justification is available. Likewise, blame can't be a demand for an excuse, since we do not demand excuses. See Nelkin (2015).

responsibility is what I am concerned with, and what philosophers working on moral responsibility have typically focussed on.²

One final remark worth making regards knowledge. A common (though not universally accepted) requirement on blameworthiness is that the wrongdoer understood what they were doing. It seems unfair to blame someone who didn't know what they were doing, or, to put it another way, would have not acted wrongly had they known. This is another reason why we do not usually target children or the mentally disabled with backward-looking blame. They lack the relevant knowledge and understanding for their actions to have moral meaning, and to take part in our moral practices.

There are some instances, however, where agents do deserve to be blamed despite not knowing what they were doing. These are cases where an agent's ignorance can be traced back to a 'benighting act' (Smith 1983), an earlier action of theirs which grounds responsibility. Although a driver may not have known he was driving through a red light, if this was because he willingly became intoxicated with no other means of transport home, we will blame him for his decision.

3 Culpable testimonial injustice

Testimonial injustice occurs when "prejudice causes a hearer to give a deflated level of credibility to a speaker's word" (Fricker 2007, p. 1). According to Fricker, this is important because it wrongs the speaker in their capacity as a knower, which is a capacity essential to human value. Since human rationality has a close connection with what gives persons their value, to suffer a testimonial injustice is to be degraded *qua* knower, and to be symbolically degraded *qua* person.

Identifying whether perpetrators of testimonial injustice are accountability responsible for their wrongdoing is difficult, because the wrong is not typically committed through any intentional action. Credibility judgments are a matter of perception, where one simply sees the speaker as trustworthy or untrustworthy. Our credibility perceptions are 'charged' by our background beliefs, desires, stereotypes and social imaginaries, just like our moral perceptions.³ Testimonial injustice is paradigmatically caused by prejudicial stereotypes affecting a hearer's perception of

² A number of forward-looking accounts will have straightforward grounds for arguing that perpetrators of testimonial injustice are blameworthy. For example, McGeer (2013) argues that blame communicates that we don't find an agent's actions acceptable, drawing them into an exchange which helps find a shared sense of the wrong and scaffolds their moral agency. Fricker's (2016) own account argues that blame functions as a proleptic mechanism, having the aim of inspiring wrongdoers to feel remorse for what they have done.

³ The fact that a stereotype or bias is false and negative is not enough to render it prejudicial. This is because someone could fulfil all of their epistemic duties and yet still develop negative stereotypes due to epistemic bad luck. According to Fricker, what distinguishes prejudicial stereotypes from "innocent mistakes" is how responsive these stereotypes are to evidence. If Solomon is raised to believe that women are intellectually inferior to men in an environment where he sees lots of evidence for this, but revises this belief when he goes to college and sees lots of competent women, then his prior stereotype will be a non-culpable mistake (example from Arpaly 2002).

a speaker's credibility. To emphasise, it is *not* the case that hearers judge the speaker's credibility, and then choose to scale this judgment down based on the speaker's identity. No intentional action is involved, and the hearer does not even know they are doing this (Fricker 2017). They genuinely believe and take themselves to see that the speaker is not credible, and as a result are ignorant of the wrong they have committed. It is thus not immediately obvious whether perpetrators deserve to be held responsible, because they do not know they've done anything wrong.

Despite his testimonial injustice being caused by prejudicial stereotypes, Fricker argues that Greenleaf is excused because he would need to have exceptional epistemic character to overcome the prejudices of his day. The key thing is that Greenleaf was "not in a position to access the reasons" (p. 101) to believe Sherwood. Though I agree with Fricker's description of Greenleaf, this terminology is vague, which matters when we consider questions of culpability. The notion of 'in a position to access reasons' can be better understood by considering Fricker's account of how an agent corrects for testimonial injustice. There are three steps. The first is to have a suspicion that one's judgment or perceptions is prejudicial. This occurs "through sensing cognitive dissonance between her perception, beliefs, and emotional responses, or whether through self-conscious reflection" (p. 92). Once the agent has this suspicion, the next step is to "shift intellectual gear out of spontaneous, unreflective mode and into active critical reflection in order to identify how far the suspected prejudice has influenced her judgement" (p. 91). If one has identified that prejudice is affecting their judgment, one then uses a "reflexive critical awareness" (ibid.) to neutralise the impact that the prejudice is having on their credibility judgments.

Greenleaf had no opportunity to even suspect his lack of trust in Marge might be prejudicial "because the critical concepts he needed were not historically available to him" (p. 101). He had no awareness of the construction of gender, or how gender shapes society and interactions. It is simply "too much to expect [Greenleaf] to achieve awareness that a certain prejudice is structuring his social consciousness, let alone to realign his habits of credibility judgement accordingly" (p. 34) because the necessary concepts were nowhere to be found in his society. Fricker, like many philosophers, thinks it is unfair to blame agents for failing to do things they objectively cannot do.

By comparison, the Maycomb jurors have "ample opportunity" (p. 89) to perceive the reasons favoring Robinson's innocence. They are implored by Finch to judge Robinson as a person, to disregard color, and to shift out of their routine moral judgments. In particular, the fact that Robinson has a disabled arm should cause the jurors to experience some cognitive dissonance and thus a suspicion that their immediate perceptions of guilt are inaccurate. However, they fail to correct for their prejudice despite Finch's directions, and this is what makes them blameworthy.

As I read Fricker then, testimonial injustices caused by a failure to suspect that one is prejudiced when the concepts necessary to do so are not available are excused, while testimonial injustices caused by a failure to correct one's perceptions when one has access to the concepts necessary to correct those perceptions are not.

4 Capacities and responsibility

Fricker's thought that "we do not blame people for things they objectively cannot do or cannot help doing" (p. 101) is a common one, and a key argument for why Greenleaf is excused while the jurors are not. However, although the jurors had all the necessary concepts in a way that Greenleaf did not, it is difficult to understand in what sense the jurors could have done otherwise, given credibility perceptions are not under our direct control. The jurors have "ample opportunity" to access reasons in the sense that the evidence is right in front of them, and they are being directed to the evidence by Finch. But the trouble with phrasing things in terms of 'accessing reasons' is that many people cannot access reasons precisely *due to the sort of person that they are*. Since prejudice causes the jurors to not see Robinson as telling the truth, prejudice could also prevent them from noticing any conflict between the evidence and their assessments, or that any such conflict calls for a reflexive critical awareness.

One might modify Fricker's argument, and say that agents are excused when their lack of access to reasons is caused by their environment, but not when their lack of access is caused by internal factors such as their constitution or character. This faces two objections. First, an agent's character is itself often heavily influenced by their external environment and upbringing. Second, any attempt to explain *why* a lack of external opportunity excuses will ultimately refer to some other factor which cuts across the internal/external distinction. For example, if our proposed explanation is that one lacks control over the external factors preventing them from accessing reasons, there will be cases where one lacks control over their internal constitution too. If the explanation is that a lack of external access to reasons shows the wrong was not a product of their 'real self', some internal factors which block access to reasons (e.g. mental illness) can equally show this.

As a charitable reading, we could instead take Fricker to mean it would be difficult for the jurors to correct for their prejudicial perceptions. They fail to see Tom as reliable, but they are not literally unable to see Tom as reliable, as evidenced by the fact that they'd believe him on matters regarding his daily work. The thought is that we should resist concluding that agents are unable to do something, simply because they fail to do that thing. We should presume that agents such as the jurors and Greenleaf have the *capacity* to notice when evidence doesn't match their assessments and take a more critical look at things, and only excuse agents when there is evidence they can't perform those tasks. The fact that no-one in Greenleaf's time period had the concept necessary to notice his prejudice is good evidence that he lacked the opportunity to question his perceptions. But since Finch does give the jurors the opportunity to question their perceptions of Robinson, we should conclude they had the capacity and opportunity to avoid wrongdoing, and are therefore culpable.

This reasoning is effectively appealing to what is known as a Control account of moral responsibility. Roughly, Control accounts of moral responsibility maintain that agents are responsible for their actions only if they have a certain kind of control over their actions. Some common justifications for maintaining that agents

need a certain kind of control over their actions for responsibility is that such a condition is entailed by something like Ought Implies Can (Nelkin 2011), or that without control over one's actions, one cannot be truly deserving of blame (Pereboom 2014), or that the function of our blaming practices is to cultivate certain kinds of agency (Vargas 2012). A common way to spell out the relevant notion of control is by referencing an agent's capacity and opportunity to avoid wrongdoing (Brink and Nelkin 2013; Rudy-Hiller 2017). The thought is that if an agent had the capacity and opportunity to avoid wrongdoing, but simply didn't exercise it, then they are blameworthy for their wrongdoing.

At first glance, it seems like the jurors were capable of recognising that Robinson was innocent, and so are blameworthy for their failure. But we have to be careful, because talk about capacities is highly context-sensitive, and capacity attributions for the purposes of assessing culpability do not always map on to our attributions of capacity in other contexts.⁴ To help clarify talk about capacities, philosophers often distinguish between general capacities and specific capacities (Clarke 2015; Jaster 2019; Maier 2010; Mele 2006). Whether an agent has a general capacity is typically thought to depend on whether the agent succeeds in ϕ -ing in a wide range of contexts. Kobe Bryant has a greater capacity to play basketball than I do because he reliably dribbles and sinks the ball, and can successfully do so in a wide variety of circumstances. When we ask if an agent has a *specific* capacity, however, our focus is restricted to particular circumstances, holding particular facts fixed. If Bryant is unconscious, he retains his general capacity to play basketball, but he lacks the specific capacity to play basketball in this situation (Clarke 2015; Vihvelin 2013). Holding the fact that he is unconscious fixed, he cannot play basketball.⁵

When we begin thinking about capacities for the purposes of assessing an agent's moral responsibility, we need to keep in mind that we are assessing an agent's specific capacity to do the right thing for the right reasons. Suppose I fail to give aid to someone. To assess whether I am blameworthy, we need to assess whether I had the capacity to see that person, recognise they were in need, run to them, recall my first aid training, form an intention to give first aid, and translate that intention into action to in fact provide first aid. If we maintain that doing the right thing in this situation is 'giving first aid', and I lack any of these specific capacities, then I will lack the capacity to do the right thing for the right reasons.⁶

⁴ Such contexts include understanding agency (Mayr 2011), explaining action (Small 2017; Smith 2003), reconciling talk of capacities with talk about determinism and free action (Clarke 2009; Franklin 2011; Vihvelin 2004), and understanding the semantics and truth conditions of counterfactuals (Lewis 1973).

⁵ This characterisation of the capacities literature is somewhat simplified, but considerations favoring further distinctions, such as between wide and narrow capacities, do not affect my argument. As an aside, it is reasonable to describe Greenleaf as either lacking the capacity or opportunity to avoid wrongdoing. Knowledge and possession of concepts are features of agents, which counts in favor of describing Greenleaf as lacking the capacity to avoid wrongdoing. But in describing his context, Fricker is trying to emphasise how he cannot access the relevant concepts, treating them as something external to him, which is why he is described as lacking the opportunity to avoid wrongdoing. .

⁶ Some philosophers resist such descriptions because it seems to multiply capacities beyond necessity (Locke 1973; Small 2017). They argue it is simpler to say that I have one capacity, which is to walk, that I can exercise in a number of different ways and places. But whether I have the specific capacity to walk

Most philosophers accept that an agent can possess a specific ability to ϕ , have ample opportunity to ϕ , try to ϕ , and yet sometimes still fail to ϕ (Austin 1956; Jaster 2019; Vihvelin 2013). To put it another way, a single instance of an agent trying to ϕ the best they can, and failing to ϕ , does not necessarily entail that they lacked the specific capacity to ϕ in that situation. Austin (1956) famously describes a case in which he tries his hardest to make an easy putt in a game of golf, but fails. Despite this, it still seems apt to say he had the specific capacity to make this putt. Though there may be some sense in which the jurors had the ability to correct their judgments in the sense that Austin has the ability to make the putt, *this* sense is not robust enough for culpability. If it were, this would entail that Austin would be blameworthy for failing to sink the golf ball in any case where sinking the ball was required to prevent some terrible outcome. Intuitively, so long as Austin tried his hardest to make the putt, we would excuse him for missing.⁷ Cases like this also explain our inclination to excuse another perpetrator of testimonial injustice. Fricker briefly describes a committed feminist who develops prejudice as a result of her upbringing, and as a result sees female leaders as less credible than male leaders (p. 38). It seems plausible that such a feminist could actively try her hardest to notice and correct for prejudicial perceptions, but still fail to do so.

One reply here is to change what we identify as ‘doing the right thing’. Perhaps we want to say that the right thing to do in Austin’s case is to *try* to sink a putt (or to intend, or choose, or decide, and then act on this intention or choice or decision). A problem with this approach is that in many cases, trying itself looks a lot like something that agents have the capacity to perform, risking a regress (Jaster 2019; Small 2017; cf. Moore 1912). At this point, philosophers often attempt to analyse what a capacity is, or what it means to have a capacity in one of two ways. The first is to try and analyse capacities in terms of conditionals, e.g. S has a capacity to ϕ if and only if S would ϕ , if S intended to ϕ (Aune 1963; Hume 1748/1999; Moore 1912; Sosa 2015; Vihvelin 2013). The second is to try and analyse capacities in terms of possible worlds, e.g. S has a capacity to ϕ if and only if there is set of relevant worlds in which the agent ϕ ’s, where the set of the relevant worlds will vary across ascriber context (Fischer and Ravizza 1998; Kratzer 1981; Lewis 1976; Vetter 2015).⁸

For our purposes, we don’t need to settle the question of whether capacities should be understood as dispositions cashed out in terms of conditionals or facts

Footnote 6 continued

down a particular street matters greatly if I am being blamed for failing to help someone on that street. The fact that I have a general ability to walk is much less relevant. For our purposes, we need to index talk about capacities to a particular situation and context. The fact an agent typically has a general or specific capacity to ϕ in many other contexts doesn’t guarantee they have the specific capacity to ϕ in this particular context.

⁷ There don’t seem to be any theories of ability which will clearly distinguish Austin from the jurors, explaining why the former is excused but the latter are culpable. See Clarke (2015) for a summary of recent work in the philosophy of ability. .

⁸ These analyses then have to grapple with questions surrounding masks (Fara 2005), finks, deviant causal chains (Wilson and Shpall 2008), impeded intentions (Lehrer 1968), and how to specify which possible worlds are relevant or distinguish capacities from other restricted possibilities (Jaster 2019).

about possible worlds, and nor do we need to grapple with regress problems. This is because on just about any plausible definition of capacity, it seems like neither the jurors nor Greenleaf will possess the specific capacity to avoid wrongdoing. Fricker emphasises that prejudicial stereotypes are resistant to evidence, that credibility perceptions are automatic, and that perpetrators of testimonial injustice do not know that they are committing this injustice. As noted earlier, testimonial injustice is not an action or an omission, but a *perception*. And perceptions do not seem like the kind of thing that we can directly control without an awareness of how they are being affected. Indeed, Fricker's own description of the jurors in several places suggests that they lack the capacity to avoid wrongdoing:

“[The jurors] cannot, in that courtroom context, perceive Tom Robinson as anything but a lying Negro” (p. 36)

“...there are those on the jury for whom the idea that the black man is to be epistemically trusted and the white girl distrusted is virtually a psychological impossibility” (p. 25).

It is true that Finch exhorts the jurors to think deeply about the case, to try and see Robinson as more than his skin color, and that this could have caused them to suspect that their initial assessments were prejudiced, in the sense that it was at least possible. But what's more important for our assessments of culpability is that the jurors genuinely see Robinson as guilty, and don't know their perceptions are being affected by their prejudicial stereotypes. Plausibly, many of them take themselves to have removed race from their assessments, looked at the evidence objectively, and judged it to be obvious that Robinson is guilty. While his left arm is disabled, it would be easy for the jurors to think that he used his other arm, or some other blunt instrument which Ewell neglected to mention, or that even if he didn't strike her he committed some other crime which hadn't yet come to light. They could form these beliefs even though all of these possibilities clearly conflict with other sources of evidence. The jurors' prejudice could cause all sorts of post-hoc justifications for their perceptions, even after taking themselves to be correcting for any initial unfounded assessments.

Under a Control account of moral responsibility, the jurors and Greenleaf are excused for their wrongdoing. If we think that Greenleaf is excused because he lacks the opportunity to correct for his prejudicial perceptions, or is not in a position to access certain concepts, then however we explain why a lack of opportunity or positionality excuses, the jurors will be excused too.

5 Tracing ignorance

One reply to this argument is that there are lots of cases in which agents seem to be blameworthy for their actions despite lacking the capacity to avoid wrongdoing. If a trainee doctor chooses to skip all her classes and go partying, she knows she will miss out on information that is crucial to saving lives. If she then later finds herself with no clue how to save someone in the emergency room, we can blame her for her ignorance precisely because we can *trace* this ignorance back to an earlier action for

which she is responsible. Likewise, we might think that although there is no earlier point at which Greenleaf could have avoided wrongdoing (the necessary concepts are literally not available at any point in his history), this is not true of the jurors. The jurors could have avoided developing their prejudice in the first place, as evidenced by the fact that some members of their society (e.g. Finch) successfully did so.

The ignorance at play in testimonial injustices is tricky. If we accept a Control account of moral responsibility and want to trace the hearer's wrongdoing back to an earlier action, there must be somewhere the hearer could have avoided developing their prejudice. The trouble is that even if there were many instances in which hearers had the opportunity to avoid developing prejudice but chose not to, this alone won't entail that they are culpable for those choices. This is because they often will be ignorant that making those choices will cause them to later develop prejudices. I could not be held responsible for failing to attend a Creationist Christian workshop, even if this would have led to my being less prejudiced against them, precisely because I could not be expected to take seriously any claims that such a workshop would make me a better hearer.

A temptation here is to think that agents are culpable when they had reasonable evidence they would go on to develop prejudicial attitudes. But when we look more closely at a wrongdoer's thinking process in the presence of reasonable evidence, there will often be other forms of ignorance which continue to exculpate. The trouble with appealing to reasonable evidence is that we assume that agents are able to *recognise* this evidence when presented with it. We assume that they haven't acquired other false beliefs or non-culpable attitudes which could interfere with their perception of that evidence.

There will be some cases where agents look at the evidence, believe they have been committing an injustice or are at risk of doing so, and decide they just don't care very much. In such cases these agents will be morally responsible for future testimonial injustices. Any time they are reprimanded for later ignorant wrongdoing, excuses such as 'but I didn't know' will be countered with 'you would have known if you had gone to that workshop, and you knew you should have gone to that workshop'. Our assessments of culpability in such cases are straightforward, and nearly all compatibilist philosophers working on moral responsibility will agree that agents who knowingly choose actions which lead to testimonial injustice are blameworthy, as would Fricker. But these are not the paradigmatic or most common cases. It is often difficult to know ahead of time how our choices will determine our future characters.⁹ Most prejudiced people clearly do not think of themselves as bigots, as people who endorse unjust states of affairs or who have unfounded beliefs. Instead, they take themselves to be 'realists' who 'say it as it is' and see things for how they 'really' are. Perpetrators of testimonial injustice often never even find out they did anything wrong.

It's worth noting just how little schooling the Maycomb jurors would have had by today's standards. *To Kill A Mockingbird* is set in 1933, and the jurors are all white

⁹ See Vargas (2005) for examples of how it is difficult to trace culpability back to a prior event.

male farmers. In the 1962 film adaptation, they are depicted as being in their 40 s and 50 s, making it likely the jurors in the book would have attended school just before the turn of the century. In 1900, although a high proportion of white US children aged 5–13 years were enrolled in elementary school, only 10% of white 14–17 year olds went to high school (Snyder 1993). This meant that for most of the population, their education effectively ended at age 13, if not earlier. Additionally, attendance was much lower than today, as children would often stay home to help with house and farm work. The average student only attended school for 86 days in a year in 1890, and 13% of the adult population were completely illiterate, with higher rates occurring in rural areas. We need to keep this background in mind when we try to assess the capacities of the jurors, and whether they could have avoided developing their prejudices.¹⁰

There is a temptation to think that if agents remain ignorant in the face of such overwhelming evidence, they must surely be blameworthy for this. But this is because most people can recognise overwhelming evidence, and so any failure to change one's ways in the face of such evidence is itself evidence they lack a sufficient amount of concern. Some people just don't care that they're doing the wrong thing. But if wrongdoers do not recognise that evidence *qua* evidence, or fail to come to the conclusion that the evidence supports, we cannot say they are nevertheless responsible on a Control account of moral responsibility. It would be viciously circular to maintain that agents with resistant prejudices are responsible because there was an earlier instance in which they had evidence they might become prejudiced, but were resistant to this evidence. Resistance to evidence is precisely what we were evaluating in the first place.

6 Attributionism

Conclusions such as this lead some philosophers to reject Control accounts altogether. For example, Attributionism is an account of moral responsibility which maintains that agents are responsible for a wrong if that wrong is attributable to the agent. To return to an earlier example, suppose someone pushes me, and I knock over your vase. While a Control account of responsibility will say that I am excused because I was not in control of what happened, Attributionism will say that I am excused because my knocking your vase is not attributable to *me* as an agent in the right way. My action does not express any objectionable attitude about you. Likewise, we can say that Austin is excused for missing the putt because his missing is not attributable to him in any way that reveals an objectionable evaluative judgment about others.¹¹

¹⁰ For more in-depth arguments on the relationship between ignorance and tracing, see Rosen (2004) and Levy (2009).

¹¹ While Smith (2015) and Scanlon (2008) both count as Attributionists on this picture, they endorse quite different conceptions of what it means for an agent to be morally responsible and blameworthy. Scanlon takes agents to be blameworthy when their intentions or attitudes are faulty by the standards of a relationship, and Smith takes agents to be morally responsible for something when it is intelligible to ask

To understand what sense of evaluative judgment is relevant, suppose that I back up my car while you are behind it, injuring you. If I backed up knowing you were there, or backed up without looking at my mirrors (because I judged that the high chance that someone might be behind the car isn't a good enough reason to warrant checking my mirrors), then my actions express an objectionable evaluative judgment about you. Essentially, my actions express that I take certain non-moral facts (that my actions may harm you) to not be sufficiently reason-giving to warrant changing my behavior, and this denial of moral reasons is objectionable. Note that I don't need to be capable of understanding moral concepts, or of thinking about you as a being with moral standing or dignity, in order to make these objectionable judgments. If I understand that backing up a car over you risks *harming* you, my understanding *this* fact when I act is enough for my actions to express an objectionable attitude toward you, and enough to make me blameworthy. This is why psychopaths are blameworthy according to Attributionism, even if they literally cannot perceive moral reasons or understand concepts like moral standing, and thus cannot understand that people's moral standing makes backing cars over them wrong (Talbert 2008).

In contrast, if I back up my car after thoroughly checking my mirrors, but didn't see you simply due to bad luck, or I forgot to check my mirrors because I was rushing to save five other people from an emergency, then my actions do not express any objectionable judgment about you. Though my actions do express a denial that I have any reason to not back up a car, they don't express a denial that *your presence* gives me a reason to not back up my car.

Attributionism faces a few objections. First, blaming agents when they lack control over their wrongdoing seems to be unfair, and some philosophers blameworthiness to be sensitive to fairness (Wallace 1994). Another objection is that if some agents don't know their actions are wrong, avoiding wrongdoing seems to require them to act irrationally (Levy 2009). Since agents may not know that their actions are immoral, they have no accessible internal reasons to avoid wrongdoing, making it difficult to articulate how they could possibly avoid wrongdoing. A final objection is that if wrongdoers are ignorant of the moral status of their actions, then they plausibly do not express the disregard that is required for someone to be an appropriate target of resentment (Nelkin 2015; Shoemaker 2011).

Though these objections are substantive, I want to set them and the Attributionist's replies aside. This is because although Attributionism seems initially well-placed to explain how perpetrators of testimonial injustice are blameworthy, I believe that on closer inspection, it actually can't blame them *qua* perpetrators of testimonial injustice, as our perceptions are not the sort of thing which express a judgment about the reason-giving status of others' interests.

First, let's be clear about what the Attributionist could in principle take the jurors to be blameworthy for. The jurors are blameworthy for caring less about black

Footnote 11 continued

them to answer to us for that thing. See Levy (2005), Nelkin (2015) and Wolf (2011) for details on the differences between these conceptions of responsibility and the one adopted in this paper. I'll set Smith and Scanlon's accounts aside and focus on Talbert's (2008) version of Attributionism.

people's interests than white people's interests. The jurors could also be blameworthy for not caring about what happens to Robinson. For example, the jurors would be blameworthy if they had decided that the risk of sending an innocent man to jail was not a good enough reason to pay attention to the court proceedings and determine the facts of the case. The jurors would also be blameworthy if they wanted Robinson to go to jail because he was black. All of these express objectionable attitudes which constitute, in some way, a denial that Robinson's being sent to jail based on how they vote gives them reason to pay attention to the evidence and assess whether he is guilty of the crime he is accused of.

However, such wrongs are not the wrong of testimonial injustice, and not what we are concerned with. The jurors' testimonial injustice doesn't consist in their simply not believing Tom. It also doesn't consist in their not believing him when they ought to given the evidence, or in their voting that they find him guilty. The injustice consists in their not believing Tom's testimony when they ought to because of how identity prejudice causes them to *perceive* him as lying. The jurors either fail to notice any discrepancy between their automatic perceptions and the evidence, or do notice, switch intellectual gear, try to reflect on their perceptions and judgments, but fail to realise that those perceptions are affected by prejudice.¹² And it is less clear whether these sorts of things can be considered to express an objectionable evaluative judgment *qua* take on the moral reason-giving status (or lack thereof) of certain facts. While the jurors' perceptions are affected by prejudicial stereotypes, and this reflects badly on them, these perceptions don't express an objectionable denial of the importance of Robinson's interests. It is not that the jurors reflect on the evidence and take it to favor forming the perception that Robinson is guilty. Asking why they perceive Robinson to be guilty is an unintelligible question; perceptions are not the sorts of things that we form for reasons.

Of course, there is something in the nearby vicinity that does seem to express a take on reasons: their judgment that Robinson is guilty. But again, testimonial injustice is not a wrongdoing solely in virtue of the content of a hearer's judgment; identity-based credibility deficits can occur even while judging a speaker to be reliable and trustworthy.¹³ Testimonial injustice is a wrong in virtue of certain factors (e.g. prejudicial stereotypes) causing a credibility deficit to form, and perpetrators are unaware that these factors are having this effect. The fact that Robinson is innocent, the fact that the jurors' judgment is not supported by the evidence, and the fact that the jurors would have believed a white defendant, are what we want to point to in order to explain what makes their judgment of guilt

¹² If they noticed the discrepancy and simply didn't care enough to try switching intellectual gear, this would be blameworthy as this intentional failure to switch would express an objectionable lack of concern with Robinson's well-being. It could be argued that the evidence against Robinson was so flimsy that it simply isn't plausible that the jurors failed to notice any discrepancy and this makes them blameworthy. One might also take the fact that the jurors took a long time in their deliberations to be evidence that they were experiencing cognitive dissonance, and thus capable of taking the first step necessary to correct their perceptions.

¹³ A hearer might still take the speaker to be less reliable and trustworthy than they would have had the speaker belonged to a different social group, for instance.

objectionable, as opposed to simply mistaken.¹⁴ But given these are facts that the jurors are unaware of, the jurors cannot be taken to be expressing judgments about *these* facts.¹⁵ Attributionism takes evaluative judgments to be objectionable in terms of their content, where the agent's awareness of certain facts warrants attributing to them a judgment such as 'Your interests do not matter' or 'Your interests are less important than mine'. The trouble is that the jurors can only express judgments like 'that man is guilty' or 'that thing you claim to be evidence is not evidence at all'.¹⁶ While the jurors' epistemic wrong also constitutes a moral wrong, their epistemic judgment is not itself a moral judgment of the kind Attributionism requires for blameworthiness. To make an analogy with our earlier car example, it is as if their prejudice causes them to judge that *no-one is behind the car*. There is something criticisable about this, plausibly grounding a charge of irrationality, or poor judgment, or a non-moral form of doxastic blame, whatever that amounts to. But since Attributionism takes agents to be blameworthy in virtue of the way in which behavior expresses objectionable evaluative judgments about others' interests, then perpetrators of testimonial injustice will be not be blameworthy so long as they are unaware of what they are doing.

¹⁴ Talbert (2008) notably argues against appealing to counterfactuals to show that a judgment is not objectionable and thus not blameworthy. For example, if there is no such counterfactual in which a psychopath does the right thing for the right reasons (because they lack the capacity to understand moral reasons), this does nothing to show that their wrongdoing expresses a judgment that is any less objectionable than the judgment expressed by a wrongdoer who does possess the capacity to do otherwise. Interestingly, this means that we cannot appeal to similar counterfactuals to show that a particular judgment *is* objectionable either. That the jurors would have believed Robinson had he been white does nothing to affect the content of the jurors' judgments or awareness of regarding certain circumstantial facts in the actual sequence of events, and in that sequence, the jurors are genuinely unaware that Robinson is innocent.

¹⁵ For more detail on the distinction between behavior matching, reflecting and expressing objectionable attitudes, and the importance of making such distinctions, see Levy (2011, 2013). In some places, Talbert seems to implicitly endorse treating actions as blameworthy if they merely reflect objectionable attitudes (e.g. Talbert 2011, p. 151). In personal correspondence and in later work on moral luck, Talbert (2019) defends the position that agents are *only* ever directly blameworthy for their attitudes, regardless of their actual amount of wrongdoing. While it would follow more straightforwardly from this that agents cannot be blameworthy for testimonial injustice *qua* testimonial injustice, this requires adopting certain commitments regarding moral luck that may be controversial. If we want to set aside debates about moral luck, and use his first defense of Attributionism (Talbert 2008) in order to evaluate accountability blameworthiness for epistemic injustice as a distinct kind of *wrongdoing*, then perpetrators of epistemic injustice will be excused, despite the account's emphasis on something like quality of will.

¹⁶ This seems to be a consequence of the fact that, as Pohlhaus (2012) and Medina (2012) point out, hermeneutical injustice is also present in the courtroom. Pohlhaus argues that the jurors "are using epistemic resources that do not allow for the intelligibility of what Robinson has to say" (p. 725), and Medina notes that the idea of a white woman falling for a black man is unimaginable, due to the limiting social imaginaries. The jurors lack the resources to make sense of Robinson's experiences and testimony, and to some extent, so does Robinson. Thanks to an anonymous reviewer for this point.

7 Remedy

Concluding that the jurors are excused according to both Control accounts and Attributionism will be unintuitive to some. It may seem tantamount to saying that despite the injustice that has occurred, since the jurors are excused, we should just let them go about their day as if no wrong had been committed. This would be an unfortunate outcome. Even if one accepts my argument, it is tempting to want to respond to the jurors in some way. How then, are we to reconcile the idea that the jurors are excused with the idea that they seem like such appropriate targets of reproach?

I believe this unease arises because there are certain common assumptions about what it means to be excused, and the ways in which we are licensed to respond to wrongdoers. Normally when we excuse young children, this entails an absence of negative reactions. We might try to encourage them to not do the wrong again, but we don't directly engage in moral address. However, it is important to remember certain attitudes and reactions are still licensed towards the jurors, even if blame is not. Had we been there, we would be perfectly licensed to try to educate, inform, argue, discuss, and engage the jurors' empathy. Ideally, we would want to get them to a place where they felt the need to disavow what they had done, and perhaps feel agent-regret. We would also be licensed to protest the verdict, and engage in political activism to get people to recognise that individuals such as Robinson were being routinely oppressed. None of these options are ruled out by concluding that the jurors are excused.

Additionally, the argument I have been making concerns whether perpetrators of testimonial injustice are appropriate targets of blame. This is a different question to whether expressing blame is justified, all-thing-considered. If blaming someone innocent was the only way to avert disaster, then blame would be inappropriate, but all-things-considered justified. If blaming a culpable wrongdoer was likely to make them suicidal, blame would be appropriate, but not justified, all-things-considered. Considerations other than an agent's culpability can affect whether we ought to express blame to someone (Calhoun 1989).

If this response does not yet allay my opponent's concerns, there are further resources to help reconcile the tension between seeing the jurors as hapless products of their environment and time, and as agents who have committed an egregious wrong. Recall that there are different *ways* in which an agent can be morally responsible and thus an appropriate target of reactive attitude. Accountability responsibility is what we generally think of when we say someone is morally responsible, and what this paper has focused on. To say someone is accountability responsible is to say they are connected to something in such a way that makes them deserving of blame, praise, and sanctions.

As mentioned earlier, many philosophers accept that there is another 'face' of responsibility, called attributability. The key motivation for thinking that there may be multiple kinds of responsibility is that, as Watson (1996) points out, our moral assessments seem to be sensitive to things other than intentional actions, expressed attitudes, and the fairness of blame. Even if someone is completely excused for

having a vicious character, this does not change the fact that their character is vicious, and that vicious people are an appropriate target of certain forms of moral assessment from us. Applied to our current case, the fact is that even if completely excused, the fact is the Maycomb jurors are very racist. They hold offensively false beliefs about the equality of persons, and they are indifferent towards or endorse the suffering of black people. Facts such as these lead philosophers to think that attributability responsibility is *not* sensitive to considerations of fairness or desert. These facts make certain attitudes in us warranted, it's just that blame is not one of them. We do not have to think of the jurors as children who simply do not know any better, or to treat them as we would an innocent bystander to the trial.

Remembering that there are different kinds of moral assessment explains our ambivalence towards the Maycomb jurors, and helps assuage worries that excusing them means negative attitudes are unwarranted altogether. This answer also perfectly complements Fricker's argument that testimonial injustice can be counteracted by the virtue of testimonial justice. What makes testimonial injustice so pernicious is precisely that perpetrators do not realise they are committing it, and instead think that they are just seeing the other person as they really are. The remedy is not to tell people to simply commit less injustice, nor to demand that people see others as accurate knowers. How we are morally assessed by others matters to us, even if we are not being blamed. Knowing that one's character is insensitive, arrogant or otherwise epistemically flawed can motivate us to improve ourselves, and take positive steps towards becoming better hearers.

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