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Credibility Excess and the Social Imaginary in Cases of Sexual Assault

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Credibility Excess and the Social Imaginary in Cases of Sexual Assault¹

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Abstract

This paper will connect literature on epistemic injustice with literature on victims and perpetrators, to argue that in addition to considering the credibility deficit suffered by many victims, we should also consider the credibility excess accorded to many perpetrators. Epistemic injustice, as discussed by Miranda Fricker, considers ways in which someone might be wronged in their capacity as a knower. Testimonial injustice occurs when there is a credibility deficit as a result of identity-prejudicial stereotypes. However, criticisms of Fricker have pointed out that credibility is part of a more complex system that includes both deficits and excesses. I will use these points to argue that we should look closer at sources of credibility excess in cases of sexual assault. This means that in addition to considering sources of victim blaming by looking at ways in which “ideal” victims are constructed, we also need to consider ways in which “ideal” perpetrators are constructed.

Keywords: epistemic injustice, testimonial injustice, sexual assault, testimony, narrative, active ignorance

1. Introduction

In June 2016, Brock Turner was convicted of raping a young woman and sentenced to six months in county jail, with three years probation, rather than the more typical state prison sentence of up to fourteen years. The judge’s reasons for handing down the extremely light sentence included Turner’s positive character references and the significant impact that prison time and media scrutiny would have on his life (Wong 2016). Turner was a student at Stanford University on a swimming scholarship, whose loss was one of the negative impacts the judge considered him already to have suffered. Statements made by both Turner and his father placed the blame on campus drinking culture and denied moral culpability for the rape itself. Though there are several ways in which this case is atypical of sexual assaults (the fact that he was even prosecuted, much less convicted, for one), it will

¹ Thanks to Nina Belmonte and Scott Woodcock for extremely helpful comments on drafts of this paper.

still be useful for us to discuss it. What I want to highlight about Turner's treatment is that he seemed to have been regarded by the judge as a basically good young man with a bright future that had been ruined by external forces.

My argument in this paper will imply that the sympathy for Turner is the result of a credibility excess resulting from his failing to fit the paradigm of a perpetrator of sexual assault. While there is a significant amount of literature on consequences for those who fail to live up to the image of an ideal victim (Cossins 2003; Larcombe 2002; Randall 2010), there is much less on nonideal perpetrators. While the phrase "ideal victim" might seem strange, it is sometimes used to refer to a common cultural understanding of how assault victims should behave. I will use the parallel phrase "ideal perpetrator" to refer to a common cultural understanding of what a typical perpetrator of sexual assault is like.

Literature on rapists' motives will often focus on those who have been convicted of rape (Levine and Koenig 1980), no doubt for practical reasons. But without acknowledging that perpetrators of sexual assault are not necessarily more uniform than victims of assault, we cannot hope to ensure that victims will be appropriately believed and treated with respect. This is because our systems of according credibility are complex, including both excesses and deficits. Discussions of sexual assault and credibility need to focus not only on the credibility deficit of non-paradigmatic victims, but also on the credibility excess of non-paradigmatic perpetrators. Without an increased acknowledgement of the complexities of the credibility economy and the ways in which it is sustained by the social imaginary, we will not be able to properly account for, much less ameliorate, the credibility deficits of sexual assault survivors.

2. Epistemic Injustice

We will first turn to discussions of credibility in the context of Miranda Fricker's *Epistemic Injustice* (2007) in which she identifies two types of ways in which someone might be wronged in their capacity as a knower: testimonially and hermeneutically. Situations of testimonial injustice are those in which systemic identity prejudice results in someone being viewed as a less reliable source of knowledge than is warranted. Situations of hermeneutical injustice are those in which the conceptual resources for expressing one's experience are, due to reasons of systemic prejudice, unavailable. Since our primary focus here will be on issues of credibility, we will primarily discuss testimonial injustice. But as we will see in later sections, there are places in which the distinction between the types of injustice becomes blurry.

Testimonial injustice is a wrong that is caused by systemic identity prejudice. This means that certain speakers are accorded less credibility than they should be simply because of who they are. This need not be a conscious decision on the part of

the perpetrator of the injustice, however. Many perpetrators of testimonial injustice are likely quite unaware that they are doing so. There is a significant amount of psychological data showing that implicit biases about such factors as race, class, gender, sexual orientation, and ability can result in certain people's being viewed as less competent or less sincere sources of knowledge than is actually warranted.² Perfectly well-meaning people might unreflectively ignore a woman's complaint about a situation, believing her to be reacting overly emotionally. They might reply patronizingly slowly to a wheelchair user.³ Or they might be skeptical of expert testimony coming from a person speaking with a lower-class accent. No malice needs to be attributed to an individual who does any of these things; in many cases, people who wrong others epistemically are unaware that they are doing so. Regardless, a wrong is being done and we can locate its source in false identity-prejudicial stereotypes that exist about different groups. These stereotypes might affect our perceptions of competence or sincerity, or both, and result in our giving less weight to someone's testimony than it deserves.

One criticism of Fricker's framework is that its focus on credibility *deficit* fails to acknowledge that some injustice can be a result of credibility *excess* (Medina 2011, 2013). In particular, Medina argues that credibility is comparative and contrastive; this means that rather than looking at credibility deficits or excesses in isolation, we should look at the proportional credibility differences assigned to various individuals in comparison with their epistemic authority. Prejudice, both positive and negative, associated with social identity, can affect the ways in which members of different groups are epistemically treated.

Both Fricker and Medina discuss issues of credibility in the book *To Kill a Mockingbird*, in particular, the differential credibility accorded to Tom Robinson, a black man, and Mayella Ewell, a white woman. Where the two differ, however, is that Fricker focuses her analysis on the credibility deficits faced by Robinson, while Medina takes a broader view of the trial proceedings as a whole, looking more generally at the ways in which credibility is disproportionately assigned to the different individuals involved. Medina points out that the trial accords a situation in which there is a *hierarchy* of credibility: white women are more credible than black men, but white men are more credible than white women. Thus, while Ewell's testimony is accorded more credibility than Robinson's, both Atticus Finch and the prosecutor are in a sense allowed to speak for her in a more credible fashion than she herself is capable of (Medina 2013, 66).

² For instance, Bertrand and Mullainathan (2004); Steinpreis, Anders, and Ritzke (1999); Moss-Racusina et al. (2012); Tilcsik (2011).

³ For a related issue, see Blankmeyer Burke (2016) to introduce the term "hearsplaining" by non-deaf people.

However, a different issue that Medina raises is more significant for our analysis here, namely that certain aspects of Robinson's testimony are virtually unintelligible to the jury given the society in which they find themselves, because some of what he describes is beyond the limits of the *social imagination*. As part of Robinson's interrogation by the prosecutor, he is asked why he regularly helped Mayella Ewell with her chores, resulting in his stopping by her house regularly. His response was to tell the prosecutor that he felt sorry for her. But this sentiment is unintelligible in their social context. Given the social background of presumed black inferiority, it is unimaginable for a black man to feel pity for a white woman. This diminishes Robinson's credibility in a way that is not a direct result of identity-prejudicial stereotypes about the untrustworthiness of black men. Rather, the credibility deficit results from the fact that it does not fit with the background assumptions and stories of the social context in which he lives. Given the incomprehensibility of his motivation for visiting the Ewell house, the rest of his story becomes suspect.

The social imaginary and the disproportionate amount of credibility accorded to Ewell in contrast to Robinson (not to mention the prosecutor) both contribute to the epistemic injustice that Robinson faces. I will argue that similar mechanisms frequently operate in many cases of sexual assault. Sexual assault, in our culture, is viewed as a serious crime; while this is clearly the case, I will argue in this paper that it is too closely linked to the idea that those who commit it are in some way monstrous or morally bankrupt. And this limits the social imaginary in a way that ultimately results in a credibility excess for many perpetrators of sexual assault, thereby resulting in many situations of epistemic injustice that hurt their victims.

3. Sexual Assault and the Social Imaginary

Narratives that are available in the social imaginary contribute to the complex system of credibility excess and deficit that Medina describes. These narratives shape our concepts and can affect the extent to which we are likely to judge another person as falling under them. There are certain paradigmatic scenarios that come readily to mind when we think of sexual assault, but many of these are not as statistically common as we might suspect. There is a significant amount of evidence about the typical relationship between perpetrators and victims; while many of our standard narratives about sexual assault involve strangers, in reality these cases are in the minority. Sexual assaults occur in a wide range of situations, with a wide variety of perpetrator/victim relationships. They are also both relatively common and infrequently reported to law enforcement, much less tried in court. For example, a Canadian 2009 survey found that 34 out of 1,000 women had experienced an incident of sexual assault in the past 12 months. But only 30% of spousal assaults and 10% of non-spousal assaults were reported to the

police. So sexual assault should not be seen as something that is always brought to trial, or to the attention of the authorities. Further, the majority (75%) of these sexual assaults are committed by people the victim knows (Sinha 2013). Thus, stranger assault, despite being a staple of crime TV, is not, in fact, the norm (which of course is not to say it is rare). Also, many victims do not come forward out of fear that they will not be believed, or will be blamed for the fact that they have been assaulted. After all, testimony about sexual assault is frequently the only available evidence outside parties have about whether or not it took place, and the testimonial injustice faced by survivors can have far-reaching effects on them, sometimes described as their revictimization (Brody 2011).

And despite having a legal definition of sexual assault that encompasses a wide range of possible situations, there are only a handful that frequently recur in movies and TV. Here are two:

Example 1. A young woman is walking home by herself late at night, when she is sexually assaulted by a stranger with a weapon. The strange man, who is discovered to have an undiagnosed mental illness, is eventually found and charged by the police.

Example 2. A university student goes to a party on campus. A drug is slipped into her drink, and while unconscious, she is sexually assaulted by several male members of a sports team. The story only comes to light because the team members are heard bragging about the incident with no remorse. The trial is prolonged and emotionally draining.

Both of these should be relatively familiar to people who watch TV and follow North American news; the former is a standard plot in many police procedural dramas and several stories like the latter have received North American media coverage in the past few years.

These examples can be fleshed out in various different ways. But as with many instances of testimony that we hear (not just anecdotes about sexual assault), they come to us as “standard stories.”⁴ Standard stories are narratives that have a limited number of characters with specific characteristics and resources, whose actions form a sort of closed system. Everything that takes place in a standard story is a direct result of something else within the story, meaning that all of the relevant

⁴ Many of the problems with standard stories that will be highlighted are problems with testimony more generally, not just testimony about sexual assault. But we will only focus on the specific problems this format causes for believing victims of sexual assault.

causal factors for events and the actions of characters are included (Tilly 1999).⁵ Though as in the cases above, some amount of cultural understanding can go into explaining characters' actions. For instance, in the first example, people are often quite willing to attribute the behavior of rapists they do not know to their being "disturbed" or "mentally ill," and letting social prejudice against mentally ill people do the rest of the work. (Yet, given that a great many mentally ill people never even attempt to assault anyone, mental illness does not seem like a particularly good explanation for why someone might try to commit rape.) In the second example, though, we can likely just infer the immoral nature of the men involved from the fact that they are bragging about their assault and show no signs of regretting it. So, in both cases, we can attribute the crime to some form of pathology.

The existence and prevalence of the standard-story format is not in itself problematic. After all, there are many cases in which we have limited resources to hear about a situation in full detail, meaning that many instances of testimony need to be short, episodic, and incapable of capturing all of the complexities of a real-life situation. The problem is not with the stories themselves, or the format in which they are presented, but of our general lack of acknowledgement of the format's limitations. The limitation I will be most concerned with is the fact that the causes of an event, or the motivation for a person's actions, are often too complex to be properly represented by a standard-story format. So, the construction of a standard story about that event will fail to represent its underlying causal mechanisms in a sufficiently complicated way. But many of us tend to assume, Tilly argues, when we hear a standard story, that all of the relevant causal factors are included in the account. This, as we shall see, will make some standard stories seem less plausible than others, in cases in which we cannot understand why the actors might behave as the story describes.

The two examples given above function relatively well as standard stories, in that the details given make it easy to understand the causal mechanisms involved, and the parties play well-understood roles. In a sexual assault, there is at least one person being assaulted and at least one other person who attacks them. What both of these stories have in common is that the details given about the attackers make it easy for us to understand why they might be attacking another person. This makes the standard-story format adequate, more or less, to account for these cases. In the first example, it is easy to assign some kind of pathology to the stranger who attacks the woman, and to blame a vaguely described mental illness for his actions.⁶ In the second case, the men involved are easy to slot into a stereotype of egotistical

⁵ Thanks to Colin Macleod and Sally Haslanger for pointing me to the literature on standard stories.

⁶ The ableism involved in this kind of attribution is an important, but separate issue.

athletes who believe they are entitled to anything they like. The cause of their actions, then, is also some kind of pathology or major character flaw. Now, while these are not the only standard stories we have available about sexual assault, many of them do involve assault by strangers or pathological individuals (or both). But these stories are not in fact representative of sexual assaults in North America, even though our understanding of what constitutes sexual assault is in part constituted by paradigm cases such as these, which are prevalent in the social imaginary.

Gendler (2000, 56) has connected issues of the imagination to issues of morality through the *puzzle of imaginative resistance*: “our comparative difficulty in imagining fictional worlds that we take to be morally deviant.” One example of this type of resistance is that we have considerably less difficulty in imagining worlds in which reproduction is entirely based on cloning than worlds in which female infanticide is morally laudable. Imaginative resistance might make it difficult to picture “normal” people “like us” committing crimes like rape, which we find morally reprehensible. While we are not, in these cases, being asked to imagine entire fictional worlds in which sexual assault is morally acceptable across the board, we are being asked to imagine ordinary people who perform acts that fit the definition of sexual assault, that they nevertheless find to be morally acceptable. While this might not require as much of a stretch as imagining an entire world in which rape is morally permissible, the difficulties are analogous.

The next section will use some of the psychological literature on concepts as well as some of the philosophical literature on narrative in order to explain some of the mechanisms through which these narratives in the social imaginary are sustained. Works on narrative (such as Velleman 2003) will complement psychology literature on concepts (Murphy 2004; Ross 1987, 1989; Brooks, Norman, and Allen 1991) to frame the effects of stereotypes that we are likely to encounter in North American media. For instance, experiments testing the exemplar model of concepts have shown that exposure to past instances of the relevant concepts can have a strong influence on our classification of new instances.

4. Concepts and Exemplars

Some theories of concepts account for our application of them primarily in terms of comparisons to exemplars. Such theories are sometimes given empirical support with reference to what are called *exemplar effects*: the use of remembered exemplars to decide how to categorize a new item (Murphy 2004).⁷ While the present discussion of concepts will not presuppose an exemplar *model*, it will at least be supported by the experiments showing that there are exemplar *effects*. The

⁷ Thanks to Corinne Bloch for pointing me to the literature on the exemplar model of concepts.

claim that notable past instances of a concept can shape our future applications of that concept does not necessarily commit us to a single theory, or even a single type of theory, though it does signal that the exemplar model is at least getting something right.

Ross (1987, 1989) has shown that people solving new mathematics problems tend to refer back to examples of previously solved problems. This is sometimes to their detriment, since they may pick up on irrelevant similarities between cases, resulting in attempts to apply the wrong type of solution in new cases. For example, word problems which merit significantly different solutions may nevertheless have similar storylines. In Ross' experiment, some of these problems were probability questions involving mechanics repairing cars at a motor pool. How the different objects (mechanics and cars) fit into the formulas provided varied from problem to problem. Subjects in the experiment would sometimes use the formulas inappropriately for the current problem, though in ways that were similar to past solved problems to which they had been exposed.

Brooks, Norman, and Allen (1991) tested these insights in a categorization context, namely medical diagnosis. This study was designed to determine how exposure to past classification instances would affect subjects' abilities to classify future instances. The experimenters presented general practitioners (with a variety of amounts of medical experience, and no specialized training in dermatology) with correctly labeled photographs of dermatological lesions. They were then asked to determine which conditions were represented in new photographs. Not all instances of a given condition look alike, but the experimental results found that visual similarity to past examples was a significant factor in the subjects' ability to classify new instances accurately. As with the previous study, not only did similarity to previous instances help subjects classify new examples correctly, it also showed a strong connection to subjects' classifying new examples incorrectly. These results held even when there was a two-week period between subjects' being shown the labeled instances and their being asked to classify the new ones.

The point to take away from these studies is perhaps unsurprising: When we classify new entities as falling under concepts, one potential source of error can be found in their superficial similarities (or lack thereof) to past instances of those concepts. These kinds of insights can also be found in the philosophy literature, in discussions of epistemic issues surrounding narrative. In that context, writers such as Velleman (2003) explore how ways in which we process new information can sometimes be affected by the extent to which that new information fits with our background stories. Our understanding of some concepts can be shaped by stories involving them, shaping our collective understanding of how certain events "normally" take place. Following Mink (1970) and Schank (1995), Velleman writes,

How do we know what a mutiny is, for example, if not by knowing the general scenario for a mutiny? Our concept of a mutiny may thus involve a story-skeleton or the memory of a paradigm case. When we comprehend a sequence of events under the concept of a mutiny, as envisioned by Mink's theory, we may well be assimilating those events to a story-skeleton or a particular remembered story, as envisioned by Schank's. (Velleman 2003, 10)

Story-skeletons are general schemas into which we can fit multiple distinct instantiations of a story. We might have a story-skeleton giving us the general outline of the events in a mutiny that could be filled in in different ways with different crews, captains, motivations, types of vessels, etc. But we might also have some particular instance of a mutiny in mind, perhaps having seen the 1935 movie *Mutiny on the Bounty*. Such a story would be our exemplar of a mutiny. And applying insights from exemplar model research, we would expect to categorize an event more readily as a mutiny if it resembles our exemplar more closely—even in superficial ways, such as its involving the English navy.

Given the relative infrequency of mutinies, the social justice implications of this expectation might not be apparent. But when we consider some of our other concepts that also involve an account of events taking place, the problems become more obvious.

In the next section, we will consider stories of sexual assault that do not fit as nicely into the standard-story format, and which are dissimilar to many of our exemplars. When many people hear stories like these, they react with skepticism. What this means is that we could hear about a non-paradigm case of sexual assault and think to ourselves that this is not how such things generally happen. This could well make us think that what we had heard was not in fact accurate. Just as we might be confused and skeptical if we heard about a mutiny on a ship filled with even-tempered pacifists committed to norms of civil discourse, we might also be confused and skeptical if we hear about a male feminist sexually assaulting a woman. Yet cases such as these do in fact happen.

In the case of a mutiny, there are generally far more people involved, more empirical evidence available to determine what happened, and far fewer instances of them in the first place. So it is less likely that an entrenched narrative about a typical mutiny will cause epistemic injustice. But in the case of a sexual assault, I will argue that entrenched narratives about typical sexual assaults can and do cause a great deal of harm, some of which takes the form of epistemic injustice.

5. Atypical Stories and Epistemic Injustice

Sexual assault occurs to a wide variety of people in a wide variety of circumstances, though the exemplars available in the social imaginary do not reflect

that. We can contrast examples 1 and 2 above with the following two examples below.

Example 3. A woman who is not considered conventionally attractive (by being thin, able-bodied, young, etc.) has a romantic interest in a conventionally attractive male colleague. She does not pursue this interest because he is already in a heterosexual relationship. However, he gives her a ride home after a work function and is invited into her home, where, later that evening, he sexually assaults her.

Example 4. A woman and her male partner break up after a stable long-term relationship. They try to stay on good terms and continue to see each other socially since they have many mutual friends. One morning, he arrives unannounced as he often has in the past, but this time she is rude to him and asks him to leave. Upset, he sexually assaults her.

These are not common ways in which sexual assault is portrayed in the media, nor are they common news stories.⁸ They might also be among the majority of cases in which the crime is not reported to the police. Perhaps the woman in the first story feels embarrassed and wonders if she brought it on herself. The woman in the second story might be afraid of the reactions of her friends. To what extent does the non-paradigm nature of these stories contribute to the extent to which others will believe them? Reactions to such stories in the literature are variable but generally show that unattractive women are more likely to be blamed for their own assaults and that a previous romantic relationship with the perpetrator tends to reduce perceived severity of the offense (Pollard 1992). One gap, however, in the studies Pollard reviews, is that variations in the sexual assault scenarios all focus on the victim or the victim's relationship with the perpetrator. Studies will vary her behavior, attire, past history, the history she has with the perpetrator, both in the prior acquaintance and in the current encounter. But none of Pollard's discussion talks about variation in the perpetrator's own character or history. I think this signals another common assumption about sexual assault, which is that it is only perpetrated by a particular kind of person with specific pathologies in his character. This is likely compounded by the fact that, of necessity, behavioral studies about the

⁸ There are *many* other stories that do not commonly get attention—for instance, same-sex assaults, assaults where the victim is male or a sex worker. These stories were chosen because of the nonstandard way in which the perpetrator is portrayed. Other nonstandard elements would most likely make the stories seem even less plausible.

characteristics of rapists can only study people who are in fact charged with rape. This makes it extremely difficult to gather clear empirical data about just how many people actually do sexually assault someone, and about the characteristics of people who are never charged with rape. Given the aforementioned statistics about how few assaults are even reported, much less warrant charges, it is likely that the data from studies such as those gathered by McCabe and Wauchope (2005), only interviewing men charged with rape, is unrepresentative, as the majority of these men were strangers to their victims.⁹

An important element in examples 3 and 4 is the fact that the perpetrators are easily seen as relatively ordinary people, capable of sustaining normal and healthy relationships with others. These are unlike many of our stereotypes about rapists. We could believe that they are merely pretending, which is also a relatively common trope in thrillers and mystery novels, but nothing in the stories themselves signals this to us. In contrast, in examples 1 and 2, the perpetrators seem more obviously to be sick or immoral individuals—even to the point of caricature. This is further supported by the standard-story format, in which we tacitly suppose that the important details are all included. No direct causes are given for the assaults in examples 3 and 4, so, given a lack of easily recognizable motivation for their actions, listeners are faced with the more difficult task of understanding how relatively normal individuals might end up committing sexual assault. Since the woman in example 3 is not conventionally attractive, and the man is already in a relationship with a woman, sexual desire does not seem to be an obvious motive.¹⁰ And many of our exemplars of sexual assault do not give us clear motives besides pathology or bad character. In example 4, some motivation is given, namely that the man is upset at his ex-partner's rejection. But for many recipients of her testimony, this might not seem sufficient motivation to commit such a significant crime.

On the other hand, if an individual is described as being mentally ill (despite the lack of information about the type of mental illness), it becomes easier to fit them into existing stereotypes. Indeed, this picture matches many common perceptions of what a rapist is like. An Israeli study that surveyed male university students initially found that they

⁹ But even in this study, there were many men who displayed surprisingly solicitous behaviors towards their victims, using “words that suggested that the offender was worried about the victim, words that indicated that the offender was trying to persuade the victim to do something, or words that were meant to be reassuring in nature” (McCabe and Wauchope 2005, 240).

¹⁰ Though it is highly questionable whether desire on its own is ever really the motivation for sexual assault in the first place.

felt that rapists had a lower educational background and were mentally disturbed. More specifically, those participants described rapists as displaying the following personality characteristics: high sexual needs, uncontrolled sexual urges, an external locus of control, depression, emotional instability, fear and anxiety that are projected onto helpless people, and violent-aggressive tendencies. . . . Seventy percent of the participants believed that all rapists had themselves suffered some form of sexual, physical or emotional abuse during childhood. (Lev-Wiesel 2004, 203–204)

This study highlighted the important fact that a “typical perpetrator” was often imagined to be someone very different from the men themselves. But as the interviews progressed, the men’s attitudes shifted from disgust towards rapists to admissions that rape may be a “natural trait” in males. Sixty percent of them also said that rape may sometimes be a result of miscommunication between the parties involved. Eventually, 30% admitted that under very specific circumstances such as these, they might commit rape. This shows an internal tension in these men’s attitudes about rape and who might commit it. While their ideas about typical perpetrators match our exemplars nicely, they do display an underlying awareness that lack of control and emotional instability might not be the only things that might cause a person to commit this kind of act.

These findings are consistent with earlier studies, such as those conducted by Malamuth, Haber, and Feshbach (1980) and Osland, Fitch, and Willis (1996). The former much-cited study gave the description of an unambiguous sexual assault to a group of American university students and provided them with an anonymous questionnaire afterwards. One of the most striking results from the questionnaire is the response that many male students gave when asked if they would ever act as the rapist in the description did. Respondents were asked to give an answer between 1 and 5 in response to the statements, where a “1” meant that they would absolutely never do such a thing, and “5” meant that they absolutely would.

Of the 53 males, 17% indicated a 2 or above in response to whether they personally would be likely to act as the rapist did in the same circumstances. Fifty-one percent similarly responded when questioned about their likely behavior if they could be assured of not being punished. Furthermore, 21% chose the middle of the scale (3) or above in response to the latter question. (Malamuth, Haber, and Feshbach 1980, 130)

The studies under discussion here have been conducted among university students, and thus relatively well-educated and socially functional individuals. They are

studies conducted among “ordinary” young men, which gives some plausibility to examples 3 and 4. After all, one of the problems previously mentioned with these examples is that we might find it difficult to attribute any kind of intelligible motivation to the perpetrators, given their relative ordinariness. Given a lack of readily available explanation for the perpetrator’s behavior, we might take another path of least resistance. For example, we might simply believe that the victim is lying. This might be due to the invocation of a trope such as the jilted ex-lover who is attempting revenge by making up stories. Something like this could easily be invoked in our examples. Indeed, the proverbial “woman scorned” is a familiar idea in North American culture.¹¹ This trope is easy to evoke when the perpetrator is known to us but the victim is not. If we have evidence at our disposal about the character of the victim or the relationship between the individuals that is difficult to reconcile with the image of a stereotypical scorned woman, then other explanations are readily available.

“Victim-blaming” is a term used to describe holding people responsible for crimes committed against them. It is regrettably common in cases of sexual assault to hold victims at least partially responsible for their own rapes. For instance, Pollard (1992) reviews a large number of studies about victim-blaming in which participants are given different scenarios in which a sexual assault occurs (though it may not be explicitly described in those terms) and are asked about the responsibility the different parties hold for the assault and the sentence, if any, that should be handed down to the perpetrator. While some of the studies disagree with each other, overall trends can still be seen in which past sexual history and attire have noticeable effects on listeners’ attitudes. In many cases, listeners believe that the perpetrator was to some extent justified in his actions, perhaps because there was some degree of consent, or some legitimate reason for him to believe that there was consent.

In Brock Turner’s case, there was an attempt to shift the blame for his crime onto party culture, and onto the alcohol consumption by both him and the victim. This is because, just as a black man feeling pity for a white woman was virtually unintelligible in the setting of *To Kill a Mockingbird*, it is similarly unintelligible in North American culture for a nice, intelligent young white man with a bright future to be a perpetrator of sexual assault. This gives Turner’s denial of guilt an unwarranted credibility excess. We lack resources in our social imaginary to account for “nice young men” who commit sexual assault while maintaining loving

¹¹ A relatively recent example of the invocation of this trope was the radio host Jian Ghomeshi’s claim that the sexual assault allegations were primarily due to a “campaign of false allegations pursued by a jilted ex girlfriend.” See *Global News* 2014 for further discussion.

relationships with their friends and family. Of course, Turner was in fact convicted of sexual assault, and in this case the issue in question is not whether he actually committed the crime, but what sentence it merited. Though it is notable that in the case of this conviction, there were two sober white male witnesses who saw him carrying it out; it seems likely that the social identity of these witnesses was extremely significant in the guilty verdict. In other cases, the guilt of the perpetrator needs to be decided in large part by comparing their credibility to the credibility of the victim.

In considering the issue of victim-blaming and consent, one objection that might be made is that the phenomena I am describing here simply fall under the heading of *hermeneutical* injustice. But as Fricker describes the two types of epistemic injustice, it is not clear that this particular kind of credibility excess is appropriately captured by either of them. The issue of sexual assault relates to both of these types of injustice, certainly. There is surely some hermeneutical injustice involved in the definition of sexual assault in the first place and our conceptualization of consent. There may be cases where the parties involved can agree on the literal sequence of events, but disagree significantly about the concept under which those events fall. Still, the label of hermeneutical injustice would be better suited to instances in which someone has trouble believing that marital rape, or the rape of sex workers, is possible. These are extremely important cases, but they are not the type I am interested in here. Instead, the cases I have been focusing on are those in which, if a listener did believe the events took place just as described, they would believe that there had been a sexual assault. The problem is when listeners do not believe that cases like these take place as described because they seem implausible. And these cases seem implausible because of the non-paradigmatic nature of the perpetrators.

And while the phenomena we are interested in might be instances of testimony, many of the situations of systematic disbelief are not a result of identity prejudice against the testifier themselves, as in the case of Fricker's testimonial injustice. Rather, they are the result of rape culture as a whole and a lack of resources in the social imaginary. For instance, while the victim in Example 3 may suffer from identity prejudice, it seems to be indirect, affecting the plausibility of her story in general, rather than her credibility or competence as a testifier. Another signal that identity prejudice is not the main source of skepticism here is the fact that it seems independent of the story's narrator (since the victim-blaming is found in the psychology literature in which researchers rather than victims are the narrators of the story). Rather, it is that the *content* of the latter stories, insofar as they are described as an instance of sexual assault, is not believed as easily as the content of the former stories. But this does wrong the victims, by questioning their credibility or their competence. If we do not believe that they were in fact victims of

sexual assault, then we undermine them in their capacity either to correctly understand what happened to them or to report it truthfully. In many cases, this can lead to the victims' questioning whether they even correctly recalled what had transpired, thereby further undermining them as knowers.

Given that victim-blaming is a problematic and well-known phenomenon, and that statistics about the nature of sexual assault are readily available, we might wonder why the current state of affairs remains the norm. Why does the range of stories we have about sexual assault remain so narrow, thereby contributing to the systemic injustice we are talking about here? Medina's (2013) concept of *active ignorance* can be useful here in explaining the continued acceptance of the stereotypical pathologized rapist.

As Medina describes it, active ignorance is connected to several epistemic vices typically found among (but not restricted to) those with relative privilege. Such vices can make one's ordinary ignorance into a meta-ignorance, such that we become insensitive to the fact that there is something important about which we are ignorant. In many cases, active ignorance serves to preserve ignorance about one's own privilege. In this case, however, active ignorance might preserve some more general form of comfort which may not necessarily track privilege. Why, after all, would many of us want to believe that perpetrators of sexual assault can be people with otherwise normal lives rather than being obviously predatory or pathological? Though the number of perpetrators of assault is no doubt lower than the number of victims, there is still quite a good chance that, for many of us, our circle of friends and family likely contains some people who have committed an assault. To use Medina's terms, this is a tendency toward being *epistemically closed-minded*, in the sense of avoiding things that are difficult to accept and acknowledge (Medina 2013, 34–35).

Yet although active ignorance about the wide range of people who commit sexual assault does not *necessarily* track privilege, such ignorance is much more sustainable among those for whom sexual assault is less of a pressing life concern. For example, First Nations people in Canada are much more likely to be victims of violent crime than non-First-Nations Canadians and are also much more likely to be economically disadvantaged.¹² In such communities, it might not be as easy to maintain active ignorance as in Settler Canadian communities, since those with more privilege, broadly speaking, also tend to be at lower risk of being the victims of violent crime, and can thereby afford a higher degree of ignorance about it.

Note the contrast between the perpetrators described in the two standard stories and the perpetrators in the nonstandard stories. We have evidence in these latter stories that the men committing these assaults are capable of maintaining

¹² See, for example, Scrim (2016).

relatively normal friendships and romantic relationships. They are, for many readers, people “like us.” As such, they do not fit the ordinary profile of the isolated and disturbed individuals that we more easily imagine to be rapists. Rather, they force us to accept the possibility that people who are close to us might commit rape (or even more challenging—that we might actually be capable of committing rape under certain circumstances).

But this challenging view is important—the image of the prototypical rapist can cause a tension when we hear one of our nonstandard stories, which might result in our making the following *modus tollens* inference:

- a) If someone commits a sexual assault, then that person is a monster.
- b) Person X is not a monster.
- c) Therefore, Person X did not commit sexual assault.

This is an inference we will in many cases want to reject, but since we cannot challenge its validity, we need to challenge the truth of its premises. Since we often have relatively good evidence that our friends, relatives, and even acquaintances, are not monsters, then the belief that needs to be changed is that sexual assault is something only committed by moral monsters. And this, to some extent, requires accepting that some people who commit sexual assault are also people who can treat others decently and might as a general rule be decent to others. They might have normal relationships with many women.

So, our difficulty in reconciling our background views about sexual assault and what it involves with the description of these situations might lead us to reject the label of sexual assault in examples 3 and 4. Since the stereotype of rapists articulated by (a) is supported by many of our paradigm cases, this will likely result in our (validly) drawing the conclusion in (c). This inference will then result in our believing that the accusation is false. But this, of course, is difficult to reconcile with the fact that people we do know can be perpetrators of sexual assault *and* can maintain perfectly ordinary relationships with others. And resolving this conflict frequently results in the testimonial injustice that manifests itself in victim-blaming. Listeners can easily speculate about what might “really have happened” in stories 3 and 4. One might easily think these are cases in which mixed messages are to blame, or in which there is some doubt about whether the sex was really nonconsensual. And this is the way in which the content of these stories becomes suspect—at least more suspect than the content of the other stories. The fact that they do not fit well with our background views about what sexual assault consists in, about victims of sexual assault, and about perpetrators, makes it easy for us to doubt them. Not to mention that other standard stories, such as the jilted ex-girlfriend trope mentioned earlier, could easily be complicating matters. Active ignorance, then, allows us to

maintain the illusion that the ordinary people we know would never have committed acts of assault, despite the fact that it is likely that some have.

6. Conclusion: Diversifying Stories

It can be challenging and uncomfortable to think of non-paradigmatic perpetrators—a temptation that easily leads to epistemic closed-mindedness. The lack of diverse accounts (and relatedly, the prevalence of stories such as the vindictive woman prone to false rape accusations) is most likely linked to structures of power, because nonstandard accounts of rapists can strain our social or moral imagination by forcing us to picture situations in which people “like us” have committed sexual assault. And this might even lead us to the conclusion that people we know and like have committed sexual assault. The main reason, then, for highlighting this different route to testimonial injustice is that solving this type of epistemic injustice might require different strategies than the ones Fricker suggests.

The virtue-epistemic approach she suggests is appropriate for counteracting individual prejudices, but in this case, the problem has more to do with the systematic misrepresentation of sexual assault scenarios. The fact that atypical scenarios (or at least a very narrow range of scenarios) are portrayed as the norm leads us to our having a skewed conception of sexual assault in the first place. The lack of paradigm cases means that many cases of sexual assault are viewed with undue skepticism. But viewed in the abstract, this skepticism is reasonable. After all, it is reasonable to be somewhat skeptical of stories of events we believe to be unusual. So the most direct way to do something about these kinds of testimonial injustices is to expand the range of paradigm cases by actively working for the inclusion of as many stories as possible. This is similar to a prescription from Nussbaum (1997) to read literature that comes from different perspectives in order to cultivate compassion:

If the literary imagination develops compassion, and if compassion is essential for civic responsibility, then we have good reason to teach works that promote the types of compassionate understanding we want and need. This means including works that give voice to the experiences of groups in our society that we urgently need to understand, such as members of other cultures, ethnic and racial minorities, women, and lesbians and gay men. (Nussbaum 1997, 99–100)

It is crucial to include marginalized voices when expanding the range of stories. Given that many people who are sexually assaulted are from marginalized groups, compassion for them at least makes it somewhat less difficult to discount their testimony. At the very least it makes for more portrayals of them than the

stereotypes that might be culturally familiar. For example, given the empirical evidence that black people tend to be seen as superhuman (Waytz, Hoffman, and Trawalter 2015), police violence against them is often portrayed as more justifiable, with white officers in fear of their lives. These latter portrayals are challenged in reports like “Say Her Name: Resisting Police Brutality Against Black Women,”¹³ which calls attention to the importance of including stories about violence against black women, particularly gendered violence.

The importance of victim narratives is absolutely crucial in many cases, particularly cases of violence against marginalized populations. However, opinions differ on their helpfulness in the case of sexual assault. For instance, Heberle (1996), while acknowledging the importance for victims of speaking out, raises the worry that victim narratives can also have the unintended consequence of reifying rape culture and male dominance. As women who empathize with victims realize that any of us could be the targets of sexual violence, and accept that rape culture is a real problem in society, Heberle also worries that this can “participate in setting up the event of sexual violence as a defining moment of women’s possibilities for being in the world” (1996, 65). There is, after all, a fine line between accepting that sexual violence is a legitimate possibility in many women’s lives and letting it play a too-significant role in circumscribing the possibilities for those lives. Now, Heberle’s strategy is not the silencing of victim narratives but rather their reframing. Rather than portraying stories of male sexual violence against women as representative of male power, she suggests portraying them as representations of the instability of masculinity. Thus, while they might be expressions of power in one sense, they are expressions of weakness in another.

My suggestion for diversifying narratives is compatible with Heberle’s arguments, though. Since if this analysis of our reason for disbelieving many cases of testimony is correct, then it is crucial to expand our compassion to the perpetrators as well as the victims. Rather than seeing them in general as monsters whose actions are incomprehensible, we should see them as people who have committed actions that were wrong, for reasons that we might condemn but might nevertheless be able to understand. Indeed, insecurity and weakness might well be among these reasons. After all, despite our stereotypes about rapists, Malamuth, Haber, and Feshbach (1980) provide evidence that we as a society are at some level aware that these stereotypes are unrepresentative, taking their findings to support

the contention that rape is an extension of normal attitudes and socialization practices in our society rather than totally the product of a sick and aberrant mind. If within the normal educated population there is a very sizeable

¹³ Available at <http://www.aapf.org/publications/>.

proportion of males who believe that they might be inclined to rape if they would not be punished and if both males and females perceive half the population to be so inclined, then it is quite apparent that people generally do not view rape as potentially committed by deviants only. (Malamuth, Haber, and Feshbach 1980, 134)

But even though many people might know that not all rapists are sick and aberrant, many of our exemplars of rapists nevertheless portray them as such. So, we will nevertheless be inclined to mistakenly misclassify many actual rapists as the wrong kind of person to commit such an act when they do not match these exemplars. The suggestion to view rapists with more understanding and compassion might seem counterintuitive at first as a solution, but it is a way to get around many of the reasons for disbelief that have been discussed here. If one of the main barriers to believing the content of the stories is that the people described as committing these crimes seem too much “like us” to be real perpetrators, then one way to do this is to show that the actual perpetrators of these crimes are more like us than we are comfortable admitting. Just like the men interviewed by Lev-Wiesel (2004), many people imagine rapists to be very unlike themselves while at the same time harboring sexist attitudes about consent and entitlement.

For Medina, the epistemic friction resulting from the interaction between heterogenous imaginations is crucial to bring about positive social change. We need to compare imaginative resistances in order for people to gain greater understanding of possible lived experiences. So, in order to believe that people who commit rape are also people who might live otherwise unremarkable lives, we might need to be able to imagine it. Nussbaum comes close to the suggestion that I am making here. She writes that we ought to invite literature that disturbs us in order to promote our literary understanding, to “allow inside one’s mind people who seem alien and frightening.” One example she cites is that of Wright’s *Native Son* whose challenge was “to look into the life of a violent criminal who kills his lover Bessie more casually than he kills a rat” (Nussbaum 1997, 98). But while I agree with Nussbaum that we should include stories from the perspective of people who commit crimes, I do not think the importance of these is always their alienness. Rather, I think that showcasing the ways in which such people are *not* so alien after all is equally, if not more, important.

But accepting that otherwise ordinary people might be capable of committing violent acts under certain circumstances is not that much of a stretch if we expand the range of violent acts under consideration. The well-known Stanford Prison Experiment (Haney, Banks, and Zimbardo 1973) has demonstrated that ordinary people can inflict cruelty on others under certain circumstances. Even

murder has a relatively wide range of portrayals.¹⁴ While our stereotype of a murderer might be a Jack-the-Ripper-esque serial killer, many of our action movie heroes (whom we are meant to identify with and admire) kill other people. There are also movies and books where sympathetic characters turn out to have committed murder. One of the best examples of a character who commits a terrible crime that seems rational to her at the time is the character of Sethe in Toni Morrison's novel *Beloved*. Sethe, an escaped slave, kills her two-year-old daughter rather than have her be recaptured and taken back to the plantation. Killing one's own child is an act that seems incomprehensible to most of us, but part of the exemplary storytelling that Morrison exhibits in the novel is exhibited by the way in which she gives us insight into Sethe's state of mind when she does it.

The answer, then, is not quite Nussbaum's suggestion, giving us insight into the minds of those who seem alien and frightening. Rather, it is to give us insight into the minds of those who are relatively ordinary but commit acts that we readily attribute to the alien and frightening. While this helps dismantle the generalization that those who commit sexual assault are monsters, the introduction of these additional accounts also has the function of mitigating the problem of standard stories. The problem with the standard-story format described above was the lack of causal mechanisms in the accounts that would allow us to understand how relatively ordinary people could commit sexual assault. But if we have enough stories of such things happening, we might not need to know the specific reasons for a particular act; rather, we can simply recognize the fact that there are many reasons why such a thing could have happened.

Finally, the suggestion that we should not see rapists as monsters is not to excuse the acts they commit. Rather, it is to recognize that one need not be a fundamentally evil human being, or someone whose psyche is basically alien and terrifying, in order to commit such an act. And while attempting to humanize perpetrators might seem *prima facie* counterproductive, this paper has outlined several ways in which it will help us accord the testimony of victims the credibility that it deserves. Committing sexual assault out of anger or a temporary loss of control is still the commission of a violent and reprehensible act. But it is nevertheless the kind of circumstance that can arise in the life of an otherwise ordinary individual, or an individual who does not treat everyone they know (or even all the women they know) poorly. And whether we want to admit it or not, many such people commit sexual assault, and we do an epistemic wrong to their victims if we are unduly incredulous in the face of these stories.

¹⁴ Though some literature does try to pinpoint the particular wrongness of rape (Berkich 2009).

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