

For attention:

Dr Fiona Tito-Wheatland,
Executive Officer
ACT Law Reform Advisory Council

Dear Fiona,

This document contains:

- My Submission to the ACT Law Reform Advisory Council's Issues Paper on restorative practice titled: Canberra – becoming a restorative city, and
- My completed ANU Ethics Committee form

I wish LRAC well in this important endeavour and I look forward to hearing how work on Canberra becoming a restorative city develops.

Regards,

Catherine

Catherine Settle

23 August 2017

PhD Scholar, AFHEA

The Australian National University

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WRITTEN CONSENT

People and organisations making submissions

Restorative Practices Inquiry

I have read and understood the Participant Information about the Inquiry at Attachment A to the Issues Paper. I have had any questions and concerns about the inquiry addressed to my satisfaction.

I understand that there are a number of ways I can participate in the Inquiry, including making a submission, having an interview or participating in a group discussion. Completing the questions in this Paper and forwarding my answers to the Council is one way of making a written submission. I can also complete these on-line.

I wish to participate through making a written submission. YES NO

Please mail the submission to:
Restorative Practices Inquiry Submissions
ACT Law Reform Advisory Council
c/o ANU College of Law
ANU CANBERRA ACT 0200

Or please email submissions to:
lrac@anu.edu.au

When the ACT Law Reform Advisory Council reports the findings from the various possible forms of participation, I understand that much of it may not be personally attributed. However, where it is, I agree to be identified in the following way:

Individual/Organisation name YES NO Catherine Settle
Name to be used

Pseudonym (by Council) YES NO

Not to be individually identified YES NO

Signature: Catherine Settle Date: 23 Aug 2017

If you are under 18 years old, can you please ask your parent, carer or guardian to co-sign the consent below.

I am the parent, carer or guardian of the above participant and I give my consent to their participation in the Law Reform Advisory Council's Restorative Practices Inquiry as indicated above.

Signature:..... Date:.....

To:

Professor Tony Foley
Chair, ACT Law Reform Advisory Council

Re: Submission on Canberra becoming a restorative city

Dear Tony,

Thank you for this opportunity to provide a Submission on the ACT Law Reform Advisory Council's Issues Paper: Canberra - becoming a restorative city [hereafter, referred to as the Issues Paper]. I welcome the work underway in developing the notion of Canberra becoming part of the small, but growing, league of cities that are incorporating restorative practice into their communities, and I make this Submission as an interested member of the ACT community.

This Submission draws attention to the premises outlined in the Issues Paper as 'necessary prerequisites for something to be restorative' (p. 10) to make a case for why any such 'prerequisites' ought to be explicitly guided by the virtue of good epistemic practice.¹

Theoretical foundations to a fuller understanding of epistemic practice

My impetus in making this Submission arises with my concern over the way that the epistemology of testimony has traditionally, and primarily, maintained a narrow focus on simply whether or not all the evidence, on any given matter, has been obtained before any relevant judgements can be made. From that impoverished perspective on epistemic practice/conduct, only then can we be justified in believing someone; thereby, validating and gaining knowledge. Yet throughout the last decade, there have been substantial developments which contest such historically asocial, and reductionist perspectives on the epistemology of testimony. Foremost being the work of Miranda Fricker (2007), who has spearheaded an influential critique on how such a limited view of epistemic practices, in general, has pre-empted and obscured questions relating to the ways that power can affect our capacity as rational beings.

Expanding on her critique, Fricker developed a theoretical framework for examining the ways that reason and knowledge are entangled with social power and identity; thereby, creating a means of examining the ethical and political dimensions associated with our epistemic conduct. Emphasising the importance of the socially-situated context of the giving and receiving of

¹ To do this, I have drawn upon my PhD research (2016) titled: Democratising health policy with deliberative mini-publics: Responsibilities, pathologies, and paradoxes. In that PhD research I explored citizens' experiences of the epistemic practices that occur when democratically deliberative means of engagement are applied to health policy development. Although that research was derived from the context of health policy making, as will be seen from the information provided in this Submission, it offers insight into why it is also important to bring explicit attention to the epistemic practices that can occur within a restorative practice setting.

knowledge in this way, positions speakers and hearers in relation to power and identity. This fuller understanding of epistemic practices reveals other factors which influence the way in which we make sense of information, including that derived from our experiences in the different, socially-situated contexts of our lives. We can then consider how epistemic practices determine the level of credibility we give to information that is conveyed to us and whether, or not, we choose to accept that information as knowledge (Fricker, 2007).

What is epistemic injustice?

Lifting the veil on epistemic practices this way, we can see that if something occurs to negatively and prejudicially impact on the perceived capacity or credibility of a person to convey information to others – or, alternatively, when they are trying to make sense of information themselves - then they are being done an epistemic injustice. If and when an epistemic injustice occurs a person not only loses knowledge, they can also effectively block the flow of knowledge from another person. It can, therefore, be ethically bad to do it to someone or, alternatively, to have it done to oneself (Fricker, 2007).

At first glance an epistemic injustice may appear to be a trivial issue, though on the contrary, it can cut deeply into our personhood and, subsequent, self-development. This occurs because if someone is done an epistemic injustice they are, in effect, being silenced and undermined in their capacity as a rational human-being. This relates to the fact that a large part of the determining feature of rational authority is intricately bound up with our capacity, and opportunity, to give and receive knowledge (Fricker, 2007). Indeed, this is inferred in the Issues Paper, when citing Braithwaite's 'values conception' of restorative justice: 'injustice hurts' he also believes (p. 10).

There are two types of epistemic injustice of direct relevance to restorative practice: testimonial injustice - which relates to circumstances within which someone is not given credibility in their capacity to convey knowledge; and hermeneutical injustice – which, due to a 'gap in collective interpretive resources', certain individuals in society are put at an 'unfair disadvantage' in trying to make sense of their experiences (Fricker, 2007, pp. 1, 151). As the analogue of the distribution of other goods in society suggests, when there is a gap in shared tools for social interpretation, the cognitive disadvantage created by this unequal distribution of epistemic goods impacts more heavily on the least powerful groups in any given society (Fricker, 2007; Anderson, 2012).

There is also a significantly political aspect to epistemic practices that warrants consideration because if someone, or a particular group of people, is systematically unable to contest or express their opinions and experiences, then, they are denied the right to exercise a crucial aspect of their political freedom. When applying this realisation to restorative practice, we can appreciate how the way that people have been historically and systematically excluded from deliberations and decision-making processes relevant to their lives, within the traditional 'justice system', amounts to an epistemic injustice.

Prejudicial thinking can underpin epistemic injustice; impacting on our spontaneous judgements without us even being aware of its occurrence (Fricker, 2007). To put these thoughts in context with restorative practice, prejudicial thinking/stereotyping can undermine the credibility of any given citizen to contribute in a meaningful way if, for instance, they are dressed or speak in a

manner that is associated with low social status in that society; compared to another citizen who may speak and be dressed in a way designated in that society with prestige and authority. Stereotypes can of course vary within different societies but when this occurs a negative-identity-prejudicial stereotype is impacting on our decision-making.

A negative-identity-prejudicial stereotype may not lie within a specific individual; it may lie within a community or the culture of an organisation – the collective ‘we’ thinking. This collective thinking has even been shown to occur when the perpetrators are of the same social group that is being stereotyped. It is as if prejudice is in the social imagination – in the form of social stereotypes. To help counter the impact of prejudicial, stereotypical thinking the virtue of epistemic justice is required – both testimonial and hermeneutical, if circumstances warrant. For instance, the virtue of hermeneutical justice could manifest at the individual level by not judging a citizen’s struggle to understand certain information, or to make sense of their own experiences, as a personal epistemic deficiency. Instead, the virtue of hermeneutical justice would recognise a citizen’s struggle to understand certain things as attributed to the lack of opportunity citizens have previously had to expand their thinking on relevant matters (Fricker, 2007; Anderson, 2012). And although it is pleasing to see mention of a ‘virtuous cycle’ (p. 10) in the Issues Paper, this would be strengthened by the inclusion of the virtue of good epistemic practice.

Another reason it is important to bring explicit attention to the epistemic practices within restorative justice is that the unequal distribution of hermeneutical resources can render the most disadvantaged groups hermeneutically marginalised, in that they ‘participate unequally in the practices through which social meanings are generated’ (Fricker, 2007, p. 6). As such, this unequal participation can leave the social experiences of members of hermeneutically marginalised groups as poorly conceptualized and ill-defined – even by the members of the marginalised group itself. A hermeneutical gap, thus, prevents people in those types of social situations ‘from making sense of an experience that is strongly in their interests to render intelligible’ (Fricker, 2007, p. 6).

With a deeply poignant aspect of hermeneutical injustice in relation to restorative justice being that the hermeneutical context of social understanding and decision making explains how: if understandings are structured in a certain way, then so are the ‘facts’ (Fricker, 2007, p.147). And while hermeneutical injustice is not perpetrated through transactional processes between individuals – unlike testimonial injustice - it can be understood as happening pre-communication and is most typically evident in dialogue between individuals, as both speaker and hearer struggle with the same ‘inadequate tools’ or resources required to achieve a certain understanding (Fricker, 2007, p.7).

Correcting epistemic injustices

So far in this Submission I have relied heavily on Fricker’s (2007) theorising on epistemic practices, but when it comes to rectifying epistemic injustice in relation to restorative practice, Anderson (2012) and Bohman (2012) have important contributions to also consider. Specifically, these two theorists call for structural remedies to be utilised when addressing epistemic injustices, as well as those targeted at the individual-level. This originates with their concern that if we maintain a singular focus on the development of individual virtues, we might not reach our intended recipient/s. Moreover, such a narrowly defined target point may well

distract attention from the broader structural or systemic ways that such epistemic injustices may also arise (Anderson, 2012). And even in the likelihood that individual-level, epistemic virtues were to become habitually embedded in critically-reflective practice, we first need to know how to practice epistemic virtues consciously. Yet this is not an easy or straightforward task when we might not even know where we might have gone wrong (Anderson, 2012, p. 168).

Taking these thoughts further, and reflecting his longstanding concerns over the pervasive and insidious impact of persistent social inequalities, Bohman (2012) is careful to distinguish epistemic injustice as a sub-species of a more basic and extensive form of injustice: the injustice and 'harms of domination' (pp. 183-7). This is an important distinction because it also broadens the scope from which we can 'diagnose' and 'offer remedies' for epistemic injustices (p. 187). Indeed, from Bohman's (2012) assessment, epistemic injustice 'entails domination with respect to the denial of communicative and epistemic statuses'; with institutional remedies required so as 'to make such power over others structurally impossible' (p. 181).

So, with these points in mind, and to conclude my Submission, it is possible to conceive of restorative practice as critical to a structural remedy for the epistemic injustices of the traditional 'justice system'. Without explicit attention given to the virtue of good epistemic practice, however, vital components of any such remedy might not be considered.

This preliminary stage in the development of Canberra becoming a Restorative City presents a significant opportunity to consider the pervasive impact of epistemic practices – injustices and justices - on our proposed Restorative City, and I trust that the Advisory Council will give this matter the attention it warrants.

Please contact me if you require further information on any of the points I have raised in this Submission.

Yours faithfully,

Catherine

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References:

- Anderson, E. 2012. Epistemic justice as a virtue of social institutions. In *Social Epistemology*. 26: 2: 163-173.
- Bohman, J. 2012. Domination, epistemic injustice and republican epistemology. In *Social Epistemology: A Journal of Knowledge, Culture and Policy*. 26: 2: 175-187.
- Fricker, M. 2007. *Epistemic injustice: Power and the ethics of knowing*. New York. Oxford University Press.