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Epistemic Injustice. Research Report

Epistemiczna niesprawiedliwość. Raport badawczy

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Abstract: This article regards a social experiment conducted by Maastricht University students as a component of the course Thinking Like a Lawyer: Legal Challenge. The research concerned the occurrence of epistemic injustice among university students. The preferred research method was a social experiment. In order to collect research material, a number of interviews was conducted among Maastricht University students. The main research question was whether university students are inclined to make epistemically unjust judgments. The analysis of the research results allowed a verification of the presuppositions.

Keywords: *epistemic injustice, stereotype, gender*

During our course we had focused on the role and significance of the evidence in the legal framework. For our final project we concerned ourselves with one of the most prominent issues from the field of evidence introduced to us during the last discussion session at the beginning of the course Evidence Matters, namely – the epistemic injustice. We wanted to explore that phenomenon and draw attention to the scale of the predicament it is creating, not only in the professional legal setting, but also within the society. Establishing this objective led us to designation of social experiment as our research method, which is a set of conceptualized and instrumentalised measures aiming at resolving the scientific question [Kamiński, 1974]. First, however, we tasked ourselves with conducting research on the matter of epistemic injustice itself.

“Epistemic injustice comprises unfair treatment in knowledge-related and communicative practices in which the voices, experiences and problems of marginalized individuals, communities and societies are not being taken

seriously” [Cummings, Dhewa, Kemboi, Young, 2023]. It is an extremely broad topic, which can involve interdisciplinary and spread across various fields of social life. Therefore, to create the most targeted results, the focus of our research was testimonial injustice. Testimonial injustice occurs once the hearer’s judgement is dictated by the influence of prejudice [Ficker, 2007]. It affects one’s capacity as a knower and results in assigning lower credibility to the witness based on epistemic reasons, such as race on gender. Epistemic injustice often stems from the ratio of social power between the subjects. This power can take different forms, including purely structural, which means there is no defined executor of it, but it is so widely spread or entrenched in the society that one group has the influence on the behaviour of the other [Ficker, 2007]. This is tightly interrelated with the concept of identity power, which is most apparent in the realm of gender. Women tend to be silenced (either actively or passively) because of the stereotypes regarding gender roles in the society. The occurrence of injustice is not dependant on whether the stereotype is actively endorsed by the parties [Ficker, 2007]. We decided to make this phenomenon the subject of our study. To facilitate that we had begun with designing the following cases.

CASE 1A

The case centred on alleged domestic violence between Emma and Jake. The courtroom was silent with the solemnity of the verdict. Emma took the witness stand. Her lawyer approached her and placed his hand on her shoulder, then turned to the jury and the judge and made his opening statement.

“Jake has been physically abusive to me over the last few months”, Emma said. The attention of the courtroom turned to her. Her lawyer presented several photographs and medical reports before calling witnesses. These documents supported Emma’s allegations.

When it was the turn of the witnesses, their neighbour Lydia was called to the stand. Lydia, a retired teacher, in her late 70s, testified “Yes, many times I heard Jake shouting loudly at Emma. Once I heard him slamming the door hard and Emma crying. One night when I was in my living room, I saw Emma taking out the trash with her sleeves rolled up and I saw multiple bruises on her arm”.

Jake's lawyer objected to Lydia's testimony, emphasizing that it was only testimony based on voices and that she had not seen any specific acts of violence. However, Lydia repeatedly testified that she had seen bruises on Emma's body and that they were from Jake.

Then, it was Jake's turn to testify. He took the stand, looking composed. "I never laid a hand on Emma", Jake began. "We've had arguments, yes, but I never physically hurt her. The photos and medical reports don't tell the whole story. Emma bruises easily, and some of those marks were from accidental bumps, not abuse".

Jake's lawyer asked him to explain further. "There were times when Emma would get upset and hurt herself. She was under a lot of stress and sometimes lashed out. I tried to help her, but it was difficult".

Under cross-examination, Emma's lawyer questioned Jake's account, pointing out and highlighting the evidence. However, Jake remained steadfast. "I love Emma", he said. "I would never intentionally hurt her".

The court took Lydia's testimony into account and considered it together with the other evidence.

CASE 2A

Maggie Smith is a 32-year-old editor at a well-known local magazine. On April 20th she had a rough day. What started as a regular Tuesday morning quickly turned into an intense chain of events. Maggie left her house in a hurry and drove to her workplace. She grabbed a coffee in the company's cafeteria before heading upstairs to her office. While walking out of the elevator she bumped into a colleague she is not fond of and spilt her coffee over her new shirt. Already annoyed she went on with her busy schedule. As the day was coming to an end and Maggie was just about to leave, she got called by her boss into their office. They told Maggie that they have not been satisfied with her job lately and that if she does not improve, she might be facing firing. Maggie left the office thrown off with the experiences of the day and proceeded to her car to finally get back home.

It was pouring rain and by the time she got to the car she was soaking wet and beyond frustrated. While she was driving past the park Maggie witnessed a rather unusual situation. In the middle of a dark alley in between the trees there were two persons swinging their hands around and struggling with

each other. Suddenly one of the silhouettes fell on the ground while the other started running. Maggie thought it looked suspicious, but she kept driving. As she quickly drove by the park's exit, in the light of a street lantern, she noticed a man nervously walking out of it holding onto something that seemed to be a handbag.

When she got home, Maggie couldn't stop thinking about what she just witnessed. After some consideration she decided to go to the police station and report a robbery, as she was convinced this is what she had just witnessed. She arrived at the station and was directed to a room where a kind police officer met her to take her testimony.

"Mrs. Smith..." – the police officer began when Maggie finished her story – "are you aware of today's graduation party at our local university?"

"No, I am not" – Maggie responded. – "But I don't understand what it has to do with the crime I have just witnessed this evening!"

"Well, from my understanding you had quite an emotional day. Considering the adverse weather and the fact that you have only seen the incident from your moving vehicle, would you agree it is possible that, in the state of unrest, you have confused a robbery for drunk students' antics?"

Maggie didn't know what to say. She was certain she witnessed a robbery...

CASE 1B

The case centred on alleged domestic violence between Emma and Jake. The courtroom was silent with the solemnity of the verdict. Emma took the witness stand. Her lawyer approached her and placed his hand on her shoulder, then turned to the jury and the judge and made his opening statement.

"Jake has been physically abusive to me over the last few months", Emma said. The attention of the courtroom turned to her. Her lawyer presented several photographs and medical reports before calling witnesses. These documents supported Emma's allegations.

When it was the turn of the witnesses, their neighbour Mark was called to the stand. Mark, a retired teacher, in his late 70s, testified "Yes, many times I heard Jake shouting loudly at Emma. Once I heard him slamming the door

hard and Emma crying. One night when I was in my living room, I saw Emma taking out the trash with her sleeves rolled up and I saw multiple bruises on her arm”.

Jake's lawyer objected to Mark's testimony, emphasizing that it was only testimony based on voices and that he had not seen any specific acts of violence. However, Mark repeatedly testified that he had seen bruises on Emma's body and that they were from Jake.

Then, it was Jake's turn to testify. He took the stand, looking composed. “I never laid a hand on Emma”, Jake began. “We've had arguments, yes, but I never physically hurt her. The photos and medical reports don't tell the whole story. Emma bruises easily, and some of those marks were from accidental bumps, not abuse”.

Jake's lawyer asked him to explain further. “There were times when Emma would get upset and hurt herself. She was under a lot of stress and sometimes lashed out. I tried to help her, but it was difficult”.

Under cross-examination, Emma's lawyer questioned Jake's account, pointing out and highlighting the evidence. However, Jake remained steadfast. “I love Emma”, he said. “I would never intentionally hurt her”.

The court took Mark's testimony into account and considered it together with the other evidence.

CASE 2B

Lucas Smith is a 32-year-old editor at a well-known local magazine. On April 20th he had a rough day. What started as a regular Tuesday morning quickly turned into an intense chain of events. Lucas left his house in a hurry and drove to his workplace. He grabbed a coffee in the company's cafeteria before heading upstairs to his office. While walking out of the elevator he bumped into a colleague he is not fond of and spilt his coffee over his new shirt. Already annoyed he went on with his busy schedule. As the day was coming to an end and Lucas was just about to leave, he got called by his boss into their office. They told Lucas that they have not been satisfied with his job lately and that if he does not improve, he might be facing firing. Lucas left the office thrown off with the experiences of the day and proceeded to his car to finally get back home.

It was pouring rain and by the time he got to the car he was soaking wet and beyond frustrated. While he was driving past the park Lucas witnessed a rather unusual situation. In the middle of a dark alley in between the trees there were two persons swinging their hands around and struggling with each other. Suddenly one of the silhouettes fell on the ground while the other started running. Lucas thought it looked suspicious, but he kept driving. As he quickly drove by the park's exit, in the light of a street lantern, he noticed a man nervously walking out of it holding onto something that seemed to be a handbag.

When he got home, Lucas couldn't stop thinking about what he just witnessed. After some consideration he decided to go to the police station and report a robbery, as he was convinced this is what he had just witnessed. He arrived at the station and was directed to a room where a kind police officer met him to take his testimony.

"Mr. Smith..." – the police officer began when Lucas finished his story – "are you aware of today's graduation party at our local university?"

"No, I am not" – Lucas responded. – "But I don't understand what it has to do with the crime I have just witnessed this evening!"

"Well, from my understanding you had quite an emotional day. Considering the adverse weather and the fact that you have only seen the incident from your moving vehicle, would you agree it is possible that, in the state of unrest, you have confused a robbery for drunk students' antics?"

Lucas didn't know what to say. He was certain he witnessed a robbery...

As the reader may notice the first of our cases was strongly gender-influenced. It considered a domestic abuse, which made it prone to gender-related stereotypes. The second case we designed in a gender-neutral matter and it considered a robbery. By incorporating both scenarios (where gender plays a significant role and where it does not) we aimed at testing whether the degree of gender's relevance is a determining factor for testimonial injustice. Our hypothesis was that, regardless of the circumstances, respondents are more inclined to believe the man than the woman.

Accordingly, we prepared two variants of each case. One part of our respondents was presented with cases A, where the eyewitness was a female and the other part with the cases B, where eyewitness was a male

(as the reader may see, other than the difference in gender the testimonies were the same). We used a twin-pairing method to ensure soundness of our experiment. This means that we put a great degree of attention to make the groups as similar as possible in terms of sex and age. We interviewed the same number of women and men for each case and kept our targeted audience among Maastricht University students. For our data analysis we have utilised forty interviews as our research group, out of which ten female participants and ten male participants have received cases A, and the respective number of female and male participants have received cases B.

The second part of our project consisted of the research on and the execution of the experiment itself. As a first phase of this task, we had to familiarize ourselves with the requirements of conducting a social study, as well as develop an experimental protocol. As mentioned above our **research method** was a **social experiment**, which conditioned the choice of the **technique of our research**, as in practical actions performed [Plich, Bauman, 2001]. The technique we found most suitable for our objectives was **in person interview**. The interviews were conducted in locations typically occupied by students such as **Maastricht University Inner City Library** and **UM Sports**, a sports complex in Maastricht.

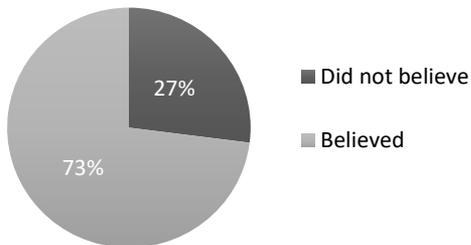
Since we were aiming at reaching a wide (quantitatively wise) audience, to avoid open-ended responses our interviews were highly structured [Fox, 2000]. After presenting our respondents with the two cases we asked them a set of questions, such as their age, sex and the faculty they are enrolled in, which were relevant for the later analysis of the data, as well as the question regarding the identity of the witness of the case they were presented with and whether they believed the witness, which was the scientific part of the questionnaire aiming at testing our hypothesis. We made a scrupulous effort not to ask leading questions or create any other circumstances that might have influence the answers of our respondents.

For the purposes of conducting the interviews we divided our team into pairs. During each interview one of the interviewers was putting the answers given by the interviewee in a previously prepared **interview questionnaire**. Since we were using a twin-pairing method, as described above, it was crucial for us to maintain a high degree of comparability [ibidem], which was the reason behind utilising a questionnaire.

In addition to the above-mentioned form, our **research tools** were the **printouts of the cases** and **smartphones we used to videotape the interviews**. We have also prepared consent forms for our respondents to be able to use their identity in our final deliverable, which was a document-style video including a thorough analysis of the data that had been gathered from the experiment.

The final phase of our project was analysing the data and generating graphs to visualise the results.

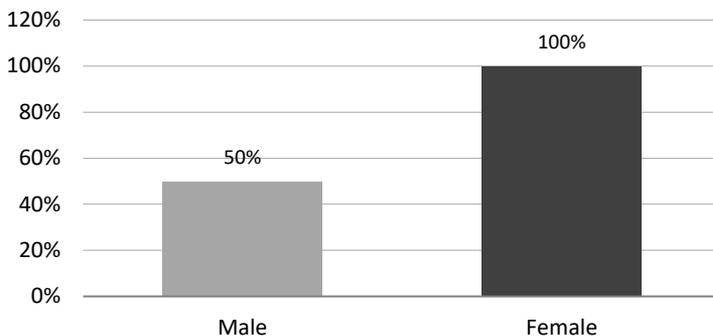
Responses to Lydia's testimony (case 1A)



Source: based on analysis of own research results.

Seventy three percent of our respondents, who were presented with the female witness in the case of domestic abuse (case 1A) believed her testimony, while twenty seven percent of the respondents presented with this case, did not.

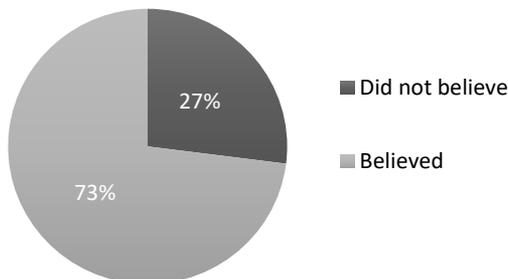
Ratio between male and female (case 1A)



Source: based on analysis of own research results.

Among this group of respondents, a hundred percent of women believed the female witness, while only fifty percent of man believed a female witness.

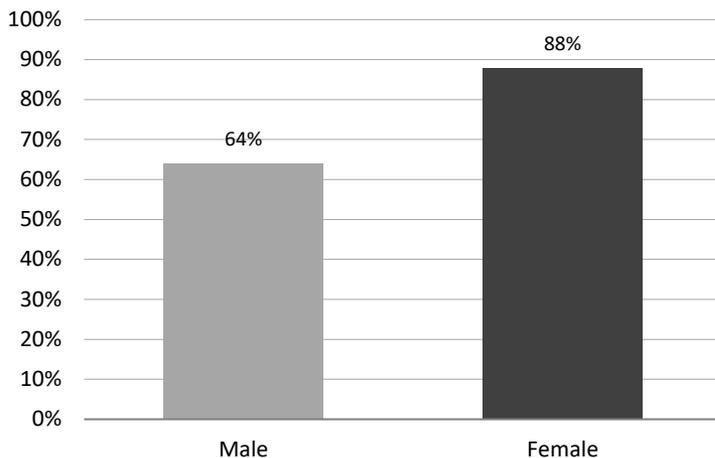
Responses to Mark's testimony (case 1B)



Source: based on analysis of own research results.

In the case of domestic abuse with male witness (case 1B) seventy three percent of the respondents presented with this scenario believed the testimony, while twenty seven percent of the respondents, who were presented with this case, did not.

Ratio between male and female (case 1B)

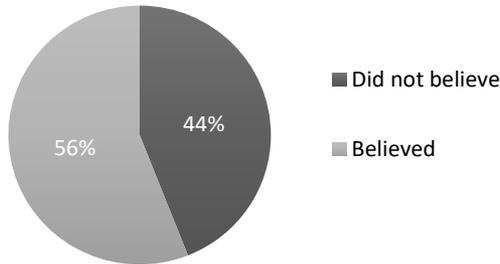


Source: based on analysis of own research results.

Among this group of respondents sixty four percent of men and eighty eight percent of women believed the male witness.

This data proves the hypothesis partially incorrect as there is no significant difference between the degree of credibility assigned to a male and to a female witness. However, it can be derived from above analysis that women are more inclined to believe a witness testimony, regardless of their gender, in case of domestic violence.

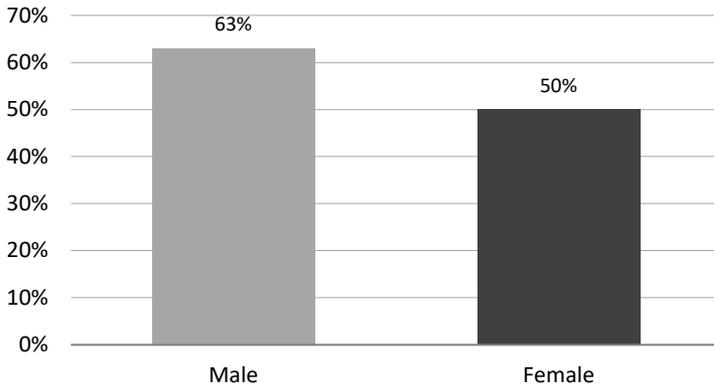
Responses to Maggie's testimony (case 2A)



Source: based on analysis of own research results.

Fifty six percent of the respondents presented with the female witness in the case of robbery (case 2A) believed her testimony, while forty four percent of respondents presented with this case, did not.

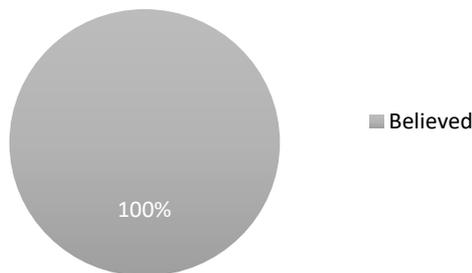
Ratio between male and female (case 2A)



Source: based on analysis of own research results.

Among this group fifty percent of women and sixty three percent of men assigned credibility to the female witness

Responses to Maggie's testimony (case 2B)



Source: based on analysis of own research results.

A hundred percent of the respondents presented with the male witness in the case of robbery, regardless of their declared sex, believed the testimony of the witness.

It can be observed from above analysis that significantly more respondents had declared they would assign credibility to a male witness in a case of robbery. Therefore, our hypothesis was proven partially true, however the degree of the gender-relevance of the case itself was not determinative in the judgement of our respondents, as they were more prone to believe male witness only in a non-gender-related case.

Due to a limited size of the research group the data gathered during the experiment shall not be generalized and cannot be considered statistically relevant. However, it is indicative of the actuality of the research question of the existence of epistemic injustice among university students.

To address this issue, it might be valuable for the universities to include courses regarding both, epistemic injustice as well as a broader topic of evidence in general in their curriculums, especially for the legal training.

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