

Voices of Deficit: Mental Health, Criminal Victimization and Epistemic Injustice

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ABSTRACT

People who endure mental and emotional distress experience a plethora of negative experiences beyond the effects of the symptoms themselves. For centuries, the designation of labels of difference; that is, those which transgress approved social norms, have affected the lived experiences of those individuals, and more widely in structuring responses, engagements with, and attitudes between society and the individual. Understanding the creation of tainted identities, particularly of those with experience of mental and emotional distress have been well rehearsed in the sociological literature of the second half of the twentieth century. Central to much of this analysis has been to understand the nature of the manufacture of deviant identities, how they are sustained and the impact of these identities on those who experience them. This paper explores the experience of those with mental and emotional distress as a victim of crime. The interconnectedness of matters of identity created through the application of a diagnosis of illness/disorder is addressed as is the crisis of criminal victimisation. This is achieved via an exploration of contemporary concerns surrounding victims of crime with experience of mental and emotional distress, including the (further) loss of voice and agency when interfacing with agencies of the State.

Keywords: Crime Victims; Criminal Justice; Deviance; Mental Health; Testimony

INTRODUCTION

Communication between one another is imbued with meaning, and assumptions over the quality, acceptability and reliability of the dialogue. Interaction may be a site of differential power relations, prejudice and discrimination. Treatment of the person who provides the testimony is a matter for critical consideration. 'Good' or 'bad' informants are subjectively constructed by the 'hearer', not least based on the social group from which they may emerge. Knowledge production may be tainted by underlying assumptions, prejudices and attempts to discredit the testimony of the knower. Marginalised groups, where inequalities may exist, are prime victims of such epistemic injustice. Evaluations of any testimony are wedded to beliefs held about the individual which may be influenced by an interpretation of the social membership or social standing of a wider group, culminating in stereotyping behaviours on the part of the hearer.

The voices of crime victims have traditionally been subordinate, with little understanding of their overarching needs either pre- or post-trial, lack of appropriate and current information, and limited understanding of Crown Prosecution Service guidance (Home Office, 1998). Further, the criminal justice system has tended to marginalise victims, notwithstanding their significance to the process. Meanwhile, the "objective of cross-examination in our adversarial system is to persuade the opposition's witnesses to change their version of events or to discredit their evidence" (Plotnikoff & Wilson, 2015: 156).

Historically, the voices of people with experience of mental and emotional distress have also been subordinate. The Enlightenment's obsession with reason and the 'mentally ill' as a scourge on society, to be placed in large institutions in an act of social exclusion (Foucault, 1971), resulted in phenomenological emphasis on the individual in the twentieth century. Uncritical acceptance amongst the psychiatric and psychotherapeutic professions that emotional distress could be dealt with by focusing on 'intense self-examination', meant that the context in which that distress emerged, could be disregarded. Currently, individuals with the stigma of 'mental illness' may either be locked up, coerced into taking ever more complex combinations of drugs or 'requested' to undergo electroconvulsive therapy. Additionally, the straightjacket of the *Diagnostic Statistical Manual*, with emphasis on 'neurological dysfunction' which can be cured with drugs, is legitimated by the state (Bracken, 2001).

Combining the subordination of the voices of crime and those who have experienced mental and emotional distress, results in double deviance; whereby individuals are treated more harshly by the criminal justice system as a consequence of their deviation from social norms. In this article, we explore and further the empirical evidence provided by Pettitt, et al.'s (2013) (also see Khalifeh et al., 2015; Koskela, Pettitt & Drennan, 2016) who have drawn attention to the experiences of those with a history of mental health problems who have been victims of crime. In doing so, a conceptual positioning of the identity and voice of the person is undertaken, drawing influence from the work of Miranda Fricker (2007). Broadly speaking, Fricker is concerned with the exercise of social power, whereby the least powerful can be silenced and dispossessed. In our application of Fricker's work to Pettitt et al's findings, silence results from having experienced mental and emotional distress and falling 'victim' to crime in a system which negatively and yet imperceptibly, constrains those judged as lacking credibility from the perspective of the hearer; otherwise known as *epistemic injustice*.

CRIME AND VICTIMISATION

Crime in England and Wales

Accurately drawing a picture of the extent of crime in a given jurisdiction is, however, difficult. Survey methods are invariably skewed in directions based on the proficiency and approach to recording. Moreover, multiple methodologies are frequently employed to collate information; often residing in multiple agencies. In the year ending March 2016, the Office for National Statistics recorded crime against adults in England and Wales standing at 6.3million. Analysis points to a general trend of crime rates falling; however, some offence types continue to grow or remain largely static.

What the public know about crime, and its extent, is more often an amalgam of influences, representations and sometimes experience. Typically, headline figures are drawn from crime data for the purposes of political speech writing media news reports on the blight of criminality in communities, or as the basis for fictive entertainment. Moreover, the represented extent of crime can never account for a true figure, not least due to the unwillingness or difficulties in reporting crime or victimisation. Taken for what they are, official crime statistics do offer some advantages for authorities such as: fulfilling obligations to evaluate performance;

indicating demographic characteristics of suspects, defendants and offenders in the criminal justice process (which can be useful in formulating critical questioning); informing and shaping policies of law and order by means of an empirical base; providing an accessible source of information on crime which the public can readily access and therefore fulfilling, in part, obligations for transparency in the criminal justice system.

Counting crime is challenging, and thus the argument of the practical usefulness of official crime statistics is brought to bear. Non-disclosure of crime to agencies such as the police is a continuing example, and several studies have sought to unveil the significance of this, based on issues such as perceptions of how the victim's initial testimony would be received and handled by authorities. Further, some crimes are recorded whilst others may not be in line with official mandates on crime recording (Cook, 1997, 2006). This, coupled with the decision making of victims in reporting or not reporting filters official crime statistics down a path of being a constructed reality (Morrison, 1995).

A 'victim-focused' criminal justice system has been a key objective for a number of decades. In 2002 the then Labour government published the White Paper *Justice for All*. This aimed to deliberately recalibrate the criminal justice system; putting the victim at its 'heart'. Engaging with victims of crime was a key strand of this document, and its influence made some changes to various aspects of pre and post-trial processes, practices of agencies delivering criminal justice services and the general positioning of the victim in political and criminal justice policy, rhetoric and discourse. However, there is evidence of victim-orientated strategies pre-dating the beginning of the new millennia. The British Crime Survey (BCS) was first in use in 1982. This survey aimed to capture insights into victimisation, and fear of victimisation. This 'in-home' surveying method, delivered by the Home Office, provided data on victimisation and attitudes towards crime from households in Britain (participants over 16 years of age). However, the paucity of evidence has marked the evolving history of the BCS into its current form today (now called Crime Survey for England and Wales) for similar concerns as official crime statistics, that is for example: that not all crimes may be included; victimisation age thresholds/limits of participation; problems accounting for non-direct victimisation; participant's residency situation.

What we know from crime surveys and statistics is that it is invariably a challenging enterprise to understand the extent of crime from these methods alone. A myopic view of crime is conjured up if a reliance is placed on crime data alone. While moving beyond quantitative/evaluative territories is a must, it is important to recognise vulnerabilities that exist; in that crime data does have a seismic presence in the reform, revision and commissioning of service arrangements for victims of crime. Distortion of data, partial views of the 'crime problem', the constructed nature of crime itself (and the statistics that represent it) pose formidable challenges for all concerned.

The changing role of the victim in the criminal justice process

Richard Quinney (1972: 315) eminently states that "if a victim cannot be imagined, a criminal law is neither created nor enforced". Here Quinney draws attention to the necessity of understanding complexities in relationships between harms, crimes and victims. What these three each represent is a contested domain; in particular the scholarly criticisms which exist set against precedents of legislature, policy and criminal justice practice. The significance, nature and character of these facets in criminal law and practice shape the experience of victims of crime. How the victim is interpreted in procedural matters of criminal justice, how they are recognised and treated, and how harms and crimes are defined, all have a bearing on just how victim-orientated a criminal justice system may be. Definitions of the victim, what rights should be afforded to victims, how a victim's needs may be met, and how outcomes of these analyses interact with due process and human rights, are illustrative of inquiries that engulf criminal justice policy strategists and critical commentators alike.

Amidst concerns that victims of crime are not accorded sufficient acknowledgement in criminal justice processes, one of the first official defining documents emerged in 1985 - United Nations (UN) General Assembly's *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*. The UN Commission on Crime Prevention and Criminal Justice passed a resolution in 1996 to create a manual for victims, followed by the publication of a *Handbook on Justice for Victims* in 1999. Campaigning by victims' movement had already been gathering momentum domestically, as seen in the publication in 1990 and 1996 of Victim Charters. These Charters set standards of service that victims can expect from

criminal justice agencies. However, as campaign groups such as Liberty Human Rights state, whilst these were well intentioned, there remained an absence of legally enforceable rights for victims of crime. The first statutory rights that victims of crime could receive came in 2004 with the Crown assent of the Domestic Violence, Crime and Victims Act. Obligations of criminal justice agencies such as the police were outlined in the 2005 *Code of Practice for Victims of Crime*, with a revised version of the *Code* being published in 2013.

The plight of the victim of crime in the criminal justice process has been a precarious one. The victim of crime has become highly politicised, and whilst victims may have received rights, they are indeed limited by the potential for discrepancy between policy and practice. Much work continues in the UK and elsewhere to continue to orientate criminal justice policy and practice that is victim-sensitive.

MENTAL AND EMOTIONAL DISTRESS AND CRIMINAL VICTIMISATION

Those with experience of mental and emotional distress are often subject to pejorative stereotyping. Terminology can be a potentially contentious subject; 'mental illness', utilised by psychological and psychiatric services for those requiring medical treatment carries with it a stigma for many survivors. For the purposes of this study, 'people with experience of mental and emotional distress', focuses attention on the individual's expertise about their own mental health, and emphasises the person over the psychiatric diagnosis. As Mason and Mercer (2014) highlight, individuals with experience of mental and emotional distress have been normatively associated with traits and behaviours attributed to riskiness, unpredictability, violence and dangerousness. These popular associations are an embedded feature of contemporary social understandings of mental illness. The falsehood of this causality fails to accrue a sufficient status in the face of media portrayals, or the application of a medical model to offending behaviour, and reductionist explanations that malfunctioning minds cause abnormal behaviours (and vice versa), as well as the failure to incorporate anti-stigma tenets into policy and legislative developments. The reason that it is crucial to emphasise this socially constructed view of the 'mentally ill' as dangerous here is that it is entirely bogus, exaggerated and serves to misinform the public audience. The long history of representations and dialogue of association between people with experience of

mental and emotional distress and criminality continue to pervade media of all types - factual and fictional depictions (see Morley & Taylor, 2016) - gaining a prominence in the lexicon of social groups who pose a risk or threat to the safety and values of a society.

These misrepresentations are perverse. They are perverse because there is no credible evidence to suggest that those with experience of mental and emotional distress are any more violent or susceptible to committing a criminal act than those without. Further, in the UK, the *National Confidential Inquiry into Suicide and Homicide by People with Mental Illness* illustrates a small percentage of homicides are perpetrated by offender-patients. The saddening truth of misrepresentation continues in that authors such as Peay (2011) reveal that in all likelihood those with 'mental illness' are more likely to be a victim of crime than a perpetrator of it. Difficulties remain in understanding the extent and nature of criminal victimisation among those with experience of mental and emotional distress, as such information is not recorded centrally. However, studies such as those presented by Pettitt et al. (2013), Khalifeh et al (2015) and Koskela, Pettitt and Drennan, (2016) reveal much about experience at various stages of the criminal justice process.

Several pieces of scholarship exist that aim to highlight the criminal victimisation of those with 'severe mental illness' (see Maniglio, 2008 for a systematic review). Violent victimisation has been noted as substantial (Hiday et al., 1999), with higher levels of victimisation when compared to national trends (Teplin et al., 2005; Hodgins et al., 2007). Those with psychotic conditions are considered more at risk of violent victimisation (Walsh et al., 2003), with homelessness and a co-morbidity of psychosis and alcohol abuse resulting in a higher risk of victimisation (Lam & Rosenheck, 1998), and a high prevalence of sexual violence against women with severe mental illness (Goodman et al., 2001). There is, however, a paucity of insight into the experience of engagement of those with severe mental illness and criminal justice agencies.

This dearth of enquiry has been addressed more recently in the UK with the publication of *At risk, yet dismissed: The criminal victimisation of people with mental health problems* (Pettitt et al., 2013). This jointly commissioned research report by charities Victim Support and Mind provided a timely portrait of criminal victimisation and the victim of crime's interactions with the criminal justice system. The research adopted both quantitative survey methods and qualitative interview and focus

groups. It sampled 361 people with severe mental illness who were using community mental health services in London. A modified version of the Crime Survey for England and Wales (CSEW) was used and compared with a general population of London who had completed the CSEW in the same time period. Eighty-one qualitative interviews were conducted. All interviewees had been a victim of crime in the last three years and had mental health problems.

Pettitt et al. (2013) found that people with severe mental illness were five times more likely to be a victim of household crime than the general public, after accounting for socio-demographic differences. The findings show that those with severe mental illness are just as likely to report their victimisation to the police and move through the various stages of the criminal justice system as those in the general population. However, what this study does highlight are troubling views on satisfaction of victims with mental health problems when interacting with criminal justice agencies. Pettitt et al (2013) report that many who participated in research interviews had been in contact (as suspect/offender, through processes of detention under the Mental Health Act, and/or victim or witness) with the police before, and that these experiences prompted a reluctance to engage with the police in the case of victimisation. The study examined some of the specific reasons why there may be a disinclination to report victimisation to the police. Pettitt and colleagues report that participants spoke of the fear of a negative response from the police on the grounds of: fearing being blamed for the incident; not being taken seriously; fear of their mental health condition being used as a basis for the police to disbelieve or discredit them; and fear that they may be detained under the Mental Health Act for reporting a crime against themselves. Further, the study reported views of some participants who claimed that poor experience with the police was due to prejudice or the police being misinformed about mental health problems. Some participants reported that they believed their case was dropped because they had mental health problems whilst others reported that the police had told them that they were unreliable witnesses due to their mental health problem. Contact with perpetrators through the courts, and being cross-examined were reported as distressing incidents of the process. Moreover, a participant in Pettitt et al's. (2013) study described how the use of a mental health history in the courts was used to discredit his personal testimony.

THE IMPORTANCE OF TESTIMONY AND VOICE

Testimony is an intrinsic feature of human interaction. As human beings, we interact with one another through a variety of communicative strategies, not least speech and listening. We story-tell on an ongoing basis recounting memories and synthesising ideas, articulating perspectives on experience and communicating viewpoints. As recipients (or listeners) of people's testimony we construct and attach meaning. Testimonies are important conduits of experience of both things which are real and imagined (Plummer, 2001). Testimony, (auto)biography and voice have been widely theorised in the social research methods domain. Here we see a deliberate critique and a drawing of attention towards what is not a uniformity in how testimonies and people's voices are heard or listened too. Indeed, many scholars have reasoned that some testimonies accrue more importance in the social and intellectual field than others (see for example, Plummer's work on sex workers *Telling Sexual Stories* (2002)). Subjugation and the culturally accepted suppressing of personal testimony based on variants such as social class, gender, race, sexuality and status is not uncommon. Pickering (2003), in her analysis of feminist perspectives on this subject, indicates that 'expert' testimonies often take precedence and personal testimonies subordinated. Personal testimonies are sites of power struggles of status. Who is providing the testimony, and who is the recipient may well be a starting point of how the form of the testimony is sculpted by the teller, and how the story is heard or acted upon by the listener; the nature of this interaction determines the amount of agency that the teller has.

Biography is closely tied to the communication of testimonies. As Shantz (2009: 117) describes in an analysis of biographical sociology, individual identities are "complex composites of who they create themselves to be and present to the world, and who that world makes and constrains them to be". The biography of the story-teller and the delivery of their testimony are a constructed phenomenon. The authenticity of the testimony may be questioned by the listener amidst observations and discrimination against the person's biography. The way that the story is recounted or used by the listener may maintain orthodoxies attributed to others who share similar biographical characteristics. In sum, the process of interaction where a testimony is delivered may be value and status laden. Any discrimination afforded to the teller is an assault on the authenticity of the testimony. Plummer (2001, 2002) lends support to the claim that stories are crucial in inspiring a moral imagination

whereby they can aid critiques of a damaged world, stimulate dialogue, stimulate empathy and deepen our sympathies. Respecting the identity of the speaker, and the testimony itself are central to challenging differential power relations, not least where testimonies are a principal feature of help seeking and support between individuals and agencies or offices of the state.

Testimonies and voices of less eligibility: mental illness

Mental illness, whether conceived of as a socially or biologically constructed (or both) condition represents an identity for the holder of social deviance. They have, through the processes of medicalisation been labelled (ab)normal/(sub)normal. Many with experience of mental and emotional distress have been the recipients of a ferocious and sustained attack on their moral standing against 'normal' society. They have been met with, and continue to attract, suspicion, discrimination, prejudice and stigmatisation. Social attitudes, medical expertise, political action and media fallacies have perpetuated a nomenclature surrounding the mentally ill as subnormal, morally defective, pitiful, potentially threatening and in need of control (Cohen, 1985). The crisis that those with mental illness experience is not simply confined to symptoms or episodes of illness, but rather also is characterised by a repression of their standing as equal in everyday life. A rich vein of scholarship exists on the subject of mental illness and stigma (see for example, Fink & Tasman, 1992; Mason et al., 2001). Social divisions based on social deviance are common, and are a damning indictment on societies which lack cohesion and favour separatism. Stigma is about identity and the process of how that identity may be discredited or disgraced and set apart (Goffman, 1963). Stigma may be public, or directed at oneself (see Corrigan et al, 2003). It is a process of stereotyping, prejudice and discrimination and is very much a moral experience whereby the individual's identity is earmarked or embodied as tainted, spoiled or discounted. The deviant self and the social identity is constructed as an outcome of stereotyping, agreements with the stereotype (prejudice) and adverse responses to the prejudice (discrimination) (Corrigan & Watson, 2002).

Theorists such as Scheff (1974, 2013) have discussed the outcomes of negative labelling; in particular conditions that arise where access to a 'valued' social status is compromised. Access to employment opportunities, social marginalisation, problematic social mobility, and a general level of social rejection characterise the

lives of many who have experienced mental and emotional distress (Rosenfield, 1997). Moreover, arguments have been advanced that suggest this stigma may lead to increases in symptoms of psychological distress (Link et al., 2001) and the trapping of individuals in a sustained pattern of social deviance (Scheff, 1974; Thoits, 1985). Indeed, stigma scholars have asserted that the false assumptions and discrediting of the identity and voice of the mentally ill is more harmful than the illness itself (Overton & Medina, 2008).

Power is important in any analysis of stigma. Deviant labels can only be conferred (and sustained) in situations of power and powerlessness. Link and Phelan (2001: 382) reason that 'labelling, stereotyping, separating, status loss, and discrimination co-occur in a power situation that allows these processes to unfold'. Medical power, political power, the power of the media to name but a few, structure the outcomes of stigma for those who have experienced mental and emotional distress. Their voice is not only suppressed by external influence, but by conditions of rejection, devaluing and discrediting, which translate into an embodied experience (self-stigma), affecting the individual's belief that they may be legitimate or that they lack agency to fight stereotyping, prejudice and discrimination - this is a truly remarkable example of the power that exists in this context.

Testimonies and voices of less eligibility - crime victims

Not all victims are constructed as such and not all victims are responded to as such. Accordingly, victims are constructed along a continuum from that of the 'deserving' victim to that of the 'underserving' victim (Walklate, 2014). The 'deserving' victim find themselves in a position where their victimisation is acknowledged and thus awarded victim status as well as public, practitioner, political, institutional and media sympathy. While the 'underserving' victim is denied victim status, media attention and public and political support and sympathy. As Goodey (2005: 124) eloquently highlights "victims whose character, past conduct or actions can be considered as undesirable, or somehow contributing to their victimisation, are unlikely to be responded to sympathetically by the criminal justice system as deserving victims with particular needs to be met". These needs include having their voices as victims accepted as valid accounts of the events of their victimisation.

Where a victim lies on this continuum depends on a number of subjective and objective factors. Subjective factors include, but are not limited to, the nature of the

crime, the severity of the harm inflicted and, the frequency with which the harm is inflicted. It also includes factors such as gender, age, sexuality, race and, ethnicity; these characteristics may also have an impact upon how the victim experiences the crime and the subsequent support they require. Indeed, victims may find that their experiences are impacted by their knowledge of and, their ability or willingness to engage with criminal justice processes in seeking redress for the crime. Objective factors include, whether the harm the person has suffered is deemed to be criminal by themselves and/or criminal justice agencies, whether the harm suffered by the victim is perceived to be worthy of the attention of criminal justice agencies, the level of blameworthiness attributed to the victim and, the level of cooperation from the victim with the various agencies involved including the criminal justice process.

Christie (1986) recognised that the process of acquiring victim status is informed by an understanding of the 'ideal victim'. This understanding is premised on the notion of the 'deserving' or 'undeserving' victim which in turn impacts on statutory and social acceptance of victimisation. According to Christie, the 'ideal' victim is weak in relation to the offender; is going about their everyday, legitimate activities; blameless for the crime/harm inflicted upon them; is unrelated to the offender, who is opposite to the offender in terms of stature and physique, that is, slight and slender in comparison to the big and bad offender and; able to elicit sympathy for the crime/harm inflicted upon them. This characterisation of the 'ideal' victim provides clear distinctions between the victim and offender. Therefore, victims who are perceived to be members of socially marginalised groups, such as people with mental health problems, find themselves occupying the lower echelons of the hierarchy of victimisation. This prompted Carrabine et al. (2009) to highlight how some victims of crime are more visible while others are more invisible, with the latter being implicated in their victimisation hence having their victim status invalidated. This is particularly evident when people with mental health problems are the victims of crime.

SOCIAL INEQUALITY AND EPISTEMIC INJUSTICE

Pettitt et al.'s (2013) study into the experiences of those with mental health problems and the criminal justice process provides a stark reminder of a variance of experience in the interface of individuals and agencies of the state. As we have

observed in previous sections of this paper, those with mental illness have historically struggled to compete as full citizens, worthy of respect, consideration and trust, due to structural inequalities created by social institutions and public opinion. Moreover, the crime victim has also experienced an impoverishment of their voice in the criminal justice process. Active membership and a full protection of rights in a process for crime victims has long been a matter of concern along with what had been considered as a lack of victim-sensitive policies and practice; indeed, as some of the critical literature points towards, for many years the crime victim may merely be a 'rhetorical' victim (Davis & Smith, 1994; Bottoms & Roberts, 2011)

Those who endure mental illness, and have been a victim of crime, fall into both categories. As such there is real potential that their experience of the crime is worsened by the response of the criminal justice system. Pettitt et al.'s (2013) study draws attention to the suspicions that crime victims have, over the potential less-than-desirable outcomes that may occur. Many of these appear rooted in discriminatory practices where the individual's identity as having a mental health 'problem' structures customary or institutional practices. Conceptually and practically, the crime victim who endures a mental 'illness' or 'problem' therefore is in receipt of an identity of double-deviance which invariably structures the experience.

As we try to understand this phenomenon in more precise detail, our attention can be drawn to the processes at work, whereby the crime victim with 'mental illness' finds their voice and as a consequence their testimony has become one of deficit. To apply this here, we have deployed a conceptual framework put forward by Miranda Fricker in her 2007 text *Epistemic Injustice: Power and the Ethics of Knowing*. Fricker's intention is to outline, from a philosophical standpoint, the intricacies of how, and in what ways, 'knowers' (those providing a testimony) are wronged; Fricker labels this as epistemic injustice. Other studies (see Carel & Kidd, 2014) make a substantial contribution to this area of thinking when applied to examples. Carel and Kidd (2014) have expertly applied Fricker's analysis to illness and healthcare, and in doing so, offer rich opportunities through recommendations to enhance approaches in practice. The intention here is the same; drawing attention towards the dual identities in our example via this heuristic device of analysis. Below, we will outline how Fricker's perspective offers value to elucidate our area of interest; by exploring her two stands of epistemic injustice; testimonial injustice and hermeneutical injustice.

Testimonial injustice is one aspect of Fricker's (2007) theory of epistemic injustice. Based on the premise of that there is a deficit in the testimony of a knower, testimonial injustice seeks to explore this phenomenon. Inextricably linked to this is power, and importantly the manner in which prejudices and discrimination filter into interactions. Credibility of the knower is brought into question and, as we have described in previous sections, for the crime victim who has experience of mental and emotional distress, the aetiology of their social identity is bound to historical, customary and ongoing stereotyping, discrimination and prejudice that bar that person from accessing a status of equal value in society. Dismissal (by listeners) of contributions made by the knower formulate the basis of testimonial injustice, often aligned to assumptions made about the social group that the knower emerges from. Fricker and others add that this issue is not simply about an individual, but also their social demographic attachment, through analyses of race and ethnicity. Victims of crime have long felt a sense of being 'silenced' in the criminal justice process. The testimony of those with mental health problems has, and arguably, continues to be cast as less important when set against professional or scientific judgement (not least through the development of mental health legislation and policy which resists opportunities to incorporate further patient choice - see Mental Health Alliance, 2012). Giving less importance to a crime victim with mental health problems is clearly illustrated in the examples put forward in this paper drawn from Pettitt et al.'s (2013) study. In court, a victim of crime recounted the time where under cross examination their testimony was set against a backcloth of a mental health medical history disclosure - doing so reinforced prejudices in the minds of the audience also. Deflating the credibility of the source of knowledge is problematic, as this not only affects the experience of the knower (for example, in Pettitt et al.'s (2013) study participants reported that they were disinclined to report victimisation to the police because they feared that they would not be taken seriously), but also what is known.

Hermeneutics, rooted in continental philosophical works by those such as Gadamer (2004), refers to the methods of interpretation. Language is the vehicle by which understanding can be made and also a primary means of sharing what are often complex human experiences (Gadamer, 2004). This process allows for the creation of concepts and understanding, with certain experiences having a conceptual relevance and vocabulary attached. However, not all experience is necessarily translated into such concepts. Social sciences have vehemently

attempted to address such an imbalance; in particular, for those whose experience is complex, and implicated in social structures, and for voices of experience which are perhaps less-heard. Hermeneutical injustice occurs, as Fricker (2007) postulates, where there is an inability of those, in particular from marginalised groups, to be able to actively express, reveal and communicate their injustice, because there is no conceptual principle to encapsulate their experience situated in the collective consciousness of a given society.

According to Fricker (2007), two kinds of hermeneutical injustice exist; incidental and systematic. The first involves experience remaining obscure because of a gap in; “the collective hermeneutical resource” (2007: 158), and the second, additionally, involving an all-encompassing, pervasive *hermeneutical marginalization*. Hermeneutical injustice only takes place when the individual attempts unsuccessfully to make sense of their experience. Beeby (2011: 485) takes issue with Fricker’s (2007) account on the grounds that hermeneutical injustice might also apply to the perpetrator, and suggests that hermeneutical injustice be reframed in order to give emphasis to epistemic injustice and provide “a more nuanced field of debate”. However, Jenkins’ (2016) erudite paper reiterates Fricker’s position that hermeneutical injustice is a specific form of epistemic injustice whereby an individual’s social experience is obscured because of hermeneutical marginalisation.

In 1998, a report, ‘Speaking up for Justice’, highlighted that victims/witnesses “should not be denied the emotional support and counselling they may need both before and after the trial” (HO, 1998) However, in 2013, Frances Andrade died after giving evidence at a sex abuse trial of her former teacher. The serious case review (Surrey Safeguarding Adults Board, 2014) concluded that she had been seriously let down by mental health services. Fricker would argue that Andrade was let down by the establishment because her lack of knowledge precluded her from understanding and protesting against her situation. The fact that she was under the impression that she was not entitled to emotional support, and the court was unaware of the fragility of her mental health, exemplifies how mental and emotional distress has tended to be hidden from sight, literally and figuratively. However, with an economic cost to the UK of £70-£100 billion a year (Organisation for Economic Co-operation and Development, 2014), more needs to be done to protect the needs of vulnerable people. For this is set against a backdrop of significant failings in community care,

and unwavering faith until recently in the ability of mental health professionals to resolve human and social problems.

Whether this is a situation of incidental hermeneutical injustice or systemic hermeneutical marginalisation is open to question. However, Jenkins (2016) argues that Fricker's (2007) account of hermeneutical injustice can be applied to the phenomenon of persistent myths and social misconceptions, and uses the example of sexual and domestic violence as a case in point, with the idea that if the individual did not fight back it is not rape, thus obscuring individual understanding of their own experiences. In this paper, it is argued that the mental health implications of domestic violence are well established (Herman, 1997; Roddy, 2015), which can engender depression, suicidal ideation, posttraumatic stress disorder and abrogation of trust. The definition of hermeneutical injustice, for Jenkins (2016: 7), includes three elements; "the experience being *significant*, the experience being *obscured* from collective understanding, and the subject being hermeneutically marginalized". Individual experience of mental and emotional distress is necessarily significant in the event of being the victim of crime; understanding the significance of what has happened determining whether they seek support. In terms of experience being obscured from collective understanding, common misconceptions about mental and emotional distress have meant that pre-trial therapy has often been denied if a prosecution is pending; for fear that it might taint evidence, involve witness coaching or undermine the credibility of the witness. Additionally, discussion about the content of evidence before a trial has historically given rise to questions about the victim's evidence. Although intermediaries can be called upon to assist vulnerable individuals who have been victims of crime (Criminal Justice Act 1999), and live link cameras have been instituted to mitigate anxiety, these are subject to economic vicissitudes. Advocacy training has been highlighted as essential (Advocacy Training Council, 2011) for supporting vulnerable people in court, following recent controversy surrounding child sexual exploitation cases, as a means of responding to past injustices for people with experiences of domestic and emotional distress who have been victims of crime. However, only a few ad hoc training events were held in 2014 indicating that little has changed for witnesses in terms of needing to respond to leading questions, or the practice of 'tag questions', which serve only to confuse vulnerable witnesses and engender 'unreliable' responses (Plotnikoff & Woolfson, 2015). Moreover, the third element, hermeneutical marginalisation, whereby victims

of crime also carry the stigma of experience of mental and emotional distress, increases their chances of being perceived as being to blame for the crime perpetrated against them, by those in dominant social positions. Further, it reduces ability to make sense of their own experience and communicate it to others, and may even be epistemically disadvantaging (Jenkins, 2016) to people with experience of mental and emotional distress, who may have no suitable concept of victimisation.

Fricker's concept of hermeneutical breakthrough is nonetheless encapsulated within The Hearing Voices Network, established by Romme, following her disenfranchised client's 'Aha' moment, when she communicates her own experience of hearing voices as an understandable consequence of social and political disadvantage. Until this time, hallucinations were only regarded as having meaning as symptoms of mental illness, which Hayes (2011) reports meant that; 'Emotional and interpersonal aspects of the experiences are either irrelevant, or triggers for an essentially meaningless process' (2011: 21), while contextual factors are ignored. Inevitably, it is, as Jenkins (2016) argues, the prevalence of myths such as these that constitute 'an injustice *in and of itself*' (2011: 12)

Apropos to the issues outlined above, it is worthwhile to consider that self-stigma too plays an important part in constructing epistemic injustice. We have drawn attention towards the issue of self-stigma earlier in this paper; a process whereby, as applied to those with mental health problems, individuals have an awareness of the stereotype, agree with it, and apply it to one's self (see Corrigan, Larson & Ruesch, 2009). This is important in the context of mental illness and Fricker's (2007) ideas on epistemic injustice. What self-stigma represents is self-directed prejudice. This may manifest in a number of ways for the crime victim with mental illness. They imbue their testimony with reticence or through interaction present as self-effacing. Any acceptance of stereotypes of deviant labels which the individual may hold invariably structures the interchange between themselves and services. These feelings and experiences may influence decisions to report victimisation to the police. If they do engage with criminal justice agencies then the character of the interaction may be governed by an individual's interpretation of their social standing (which may be embodied as being powerless in the face of powerful social forces which have created them already as deviant) which plays out as self-effacement occasioned by poor self-confidence, low self-esteem and low self-

efficacy. This too is testimonial injustice, but in this case it is contributed to by the knower through no fault of their own.

CONCLUSIONS

This paper originated as a response to the idea that people with experience of mental and emotional distress who have been the victim of crime need support in the form of radical change in order to find their voice. It is feasible that changes made to the Criminal Justice System and health care professions, in the wake of Serious Case Reviews, inspire hope. Nonetheless, the narratives associated with being the victim of crime for those who have experienced mental and emotional distress remain distressingly similar, including; lack of awareness of criminality, feelings of responsibility for the crime, shame, lack of confidence in disclosing to professionals and confusion about whom to approach. The concept of double deviance potentially provides these individuals, and those in positions of social power, with the means to understand how personal suffering can be socially constructed. Conceptualising these narratives as a form of testimonial and/or hermeneutical injustice necessitates consideration of what is required to work in this area and provides a more nuanced understanding of the debilitating effects of epistemic injustice.

Pettitt and colleagues have shed light on a jarring image of conditions of less-eligibility in various aspects of the criminal justice process. Indeed, Fricker's analyses utilised here have aided in establishing a conceptual thoroughfare by which aspects of experience and treatment can be traced. Whilst criminal justice agencies continue to attempt to address shortcomings of the past, failures appear to prevail in crime victim territories. We see evidence, particularly in the mental health domain, of attempts to counter negative treatment and experience by the State through a growing influence of identity politics. Similarly, critical voices emerging from crime victims' movements have gradually become more pronounced. However, as can be seen there is room for much more to be done. The denial of any semblance of justice for crime victims who experience mental and emotional distress is a pressing matter for reform as it represents an indictment of policy failure and a criminal justice system which remains burdened by behaviours that promote disenfranchisement and marginalisation.

As Carel and Kidd (2014) reflect, recommendations to ameliorate the effects of epistemic injustices are a priority for services of the State. The potential for the criminal justice system to perpetuate conditions of social injustice has been shown here. Indeed, the examples unearthed by Pettitt et al (2013) illustrate a neglect of recognition of empowerment that constitutes choice, influence and control (see World Health Organization, 2010). Whilst work is still being undertaken to ensure that criminal justice processes and policies develop on a trajectory of victim-sensitivity, the nature of crime victims as not a homogenous group requires further realisation. Enabling rather than disabling policy and agency interventions are required as a matter of urgency in order to protect vulnerable individuals from discrimination and abuses of a system. Creating the conditions (not just policy and rhetoric) whereby voices can be heard, respected and opinions held with equal weight to others has the potential to advance services that appear bedevilled with both formal and informal barriers.

This study therefore owes much to Fricker's philosophical thesis; what remains unclear, however, is not so much whether initiatives established to support advocates and intermediaries working in this domain, will provide effective support and a voice for people with experience of mental and emotional distress in the event they also become victims of crime, but whether these people will be believed in the first place, and more significantly, what happens if they are not.

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