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THE THEORY OF EPISTEMIC (IN)JUSTICE IN THE PERSPECTIVE OF THE PERFORMANCE OF LAW: AN APPROACH BASED ON THE CONCEPT OF HERMENEUTIC THERAPY

Abstract. In this paper, the assumptions of Miranda Fricker's theory of epistemic (in)justice read in the context of the neo-Wittgensteinian philosophical trend, also called therapeutic or resolute approach, will be approximated. The theory in question concerns the issue of unequal participation of the experiences of specific marginalised individuals or their groups in the practices of legal meaning-making. The aim of the paper is to show the role of the said theory in legal theory. In the first step, I will discuss the main assumptions of the theory of epistemic (in)justice and its varieties from the perspective of the lawyer-layperson epistemic dependence. I will also present normative proposals for implementing the ideal of epistemic justice as well as a justification for abandoning such a research approach. In the second step, I will show an alternative to normative approaches in the form of a theoretical innovation consisting in supplementing the assumptions of the epistemic (in)justice theory with a therapeutic-resolute reading of the late Wittgenstein in the hermeneutic perspective. In the third step, I will demonstrate that the full application of the theoretical innovation presented in the previous steps within legal institutions requires taking into account the critical category of legal imagination related to "playing" or the performance of law (the game activity) in the sense of performance studies. The fourth step will be to identify sensitive legal institutions that can be improved by including the categories proposed by the theory in question while taking into account the concept of hermeneutic therapy derived from Type III deliberation. In order to illustrate the application possibilities of the theory of epistemic (in)justice in the area of law, I will use a case study. I will apply the following methods: analytical, thick description, and critical legal studies with elements of feminist research methodology.

Keywords: epistemic (in)justice, hermeneutic therapy, language games, performance of law, legal imagination, deliberation

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TEORIA (NIE)SPRAWIEDLIWOŚCI EPISTEMICZNEJ W PERSPEKTYWIE PERFORMOWANIA PRAWA: PODEJŚCIE OPARTE NA KONCEPCJI TERAPII HERMENEUTYCZNEJ

Streszczenie. W niniejszym artykule przybliżone zostaną założenia teorii (nie) sprawiedliwości epistemicznej Mirandy Fricker odczytywane w kontekście filozoficznego nurtu neowittgensteinowskiego, zwanego też podejściem terapeutycznym lub rozjaśniającym. Teoria będąca przedmiotem analizy dotyczy kwestii nierównomiernego udziału doświadczeń konkretnych marginalizowanych jednostek lub ich grup w praktykach tworzenia znaczenia prawnego. Celem artykułu jest ukazanie roli omawianej teorii w teorii prawa. W pierwszym kroku omówię główne założenia teorii (nie)sprawiedliwości epistemicznej i jej rodzaje w perspektywie problemu zależności epistemicznej prawnik-laik. Przedstawię też normatywne propozycje realizacji ideału sprawiedliwości epistemicznej oraz uzasadnienie rezygnacji z takiego podejścia badawczego. W drugim kroku ukażę alternatywę dla ujęć normatywnych w postaci innowacji teoretycznej polegającej na uzupełnieniu założeń teorii (nie)sprawiedliwości epistemicznej o terapeutyczno-rozjaśniające odczytanie myśli późnego Wittgensteina w perspektywie hermeneutycznej. W trzecim kroku wykażę, że pełna aplikacja przedstawionej w poprzednich etapach innowacji teoretycznej w obrębie instytucji prawnych wymaga uwzględnienia krytycznej kategorii wyobraźni prawniczej odnoszonej do „odgrywania" lub performowania prawa (aktywności growej) w rozumieniu performatyki. Czwarty krok będzie polegał na identyfikacji newralgicznych instytucji prawnych, które mogą być udoskonalane poprzez uwzględnienie kategorii proponowanych przez omawianą teorię z uwzględnieniem koncepcji hermeneutycznej terapii zaczerpniętej z teorii deliberacji typu III. W celu zobrazowania możliwości aplikacyjnych teorii (nie)sprawiedliwości epistemicznej w obszarze prawa posłużę się studium przypadku. Wykorzystam przy tym następujące metody: analityczną, opisu zagęszczonego, krytycznych nauk o prawie z elementami feministycznej metodologii badawczej.

Słowa kluczowe: (nie)sprawiedliwość epistemiczna, terapia hermeneutyczna, gry językowe, performowanie prawa, wyobraźnia prawnicza, deliberacja

1. INTRODUCTORY REMARKS

The paper presents a legal analysis of Miranda Fricker's theory of epistemic (in)justice in the context of the neo-Wittgensteinian philosophical trend, also known as therapeutic or resolute.[1] According to the theory in question, there exists a distinct kind of (in)justice inflicted on knowers (knowledge producers, testifiers) or due to their cognitive abilities (cf. Bublitz 2023, 1–28). One of the highlighted problems is epistemic dependence – an asymmetric distribution of dynamic hermeneutical resources (cf. Grygieńć 2021a, 11–28). Epistemic dependence is a relationship oriented towards achieving epistemic goals (e.g. justification) and at the same time a form of epistemic oppression, which, in turn,

[1] In the following paper, I do not elaborate on this thread and the significant subtle differences between the therapeutic and resolute approaches. A comprehensive and inspiring analysis in this regard has been presented by Wojciech Ufel (2023).

is a phenomenal form of epistemic injustice. It concerns exercise of a vulnerable knower's agency in meaning-making and knowledge production processes. The legal system is built on socio-epistemic structures that are rooted in and reinforce the existing inequities. At the systemic level, one such structure is epistemic injustice (Glaberson 2024, 456). The therapeutic approach demonstrates that this dependence is an element of language games, subject to contextual doubt and revision on a case-by-case basis.[2] It enables the identification of various forms of epistemic (in)justice, understood as real-world phenomena (lived experience) or practices reported in the literature.

Eliminating epistemic asymmetry on a universal scale seems impossible due to the so-called paradox of emancipation inherently embedded in power relations (both in a substantive sense, based on coercion – power-over or concentrated power and in a generative or communicative form, e.g. characterised by non-subjective, informal networks – power-with, power-to) (Hendriks 2008, 173–184). Additionally, the functioning of legal institutions is subject to specific legal-procedural rigour, where hierarchy (e.g. non-equivalence of parties in administrative legal relationships) and formality, distinct from formalism, are necessary attributes of the law. This paradox concerns the relationship between knowledge production and power dynamics that shape the discursive construction of what is "true" or "false" (Ferreira 2022, 314). The "paradox of emancipation" in legal terms involves the reproduction of the existing power dynamics that exclude socially-situated knowledges of marginalised groups (epistemic dependencies) through legal decisions, leading to the initial and systematic privileging of the lawyers' perspective in the process of creating normative meanings3 (cf. Carter, López 2024, 34).[3] In other words, in their effort to overcome instrumental rationalities or oppressive episteme, individuals (e.g. judges, practitioners, and academics) also partly stabilise them. Legal reasoning produces authoritative knowledge regarding human behaviour and social relations (Gutiérrez 2024, 209). Thus, in accordance with the normative approach, lawyers shall forgo the advantage of possessing superior knowledge, avoid professional jargon and mediate in normative universalisation of legal statements through translating legal requirements into the subjective language of everyday interactions for citizens. As a result, a theoretical shift occurs from deterrence to compliance (legitimate coercion). On the one hand, the higher the normative expectations or conditions imposed of lawyers and communication to break the cycle of relational and structural domination stemming from legally-constituted public

[2] The language game is a "specific system of concepts and rules in which the organisation of information about the world takes place" (Ziemińska 2013, 295).

[3] Thomas J. Spiegel describes this problem as "the epistemic injustice of epistemic injustice" (cf. Spiegel 2022, 75–90).

power,[4] the more their fulfilment becomes unrealistic in empirical (factual, sociological) circumstances. On the other hand, the more the deliberative approach mitigates or relaxes the rigours or restrictions of these normative requirements (e.g. the strict consencus, the ideal speech situation), the more it diminishes in its critical impact, which, in turn, is associated with a return to more idealistic and rigorous assumptions of the theory. *Prima facie*, one could consider this paradox insurmountable due to empirically confirmed differences in power structures and in the linguistic, cognitive, and communicative resources of individual participants in legal discourse. In such an approach, law is anchored in violence, hence the epistemic relationship between experts and laypeople is always somewhat asymmetric, and its basis lies in (en)trust or reliance (cf. Grygieńć 2021b, 33). Trust and trust conflicts are partly born of ignorance. In contrast, from the perspectives of the theory of epistemic (in)justice and legal agency, laypeople (hermeneutically disadvantaged persons) play the role of experts possessing (experiential knowledge) necessary to make a fair decision. However, this knowledge is often systematically ignored or belittled and vulnerable knowers are denied opportunities to participate in sense-making and concept-mining activities.

The issue of uneven participation in legal culture is recognised within various "types" and "generations" of normative theories of deliberation, and in different "turns" in its scope.[5] Realistically utopian proposals in this regard are optative (grammatical statements used to express wishes, desires, or hopes) and based on "dogmas" (strong or hard normative assumptions) about communication, language, and meaning.[6] The utopian realism perspective they adopt does not provide adequate means to criticise epistemic asymmetry and fails to confront

[4] According to Poul F. Kjaer "[s]tate law and public law are therefore not identical as public law goes beyond formal state institutions. A concept of 'legally constituted public power' provides a broader, yet more targeted and precise approach, deployable in a wide range of local, national and transnational settings, as well as in relation to formally public and to formally private institutions" (Kjaer 2022, 771).

[5] In global research, the genealogical analysis of the chronological development of deliberative democracy theory is conducted by combining two approaches to its description through two types and four generations. This is a systematics established and being developed in the science of 2009/2010, when „Bächtiger et al. systematised this debate by introducing the distinction between type I and type II deliberation" (Schmidt 2024, 6). As a supplement to this classification in the context of seeking a normative (desirable) ideal of democracy attention is also given to the occurring "turns": epistemic, institutional, practical, empirical, and systemic (Ufel 2023, 110). The theory of epistemic (in)justice constitutes a distinct and independent field of study from the normative epistemic turn in deliberation, promoted by scholars such as Cristina Lafont and Hélène Landemore.

[6] One of the thinkers who described his concepts as a "realistic utopia" was John Rawls. Rawlsian realistic utopianism is a combination of an axiological perspective with a realistic assessment of the social and political conditions that limit the feasibility of normative ideals (Klimowicz 2016, 36). I distinguish this perspective from utopian realism represented, *inter alia*, by Anthony Giddens. The reflexive law examined through the lens of Giddens' theory is not so much a socio-historical stage (trajectory) in the evolution of law as is a proposed state of affair (institutional ideal).

the presupposition of equality in the principle of social dialogue with forms of epistemic (in)justice in the field of law (cf. Levy 2018, 368).[7] A crucial element of this dialogue is shaping the set of norms that, from the perspective of a minority community, provide an impression of justice. In this paper, I look at this problem from the "epistemological angle" (cf. Gutiérrez 2024, 210). The original proposal for the study of social episteme (the system of meanings, including collective beliefs – propositional attitudes)[8] in the context of the relationship between law and its broader social background is Type III deliberation which proposes the hermeneutic (non-dogmatic) concept of deliberation based on a therapeutic (descriptive and critical) approach inspired by the method of language games (cf. Ufel 2023).[9] My research aligns with the broader current of studies on epistemic

[7] One should bear in mind the risk of transforming deliberation into epistocracy. It is also pointed out that "procedural and substantive conditions of deliberation formulated in theoretical terms may paradoxically lead, in practice, to exclusion, thus remaining inconsistent with the democratic ideal. […] Deliberative institutional solutions can be seen rather as an expression of a paternalistic attitude of elites, which, by controlling participation practices, exclude various social groups from effective political dialogue, depriving them of the opportunity to present new perspectives and ideas" (Tobiasz 2021, 31, 42).

[8] The system of beliefs does not have a closed character. The rules constituting it are indeterminate, open, variable, and non-binary. The "paradox of emancipation" in the realm of language games lies in the fact that in its efforts to break the dominant rules of individual interpretation, it also partially stabilises them. Testimonies serve as relays for beliefs. I would like to thank Wojciech Ufel for drawing attention to this issue and many other problems in the field of the philosophy of language games and its hermeneutic (interpretive) reading.

[9] Similarly to Robert Adlington and other scholars (such as André Bächtiger, Simon Niemeyer, Michael A. Neblo, Marco R. Steenbergen, Jürg Steiner, Axel Tschentscher, Stephen Elstub, Selen Ercan, Ricardo F. Mendonça, Jean-Paul Gagnon, Dannica Fleuß, Karoline Helbig, Gary S. Schaal, Kei Nishiyama, Susumu Shikano, Seraina Pedrini, Mirjam Ryser, Katharina Esau, Lena Wilims, Janine Baleis, Birte Keller, Juan E. Ugarriza, Natalia Trujillo-Orrego, Emma Turkenburg, Ine Goovaerts), I identify the Type I – classic, idealist or restrictive and Type II – more realistic and compromise-oriented, expansive or inclusive deliberation ("first", "second", "third", and "fourth generation" theory) (cf. Ufel 2023, 164). The primary interpretative trace of the main changes in the successive types of deliberative theory is, however, the concept of its four generations: the first – focused on normative aspects of the theory (Rawlsian and Habermasian versions); the second – developing the theory towards practical implementation; the third – concentrating on institutional solutions; and the fourth – associated with the systemic turn in deliberation theory (Ufel 2023, 110). Type III deliberation focuses on the reconstructions occurring within language games involved in the deliberative process (Ufel 2023, 317). It focuses on the analysis of the reconfiguration of language games, i.e. disciplining (rule following), transformation (the change of an "aspect-seeing"), and creation (perspicuous representation of meanings). Dominance, whether in terms of consolidating or gaining it, emerges as an inescapable element of policy (Ufel 2023, 320). Regarding the main element on which deliberation focuses, the hermeneutic model of deliberation shifts attention from the ideal deliberative process or its accompanying institutions or effects to the dynamics of the reconfiguration of language games (Ufel 2023, 25). By considering both the creative and transformative elements as well as those that discipline and limit free, rational discussion, the hermeneutic model of deliberation highlights the necessity of including all these elements as its indispensable

(in)justice in the context of the theory of deliberative democracy (cf. Schmidt 2024, 1–10).

The paper puts forward the following thesis: the application of the theory of epistemic (in)justice in legal sciences allows the delineation of the therapeutic dimension of legal language games, focusing on the participation of knowers or subjects of knowledge, including differently-situated individuals with vulnerable (prone to marginalisation) traits in the creation of normative meanings. Legal language games are language games that serve as coordinators of social institutions or synchronisers of structures organising social life.

In the first step, I will discuss the main assumptions of the theory of epistemic (in)justice and its forms, demonstrating that the normative approach in this area does not offer adequate means to examine the problem of creating language and concepts reflecting the experiences of individuals characterised to an equal extent by a given sensitive trait. In the second step, I will complement the theory in question with a therapeutic-resolute interpretation of the late Wittgenstein's thought.[10] In the third step, I will demonstrate that the full application of the proposed theoretical innovation requires a consideration of legal imagination as a tool for capturing the extremely delicate matter of "playing" law (the performance of law). The final step will involve the identification of crucial legal institutions that constitute the areas of the application of the theory in question as well as the development of a case study. In the first, second, and third steps, I will use the "from philosophy to law" approach, while in the fourth step, I will

components (Ufel 2023, 25). This approach abandons the substantive distinction between rational argumentation and emotional forms of speech or rhetorical statements (e.g. storytelling, metaphor). All forms of communication are treated as equally valid language games with a persuasive character. At the descriptive level, it is showing how language works in the specific context of deliberation, while at the normative level, it is saying how deliberation could work but is constantly aware of its own contingency (Ufel 2025, 288). However, normative premises regarding the acceptance or negation of specific means and forms of communication are replaced by a strategic selection of communication methods through the prism of the context and purpose of deliberation, e.g. the coordination of preferences in law-making processes (cf. Ufel 2023, 322). Consensus or justifying knowledge claims shall be regarded as another language game or rule, lacking transcendental principles that validate it against other games and that would appeal to its (radical) democratic nature or apolitical stance (Ufel 2023, 323). It is important to examine the direct epistemic effects of deliberations concerning the way knowledge is produced and the understanding of the problem under deliberation, whether in the context of material (regarding the allocation of resources) or normative decisions (disputes about values) (Ufel 2023, 322).

[10] Philosophical (hermeneutic) therapy is a form of language critique. The object of criticism is the metaphysical (metagame) conception of the relationship between language and the world of communicative practices. Therapeutic philosophy serves to clarify the forms of speech and the functions that speech fulfils in various contexts, as well as the ways in which it contributes to social integration (cf. Crary 2000, 1–18). "Philosophy is a battle against the bewitchment of our intelligence by means of language" (Wittgenstein 2000a, 72). Wittgensteinian therapy applied to the existing theoretical conceptions can identify their dogmatic elements.

adopt the "from law to philosophy" perspective (cf. Zirk-Sadowski 2021). I will apply analytical and descriptive methods and critical legal studies with elements of feminist legal methodology.[11]

2. THE CONCEPT OF EPISTEMIC (IN)JUSTICE – BASIC ASSUMPTIONS AND VARIETIES

Miranda Fricker distinguishes between two species of epistemic injustice: testimonial injustice and hermeneutical injustice. The author points out that

> [t]estimonial injustice occurs when prejudice causes a hearer to give a deflated level of credibility to a speaker's word; hermeneutical injustice occurs at a prior stage, when a gap in collective interpretive resources puts someone at an unfair disadvantage when it comes to making sense of their social experiences. An example of the first might be that the police do not believe you because you are black; an example of the second might be that you suffer sexual harassment in a culture that still lacks that critical concept. We might say that testimonial injustice is caused by prejudice in the economy of credibility; and that hermeneutical injustice is caused by structural prejudice in the economy of collective hermeneutical resources (Fricker 2007, 1).

Epistemic (in)justice is subtly embedded in many other types of (in)justice (e.g. distributive, restorative) and (un)equal treatment. Epistemic justice is a *condicio sine qua non* for non-domination as non-neutrality. Epistemic injustice results from language resource variability. The theory of epistemic (in)justice concerns knowledge claims of disadvantaged groups inhabiting peripheral, degraded, underrepresented areas (e.g. uneducated slum dwellers, migrants, refugees, stateless people), minorities (e.g. LGBTQIA+ persons seeking asylum), and the weaker (e.g. defendants in SLAPP lawsuits). The "weakness" of an individual's position may result from subjective and social biases, perceived through the prism of entrenched negative stereotypes (e.g. related to gender) (Safjan, Mikłaszewicz 2011, 33). Yet, assigning certain groups the status of the weaker (e.g. children in care) can be stigmatising for them. The theory of hermeneutical injustice has a structural and relational dimension, because it refers to cognitive gaps or blind spots in the systemic knowledge, remnants of the historical, conceptual, or intersectional exclusion of certain groups from

[11] The hallmarks of feminist legal methods are empirical holism, situatedness, and sensitivity to non-arbitrary and inclusive ways of knowing (establishing truth and creating knowledge). The latter is an embodied – i.e. inseparable from socioeconomic and cultural positioning – point of view and a significant trait of the knower. This is a naturalistic approach, because normative claims are questioned by explaining causation through examples of lived experiences, without negating the essence of epistemic normativity or normative inquiry (cf. Sveinsdóttir 2016, 49–60). The "situatedness" gives rise to knowledge originating in circumstances led by particular experiences (Gutiérrez 2024, 209). However, I do not subscribe to the dogma that the law always constitutes a sexist instrument of subordination from women towards men.

knowledge production processes, and lacunae in the legal conceptual framework, resulting in the lack of legal definitions of certain concepts (e.g. stateless person). On the one hand, some individuals (e.g. asylum-seekers) lack the conceptual apparatus and interpretive tools needed to make sense of their experiences, ultimately limiting their ability to articulate those experiences (cf. Ferreira 2022, 303–326). On the other hand, testimonial injustice concerns the credibility of the speakers and their argumentation, deposition, or explanations about their lived experience (experiential expertise). According to M. Fricker, the reference point for evaluating the strength of evidence (e.g. testimony based on memories revealed through trauma-focused psychotherapy (cf. Bublitz 2023, 1–28) or evidentiary conclusions is their evaluation through the prism of the standards of the ethics of knowing and legal interpretation.

Kristie Dotson and Gaile Pohlhaus Jr. also distinguish contributory injustice.[12] It is an intermediate form between testimonial injustice and hermeneutical injustice, and results from intentional hermeneutical ignorance that immunises the hearer from the discomfort of doubts (cf. Corso 2023, 103). This type of injustice occurs when oppressed epistemic communities can create alternative hermeneutic resources, but these resources are rejected or discredited by the dominant group (Pohlhaus Jr. 2012, 715–735). Those historically excluded from knowledge production or the realm of social understanding (e.g. indigenous people living in Canadian territories with direct experiences of the impact of specific investments on the environment) as well as disadvantaged or weaker groups (e.g. mentally ill patients, women-"home managers", incarcerated people) possess different levels of oppositional consciousness, which is why they cannot contribute equally to the collective understanding of their rights (e.g. home-working women's right to privacy, the right of indigenous peoples to consultation and ownership).[13] Experiential knowledge produced by them cannot become reflexive and reciprocally influence the law. Testimonies shaped by meanings (ways of using words) adopted in a particular group do not contribute to the linguistic representation of the world – a collectively shared pool of epistemic means (linguistic structures, expressions, conceptual metaphors). Due to wilful ignorance on the part of hearers, this representation does not reflect the epistemic reality experienced by all knowers whose knowledge it concerns. The theory of contributory injustice examines the intentions behind hearers' opinions and is the criterion for evaluating the quality of listening, cross-examination, and constitutional hearing. The scope of this paper does not allow for a detailed analysis of this issue.

[12] According to K. Dotson, contributory injustice occurs when "an epistemic agent's willful hermeneutical ignorance in maintaining and utilizing structurally prejudiced hermeneutical resources thwarts a knower's ability to contribute to shared epistemic resources within a given epistemic community by compromising her epistemic agency" (Dotson 2012, 32).

[13] The issue of epistemic injustice in the context of indigenous peoples' rights is described, *inter alia*, by Erin Shields, Dina Lupin Townsend, and Rebecca Tsosie.

3. JUSTIFICATION FOR NOT USING THE NORMATIVE (DOGMATIC) APPROACH, OR ABOUT THE WEAKNESSES OF THE DELIBERATIVE APPROACH TO THE FRICKERIAN THEORY OF EPISTEMIC (IN)JUSTICE

In literature, the category of the deliberative approach is often encountered in the context of political practice or dispute resolution, but it very rarely appears in the context of knowledge-sharing processes. The theory of epistemic (in)justice provides fertile ground for normative analyses embedded, explicitly or implicitly, in idealistic or realistic currents of the deliberative theory. It is emphasised that the active facilitation of just (equal), mutual linguistic exchange, the process of perspective-taking (actively imagining others' experiences), the social inclusion of speakers, and the exercise of empathetic skills and "testimonial sensibility" by hearers are all essential (cf. Muradova 2021, 644–664; Sorial 2022, 215–231). According to the doctrine of political liberalism, equality is an implication of dignity, and the principle of formal equality before the law guarantees equal opportunities (equity). It is thus necessary to expand the procedural framework of legal and judicial deliberation with new normative standards to ensure substantive equality of speakers. These standards can be interpreted from the perspective of normative ethical theories: deontologism (e.g. John Rawls's account), non-utilitarian (objective) consequentialism (e.g. Amartya Sen's account), or aretology (e.g. Martha Nussbaum's account). The first theory emphasises the need for hearers to fulfil specific hermeneutical duties and obligations, the second one lacks an enumerative catalogue or set of abilities in this regard, while the third one underscores the necessity of creating an objective list of epistemic virtues enabling benevolent co-understanding (cf. Sorial 2022, 221).

M. Fricker and other researchers (e.g. José Medina, Elizabeth Anderson) adopt the aretaic position, expressing it in the development of "corrective" (prejudice-neutralising) individual epistemic virtues (such as impartiality, open-mindedness, epistemic vigilance, intellectual sobriety, epistemic resistance, and reciprocity), institutional virtues, and protective epistemic character traits in contrast to vices (such as intellectual recklessness, naïve cynicism, epistemic laziness, carelessness, hubris, cultural blindness, and linguistic subterfuge).[14] Epistemic virtues are individual cognitive and valuable dispositions or remedies that serve to reduce hearers' identity biases woven into the fabric of our lived experience. These

[14] A similar epistemic competence approach is developed by Anne Ruth Mackor in legal ethics. It should be noted that objective epistemic virtues can sometimes be used to manipulate language (conceptual) resources (interpretative tools) shared in the legal imagination through legal interpretation (e.g. the so-called *Etikettenschwindel* – labelling someone or something with an untrue name, seeming legal institutions dressed in the robes of the law or a legal sham based on a shift of the meaning of certain terms in relation to their original meaning). Meanwhile, epistemic vices to a certain limited (narrow) extent can contribute to triggering progressive structural and systemic changes in discourses (language games). This phenomenon is called bias paradox.

prejudices contribute to the stereotyping of various aspects of a person's social identity and can affect the attribution of competence and sincerity, which are essential components of epistemic credibility (cf. Fricker 2007, 32). Epistemic virtues are not absolute and unconditional. They are contingent, progressive, and relative in character.

Imposing additional normative expectations on privileged hearers or speakers participating in deliberation can generate reverse epistemic injustice. The proponents of the deliberative approach to knowledge exchange and production processes based on mutual understanding (e.g. Susan Dieleman, Catriona Mackenzie, Lala Muradova, Sarah Sorial) and the aretaic interpretation of the theory of epistemic (in)justice (M. Fricker) valorise the role of substantive equality (as understood, *inter alia*, by Sandra Fredman). Yet, they do not conduct a comprehensive analysis of the objectivity of knowledge in the context of the actual differentiation of the status and real position of knowers in the social or personal system. These factors translate into the issue of representing the experiences of knowers in the grammar of legal language (the ways of using linguistic expressions which are constitutive of practice, meaning, and concepts).[15] Judges, as individuals distinguished by legal knowledge, members of a ruling elite, have authority over the interpretation of speakers' narratives and the integration of normative meanings in culture, which places them in a more favourable position than laypersons. Expert individuals "fare better in a discussion defined by themselves, can convince others of imposed standards, solidifying and reproducing the existing system. (…) In reality, we have deliberation controlled by the dominant group or groups based on standards presented as universal and serving everyone equally" (Tobiasz 2016, 112).

The normative (idealistic) approach to the theory of epistemic (in)justice is not entirely adequate, because it relies on the narrow conception of the objectivity of knowledge (cf. Crary 2018, 48–49, 51, 56). Referring to Ludwig Wittgenstein's terminology, it can be said that, in this approach, hinge propositions,[16] which serve

[15] Grammar is restored behaviour; it pertains to therapy, the cultural genealogy/sources of language games, while hinges rather relate to "resoluting", empirical, physical, biological, ethnological, or geographical causality. Grammar and hinges occur in the practice of language functioning. They can be used as specific functional equivalents of transcendental conditions of possibility. Cf. the next footnote.

[16] Hinge propositions are beliefs-certainties devoid of logical value that we recognise while playing the language game. They operate at the pre-reflective level, are not subject to justification, and are usually exempt from all doubt. Hinge propositions result from our cognitive engagement with reality and they are dispositions to rationally envisage reality that people bring to deliberation, epistemically prior to empirical knowledge (García-Valdecasas 2023, 36, 44). Hinges are distinguished as *de jure* (presuppositions, local) and *de facto* (universal, local) (Boncompagni 2021, 14–15). The concept of hinges is expressed most fully in L. Wittgenstein's work, *On Certainty* (Wittgenstein 2014). Similarly to Alice Crary and Brian Rogers, I assume that in this philosophical work, Wittgenstein continues to develop the therapeutic method. Unlike A. Crary and Penelope Maddy,

as a substitute for objective knowledge and a point of reference for empirical sentences, stem not so much from sensitive observation and lived experiences as from the realistic utopia of aseptic reason. This occurs at the expense of accepting an inadequate assumption about the existence of strong normative spheres and the metaphysical grounding of epistemic virtues and skills in the anthropological paradigm of *homo narrans* as one of the arbitrary approaches to human nature.

Narrative is a language game of an ambivalent or ambiguous nature, because it can be both good and bad in the normative sense and in relation to deliberative ideals (cf. Boswell 2022, 333–344; Ufel 2023, 241).[17] It can structure testimonies and collective social understanding as well as it emphasises alternative interpretations of truth, a historicising pattern of knowledge ("plot-characters-moral"), and the expressive aspect of giving meaning to the nuances and complexities of the issue (cf. Skuczyński 2020, 2–6, 10; Muradova 2021, 660). Legal narrative has both inner and public dimensions. It can create the possibility to make hermeneutical resources intelligible or visible in a single moment of testimonial exchange (cf. Ralph 2024, 1345, 1351; Medina 2011, 16).

However, narrative statements are not brute facts. They are extra-rational means of argumentation. A narrative remains a persuasive tool susceptible to an excess of credibility, mythololegisation (e.g. the standard victim-blaming narrative of rape constructed by rape myths as highlighted by Emily Tilton, "greedy" consumer claims, "fake" and "bogus" asylum claims based on sexual orientation and gender identity (SOGI) as underlined by Nuno Ferreira), systemic biases that justify discrimination, false representations of testimonies ("toxic narratives" or dogmatic ones which turn out to be roots of a gross distortion of reality as underlined by John Boswell, Marco Armiero, and Iwona Jakubowska-Branicka), and epistemic exploitation (cf. Fricker 2007, 132).[18] The latter occurs when

I consider that linguistic therapy can be reconciled with the concept of hinge propositions. This position is consistent with the findings of J. Medina on Wittgensteinian social naturalism. In the light of non-reductive naturalism, the acceptance of hinges according to the so-called third Wittgenstein is not equivalent to blindly trusting them; regardless of their actual certain contexts, some of them (especially local *de facto* hinges, e.g. prejudices, notoriety) may be revised (cf. García-Valdecasas 2023, 35). Epistemic normativity is a perspective on the relationship between hinges and empirical sentences through the lens of a form of life (culture) or a specific position on the structure of justifying beliefs (the legitimisation of knowledge as justified true belief).

[17] In older works, the view that narrative is one of the fundamental components of postmodern language appears. Currently, this position is considered outdated.

[18] Epistemic exploitation means "unrecognised, uncompensated, emotionally taxing, coerced epistemic labor" (Berenstain 2016, 587). According to S. Lisa Washington, the American family regulation (policing) system pathologises women, especially those who are poor and of colour, when they anticipate and share knowledge that contradicts the "carceral" official narrative of domestic violence based on, e.g., a standard template of community interview. The unwritten expectation is that survivor will portray herself as a needy mother in order to get a favourable result at the hearing (Carter, López 2024, 32). Survivors "are encouraged by advocates to construct their testimony in ways that fit the prevailing narrative of what a domestic violence victim looks like" (Carter, López

a person's experiences are betrayed through the telling (reporting) of a story by someone who does not share the lived experience (e.g. when a prosecutor publicly defends the "law and order" position on behalf of a person experiencing domestic violence, regardless of whether the person supports this position; or when a lawyer defends their client in a way that does not reflect the accused person's experience adequately) (Washington 2022, 1111; Picinali 2024, 24). The experience gained through the constitutional crisis confirms that various forms of epistemic injustice and exclusion patterns can be subtly embedded and interlocked in narratives which may virulently fill hermeneutical gaps in accessing epistemic justice. As Lala Muradova points out, "[p]otential biases in the stored knowledge may lead people to make erroneous inferences about another person's feelings and thoughts" (Muradova 2021, 648).

Narratives of lawyers representing the stronger party to the contract (e.g. corporate client) may be structurally prejudiced, deprive those in a weaker (*de facto* unequal) procedural position of a sense of epistemic credibility and agency, and may also serve to prompt judges with biased interpretations (fables) of the law. In this context, the narrative contributes to systemic epistemic injustice. This issue in private law is discussed, *inter alia*, by Lyn K. L. Tjon Soei Len.

Narrative knowledges function based on rhetoric, appealing to opinions that may be based on a desire for dominance (cf. Sullivan 2017, 295). "Filtering" the content of narratives according to the pattern of virtuous hearing has little cognitive value in reformulating linguistic structures that perpetuate an epistemic dependence. Therefore, I propose the therapeutic approach to the theory of epistemic (in)justice. This approach is based on concepts of language games and wider objectivity (A. Crary). The consequence of this theoretical choice is the acceptance of non-essentialist methodological standards of an embodied conception of knower (e.g. Shaun Gallagher's approach), situated knowledges (e.g. Donna Haraway's approach), and standpoint empiricism (e.g. Nancy Hartsock's approach). In this approach, schematas or frameworks for generating knowledge, reason (justification rationality, reflective reasoning), and imagination are local and contingent in character and result from the historical interplay of various language games, while epistemic tools (dogmatic ones) and theories are

2024, 32). The discrepancy between the survivor's narrative (mothering knowledge) and the narrative based on institutional prejudices of lawyers, judges, or social assistance (e.g. parental alienation syndrome recently recognised by Italian courts as scientifically unreliable) is described as a lack of the victim's "insight" into the concept of violence (cf. Corso 2023, 110). Attempts to recontextualise the notion of domestic violence taking into account the parents' knowledge about child safety lead to the reorientation of state intervention towards family separation and questioning women's parental rights or the school-to-prison pipeline (cf. Washington 2022, 1141, 1160). According to Stephanie Glaberson, the systematic conflation of poverty as neglect is itself a form of institutional gaslighting (Glaberson 2024, 427). Terrell Carter and Rachel López argue that due to the narrative shift related to formation of "the battered woman syndrome", "courts tend to discredit the testimony of those victims who fight back, considering them unworthy of protection" (Carter, López 2024, 33).

burdened with inherent limitations (e.g. ideological saturation), which can only be overcome contextually (cf. Sorial 2022, 228). A person does not enter into language relationships as a rational, autonomously judging individual (such as in realistically utopian models of deliberation), but, under the influence of various language games, something is formed that we are inclined to call our own rational judgement (Ufel 2023, 311). The concept of epistemic injustice "is ultimately more a matter of the facts than the law" (Rogacka-Rzewnicka 2023, 1130). The main practical implication of the approach to the theory of epistemic (in)justice that I propose is the enhancement of criteria for legislative and judicial empirical analysis of hermeneutical resources or epistemic advantages of vulnerable knowers by the incorporation of some elements of hermeneutic therapy into legal evidential (factual) reasoning.

4. CREATING KNOWLEDGE THROUGH LANGUAGE GAMES – THE THERAPEUTIC-RESOLUTE APPROACH IN LAW

The theory of epistemic (in)justice in the normative perspective refers to the idea of the regulatory dogmatism of reason. Public reason is neutral towards situated knowledges (ethically-loaded perspectives), which results in their non-consideration in the practice of interpreting programmatic norms (policies).[19] Emotions and other normatively-loaded concepts are treated as a non-conceptual "given."[20] Conflicts of rules are resolved at the abstract level, detached from the actual situation of sensitive groups or the variable linguistic knowledge base. In the therapeutic approach, a broad and situated approach to social episteme objectivity is essential. Our view of the world is always a "view from somewhere" (Ufel 2023, 275). Language is rooted in lived experiences, enabling the creation of concepts and the transmission of information. Affect and emotions allow the conceptualisation of the relationship between the world and the properties and conditions of knowers. They reveal authentic forms of suffering (epistemic harms), thereby providing us with a more objective understanding of the world (cf. Crary 2002, 97–118; Fricker 2007, 162). Emotions are enfleshed interactions with the social environment, a factor that stimulates critical cognitive processes due to behavioural reactions suggested to rational consciousness by the imagination (the act of creating an alternative version of the world). Testimony is a non-purely rational form of discourse, a source of first-hand knowledge, a sentence construction based on images (world-pictures), and as such belongs to the class

[19] An example of such a norm is Article 70 section 1, first sentence of the Act of April 2, 1997 – Constitution of the Republic of Poland [Pol. Konstytucja Rzeczypospolitej Polskiej] (Journal of Laws, 1997, No. 78, item 483 as amended), hereinafter referred to as: "the Constitution of the Republic of Poland".

[20] I borrowed the adjective from A. Crary.

of local *de jure* hinges (Boncompagni 2020, 14). It allows the naming of what has no developed terminological vocabulary and the explaining of new knowledge. Reading the works of L. Wittgenstein suggests that imaginative experience (imagining something, creating imaginative schemes), implicit or tacit knowledge (know-how), communication, and professional skills of hearers are all local *de facto* hinges of every knowledge acquisition game.

As Wittgenstein points out, "[t]here is not a philosophical method, though there are indeed methods, like different therapies" (Wittgenstein 2000a, 78). The therapeutic interpretation of the theory of epistemic (in)justice involves applying the conceptual categories used in it to critique legal language games seen as practices of creating social episteme.[21] This is a significant and plausible alternative to the normative approach, which assumes that public reason constitutes an ideal standard of deductive reasoning ("from general to particular"), creating meanings autonomously, independent of the discriminative power of hidden or concealed motivations, the context of language use, and the actual circumstances of a specific case. Public reason uses idealised figures – general-abstract principles of justice – and it abstracts from neglected ways of knowing such as embodied cognitive mechanisms (imagination, intuition, language reasoning) distinguished in cognitive legal humanities (cf. Brożek 2018, 17). Such an approach easily leads to the trivialisation of knowledge or moralising and does not provide a experiential insight into the lived experiences involved in the mechanisms of the game, which operate according to rules – a set of grammatical and hinge propositions (the ways of seeing the world). Among these rules are forms of epistemic abuse (e.g. presumptions dictated by cultural or psychological biases rooted in social awareness, false or coerced confessions). On the one hand, they constitute dysfunctional (biased) epistemic resources of legal language games that distort our linguistic image of the world. This allows us to reconsider the essence of judicial truth and the principle of material (objective) truth. On the other hand, language games can be used to analyse the issue of giving normative meaning to empirical sentences describing socially-significant but unnamed experiences of a particular person.

[21] Phenomenal forms and family resemblance concepts of epistemic injustice manifest harms and patterns of practices and abuses (local *de facto* hinges), such as: epistemic positioning (bounding, domaining, non-attribution), epistemic appropriation (in IP law this is called pitching or idea theft), racial profiling, harbouring prejudices, biases, testimonial/legal quieting (by expectation, by doctrine), silencing, insincerity, suppressing, popular opinion, "tunnel vision" thinking, epistemic oppression and violence, objectification, epistemic redlining, epistemic exploitation, epistemic alienation, epistemicide, wilful hermeneutical ignorance, informed ignorance, testimonial/legal smothering (by doctrine, by expectation), othering, mansplaining, misgendering, epistemic bubble, epistemic corruption, denialism, systemic disbelief, lookism (halo effect), cat-calling, street-harassment, intellectual arrogance, obfuscation, disenfranchised grief, epistemic internal exclusion.

The theory of epistemic (in)justice relates to the study of the standard of fact-finding practices with legal significance. It is essential to "point out various forms of epistemic injustice (unfair argumentative advantage) resulting from legal or practical «privileging» of certain types of evidence (including statistical and probabilistic evidence), adopted rules of burden of proof distribution, presumptions, etc." (Dyrda 2021, 31). Legislative and judicial decisions shall unveil and examine nuanced justice implications of the subject of the case. In this context, the hermeneutical therapy focuses not only on identifying the communicative pitfalls or pathologies to which the law is exposed, but also on mechanisms for changing the "aspects of seeing" in the context of detecting misjudgments of the credibility of a testimony as well as the causes of the miscarriage of justice. The change is fluid. It concerns the implicit understanding of certain issues and opinions on public matters, the recognition of and support for specific problems, solutions, programmes, as well as a more personal shift in perceiving one's own identity or individual and group interests (cf. Ufel 2023, 319). Yet, "there may only be discursively constructed «truth» and «fakeness» rather than objective ones" (Ferreira 2022, 326).

5. LEGAL IMAGINATION AS AN OPERATIVE CATEGORY OF THE EPISTEMIC (IN)JUSTICE THEORY, OR ABOUT THE PERFORMANCE OF LAW

An essential aspect of the epistemic (in)justice theory is the practice of dialogue between hearers and speakers. The legal professional plays an actively accompanying role in relation to the knower (cf. Walker 2020, 25). Dialogue is based on an active process of transitioning from one's own position to the perspective of someone else – the ability to see oneself through the eyes of others, referred to in psychology as decentration (cf. Koczanowicz 2020, 46). The latter is linked to resilience.[22] Deliberative contexts in the hermeneutic approach are polyphonic. Words are powerful instruments for understanding the world. Hermeneutically marginalised individuals can enrich the "public lexicon" (language games) with new meanings of words that are essential for understanding the standards of a particular social normativity (e.g. the rules of an oppressed group concerning their relationship to specific cultural heritage). Words are dialogic and performative in character, because they emphasise the multitude of interpretative positions, which create a context of communication

[22] Resilience is an ability to flexibly and agilely respond to unforeseen circumstances and adapt to constantly changing conditions (e.g. digital reality and its non-linear narratives). One should bear in mind that resilience can turn into epistemic injustice when the frame narrative surrounding epistemic injustice expects a marginalised knower and a social worker to have internal motivation to cope with prejudices without emphasising the crucial role of systemic change in addressing this kind of injustice. This problem is investigated by Renada M. Goldberg.

(cf. Medina 2017, 209, 218; Ufel 2023). The court reconstructs the factual state of the case based on testimonies led by particular experiences or the language of the oppressed. It is possible to expand a limited (partial) perspective of understanding lived experiences for accurate truth-seeking and comprehensive evaluation of evidence.

Decentration (distinguished from decentralisation) may be perceived as an aspect of legal imagination in the perspective of creating a potential path for change in institutions. Imaginative thinking interacts with conceptual thinking and encompasses multiple dimensions (cognitive, perceptual, affective). Imagination is a mental tool subject to the control of will, allowing the development of alternative associative patterns provided by metaphors and other hermeneutical resources or mechanisms of debating law that underpin cognition. Its function involves envisioning (encoding meaning), awareness, and the juxtaposition of epistemic (cognitive, noetic) experiences or emotions (feelings) in specific circumstances, including oppressive social contexts (e.g. racism, sexism, classism)[23] (cf. Sousa 2007, 139–161).[24] Affective factors in communicative practices may distort facts related to a person's social identity (Burlando-Salazar 2023, 1254). Facts may also be overshadowed by improper assessments of a witness' credibility. Imagination is resolute in character because, it helps reveal tensions in this area.[25] It allows the reconfiguration of legal language games by changing the boundaries of figurative language to include new concepts which describe forms of epistemic (in)justice that are not entrenched in language (cf. Páez, Matida 2023, 13).

The category of legal imagination has been applied since the 1970s within the law and literature movement and is the subject of analyses in the jurisprudence of embodied mind. The latter has been developed, among other influences, under the thought of Maurice Merleau-Ponty (the so-called philosophy of attention). Concrete concepts of legal imagination are presented in areas such as legal theory (Amalia Amaya, Maksymilian Del Mar), constitutional law (Michael W. Dowdle, Zoran Oklopcic, Alexander Somek), international law (Martti Koskenniemi, Gerry

[23] One should bear in mind, that academic philosophy is still largely dominated by non-disadvantaged persons with middle- and upper-class backgrounds, and classism is an issue which can be overlooked by the proponents of epistemic (in)justice possibly due to their own social standpoint (Spiegel 2022, 76).

[24] In cognitive sciences, epistemic emotions include phenomena such as the tip-of-the-tongue phenomenon, melancholy, accuracy, curiosity, wonder, surprise, doubt, disorientation, (un)certainty. The social dimension of these emotions is expressed in the sense that they constitute a set of meaning rules guiding epistemic actions understood as acts of the deliberative exploration of the social environment to extract or discover important information.

[25] The resolute approach (represented, e.g., by Cora Diamond and James F. Conant) refers to proposition 6.54 of the *Tractatus* (Wittgenstein 2000b, 83) and the following statements: "[t]he limits of my language mean the limits of my world"; "[w]hereof one cannot speak, thereof one must be silent" (Wittgenstein 2000b, 64, 83). Imagination is a cognitive disposition that makes it possible to challenge the assumption that language is the central point of every game activity.

Simpson), IT law, and legal tech (Leila Brännström, Markus Gunneflo, Gregor Noll, Amin Parsa).[26]

A common point in various theoretical approaches to legal imagination is the close connection between the state of potentiality (unexpected interpretative possibility) and empiricism. Counterfactual thinking is the beginning of innovative actions. Imagination is an element of the mind that supports legal reasoning, responsible for mental simulations, "playing" images, and embodied experiences (e.g. the tone and rhythm of speech, body language) (cf. Brożek 2018, 77–128). This aspect of "playing" is called theatrical and brings legal language games closer to performing arts. The performative power of language lies in creating a reality that had not existed before. Each legal performance is unique and unrepeatable. Artistry (the performance of law) is a kind of therapy that aids the balance between the freedom of interpretation (expression) and its cognitive or affective limitations in the context of breaking the linguistic boundary of legal interpretation. Legal practice is based on reflex and thoughtfulness, while the distinguishing features of artistic craftsmanship, artistic work methodology, and theatrical operatic methods are situational improvisation, cognitive empathy for alternative "aspects of seeing" the world, and embodied mindfulness (cf. Leiboff 2015, 86).[27] Senses are socially-constituted through action and if it meets with social appreciation, a performative identity and legitimacy is created (Skuczyński 2016, 161). In this context, the

[26] The law, which evolved in the analogue era, struggles to keep up with the development of new technologies and forms of knowledge accumulation in this field. Legal imagination helps analyse knowledge-building practices (e.g. automated data processing, profiling aimed at constructing virtual legal actors' or Internet users' identities, computer-based implicit-association test (IAT)), involving entities other than humans (e.g. artificial intelligence). The result of these practices can be informational injustice or algorithmic discrimination associated, among other things, with epistemic biases (e.g. racial ones) embedded in the source codes of software that processes biometric data (cf. Hoven 2021, 1–12). Scholars such as Jasmine B. Gonzales Rose, Stephanie K. Glaberson, Nicola Lacey, Anne E. Ralph, and Jennifer Lackey draw attention to the aspect of racial biases in evidence law, rules, and doctrines (e.g. the doctrine of qualified immunity). The aforementioned issues shall be continuously monitored by the President of the Office for Personal Data Protection [Pol. Prezes Urzędu Ochrony Danych Osobowych], taking into account the analytical categories of the theory of epistemic injustice in relation to the "unique institutional knowledge" of this public body, on which all its employees rely on and which guarantees the possession of specialised expertise.

[27] For example, an element of a judge's embodied mindfulness is highlighted in the film *Courted* [Fr. *L'hermine*], directed by Christian Vincent, premiered on 6th September, 2015. The performative method makes it possible to question the "hegemonic" dimension of discourses, including legal sciences and legal ethics discourses, which adopt limited "tunnel vision" of "truth". Various aspects of the performativity of law, judicial decision-making, constitution-making processes, and role-playing game are drawn, *inter alia*, by Filippo Annunziata, Jack M. Balkin, Giorgio Fabio Colombo, Jeanne Gaakeer, Randy Gordon, Ewa Łętowska, Sean Mulcahy, Austin Sarat, Paweł Skuczyński, Julie Stone Peters, Nicole Rogers, and Martha Merrill Umphrey (cf. Annunziata, Colombo 2018; Gaakeer 2024, 340–354; Gordon 2023; Levinson, Balkin 1991, 1597–1658; Łętowska 2005, 3–7; Mulcahy 2022, 165–182; Peters 2022; Rogers 2008, 429–443; Sarat, Douglas, Umphrey 2018; Skuczyński 2016, 159–162).

perspicuous representation of meanings is crucial. One can view the courtroom as a real-world interpersonal deliberative setting and the lawyer as an imaginator who recentres the marginalised (sidelined) perspective by resolutely re-picturing the social imaginary of vulnerable traits (cf. Muradova 2021, 652). The social imaginary is a symbolic "repository of images and scripts that become collectively shared", which "provides the representational background against which people tend to share their thoughts and listen each other in a culture" (Medina 2011, 16, 33). The theory of epistemic (in)justice helps better understand the needs and expectations of members of oppressed groups, the third party, or non-academic co-researchers, who may provide informations and crucial evidence for particular cases or issues. Their testimonies may "co-judge" the decision and inform legal terms (cf. Gaakeer 2024, 348). Imagination implies the studiousness of audience's experience, human problems, and affairs. Drawing inspiration from Alain Badiou's thought, it can be said that every case or testimony is an "event."

A legal professional can reduce forms of epistemic injustice (e.g. in the context of procedural power imbalance based on informational advantage of the stronger party to the contract) by "healing" reasoning patterns. Imagination is stimulated by epistemic anxiety. The latter is an emotion that responds to epistemic risk – the risk of over-interpretation, belief in cognitive error (e.g. the false consensus effect), and misunderstanding or drawing conclusions about a knower, e.g. a mythomaniac,[28] a person with multiple personality disorder, a survivor-perpetrator of aggressive suicide, a murderer, and a victim of a domineering partner who endured prolonged domestic violence (cf. Fricker 2013, 1329–1330).[29] Imagination allows the introduction of a dose of humanistic spontaneity into law. The work of imagination is an element of multi-voiced therapeutic

[28] In this case, the reduction of the credibility of the testimony is justified (cf. Bublitz 2023, 5).

[29] The criteria of epistemic (in)injustice are of significant importance in criminal cases concerning homicides committed in the heat of passion, known as crimes of passion or provocation (the defence of provocation). They can serve to raise the standard (average level of real legal protection) established in the context of Article 148 § 4 of the Act of June 6, 1997 – Criminal Code [Pol. Kodeks karny] (Journal of Laws, 2024, item 17). When analysing the concept of domestic violence, including coercive control or reasons why a person experiencing domestic violence under art. 2 section 1 point 2 letter a, e or g of the Act of July 29, 2005 on Counteracting Domestic Violence [Pol. Ustawa o przeciwdziałaniu przemocy domowej] (Journal of Laws, 2024, item 424) did not leave her or his cohabiting partner (abuser), also in the Living Apart Together relationship model, and committed counter-violence (or exceeding the limits of self-defence), it is necessary to take into account a whole range of factual and contextual factors (e.g. (in)appropriate collective understanding of the victim/perpetrator's experiences, role or perspective reversal). In such cases, the key question is: who or what is considered a casualty in the first place? (cf. Gutiérrez 2024, 216). See the case of Sally Challen described by Emilie van den Hoven (2021, 5–7, 9, 11). Illustrative examples regarding the relationship between judicial truth and prejudices that may dominate the interpretation of law in this type of cases is provided by legal cinematography (e.g. the film directed by Justine Triet entitled *Anatomy of a Fall* [Fr. *Anatomie d'une chute*], premiered on 21st May, 2023, at the 76th International Cannes Film Festival (France)).

mediation (experience-based therapy) – a legal-practice methodology focused on situationally-adequate solutions. Its essence lies in reducing epistemic pressure through a dialogic analysis of linguistic misunderstandings or dogmatic nonsenses at the level of open conceptual structures and deep grammar (the description of ways in which words are used in different contexts). Social reality is in flux and too variable to present universal normative patterns in this area. Diagnosing the causes of perplexities or linguistic dilemmas in legal language games requires the use of abduction, techniques of "design jusitce",[30] question, iterative and lateral thinking inducing situational changes in the "aspect of seeing" a legal issue.

In the light of the concept of performative law, imagination supports trans-conceptual communication[31] in accordance with the conception of wide objectivity of knowledge, which assumes that the world is accessible to the mind in a way mediated by concepts. This approach can help us „move beyond the potentially stereotypical thinking about the modes of communication employed by marginalised groups" (Schmidt 2024, 6). Human experiences are situated in a specific language game, influencing which features of the world and meanings of words they consider essential. The therapeutic and resolute use of legal imagination supports the transformation of "aspects of seeing" (conceptual change) through hearing, questioning, sober reassessment, and replacing previous interpretations with new ones. The central problem of any legal language game is the performance of law. Language may be a source of epistemic injustice. Legal imagination transcends the boundaries of knowledge and it may be bound by dogma and jeopardise epistemic justice through forms of language, so it is necessary to use this epistemic tool carefully and through the prism of hermeneutic therapy.

6. EPISTEMIC (IN)JUSTICE – APPLICATIVE LEGAL INSTITUTIONS

6.1. Hermeneutic (in)justice and testimonial (in)justice in the legal cognitive process – crucial areas and empirical examples

The theory of epistemic (in)justice can be applied as a legal tool in legal practice. By applying the therapeutic approach, I will present crucial legal institutions – hermeneutic "hotspots" – within which both forms of the theory in question find application.

[30] According to Sasha Constanza-Chock, it is an approach to legal design that is led by marginalised communities and that aims explicitly to challenge, rather than reproduce, structural inequalities in order to ensure societal "feedback" in the way that community members are actually included in meaningful ways (Constanza-Chock 2020; Glaberson 2024, 454–455).

[31] In line with K. Dotson, I adopt the stance that trans-conceptual communication is an ability to engage in linguistic interactions across social boundaries and to pay attention to nonstandard uses of language that arise in practice.

The theory of hermeneutic (in)justice pertains to the failure to name and consider a specific individualised experience socially relevant, thus applying and perpetuating detrimental conceptual categories in language. Consequently, pursuing or questioning something that cannot be named is not possible. The case of Carmita Wood, who contributed to the formulation of the concept of sexual harassment and its inclusion in legal language in the 1980s, demonstrates that epistemic material possessed by a marginalised rights holder can play a pioneering role in creating meanings (cf. Fricker 2007, 149–162).[32] Hermeneutic deliberation transforms constitutional case-law games that pave interpretative paths in law and can be enriched by the assumptions of the theory in question.

The theory of epistemic (in)justice has practical implications for exercising the power of constitutional review. The reference point for analyses in this area is the principle of equality. It concretises epistemic justice concerning the examination of the identity of similar subjects and ensures advocacy organisations representing marginalised and minoritised groups the ability to supplement hermeneutical resources that contribute to the collective understanding of the experiences of these groups. Polish constitutional case-law is not consistent in the practice of interpreting the principle of the equality in law. The cause of this methodological inconsistency is the Constitutional Court's [Pol. Trybunał Konstytucyjny] reliance on various theoretical concepts and the application of different conceptual frameworks that refer to interpretative standards shaped against the background of pre-constitutional, Strasbourg, or Luxembourg case-law (Ziółkowski 2015, 100). Furthermore, the assumption is made about the non-autonomous constitutional nature of the right to equal treatment (Ziółkowski 2015, 104). The constitutional principle of equality is a second-order right (meta-right). It is a construction principle referring to the application of other constitutional norms and takes the form of an interpretive rule (Ziółkowski 2015, 103). According to established case-law, when assessing whether a violation of the principle of equality expressed in Article 32 of Constitution of the Republic of Poland has occurred, the Constitutional Court applies the equality test (cf. judgment of the Constitutional Court of March 18, 2014 (SK 53/12, OTK-A 2014/3, item 32)). This test consists of three elements: 1) assessing the similarity of the subjects compared (the obligation to treat similar subjects equally, the prohibition of treating similar subjects differently); 2) identifying the criterion of differentiation; 3) assessing the constitutional permissibility of differentiation according to the requirements of relevance, proportionality, and axiological adequacy (Ziółkowski 2015, 105).

From the perspective of both constitutional beneficiaries of rights and the methodology of the constitutional court, it is justified to expand the equality test to criteria related to the equal treatment of similar subjects from the perspective

[32] Another example in this regard is the case of Virginia Prince, who in 1969 introduced the adjective "transgender" into public discourse.

of epistemically-sensitive characteristics. Firstly, when assessing the similarity of subjects based on a common relevant feature, the category of difference as an epistemic counterpoint must be taken into account. The relevant feature is a property of epistemically similar subjects. A sensitive feature is its synonym, which emphasises what is different, separate, and individual in the structure (profile) of a marginalised subject of constitutional rights and freedoms (e.g. a non-citizen, disenfranchised individual). Differences may be analysed through the prism of voices briefs or legislative testimonies, current social knowledge resulting from the exchange of epistemic experiences, and the mutual overlap of their interactions (cf. Ralph 2024, 1374). Secondly, when examining the criterion of differentiation, the social experiences of individuals with intersectional identities should be taken into account. Thirdly, when evaluating the proportionality of differentiation within economic, social, and cultural rights related to knowledge (e.g. the right to be believed or to found to be persuasive, sexual education, information, legal counselling), it is necessary to analyse whether the consequence of introducing a specific barrier to access to knowledge will not limit the personal rights (e.g. reproductive or sexual rights) of weaker individuals. This limitation may exacerbate bias and prevent the articulation and naming of experiences and their inclusion in a collective interpretation base. Social data in this area may not reach constitutional hearers. A quantitative analysis of the vocabulary used in justifications of the Constitutional Court's judgments (previous judgmental practice) does not provide a complete picture of hermeneutic (in)justice: and may co-generate epistemic paradoxes of self-reference (e.g. the knower paradox). The weakness of such an approach in the light of the results of empirical legal research is highlighted by Tomasz Stawecki and Jan Winczorek (cf. Stawecki, Winczorek 2015, 528). It is prudent to pay attention to the following issues: forms of representing the knowledge of communities susceptible to marginalisation in protective regulations regarding weaker people and advocacy activities and epistemic rights, the essence of which are the knowledge claims of similar entities to obtain the level of credibility or veracity they deserve and not distorted by prejudice. The source of prejudice and other "grammatical" epistemic errors may be the application of a cognitive and interpretive scheme inconsistent with the gradable standard of epistemic rationality, i.a. inappropriate use of language in a given context. This standard is based on very weak deontic power.

In turn, the theory of testimonial (in)justice finds application in interpersonal deliberation between professional and non-professional actors and actresses in the legal order (e.g. during public hearing in law-making process, the implementation of the right to be heard). Testimonial injustice may be intentional or unintentional (negligent). Assuming that procedural law serves as an epistemic tool for realising the principle of equal treatment, testimonial justice is an aspect of procedural justice (cf. Bublitz 2023, 1–28). Law is a "narrative" system that policies what testimonies can be developed (cf. Ralph 2024, 1336, 1340). In outsider

jurisprudence, it is noticed that the "legibility of legal claims" of minorities requires simplifying their complex knowledge and translating it into arguments and claims that are recognised in legal language.[33] They are faced with the need to categorise their ineffable notions and experiences according to the logic imposed by legal terminology and legislative practice of using linguistic expressions (terms) in their ordinary and generally accepted meaning. This is an expression of "social suffering" generated by legal institutions.

An example of a factor triggering this type of suffering had previously been mentioned in epistemic exploitation,[34] which is a form of structural inequality. This phenomenon relates to the epistemic division of labour and may manifest particularly in the context of legal cases involving human rights issues, including the right to respect with regard to private and family life (Article 8 of the European Convention on Human Rights) in the context of the adoption procedure (cf. ECtHR 60083/19; Corso 2023, 109) and sexual violence (cf. Picinali 2024, 217), the right to fair trial (Article 6 of the European Convention on Human Rights) in the context of wrongful convictions and the violation of the presumption of innocence (cf. Bublitz 2023, 21), the prohibition of direct or indirect discrimination (based on gender identity, race, ethnic origin, nationality, religion, belief, worldview, disability, age, sexual orientation, or any other legally protected characteristic),[35] strategic climate

[33] This is particularly evident in proceedings regarding the determination (correction) of registered gender (cf. Jain, Rhoten 2020, 31). Transgender litigants „must narrow their lived experiences to become *citizens*" (Jain, Rhoten 2020, 7). The architecture of the courtroom and the provisions of the Polish law (e.g. the requirement for the plaintiff to sue their parents) do not create a friendly atmosphere for the parties. Similar conclusions are drawn by, *inter alia*, B. Lee Aultman regarding the judicial system in the United States in the context of legal proceedings related to workplace discrimination against transgender individuals.

[34] Epistemic exploitation refers to a situation in which the law imposes unequal cognitive burdens on marginalised speakers. Hearers, in a way, compel speakers to counteract the formulation of prejudiced judgements by undertaking additional work ("mental load"), providing explanations and knowledge about the nature of oppression faced by marginalised individuals (cf. Berenstain 2016, 569–590). Gaslighting is an example of epistemic exploitation. It constitutes a form of violence based on psychological manipulation (e.g. undermining competence, questioning credibility). This phenomenon can be encountered in areas such as workplace relationships, family and care law, and criminal law (cf. Romańczuk-Grącka 2021, 411–423). Another vivid example is when courts, when deciding on the divorce of a marriage with minor children, establish the residence of the minor with his or her mother. It is presumed that the mother possesses better parenting (caregiving, upbringing) skills and a stronger emotional bond with the child than the father. Therefore, the burden is assumed to be on the father to demonstrate higher abilities in this regard.

[35] This issue is regulated, among others, by: Article 32 and Article 33 of the Constitution of the Republic of Poland, Article 113, Chapter IIa of Section I, and Article 94^3 § 2 of the Act of June 26, 1974 – Labour Code [Pol. Kodeks pracy] (Journal of Laws, 2023, item 1465), Article 23a of the Act of August 27, 1997 on Vocational and Social Rehabilitation and Employment of Persons with Disabilities [Pol. Ustawa o rehabilitacji zawodowej i społecznej oraz o zatrudnianiu osób niepełnosprawnych] (Journal of Laws, 2024, item 17), Article 61 § 1 point 5 and Article 65 § 2 of the Act of November 17, 1964 – Code of Civil Procedure [Pol. Kodeks postępowania cywilnego] (Journal

litigation (cf. Gutiérrez 2024, 208–226),[36] international humanitarian law,[37] as well as tort law (e.g. civil cases concerning non-pecuniary damages) and criminal law (such as legal responsibility of minors, sexual assault trials,[38] property crimes, stalking, hate speech – defamation or insult of another person, including through mass media, based on national, ethnic, racial, religious affiliation, or lack thereof).

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of Laws, 2024, item 1568), and the Act of December 2, 2010 on the Implementation of Certain EU Regulations on Equal Treatment [Pol. Ustawa o wdrożeniu niektórych przepisów Unii Europejskiej w zakresie równego traktowania] (Journal of Laws, 2024, item 1175). Incidentally, the theory of epistemic (in)justice should become an integral tool in the work of the Commissioner for Human Rights [Pol. Rzecznik Praw Obywatelskich], Joint Commission of the Government and National and Ethnic Minorities [Pol. Komisja Wspólna Rządu i Mniejszości Narodowych i Etnicznych], and other equality bodies or grass-root organisations in the context of strengthening the effectiveness of the equality law.

[36] Natalia Urzola Gutiérrez argues that knowledge production regarding climate action measures or solutions in Latin America (LATAM) seriously lacks meaningful participation of non-binary persons and children. LATAM has no truly gender-conscious approach to climate litigation besides relying on material impacts that the oppressed groups suffer and treating them as knowledge users or concentrating on the procedural positions they formulate (Gutiérrez 2024, 212, 217). This is confirmed by the empirical analysis of the following cases: *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina* (6 February 2020), (ser. C) No. 400, Inter American Court of Human Rights, *Future Generations v. Ministry of the Environment and Others* (2018), STC4360–2018, Supreme Court of Colombia, and *Citizens v. Authorities for Environmental Damage to Mangroves* (2018), AR307/2016 Supreme Court of Justice of the Nation, Mexico (cf. Gutiérrez 2024, 210–226).

[37] The theory of epistemic (in)justice can be useful tool in the practice of international courts such as the European Court of Human Rights and International Criminal Court (ICC). For example, the trial of Dominic Ongwen at the ICC in 2021 raises the following question: was he a perpetrator only or merely a victim? (Gaakeer 2024, 352–354). On 15th December, 2022, D. Ongwen, one of the leaders of the Lord's Resistance Army (LRA), a rebellion led by Joseph Kony in northern Uganda from 1986 to 2007, was convicted by the ICC to 25 years in prison for war crimes (e.g. murder, torture, enslavement, forced marriage). He faced 70 charges and was convicted on 61 counts. At the age of 10, D. Ongwen had been abducted and conscripted into the LRA, later becoming one of its ruthless leaders. Ongwen's knowledge has been shaped by the criminal system, so he had an overdeveloped sense of "justice". His traumatic background spared him from a life sentence. The theory of epistemic (in)justice can play a crucial role in assessing the circumstances of offenders or victims who belong to marginalised communities. This is a significant social benefit associated with the proposed "therapy" of law. Hermeneutic therapy sensitises us to the problem of issuing (overly) definitive judgements about the actions of controversial knowers, which, however, is not equivalent to justifying these actions.

[38] For example, in the 1989 Central Park Jogger/Five Case, law enforcement officers' identity prejudices tied to racist stereotypes about men of colour (Black, Brown/Latino) suspected of raping a white woman led to their testimonies being considered untrustworthy and to unjust conviction for a crime that these men did not commit. Cf. also the 1991 case of Anita Hill (Black attorney and legal scholar) and Clarence Thomas (Black Supreme Court nominee, Hill's previous boss) concerning workplace sexual harassment (cf. Crary 2018, 51). Hill's testimony revealed the need for deeper systemic changes in thinking about gender violence, due process, and fair procedures through the prism of (in)justice related to knowledge.

According to the Supreme Court (Pol. Sąd Najwyższy), every judge has his or her own individual set of criteria that they use to assess the credibility of testimony. It cannot be ruled out that the knowledge of the criteria used in practice is tacit and that while specific indications serve as the basis for judgments, they are not necessarily conscious. It is suggested that judges are likely not fully aware of the factors that significantly influence their assessment of the evidentiary value of testimony. The court bases this assessment, *inter alia*, on the direct impression made by the witness, his or her behaviour, and the manner of giving testimony. The judicial discretion in the evaluation of evidence cannot amount to arbitrariness in rejecting or deeming evidence credible. The court should demonstrate that the decision is based on rational grounds and that this assessment aligns with the directives contained in Article 7 of the Code of Criminal Procedure,[39] meaning it was made with the consideration of the principles of sound reasoning, as well as the indications of knowledge and life experience (cf. decision of the Supreme Court (Sąd Najwyższy) of October 20, 2021 (II KK 467/21, publ. https://www.sn.pl/sites/orzecznictwo/Orzeczenia3/II%20KK%20467–21.pdf). The trial is an epistemic enterprise (Picinali 2024, 229). An important criterion for the legitimacy of the judicial decisions is the fair distribution of credibility in compliance with the principle of the benefit of the doubt and proper identification of the disconnect between public experience and legal knowledge (cf. Ralph 2024, 1371–1372; Ferreira 2022, 323).

In my opinion, rational grounds of judicial decision are rooted in a wider conception of objectivity of knowledge, which means that they must encompass some subject-dependent qualities of the world elicited by knowers that possess them. Law is a concrete, personalised system of rules where experiences of vulnerable knowers are salient and really matter. Courts should exercise particular vigilance and critical awareness of phenomenal forms of epistemic injustice and caution in evaluating vulnerable witness testimony. Judges should bring their own mind to the law, apply the analytical tool of hermeneutic therapy, performatively enact it into practice in cases where the lack of credibility may be linked to some form of discrimination and therefore to the stereotypes held by the hearer regarding gender, ethnicity, race, etc., and in this context, define the limits of judicial discretion in evaluating evidence as understood under, e.g., Article 233 of the Code of Civil Procedure (cf. Corso 2023, 108). It can also help support the verification of motivated reasoning (hinges) underlying the hearer's attitude towards the knower in the context of the problem of the fallibility of eyewitness identification.

Representatives of ethnic minorities (e.g. Romani people) are often characterised by low legal awareness and do not use legal language in a manner

[39] The Act of June 6, 1997 – Code of Criminal Procedure [Pol. Kodeks postępowania karnego] (Journal of Laws, 2024, item 37).

satisfactory to the court (cf. judgment of the Regional Court in Nowy Sącz [Pol. Sąd Okręgowy w Nowym Sączu] of May 14, 2019 (III Ca 450/18, publ. https://orzeczenia.nowysacz.so.gov.pl/)).[40] For the majority and local authorities, they are "others" who do not participate in local life because of cultural beliefs and credibility deficits due to their level of language and discursive competencies (inequality in deliberative capacities) (cf. Sorial 2022, 218–219). The theory of epistemic injustice can serve as a tool or axe for evaluating the standards of implementing the prohibition of discrimination based on membership in a minority group, as referred to in Article 6 of the Act of January 6, 2005 on National and Ethnic Minorities and on the Regional Language [Pol. Ustawa o mniejszościach narodowych i etnicznych oraz o języku regionalnym] (Journal of Laws of 2017, item 823). It emphasises that the hermeneutically-disadvantaged persons often see and hear what the dominant groups cannot (cf. Glaberson 2024, 454).

In the recognition of such cases, important considerations include the use of inclusive and plain language, juxtaposing legally-relevant facts with an individual threshold of sensitivity and the degree of experienced distress. From the perspective of the victim, providing evidence or giving testimony in cases related to anti-discrimination law, bullying, crimes against sexual freedom or morality, and crimes against family and care may be perceived as a form of epistemic exploitation, leading to secondary victimisation (the necessity to relive a specific trauma).[41] However, from the perspective of judges, it represents the

[40] The judgment of the first-instance court in the cited case reveals epistemic dependence related to structural inequality resulting from the communicative power imbalance in legal performance between the judge and the knowers. As a consequence, the minority group has been denied the opportunity to contribute to collective hermeneutical resources and has become subjected to a public discourse that was primarily formulated by the majority (cf. Sorial 2022, 220).

[41] Epistemic exploitation can also occur in cases related to labour law, family law, fiduciary and care law, as well as in administrative cases concerning the certification or refusal of the certification of citizenship and the transcription of foreign civil status acts (e.g. birth certificates of children whose parents are in same-sex relationships). For instance, in the resolution of the Supreme Administrative Court [Pol. Naczelny Sąd Administracyjny] of December 2, 2019 (II OPS 1/19, published by the Central Database of Administrative Court Judgments (CBOSA), https://orzeczenia.nsa.gov.pl/cbo/query), it was indicated that entering the names of same-sex parents in a child's birth certificate contradicts the principles of the Polish legal order. This resolution highlights the tendency of administrative courts to base legal (interpretative) assessments and credibility appraisals on strictly normative criteria (the principle of legality), detached from the examination of the factual and intellectual experiences of individuals and social groups being assessed. Establishing a clear meaning of a provision or constructing a legal norm in isolation from the factual context is a mode of thinking that finds reflection in public law in general. This specific judgment resolved the legal issue in an operative dimension but not in the sociocultural aspect. Essentially, it perpetuates a state of epistemic marginalisation of children of LGBTQIA+ parents. There is no doubt that "rainbow" families do not enjoy the special care and protection envisaged in Article 18 of the Constitution of the Republic of Poland. Nevertheless, this provision, as stated in connection with Articles 30, 33 section one, and 47 of the Constitution of the Republic of Poland, does not exclude statutory regulation of the status of partnership relationships forming these families (cf. ECtHR

implementation of specific principles, duties, and procedural actions.[42] In turn, legislators may consider applying the discussed theory when creating legal constructs (e.g. legal definitions) and legislative solutions in the aforementioned areas of law.[43]

The theory of testimonial (in)justice emphasises strengthening the role of situational and contextual factors in evidence assessment and examining the potential contribution to shared interpretive resources by persons with epistemically-sensitive characteristics. Their experiences can significantly influence the evidentiary standard.[44] For example, digital evidence provides a context for understanding why parties or participants in legal proceedings

11454/17). The administrative court, as a rule, does not make factual determinations but only assesses whether findings of the facts made by public administration authorities in a specific case are correct. Therefore, it often focuses on examining purely formal compliance with law and, in a way, avoids reflecting on the broader societal context (policies) of the decision being made.

[42] In the specified exemplary categories of cases, courts should consider *in situ* axiological arguments. Their content revolves around the significance shaped based on an individual's sense of identity, which is inseparably linked to their epistemic positioning determined by the societal and cultural context. The theory in question can serve as a means of interpreting the rights of marginalised individuals shaped by institutions not regulated by the Polish law (e.g. surrogacy agreements).

[43] For example, the applicative value of the theory of epistemic injustice can be used to rethink the shape of the institution of the family environmental interview, as referred to in Article 107 of the Act of March 12, 2004 item 1283 on Social Assistance [Pol. Ustawa o pomocy społecznej] (Journal of Laws of 2024, item 1283). Directionally, the interview questionnaire should include a section on the sociocultural aspects of the lives of disfavoured knowers (e.g. ethnic minorities) so that attention can be drawn to how the social problem is experienced by them. They can contribute information about their lived experience that should be relevant to policy decisions.

[44] For example, in the assessment of police interventions involving marginalised individuals, recordings from city cameras and personal police body cameras (attached to officers' uniforms) play a significant evidentiary role in wrongful death lawsuits. An example is the 2021 case of the assassination of George Floyd, previously punished Black American man, by Derek Chauvin, white police officer. On 25th May, 2020, G. Floyd allegedly used a fake $20 bill to pay for cigarettes (Gaakeer 2024, 348). D. Chauvin, a police officer summoned to the scene of the crime, cuffed G. Floyd and then pressed his neck with his knee for a few minutes, preventing G. Floyd from breathing, which eventually led to his death. On 25th June, 2021, a Minneapolis court announced that D. Chauvin had been sentenced to 270 months in prison. The case was heard by a racially- and gender-diverse jury and intensified discussion on the standards of adjudication in cases of Black people who had lost their lives or had suffered permanent damage to their health due to police violence (cf. Gaakeer 2024, 350; Ralph 2024, 1319). In such cases, it is essential to consider the following factors: structural racism, prejudice and bias, systemic inequity, social conditions relating to knower's race, class, or positionality – the roles individuals may play in relation to the system (cf. Glaberson 2024, 422, 425*;* Harding 2020, 1–12). It is indicated that an anti-discrimination approach to racialised testimonial injustice is too narrow and should therefore be replaced by a critical race theory (criticalist) anti-subordination perspective (Gonzales Rose 2024, 178–179). Our unconscious cognitive biases (e.g. heteronormative assumptions, the framing effect: hindsight bias effect) should not obscure a comprehensive evaluation of the evidence. The hermeneutic therapy helps us situationally identify this issue in judicial deliberation.

may perceive facts differently (Sullivan 2017, 296–297). It is crucial to enhance the awareness of professional and lay judges regarding the assumptions they bring to interpretation (Sullivan 2017, 295). Higher-instance courts, tasked with examining the fairness of proceedings, should verify the evidentiary reasoning of lower-instance courts, taking into account the experiences and variable knowledge of the sensitive social group to which the party or participant in the proceedings belongs (cf. Picinali 2024, 1–35).

The theory of epistemic (in)justice can be applied to reflect on the case of Ms. Joanna from Kraków (Poland), which is pending before the Regional Court in Kraków [Pol. Sąd Okręgowy w Krakowie] (VI Ko 55/24). Ms. Joanna is seeking 100,000 PLN in compensation for wrongful detention. On 28th April, 2023, Ms. Joanna contacted a doctor (psychiatrist) after her health had deteriorated following the ingestion of an abortion pill. During her visit to the hospital, it turned out that the doctor had informed the police about the incident, thereby violating medical confidentiality. During the examination of the woman, four police officers violated Ms. Joanna's personal dignity, forcing her to undress, perform squats, and cough. The police also confiscated her mobile phone and laptop. After the entire incident, the patient was escorted to another hospital, where another police patrol was waiting for her. The Polish law does not prohibit women from performing abortions on their own. Ms. Joanna was not suspected of committing a crime and there was not even a prospect of charging her. Therefore, the police had no legal basis for their intervention and repressive behaviour, which was confirmed by the District Court for Kraków-Krowodrza in Kraków [Pol. Sąd Rejonowy dla Krakowa-Krowodrzy w Krakowie] in the decision of June 12, 2023 (II Kp 589/23/K).[45] The woman perceives the personal search as humiliating. Through such action by the police officers, Ms. Joanna was, *de facto*, punished for an act that, in the light of Article 152 of the Penal Code, cannot be attributed to her. Ms. Joanna argues that she had terminated her pregnancy almost two weeks before the police intervention. She did not report any side effects from taking the medication, she was not in any suicidal crisis, and only needed medical assistance, not intervention from police services.

This example should be treated not only as a contribution to the discussion about excesses in police interventions or the disproportionate use of competence as understood in human rights case law. From the perspective of the epistemic (in)justice theory, the police, in their search for evidence which they unjustifiably consider justified, essentially portray the affected woman as if she were actively involved in criminal assistance with abortion. These actions are compounded by media narratives that delve into the woman's past and expose her intimate details. The hermeneutic therapy of law involves the reconfiguration of judicial deliberation in a particular case through a change in the "aspect of seeing" facts,

[45] The decision has been shared on social media by Ms. Joanna's attorney.

mitigating circumstances, or issues. In such cases, judges and attorneys should analyse whether they are dealing with various forms of epistemic injustice phenomenon, as described in footnote 21.

In the new model of judicial governance reform as understood by Pablo Castillo-Ortiz, proposed by judicial associations, it is necessary to include the institution of a sensitive observer, i.e. a member of a disadvantaged community (e.g. the person whose social and personal knowledge is concerned), who adopts the wider concept of objectivity and could assist the judge or the legislator in reconstructing the standards of marginalised social normativity (e.g. climate adaptation policies). In this regard, a critical and careful selection of the sample is essential. Under these conditions, the importance of properly recognising the conditions of deliberation (e.g. the acknowledgement of the value of situated-knowledge, the nature of its subject, the scope of decision, differentiated and heterogenous characteristics of the audience, fundamental features of the creation and functioning of language) increases (cf. Ufel 2023, 300; Gutiérrez 2024, 223).

6.2. Case study – the prohibition of the discrimination of employees (the principle of equal treatment)

In accordance with current judicial decisions, workplace discrimination constitutes any case of unequal treatment that is not objectively justified, regardless of criteria such as gender, age, disability, race, religion, nationality, political beliefs, union membership, ethnic origin, faith, sexual orientation, employment on a fixed-term or indefinite basis, in full or part-time (cf. resolution of the Supreme Court [Pol. Sąd Najwyższy] of August 24, 2023 (III PZP 1/23, publ. http://www.sn.pl/). The prohibition of discrimination also applies to non-employment forms of work (cf. judgment of the European Court of Justice of January 12, 2023, J.K. v. TP S.A. (C-356/21, ECLI:EU:C:2023:9)). The catalogue of discrimination criteria (non-epistemic reasons for the weakening of the persuasive power of testimony from a weaker party) is open (cf. judgment of the Regional Court in Lublin [Pol. Sąd Okręgowy w Lublinie] of June 20, 2018 (VIII Pa 86/18, publ. https://orzeczenia.lublin.so.gov.pl/)). These criteria help determine whether there are grounds for applying the theory of epistemic (in)justice. The latter allows for a deeper understanding of discrimination, wrongful undermining an employee's role as a knower, and mobbing behaviours.[46]

[46] For example, such behaviours can include actions based on subjective (arbitrary) judgements by a direct supervisor (e.g. a head of a division), involving the obligation of only one department employee to provide a detailed daily report regardless of the reporting obligation that this employee, like other employees, must complete in the electronic work reporting system introduced by the employer. Such behaviour may be analysed in terms of undermining credibility and cause the employee (knower) to feel alienated and even suffer from health problems.

In the collective interpretation base, there are concepts such as ableism, ageism, and misogyny, but no vocabulary has been developed to capture the problem of discrimination based on criteria beyond the above-mentioned relevant features. A hypothetical case is that of an employee in a specific department of an organisational unit of a public authority and treated less favourably than other employees due to affiliation with the scientific (academic) community – a significant feature in the form of an academic degree or title. Epistemic injustice can be discussed when the social context of the language game indicates that a given significant feature is a source of structural prejudice. In the projected case, epistemic injustice is a dimension of discrimination that may involve the continuous assignment of duties outside the division to which the employee has been assigned under the employment contract. As a result, there is a real deterioration in the conditions of employment for the weaker person, who effectively becomes an interdivisional employee. In the evaluation by the superior (e.g. possessing a Master's degree in the same field as the employee), the objective reason justifying the constant and different from other employees of the parent division allocation of tasks from another division is the provision of the employment contract allowing the assignment of other tasks entrusted by the superior within the scope of the occupied position. Such general clauses are included in the employment contract or a document describing the individual duties of the employee to flexibly implement the employment relationship in the case of exceptional circumstances (e.g. longer absence of another employee) and should not be treated instrumentally.

From the perspective of the theory of epistemic (in)justice, the employer's reliance on the argument that a different way of assigning tasks is justified due to the significant (socially-important) feature of the employee in the form of an academic degree or title raises doubts when the practice context adopted by the employer, and the testimonies of other employees show that this is not a *condicio sine qua non* for performing these other tasks. The employee's objection to reprehensible practices may face repeated accusations of excessive inquisitiveness and emotional hypersensitivity as well as encounter gaslighting and moral harassment or mental mistreatment (abuse). The boss oppresses the employee by diminishing his or her self-confidence. Gaslighting and moral harassment often lead to mobbing. It causes unique moral and epistemic harms, because in a situation where it is not recognised it can act as a betrayal, undermining the speaker/victim's "moral trust" in the person or institution (e.g. coordinators/representatives for equal treatment in central, provincial, or local offices) to which they turned with their account (cf. Glaberson 2024, 423).

Employment relationship is a legal language game that generates various interpretative misunderstandings, linguistic dilemmas, and forms of epistemic injustice. Interference with the agency of the knower (employee) by the stronger party (supervisor) to obtain epistemic benefits (results of conceptual work)

without regard to the pro-employee judicial decisions, *de jure* hinges (the mechanism of deriving freedoms and rights of the employee from the dignity, the proportionality principle) may constitute discrimination against the weaker in law, and, consequently, cause testimonial injustice. However, employer prejudices are not necessarily related to discrimination and may be considered a separate category for examining epistemic injustice in labour law. Analytical and comparative subsuming of employee experiences under general judicial standards or computational algorithms based on the averaging (standardisation) of features and estimating the credibility of argumentation is an unreliable approach in terms of identifying epistemic errors. The examination of the ways of practical reasoning adopted by the parties to the employment relationship should be based on models of operative interpretation that take into account the factual circumstances accompanying the initiation of cooperation between the parties and the execution of the employment contract.

The above-described case does not constitute the factual circumstances of a specific court case, although it is based on real and authentic lived experiences. However, in the following case, the knower is denied the conceptual vocabulary to understand his or her own experience and may be harmed in his or her capacity as knower. Many labour law cases are not brought to court, because the law does not include the category of epistemic (in)justice as a separate ground for the employer's legal liability. The "therapy" of law based on the hermeneutic model of deliberation serves to build bridges between law and imagination by revealing or dawning many new aspects for understanding phenomena such as workplace policies (e.g. Diversity, Equity, and Inclusion (DEI) programmes),[47] mobbing, gaslighting, and professional burnout. It can also support research on the discrimination of vulnerable and/or marginalised knowers (e.g. neurodivergent intersex employee), and can be used as a criterion to assess whether the report of a knower (e.g. a vulnerable witness) is credible or unreliable. The processes of perspective-taking and collective reasoning may be biased, e.g. when a particular community or social group normalises the situation of those persons who lack the epistemic resources to name their experiences, perspectives, and feelings in their own words and are denied the possibility to develop these resources in the specified factual situation (cf. Muradova 2021, 659).

The epistemic (in)justice theory inspired by hermeneutic therapy enables the development of effective methods of acquiring knowledge from highly sensitive knowers and it is capable of situationally overcoming less or more deep-seated biases, the hermeneutic impoverishment, and overlapping systems of oppression

[47] It may turn out that, in practice, the DEI narrative achieves the opposite of its intended effect and paradoxically excludes certain individuals (e.g. men, linguistic minorities) from deliberation. Tokenistic half-hearted inclusion of the marginalised person or community in agenda-setting (pre--decisional processes) and decision-making spaces (e.g. diversity washing) is a way of reproducing epistemic dependence (cf. Gutiérrez 2024, 219).

in such a way that they do not constitute a concealed criterion for assessing the credibility of a knowing subject. This is a significant benefit of applying the theory of epistemic (in)justice from the point of view of the judicial interpretation and application of law. It may be expected that the legislation and interpretative performance of labour courts will tend towards including epistemic (in)justice as an integral element of the pro-employee model of the protection of human rights. The latter are performative acts that may begin to construct a new arrangement of meanings in social normativity. Ensuring the sustainability of legal decisions in such a way that they constitute a source of the transformation of social normativity involves formulating arguments from the perspective of the lived experiences of vulnerable knowers (e.g. plaintiffs) affected by the decision. In this way, legal policy coherence is achieved.

7. CONCLUSIONS

An epistemic injustice occurs when a hearer does not believe the words or experience of a knower because of multiple biases. Credibility is a comparative and contrastive quality (Medina 2011, 20). It is distributed inappropriately among deliberators due to prejudices and gaps in hermeneutical resources. In collective reasoning, some forms of epistemic injustice may go unrecognised and be normalised, regarded as legitimised. Hermeneutic therapy shows that the ways of knowing related to "aspects of seeing" (the evaluation of legislative and evidentiary facts) are inevitably linked to the challenge of abandoning the universalising elements present in the standard account of M. Fricker's theory in favour of examining the reconfiguration or transformation of knower's position, contribution, status, or standing in meaning-making and knowledge acquisition communicative practices. The novelty or genuine solution to the research problem I bring to the theory of epistemic (in)justice is the reconfiguration of its specific dogmatic (normative) assumptions from the perspective of "therapeutic" and "performative" deliberation based on a wider conception of objectivity and the exploration of directions, areas, and potential ways of its application in law, with particular attention to the specifics of the Polish law.

The theory of epistemic (in)justice is crucial for law, as it addresses the examination of uneven access to hermeneutic resources, enabling the articulation of nominal and interpretative knowledge that does not fit into normative legal categories. It can serve as a heuristic device (tool), which enriches legal means by providing a broader view of interpretative, situational, and contextual factors influencing various ways of perceiving the equality, reception, assessment, or interpretation of the same fact or event. A shortcoming affecting the theory in question is its dogmatic framework assuming the existence of metalinguistic games (universal reference points validating other games), and cognitive-affective

sensibility is considered a subjective (private) epistemic virtue serving to neutralise hermeneutic resources (cf. Ufel 2023, 20, 24, 165, 268). Transitioning to a critical linguistic register, it can be said that institutions, through their apparent neutrality expressed in various legal language games (e.g. movement law, disaster law), paradoxically may generate and reinforce systemic hierarchies and inequalities (cf. Rosario-Lebrón 2023).[48] In other words, institutions and their entrenched linguistic practices are an ideological tool that serves to (self)justify their existence and thus legitimises the causes of institutional crises resulting from the omission of the element of epistemic injustice in the processes of participation in the reconfiguration of social normativites.

In the light of the performative conception of law, philosophical therapy focuses on reflexively removing language difficulties in hermeneutic deliberation. It assumes that since language is social, the imaginative sensitivity of its users is an objective, non-neutral (situated but not partisan), and embodied habit of thought. This means moving away from establishing semantic criteria for using rules (conventions) of language to searching for a successful interpretation of these rules in the light of cultural norms and values as well as specific temporally lived experiences.[49] This approach is based on a wide, weak (ensuring societal coherence), and qualified (considering marginalised knowledges) concept of objectivity (cf. Rodak 2011, 6, 10; Kjaer 2022, 777). In the light of the Latin maxim *ex facto ius oritur*, law (artifact) arises from a fact (knowing-in-practice) mediated by acts of legal imagination. The latter serves the functions of reproducing, projecting, and organising experiences or affective reactions related to the insufficient representation of devaluated knowledges in law by incorporating or combining meanings into new sense-making constellations (cf. Lobo 2022, 20). Imagination aids the analysis of the correlation between deficits and surpluses of the credibility of speakers associated with implicit biases of fact-finders. A nuanced view of epistemic dependence as an ambivalent phenomenon is possible. This dependence arises from the insufficient cognitive engagement of hearers (e.g. judges, jury, legislators) in the perspective of a disadvantaged person or community (e.g. a man experiencing domestic violence, a homeless person, a Black sexual worker, a martial rape victim, a male victim of rape, a female prisoner, a victim of violent crime inside prison, a genderqueer person, a member of the Rohingya ethnic group or the Windrush generation). The performative task of lawyers is to analyse the risk of epistemic harm at the individual and institutional levels, and raise awareness of tokenistic assumptions and generalisations that may cause

[48] The theory of epistemic (in)justice may constitute an important contribution to reflection on the paradoxical nature of rules, which may be developed in other work.

[49] The fundamental problem on which the therapeutic approach focuses is the dilemma between normativity, objectivity, and the "hingeness" of law as a performative (i.e. cultural and political) phenomenon.

or perpetuate the disadvantageous situation of knowers. The theory of epistemic (in)justice takes into consideration the fact-interpretation distinction to better understand "aspects of seeing" in the context of deliberative standards (e.g. democratic or experimental digital innovations such as legislative forums and mini-publics). Lawyers (e.g. during *voir dire*) and expert witnesses should reflect on the question of how some of the key narratives upon which legal standards of proof and their social understanding rest have been formed, unfolded, validated, or excluded, and consider their implicit acceptance of "taken-for-granted" kinds of rules of evidence (cf. Sullivan 2017, 301).

The goal of implementing the proposed concepts is to change the outcomes in specific cases. However, the issue of epistemic (in)justice should be approached holistically rather than casuistically and must be based not on wishful thinking, but on thick historicity and sociality (cf. Páez, Matida 2023, 32; Medina 2011, 17; Carter, López 2024, 54). On the systemic level, structures are needed that would allow the subaltern to speak for themselves and lawyers in power to listen to the knowledge of the hermeneutically-disadvantaged without objectification, representational bias, or tokenistic inclusions (cf. Glaberson 2024, 455–456; Gutiérrez 2024, 219); Carter, López 2024, 36). The specific reconfigurations of legal language games or social normativities occurring in the processes of knowledge production by critically analysing legal language can initiate certain processes of change in the perspectives ("aspects of seeing") of hermeneutically-privileged participants in deliberations (cf. Ufel 2023, 320). Despite the short-term legitimacy of current power and the *status quo*, in the longer term, these changes can lead to lasting shifts in attitudes or the functioning of the existing and future institutions (cf. Ufel 2023, 320).

Many legal issues – such as procedural law (especially evidentiary procedures), anti-discrimination law, family law, criminal justice, forensic science, penology and penitentiary law (cf. Hanan 2020, 1185–1244), refugee law (cf. Ferreira 2022, 303–326), legal ethics (cf. Buralndo-Salazar 2023, 1282–1283), or the computational turn in law (cf. Hoven 2021) – are not commonly associated with the theory in question. It is advisable to further familiarise concepts within its scope and incorporate them into inferences or practical reasoning and socio-legal participatory research as well as the legal education process[50] in a way that reflects balancing legal decisions and becomes part of reflexive legislative and judging arts.

[50] The need to apply the theory of epistemic (in)justice and more precisely curricular injustice in legal education in the context of decolonisation of knowledge is emphasised i.a. by Swethaa S. Ballakrishnen, Sofia Balzaretti, Stephanie Deig, and Sarah B. Lawsky.

BIBLIOGRAPHY

Annunziata, Filippo. Giorgio Fabio Colombo. Eds. 2018. *Law and Opera*. Berlin: Springer.

Berenstain, Nora. 2016. "Epistemic Exploitation." *Ergo: An Open Access Journal of Philosophy* 3(22): 569–590. https://doi.org/10.3998/ergo.12405314.0003.022

Boncompagni, Anna. 2020. "Prejudice in Testimonial Justification: A Hinge Account." *Episteme* 1: 1–18. https://doi.org/10.1017/epi.2021.40

Boswell, John. 2022. "Narrative Analysis." In *Research Methods in Deliberative Democracy*. Edited by Selen A. Ercan, Hans Asenbaum, Nicole Curato, Ricardo F. Mendonça. 333–344. Oxford: Oxford University Press. https://doi.org/10.1093/oso/9780192848925.003.0023

Brożek, Bartosz. 2018. *Umysł prawniczy.* [The Legal Mind]. Kraków: Copernicus Center Press.

Bublitz, Jan Christoph. 2023. "When is Disbelief Epistemic Injustice? Criminal Procedure, Recovered Memories, and Deformations of Epistemic Subjects." *Criminal Law and Philospohy* 2*:* 1–28. https://doi.org/10.1007/s11572–023–09695–3

Burlando-Salazar, Julian A. 2023. "Preventing the Epistemic Harm of Testimonial Injustice in Lay Witness Credibility Assessments." *Boston University Law Review* 103(4): 1245–1285. https://doi.org/10.1007/s11572–023–09695–3

Carter, Terrell. Rachel López. 2024. "If Lived Experience Could Speak: A Method for Repairing Epistemic Violence in Law & The Legal Academy". *Temple University Legal Studies Research Paper No. 2024-26*, https://ssrn.com/abstract=4741795 [access: 14.10.2024].

Constanza-Chock, Sasha. 2020. *Design Justice: Community-Led Practices to Build the Worlds We Need*. Cambridge, MA–London: The MIT Press.

Corso, Lucia. 2023. "Epistemic Injustice, Judiciary Reasoning and Stereotypes: From Narrow, to Broad, to Broader." *Milan Law Review* 4(2): 100–113. https://doi.org/10.54103/milanlawreview/22186

Crary, Alice. 2000. "Introduction." In *The New Wittgenstein*. Edited by Alice Crary, Rupert Read. 1–18. London–New York: Routledge.

Crary, Alice. 2002. "What Do Feminists Want in an Epistemology?" In *Feminist Interpretations of Ludwig Wittgenstein.* Edited by Naomi Scheman, Peg O'Connor. 97–118. Philadelphia: Penn State University Press.

Crary, Alice. 2018. "The Metodological is Political. What's the Matter with 'Analytic Feminism?'" *Radical Philosophy* 2(2): 47–60.

Dotson, Kristie. 2012. "A Cautionary Tale: On Limiting Epistemic Oppression." *Frontiers: A Journal of Women's Studies* 33(1): 24–47. https://doi.org/10.5250/fronjwomestud.33.1.0024

Dyrda, Adam. 2021. "Epistemologiczne problemy prawoznawstwa." [Epistemological Problems of Jurisprudence]. In *Teoria i filozofia prawa.* [Theory and Philosophy of Law]. Edited by Adam Dyrda. 29–32. Warszawa: Wolters Kluwer.

Ferreira, Nuno. 2022. "Utterly Unbelievable: The Discourse of 'Fake' SOGI Asylum Claims as a Form of Epistemic Injustice." *International Journal of Refugee Law* 34: 303–326. https://doi.org/10.1093/ijrl/eeac041

Fricker, Miranda. 2007. *Epistemic Injustice: Power and The Ethics of Knowing.* Oxford: Oxford University Press.

Fricker, Miranda. 2013. „Epistemic Justice as a Condition of Political Freedom?" *Synthese* 190(7): 1317–1332.

Gaakeer, Jeanne. 2024. "Feel, Show, Tell: Affect and Legality in the Trial as Performance." *Law, Culture and the Humanities* 20(2): 340–354. https://doi.org/10.1177/174387212311776

García-Valdecasas, Miguel. 2023. "Are Wittgenstein's Hinges Rational World-Pictures? The Groundlessness Theory Reconsidered." *Topoi* 42: 35–45. https://doi.org/10.1007/s11245–022–09830–0

Glaberson, Stephanie. 2024. "The Epistemic Injustice of Algorithmic Family Policing." *UC Irvine Law Review* 14(2): 404–456.

Gonzales, Rose. Jasmine B. 2024. "A Critical Perspective on Testimonial Injustice: Interrogating Witnesses' Credibility Excess in Criminal Trials. A Comment on Federico Picinali's 'Evidential Reasoning, Testimonial Injustice and the Fairness of the Criminal Trial'." *Quaestio Facti. Revista Internacional Sobre Razonamiento Probatorio* 7: 173–185. https://doi.org/https://doi.org/10.33115/udg_bib/qf.i7.23043

Gordon, Randy. 2023. *The Performance of Law: Everyday Lawyering at the Intersection of Advocacy and Imagination*. Abingdon–New York: Routledge.

Grygieńć, Janusz. 2021a. "Czy powinniśmy bać się zależności epistemicznej (i jak bardzo)?" [Should We Fear Epistemic Dependence (And How Much)?] *Filozofia i Nauka. Studia filozoficzne i interdyscyplinarne* 9(1): 11–28.

Grygieńć, Janusz. 2021b. "Od dyktatury ekspertów do demokracji nieliberalnej. Podejście systemowe do demokracji deliberacyjnej i jego braki." [From the Dictatorship of Experts to Illiberal Democracy: A Systemic Approach to Deliberative Democracy and Its Shortcomings]. *Civitas. Studia z Filozofii Polityki* 28(4): 15–40.

Gutiérrez, Natalia Urzola. 2024. "Gender in Climate Litigation in Latin America: Epistemic Justice Through a Feminist Lens." *Journal of Human Rights Practice* 16(1): 208–226. https://doi.org/10.1093/jhuman/huad030

Hanan, M. Eve. 2020. "Invisible Prisons." *UC Davis Law Review* 54(2): 1185–1244.

Harding, Brynne. 2020. "*R v Theriault:* A Case of Epistemic Injustice." *ABlawg.ca* 10: 1–12. https://ablawg.ca/wp-content/uploads/2020/10/Blog_BH_Theriault.pdf (accessed: 14.08.2024).

Hendriks, Carolyn M. 2008. "Deliberative Governance in the Context of Power." *Policy and Society* 28(3): 173–184.

Jain, Dipika. Kimberly M. Rhoten. 2020. "Epistemic Injustice and Judicial Discourse on Transgender Rights in India: Uncovering Temporal Pluralism." *Journal of Human Values* 26(1): 30–49. https://doi.org/10.1177/0971685819890186

Kjaer, Poul F. 2022. "What is Transformative Law?" *European Law Open* 1: 760–780. https://doi.org/10.1017/elo.2023.1

Klimowicz, Katarzyna. 2016. "Utopia w «realistycznej» teorii demokracji przedstawicielskiej i realizm w «utopijnych» teoriach demokracji deliberatywnej i partycypacyjnej." [Utopia in 'Realistic' Theory of Representative Democracy and Realism in 'Utopian' Theories of Deliberative and Participatory Democracy]. *Hybris. Internetowy Magazyn Filozoficzny* 33(2): 33–52.

Koczanowicz, Leszek. 2020. *Lęk i olśnienie. Eseje o kulturze niepokoju.* [Anxiety and Lucidity: Reflections on Culture in Times of Unrest]. Warszawa: Instytut Badań Literackich PAN.

Leiboff, Marett. 2015. "Towards a Jurisprudence of the Embodied Mind – Sarah Lund, Forbrydelsen and the Mindful Body." *Naveiñ Reet: Nordic Journal of Law and Social Research. Special Issue on Law and Art* 6: 77–92.

Levinson, Stanford. Jack M. Balkin. 1991. "Law, Music, and Other Performing Arts." *University of Pennsylvania Law Review* 139(6): 1597–1568.

Levy, Ron. 2018. "The 'Elite Problem' in Deliberative Constitutionalism." In *The Cambridge Handbook of Deliberative Constitutionalism*. Edited by Ron Levy, Hoi Kong, Graeme Orr, Jeff King. 351–369. Cambridge: Cambridge University Press. https://doi.org/10.1017/9781108289474.027

Lobo, Camila. 2022. "Speaking Silences: A Wittgensteinian Inquiry into Hermeneutical Injustice." *Nordic Wittgenstein Review* 12: 1–23. https://doi.org/10.15845/nwr.v11.3643

Łętowska, Ewa. 2005. "Communicare et humanum est – o komunikacyjnej misji prawników i muzyków." [Communicare et humanum est – on the Communicative Mission of Lawyers and Musicians]. *Monitor Prawniczy* 1: 3–7.

Medina, José. 2011. "The Relevance of Credibility Excess in a Proportional View of Epistemic Injustice: Differential Epistemic Authority and the Social Imaginary." *Social Epistemology: A Journal of Knowledge, Culture and Policy* 25(2): 15–35. https://doi.org/10.1080/02691728.2010.534568

Medina, José. 2012. "Hermeneutical Injustice and Polyphonic Contextualism: Social Silences and Shared Hermeneutical Responsibilities." *Social Epistemology: A Journal of Knowledge. Culture and Policy* 26(2): 201–220. https://doi.org/10.1080/02691728.2011.652214

Mulcahy, Sean. 2022. "Methodologies of Law and Performance." *Law and Humanities* 16(2): 165–182. https://doi.org/10.1080/17521483.2022.2123616

Muradova, Lala. 2021. "Seeing the Other Side? Perspective-Taking and Reflective Political Judgements in Interpersonal Deliberation." *Political Studies* 69(3): 644–664. https://doi.org/10.1177/0032321720916605

Páez, Andrés. Janaina Matida. 2023. "Editorial of Dossier 'Epistemic Injustice in Criminal Procedure'." *Revista Brasileira de Direito Processual Penal* 9(1): 11–38. https://doi.org/10.22197/rbdpp.v9i1.821

Peters, Julie Stone. 2022. *Law as Performance: Theatricality, Spectatorship, and the Making of Law in Ancient, Medieval, and Early Modern Europe*. Oxford: Oxford University Press.

Picinali, Federico. 2024. "Evidential Reasoning, Testimonial Injustice and the Fairness of the Criminal Trial." *Quaestio facti. Revista Internacional sobre Rezonamiento Probatio* 6: 1–35. https://doi.org/10.33115/udg_bib/qf.i6.22888

Pohlhaus Jr., Gaile. 2012. "Relational Knowing and Epistemic Injustice: Toward a Theory of Willful Hermeneutical Ignorance." *Hypatia: A Journal of Feminist Philosophy* 27(4): 715–735.

Ralph, Anne E. 2024. "Qualified Immunity, Legal Narrative, and the Denial of Knowledge." *Boston College Law Review* 65(4): 1317–1380.

Rodak, Lidia. 2011. "Objective Interpretation as Conforming Interpretation." *Oñati Socio-Legal Series* 1(9): 1–11.

Rogacka-Rzewnicka, Maria. 2023. "The Impact of the Concept of Continental (Romano-Germanic) Criminal Procedure on the Phenomenon of 'Epistemic Injustice'." *Revista Brasileira de Direito Processual Penal* 9(3): 1109–1135. https://doi.org/10.22197/rbdpp.v9i3.800

Rogers, Nicole. 2008. "The Play of Law: Comparing Performances in Law and Theatre." *Queensland University of Technology Law and Justice Journal* 8(2): 429–443.

Romańczuk-Grącka, Marta. 2021. "Gaslighting jako forma przemocy psychicznej." [Gaslighting as a Form of Psychological Violence]. *Studia Prawnoustrojowe* 52: 411–426. https://doi.org/10.31648/sp.6614

Rosario-Lebrón, Aníbal. 2023. "Law's Power in Naming & Silencing (reviewing Lisa Washington, Survived & Coerced: Epistemic Injustice in the Family Regulation System, 24 Colum. L. Rev. 1097 (2022))." *Family Law Jotwell: The Journal of Things We Like (Lots)* 11. https://family.jotwell.com/laws-power-in-naming-silencing/ (accessed: 6.08.2024).

Safjan, Marek. Przemysław Mikłaszewicz. 2011. "Granice uprzywilejowania wyrównawczego." [The Limits of Compensatory Preference]. *Przegląd Sejmowy* 107(6): 31–45.

Sarat, Austin. Lawrence Douglas. Martha Merrill Umphrey. 2018. *Law and Performance*. Amherst–Boston: University of Massachusetts Press.

Schmidt, Eva. 2024. "Epistemic Injustice in Deliberative Mini Publics". Journal of Deliberative Democracy 20(1): 1-10. https://doi.org/10.16997/jdd.1493

Skuczyński, Paweł. 2016. "The Attitudes of Lawyers Towards the Constitutional Crisis and the Independence of the Judiciary." In *The Limits of Judicial Independence?* Edited by Grzegorz Borkowski. 149–166. Warszawa–Toruń: Krajowa Rada Sądownictwa.

Skuczyński, Paweł. 2020. "Narrativity of Legal Language in the Law-Making Process." *Archiwum Filozofii Prawa i Filozofii Społecznej* 22(1): 1–17. https://doi.org//10.36280/AFPIFS.2020.1.66ENG

Sorial, Sarah. 2022. "Deliberation and the Problems of Exclusion and Uptake: The Virtues of Actively Facilitating Equitable Deliberation and Testimonial Sensibility." *Ethical Theory and Moral Practice* 25: 215–231. https://doi.org/10.1007/s10677–022–10273–0

Sousa, Ronald de. 2009. "Epistemic Feelings." *Mind and Matter* 7(2): 139–161.

Spiegel, Thomas J. 2022. "The Epistemic Injustice of Epistemic Injustice." *Social Epistemology Review and Reply Collective* 11(9): 75–90.

Stawecki, Tomasz. Jan Winczorek. 2015. "Posłowie." [Afterword]. In *Wykładnia konstytucji. Inspiracje, teorie, argumenty*. [Constitutional Interpretation: Inspirations, Theories, Arguments]. Edited by Tomasz Stawecki, Jan Winczorek. 517–528. Warszawa: Wolters Kluwer.

Sullivan, Michael. 2017. "Epistemic Injustice and the Law." In *The Routledge Handbook of Epistemic Injustice*. Edited by Ian James Kidd, José Medina, Gaile Pohlhaus Jr. 293–302. Abingdon–New York: Routledge. https://doi.org/10.4324/9781315212043.ch28

Sveinsdóttir, Ásta. 2016. "The Naturalism Question in Feminism." In *The Blackwell Companion to Naturalism*. Edited by Kelly James Clark. 49–60. Hoboken: Wiley-Blackwell. https://doi.org/10.1002/9781118657775.ch4

Tobiasz, Marcin. 2016. "Demokracja deliberatywna a władza. Iluzje współdecydowania." [Deliberative Democracy and Power. Illusions of Co-Decision]. *Studia Politologiczne* 41: 106–122.

Tobiasz, Marcin. 2021. "Deliberacja jako forma wykluczenia." [Deliberation as a Form of Exclusion]. *Myśl Polityczna* 2(8): 31–45.

Ufel, Wojciech. 2023. *Granice demokracji. Dylematy deliberacji w perspektywie filozofii gier językowych.* [The Limits of Democracy: Dilemmas of Deliberation from the Perspective of the Philosophy of Language Games]. Warszawa: Wydawnictwo Naukowe Scholar.

Ufel, Wojciech. 2025. "Language-Based Critique of Deliberation as a 'Picture' in the 'Album Theory' of Democracy." In *Wittgenstein and Democratic Politics. Language, Dialogue and Political Forms of Life*. Edited by Lotar Rasiński, Anat Bieletzki, Leszek Koczanowicz, Thomas Wallgreen. 274–294. New York–Abingdon: Routledge. https://doi.org/10.4324/9781003485254-17

Hoven, Emilie van den. 2021. "Hermeneutical Injustice and the Computational Turn in Law." *Journal of Cross-disciplinary Research in Computational Law* 1(1): 1–13.

Walker, Melanie. 2020. "Why Lawyers and Legal Educators Should Care About (Epistemic) Justice." *International Journal of Clinical Legal Education* 27(1): 5–46. https://doi.org/10.19164/ijcle.v27i1.915

Washington, S. Lisa. 2022. "Survived & Coerced: Epistemic Injustice in the Family Regulation System." *Columbia Law Review* 122(4): 1097–1664.

Wittgenstein, Ludwig. 2000a. *Dociekania filozoficzne.* [Philosophical Investigations]. Translated by Bogusław Wolniewicz. Warszawa: Wydawnictwo Naukowe PWN.

Wittgenstein, Ludwig. 2000b. *Tractatus logicus-philosophicus*. Translated by Bogusław Wolniewicz. Warszawa: Wydawnictwo Naukowe PWN.

Wittgenstein, Ludwig. 2014. *O pewności.* [On Certainty]. Translated by Bohdan Chwedeńczuk. Warszawa: Wydawnictwo Aletheia.

Ziemińska, Renata. 2013. *Historia sceptycyzmu. W poszukiwaniu spójności.* [The History of Skepticism: In Search of Consistency]. Toruń: Wydawnictwo Naukowe Uniwersytetu Mikołaja Kopernika.

Ziółkowski, Michał. 2015. "Zasada równości w prawie." [Principle of Equality in the Law]. *Państwo i Prawo* 5: 94–111.

Zirk-Sadowski, Marek. 2021. *Wprowadzenie do filozofii prawa*. [Introduction to the Legal Philosophy]. Warszawa: Wolters Kluwer.

Legal acts

Convention of Human Rights and Fundamental Freedoms of November 4, 1950, Journal of Laws 1993, No. 61, item 284, https://www.echr.coe.int/documents/d/echr/convention_eng.

Constitution of the Republic of Poland of April 2, 1997, Journal of Laws, 1997, No. 78, item 483 as amended.

Act of November 17, 1964 – Code of Civil Procedure, Journal of Laws, 2024, item 1568.

Act of June 26, 1974 – Labour Code, Journal of Laws, 2023, item 1465.

Act of June 6, 1997 – Code of Criminal Procedure, Journal of Laws, 2024, item 37.

Act of June 6, 1997 – Criminal Code, Journal of Laws, 2024, item 17.

Act of August 27, 1997 on Vocational and Social Rehabilitation and Employment of Persons with Disabilities, Journal of Laws, 2024, item 44.

Act of March 12, 2004 on Social Assistance, Journal of Laws, 2024, item 1283.

Act of January 6, 2005 on National and Ethnic Minorities and on the Regional Language, Journal of Laws, 2017, item 823.

Act of July 29, 2005 on Counteracting Domestic Violence, Journal of Laws, 2024, item 424.

Act of December 2, 2010 on the Implementation of Certain EU Regulations on Equal Treatment, Journal of Laws, 2024, item 1175.

Case law

Judgment of the European Court of Human Rights of January 20, 2022, D.M. and N. v. Italy, 60083/19, https://hudoc.echr.coe.int/#{%22itemid%22:[%22001–215179%22]}

Judgment of the European Court of Human Rights of December 12, 2023, Przybyszewska and Others v. Poland, 11454/17, https://hudoc.echr.coe.int/?i=001–229391

Judgment of the European Court of Justice of January 12, 2023, J.K. v. TP S.A., C-356/21, ECLI:EU:C:2023:9.

Judgment of the Constitutional Court of March 18, 2014, SK 53/12, OTK-A 2014/3, item 32.

Resolution of the Supreme Administrative Court of December 2, 2019, I OPS 1/19, https://orzeczenia.nsa.gov.pl/doc/0CB4DBF3D4

Resolution of the Supreme Court of August 24, 2023, III PZP 1/23, http://www.sn.pl/sites/orzecznictwo/orzeczenia3/iii%20pzp%201–23.pdf

Judgment of the Regional Court in Lublin of June 20, 2018, VIII Pa 86/18, https://orzeczenia.lublin.so.gov.pl/

Judgment of the Regional Court in Nowy Sącz of May 14, 2019, III Ca 450/18, https://orzeczenia.nowysacz.so.gov.pl/

Decision of the Supreme Court of October 20, 2021, II KK 467/21, https://www.sn.pl/sites/orzecznictwo/Orzeczenia3/II%20KK%20467–21.pdf

Decision of the District Court for Kraków-Krowodrza in Krakow of June 12, 2023, II Kp 589/23/K, unpublished.