

Silent Epistemologies

Theorising Children's Participation Rights

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Abstract

This article presents a conceptualisation of children's participation rights based on Miranda Fricker's epistemic injustice. Drawing on research conducted in a secondary school in the UK, the article applies Fricker's framework, in particular her concepts of testimonial and hermeneutical injustice, to explain some of the reasons for adults' disquiet around children's participation rights. Fricker's concept of testimonial injustice explains how prejudice about a social group results in deflated attributions of credibility to their views and opinions. Hermeneutical injustice occurs when a social group struggles to make sense of their social experiences because of insufficient interpretive resources in the collective social imagination. By applying these concepts to children, I highlight the role of silence in conceptualising children's right to be heard and to freedom of expression. I present a conceptual framework of participation, informed by epistemic injustice and based on empirical research, in order to bolster children's participation rights.

Keywords

participation rights – epistemic injustice – UNCRC

1 Introduction

Children's rights is a relatively young discipline, suspended between the two "parent" disciplines of human rights and childhood studies (Stalford and Lundy, 2020). Perhaps as a consequence of this suspension, arguments that children's

rights research is under-theorised stubbornly remain (Quennerstedt, 2011, 2013; Dixon and Nussbaum, 2012; Reynaert *et al*, 2009, Ferguson, 2013; Federle, 2017). Freeman (1994: 493) argues that this lack of attention to the conceptual foundations of children's rights constitutes 'a lack of intellectual responsibility'; one that neglects a fundamental part of the human rights idea and in doing so, jeopardises its legitimacy (Tobin, 2013). Hanson and Peleg (2020) respond to criticism of the children's rights field lacking theorisation by challenging such claims, arguing that children's rights theories are in fact abundant when considering that they can be both implicitly and explicitly posed under different guises for different purposes. These include normative or explanatory purposes which are either sophisticated or straightforward, borrowed from other disciplines, or developed from within the children's rights framework. Indeed, a number of scholars have dutifully rehearsed the "will" and "interest" theories of rights with regard to children (MacCormick, 1976; Eekelaar, 2017), and concluded, based on this zero-sum conceptualisation of rights, that neither quite bequeaths children any rights on their own standing because they are not adults (see, for example, Geisinger, 2019; Ross, 2014). Others have conceptualised children's rights on their own footing; Hanson and Peleg (2020) cite a number of theories within the children's rights field: children's evolving capacities; recognition theory; the Capabilities Approach (Nussbaum, 2011); the four general principles (cf. Hanson and Lundy, 2017); the best interests of the child; autonomy and the subject of this article: participation. Participation rights have been conceptualised as voice, space, audience and influence (Lundy, 2007), and as a ladder (Hart, 1992). Nonetheless, what children's participation rights are still lacking, is a coherent, comprehensive and convincing theoretical bedrock. Whilst the findings from the study upon which this paper is based have been reported elsewhere (Hanna, 2021a, 2021b); this paper will present a conceptual framework for children's participation rights.

2 Research Design

This paper's contribution to theorising children's participation rights, and the role of silence in such theorisation, is supported by the findings of a research project which investigated how silence was used and experienced by young people and teachers in a secondary school. The main aim of the project was to explore these uses and experiences of silence as a feature of young people's enjoyment of their participation rights in school. The project applied two distinct lenses: theoretical and rights-based. Miranda Fricker's epistemic injustice was applied to the findings, which attends to the social identities of young people and the

role these identities play in participation. These lenses converged in a conceptual framework of participation through which to investigate and interpret uses and experiences of young people's silences. Therefore, this theorisation of children's participation rights is informed both by empirical data and by theory. The research question posed in the project was: how do students and teachers understand, use and experience silence in the classroom, in school as a whole, and in relationships with others? A children's rights-based methodology, which views young people as experts in their own lived experience, was employed; a Young Persons Advisory Group (YPAG) advised the researcher on research procedures (see Lundy and McEvoy, 2012; Lundy *et al.*, 2011). The YPAG was set up before data collection began in order to consult young people on how the study should proceed and to gain initial responses to research design.

Two qualitative data collection methods were subsequently engaged: nine conceptual group discussions with young people, and 33 interviews with students and teachers respectively. Group discussions took the form of deliberative dialogue led by participants' own ideas (Cassidy, 2017) about silence and formed an opportunity for young people to reveal their understanding of their experiences, and to do so *collaboratively*; not simply offering responses that are mediated by adults. These discussions were followed by interviews with young people of no more than three participants, which were carried out on the basis that they were both a conversation and exchange of ideas as opposed to standardised questioning. This approach was chosen deliberately to reflect the theoretical frame which emphasises how certain social groups are reduced to sources of information and not participants in knowledge production (see Hanna, 2021a). Interviews with young people also offered a forum in which to continue conversations that occurred in the group discussions. Of the 42 students and 27 teachers who participated, 35 students engaged in 15 interview sessions, and 20 teachers engaged in 18 interview sessions. The conceptual discussions and interviews were audio-recorded and transcribed verbatim and the data was coded inductively using NVivo. Coding provided an organisational frame with which to report the findings because it draws out the more functional aspects of silence in school. Thematic analysis propounded by Braun and Clarke (2006, 2012) was used to explore the uses and experiences of silence because it provided a systematic way of approaching qualitative data. This was also chosen because it suited the research questions and data collection methods which were experiential and exploratory (Braun and Clark, 2012).

Whilst the findings of the study are reported elsewhere (Hanna, 2021a, 2021b), one of the key conclusions of the research was that both young people's and teachers' uses and experiences of silence were contingent on the purposes and motivations for their use. The consequences, intentional or otherwise,

were that young people's participation rights were contravened by the silences which also featured and manifested in epistemic injustice. A paradox emerged: uses of silence were both a contributing factor, and a consequence of young people's experiences of epistemic injustice, which served to obstruct their voices and expressions. Silence also emerged as a concept which imperceptibly shapes individual expression and opinion, and serves to construct young people's exercise of their right to participation in ways which serve to hinder their understanding, and others' understanding, of their experiences. Rising above these features of silence and epistemic injustice in participation were broader themes of injustice, power and respect: themes that Federle (1994, 1994b, 2017) argues are crucial for the legitimacy of children's rights theory, and which, of course, underpin long established human rights theory.

I make two core arguments in this article: first, that the reasons for the unease around children's rights cited by Stalford and Lundy (2020) lie partially in the wider social-imaginative understanding of children in society; and secondly, that whilst the field of childhood studies is extensively theorised, in the form of an epistemological turn to viewing children as 'active in the construction and determination of their own social lives, the lives of those around them, and of the societies in which they live' (James and Prout, 1990: 8; see also James, 2011; James and James, 2012), participation rights have not benefited from this theorisation, perhaps surprisingly, and have not, to date, been theorised as an entitlement. Such a theorisation demands a cogent framework that is customised to children's human rights and not adapted from their application to adult human rights theories. Whilst O'Neill (1988) argues that children should not have rights on the basis that they are not like other marginalised groups since their main remedy is to 'grow up', and Freeman (1992) counterclaims that in the case of children's rights, the interest theory is more coherent and has greater explanatory power, I suggest that the theorisation of participation rights will serve to endorse children's participation rights as an entitlement when understood through the lens of epistemology. I will apply Miranda Fricker's (2007) framework of epistemic injustice, tailored to children's participation rights, to present a new theory of participation rights.

3 Children's Participation Rights

3.1 *Article 12 CRC*

Participation is one of the guiding principles of the United Nations Convention on the Rights of the Child (UN, 1989) (CRC) which is a means through which to realise other rights (Hanson and Lundy 2017; Lundy *et al.*, 2019). These

participation rights are located in Articles 12, 13 and 17 of the CRC, although “participation” is mostly associated with Article 12. Participation rights are also enshrined in the right to freedom of thought, conscience and religion (Article 14), and freedom of association (Article 15), but this paper will focus on Articles 12, 13 and 17. The Committee, in its General Comment on Article 12, describes participation as:

Ongoing processes, which include information-sharing and dialogue between children and adults based on mutual respect, and in which children can learn how their views and those of adults are taken into account and shape the outcomes of such processes

UN, 2009: para. 3

The Committee have also pointed to Article 12 as a ‘fundamental value’ of the CRC (UN, 2009: para. 2) owing to the fact that it is not only a right, but should be considered in the implementation and interpretation of all other rights (UN, 2009: para. 2). Article 12 stipulates that:

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or appropriate body, in a manner consistent with the procedural rules of national law.

The complexity of Article 12 is partially attributed by Lundy (2007) to the fact that ‘due weight’ is explicitly linked to young people’s ‘age and maturity’ which normally depend on adults’ perceptions of children’s capacity that can lead to a ‘competence bias’ (Hinton, 2008). The exclusion of young people’s participation is furthered when competence is assumed to be an intrinsic quality rather than recognising it as relational and enacted (Le Borne and Tisdall, 2017; Tisdall, 2018). Despite frequent use of the terms competence and capacity in the literature, Tisdall (2018) notes that they have casual use, and are rarely used with definition; the term “maturity” is further used without precision (Fortin, 2009: 86). When young people are deemed “incompetent” their opportunities to participate are reduced and they are positioned in less powerful positions (Le Borne and Tisdall, 2017). In fact, incompetence can be used to *exclude* certain subjects from decisions (Ljungdahl, 2016). Children’s rights are most likely to be realised if fresh ideas about recognising and supporting capacity

are submitted which would address the concentration on children's competence in practice and literature, and not on adults' lack of competence in enabling children to participate, and supporting the evolution of their capacity (Tisdall, 2018; Le Borne and Tisdall, 2017).

Tisdall (2018) further argues that legal "capacity" is underpinned by concepts of competence which are not used with precision and is therefore not always clear in its relation to capacity. This awkward relationship between "capacity" and "competence" are partially addressed by Federle (1994), who reminds us that "capacity" is a core organising principle of Western rights thought and that an uncritical acceptance of capacity in relation to having and exercising rights not only weakens rights theory, but disadvantages and excludes children from the class of rights holders. If having rights is conditional on "capacity", then holding rights becomes exclusive whereby only claims by particular groups of "competent" beings are recognised. Indeed, the Committee has been clear in its stipulation that 'capable of forming his or her views' should not be seen as a limitation of Article 12, but as an obligation for States parties to assess the capacity of the child to form an autonomous opinion; States cannot begin on the assumption that a young person is incapable of expressing views, and it is not up to the young person to prove their capacity (UN, 2009: para. 20). The danger of such uses of the capacity principle is the positioning of those without the requisite "capacity" where their rights claims 'need not be recognised' (Federle, 1994: 344) which explains the problem identified by Stalford and Lundy (2020) of children's rights not being taken seriously. I suggest that this fixation with capacity in human rights demands a bespoke framework that attends to the "capacity" of children in demanding their rights – one based in epistemology, as I discuss below.

A number of models of participation have been suggested since the widespread and rapid ratification of the CRC. The earliest of these is Hart's ladder of participation (1992) which was adapted from Arnstein's (1969) community participation model. The ladder of children's participation was widely criticised for implying that participation occurs in a sequence, and that the different forms can be placed in a hierarchy, with a recent paper by Lundy (2018) suggesting that tokenism – which is not participation under Hart's model – *can* be valued in its own context. Indeed, Hart (1992: 11) himself criticised the use of his model as a 'measuring stick of quality' or a tool of evaluation and encouraged a move beyond the ladder. Subsequently, there has been something of a proliferation of participation models and typologies (for example, Franklin, 1997; Treseder, 1997; Lansdown, 2001; Shier, 2001; Lundy, 2007; see also Smith, 2007). Treseder (1997) rearranged the degrees of participation into a circular layout in recognition that different styles and activities of participation are

appropriate to different environments and relational contexts (Thomas, 2007). Franklin (1997), as well as adding to the ladder, rearranged the order so that the hierarchy ran from 'complete lack of power' to 'complete power on the part of children' (Thomas, 2007: 205).

Theories of participation largely only attend to Article 12, with one significant exception being Lundy (2007) who conceptualised Article 12 alongside other participation rights in the CRC under Articles 2, 3, 13 and 17. Yet, there remains something of a lacuna in children's participation for developing a theory of participation that captures the positioning of young people and adults in various roles, the power implications of these roles, and the structural and institutional implications which facilitate and produce young people's views, opinions and expressions. Lundy's (2007) theorisation of children's participation rights stemmed from the student voice discipline, and while it implicitly acknowledges silences around young people being heard, alludes to silence in emphasising the necessity of taking account of non-verbal expression, and recognises that there is 'no guarantee that their views will be communicated' to adults (937), the children's rights discipline more broadly has overlooked voices that are unspoken or silent.

3.2 *Articles 13 and 17 CRC*

Despite the dominant attention on Article 12, participation cannot be considered in isolation from the package of participation rights in the CRC, and especially relevant in this regard is the right to freedom of expression under Article 13, in tandem with Article 17 'access to information and material' (Lundy *et al.*, 2019). The right to freedom of expression is often confused with Article 12 however, and while the Committee acknowledge that they are linked, 'they do elaborate different rights' (UN, 2009: para. 81). Effective implementation of Article 12 relies on state obligations under Article 13 (Lundy *et al.*, 2019; UN, 2009: para. 80–81). This distinction lies in the right of young people not to be restricted in the opinions she or he holds and expresses, thereby placing an obligation on States parties not to interfere in the expression of those views or access to information, subject to necessary restrictions provided for in law. Article 12, however, relates to the expression of views specifically about matters that affect young people and the right to be involved in decisions which impact a young person's life. Article 12 imposes a duty to introduce a legal framework necessary to facilitate active participation of young people in all matters affecting them, and to give them due weight. Therefore, although Article 12 involves an active obligation to facilitate the expression of views and to give them due weight, Article 13 places an obligation on the state and state actors to refrain from interference in the expression of a child's views:

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any media of the child's choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - a. For respect of the rights or reputations of others; or
 - b. For the protection of national security or of public order (order public), or of public health or morals.

Beyond its instrumental value, the right to freedom of expression is considered to be a crucial component of human dignity and central to self-fulfilment and autonomy of individuals (Tobin and Parkes, 2019). Yet, social expectations about children and their capacity have marginalised the relevance of this right for children and denied them the structures and mechanisms to enjoy this right to freedom of expression (Tobin and Parkes, 2019). Without these structures and mechanisms, of course, children's expressions remain silent. Moreover, the 'information of all kinds' under Article 13 is not limited to statements of fact, but includes opinions, criticisms and speculation regarding validity (Tobin and Parkes, 2019). Whilst Langlaude (2010) calls into the question the value of Article 13, and argues that Article 13 has been poorly interpreted by the Committee to add little meaning to children's right to freedom of expression specifically, the Committee is clear that both Article 13 on the right to freedom of expression and Article 17 on access to information are 'crucial prerequisites for the effective exercise of the right to be heard', because alongside Article 12, 'they assert that the child is entitled to exercise those rights on his or her behalf, in accordance with her or his evolving capacities' (UN, 2009: para. 80).

Generally, the right to seek and receive information has been understood as a right to access information held by public authorities, yet, critically, according to Tobin and Parkes (2019), the right to seek information under Article 13 denotes an 'active inquiry' on the part of the child. This aspect of children's participation rights, therefore, equips young people with the tool, indeed the power, of being "informed" and has, perhaps, an implicit reference to agency and autonomy, instead of "capacity" (Tobin and Parkes, 2019). Shaub (2012: 209) argues that in terms of expression, 'children use media and other expressive outlets to listen to, and participate in, expression that entertains and satisfies them ... [and] to experience the autonomous pleasure and emotional fulfilment of catharsis' which, Tobin and Parkes (2019) suggest, offers something not captured by Article 12: expression that is not burdened or limited by creation of dialogue with adults. Lundy (2018) makes a similar argument when she points out that even if Article 12 is not complied with, Article 13 still

exists, and is not dependent on decision-making. As such, Article 13 allows for young people to express themselves through a medium of their choice, about a subject of their choice but also allows for the possibility that this expression need not be in communicable form and is not 'encumbered by the need for a conversation' (Tobin and Parkes, 2019: 473). The state should take measures to 'respect, protect and fulfil' this right (Lundy, 2018: 344). This enables young people to discover their own identities and explore affective and cognitive states through whichever medium they wish to adopt – a liberating understanding of the right to freedom of expression (Tobin and Parkes, 2019) which opens space for expressions that take place in and through silence.

4 The Role of Silence and Children's Social Identities in Participation

Fricker's (2007: 1) framework of epistemic injustice proceeds on the premise that there is a distinctly epistemic kind of injustice: 'a wrong done to someone specifically in their capacity as a knower'. The root cause of epistemic injustice is structures of unequal power and prejudice which exclude some, but not others, from participation in knowledge practices. Crucial to this framework is the social imagination: a shared social resource which holds broad conceptions of the social identities of individuals, and informs how they participate in operations of power. Identity power is a form of social power which is 'directly dependent upon shared socio-imaginative conceptions of the social identities of those implicated in the particular operation of power' (Fricker, 2007: 4). This social imagination operates at the level of shared conceptions of what it is to be, for example, a black person, a woman, or a child, for example, and each social identity carries a set of assumptions about how that identity is to be treated by other social types, and society generally.

One type of social power is particularly significant in this regard: what Fricker calls *identity power*. It is not only practical coordination with another's actions that defines social power, but an imaginative social coordination whereby certain operations of power are dependent upon individuals having shared conceptions of social identity such as 'what it means to be a woman or a man, or what it means to be gay or straight, *young or old ...*' (Fricker 2007: 14, emphasis added). Identity power is crucial to Fricker's conceptual framework because epistemic injustice is concerned with how such power is involved in exchanges through which knowledge is imparted from speaker to hearer; power is deployed through 'shared imaginative conceptions of social identity' (Fricker, 2007: 14), such as being a woman, being LGBTQI+, or being a child, for example. This identity power operates at both structural (hermeneutical)

and individual (testimonial) level, and is an expansive resource owing to its capacity for directly informing thought, independently of beliefs, that may be tainted by prejudice.¹ Fricker's framework does not mention children or young people, and this article will apply her framework to children to advance the theorisation of children's participation rights.

Fricker (2007) identifies two forms of silence with regard to participation: epistemic "objectification" and "pre-emptive silence". Epistemic objectification occurs where the subject is 'ousted' or excluded from the role of participant in the exercise of the capacity for knowledge, and relegated to 'passive bystander' (Fricker, 2007: 132); the subject is unable to participate and is therefore demoted from subject to object. This exclusion confines the subject to a role in which she is a source of information only (Fricker, 2007). This serves to wrong someone in their capacity as a knower by confining them to a 'passive capacity as a source of information' (Fricker, 2007: 132). Pre-emptive silence occurs, according to Fricker (2007: 130), in a 'tendency for some groups simply not to be asked for information in the first place'; this information includes 'their thoughts, their judgements, their opinions'. The epistemic injustice of such "advance" silencing has direct implications for young people's participation rights because the 'not being taken seriously' precedes the seeking of views and opinions, and young people are not free to impart ideas and express themselves.

The operations of identity power can therefore control whose contributions are expressed, whose are not, and whose are expressed in and through silence: both through objectification and pre-emptive silences. Fricker (2007: 171–172) urges that such silences require a more socially aware, and remedial, kind of listening: 'listening as much to what is *not* said as to what is said' which resonates with young people's participation rights. These silences illuminate participation rights because it is silence that occludes realisation of the right to freedom of expression not only in imparting knowledge, but also in seeking, receiving and imparting information, and access to information for the opinions held. MacDonald (2011) acknowledges that full application of children's right to freedom of expression is still evolving, but it encompasses the freedom to manifest an opinion and the liberty to believe differently to others (Van Bueren, 1998); a freedom that young people are not, perhaps, frequently afforded. Fricker's objectification silence also legitimises and explains why young people have the right to participate, and the right to be consulted on matters which affect

1 Fricker's use and application of "prejudice" in her framework will be discussed later in this article.

them in particular under Article 12. Under objectification, young people are reduced to informants, from whom information is to be gleaned, rather than as inquirers, and are excluded from participating in sharing knowledge. This relegates them to passive sources of information, and their right to freedom of expression is contravened as their right to seek, receive and impart information is restricted. This deprives young people of a ‘fundamental sort of respect’ (Fricker, 2007: 132) – a rights entitlement – which resonates with giving young people’s views ‘due weight’ under Article 12. This due weight is assessed against age and maturity, which helps to explain why young people, when they do explain their situations and experiences, are dismissed with deflated credibility. The operation of both objectification and pre-emptive silences can, therefore, control whose contributions are expressed, whose are not, and whose are expressed in and through silence.

5 A New Theory of Participation

There are two forms of epistemic injustice presented in this framework which are considered in detail below: testimonial and hermeneutical injustice. I advance the idea that testimonial injustice attends to young people’s right to freedom of expression under Article 13 CRC, and that hermeneutical injustice attends to young people’s right to be heard and taken seriously under Article 12 CRC. I will begin by presenting testimonial injustice of individual exchanges and participation under Article 13 CRC because it is not only a ‘crucial prerequisite’ to participation under Article 12 (UN, 2009: para. 80), but because the negative obligations it comprises are frequently overlooked and overshadowed by the jurisprudence pertaining to Article 12 CRC. I will then present hermeneutical injustice as it pertains to participation rights more broadly, and consider the positive obligations of States Parties. Both forms should be considered together, however, in understanding the framework of epistemic injustice and its relevance to children’s participation rights.

5.1 *Testimonial Injustice*

Fricker defines testimony ‘in its broadest sense to include *all cases of telling*’ (emphasis added), including ‘when a speaker simply expresses a personal opinion to a hearer, or airs a value judgement, or tries out a new idea or hypothesis on a given audience’ (Fricker, 2007: 60); expressions that fall under the remit of Article 13 CRC. Testimonial exchanges are therefore those in which individuals participate in communication, and can be more or less formal and structured, including articulation ranging from silence and inchoate expression

to sophisticated discursive structures (Medina, 2013). Testimonial injustice arises where 'prejudice causes a hearer to give a deflated level of credibility to a speaker's word' owing to their social identity (Fricker, 2007: 1). Identity power is therefore central to testimonial exchanges because hearers use social stereotypes to make assessments of a speaker's *credibility* (Fricker, 2007).

For Fricker, the primary character of testimonial injustice is prejudicial credibility deficit, but such deflated credibility is connected via a common prejudice with other types of injustice, making the injustice systematic. Such prejudices include, for example, race, gender and age, but they are not isolated: they track a subject through 'the different dimensions of social activity – economic, educational ... political, religious' (Fricker, 2007: 27). The only type of prejudice that tracks a subject in this way is prejudice relating to social identity: what Fricker calls *identity prejudice* (27). This influence of identity prejudice on how a hearer bestows credibility (or not) is concerned with identity power because the influence of identity prejudice is a matter of one individual drawing on collective (social-imaginative) conceptions of social identities to prevent or obstruct another from sharing knowledge – silencing. For example, an adult may not allow a young person in trouble with the law to speak because of the prejudice against their identity as a young person as being disrespectful or uncontrollable. Young people are understood in the social imagination to lack credibility, and their social identities as lacking in capacity is a testimonial injustice that also occurs in silence when prejudice on the part of adults pre-empt any testimonial exchange with children.

This theorisation of children's individual expression and voice using testimonial injustice helps us conceptualise why young people have the right to freedom of expression in the first place, and the right to seek, receive and impart information and ideas of all kinds. The socio-cultural habits which surround the attribution of credibility, prejudice and marginalisation, inform rights theory in revealing something of an explanation for why children's participation rights are badly implemented, and also a justification for an alternative structuring notion of rights away from "capacity". Rights discourses must be reconstructed, argues Federle (1994), if we are to reconceive children's rights, by rejecting capacity as a structuring principle, and proposing instead to address imbalances in power in order to redress marginalisation and inequality. Rights theory must, therefore, attend to the connections between power, respect and participation. It is the sources of the power imbalances inherent in the social identity of children and young people, and their contingent identity powerlessness, that are addressed by applying Fricker's framework. Epistemic injustice captures the nature of participation rights for young people as entitlements, provides a justification for why they have these rights, worded in the

ways they are laid out in the CRC, and advances a means by which to restructure the theoretical rationale of participation rights in terms of both intelligence of, and access to, information in a way that does not return to adjudicating young people's capacities. Indeed, epistemic injustice helps to explain *why* children's participation rights have encountered such challenges.

5.2 *Hermeneutical Injustice*

Fricker's hermeneutical injustice is defined as 'when a gap in collective interpretive resources puts someone at an unfair disadvantage when it comes to making sense of their social experiences' (Fricker, 2007: 1). Hermeneutical injustice only arises when a subject cannot render an experience intelligible, either to themselves, or to another, and it is here that the unspoken nature of experience owing to hermeneutical injustice emerges: what I suggest might be more easily understood as a *structural silence*. Such structural silences involve no individual perpetrator and are therefore difficult to detect and identify. Hermeneutical injustice is of crucial significance not only because of its silences – but because of its orientation to participation, or the lack thereof.

The scope for participation rights to be implemented in a discriminatory manner emerges when we consider that not all participation is equal: this aptitude for participation to be mired by discrimination is a feature of Lundy's (2007) model. In Fricker's framework, when there is unequal hermeneutical participation, members of the disadvantaged group are *hermeneutically marginalised*, a phrase utilised to indicate the subordination and exclusion from full participation in a practice that would be beneficial for the participant. This unequal participation is concealed by existing meanings attributed to various behaviours by particular social identities; Fricker gives the example of repeated sexual propositions in the workplace which are explained away as "flirting" or as the female recipient "lacking a sense of humour" (Fricker, 2007: 153). These meanings disguise inequality and marginalisation, and are, therefore, very difficult to detect. For example, not creating consultation processes and spaces for children to express their views and opinions on matters that affect them may be justified by similarly deficit-framed explanations of young people 'lacking in discipline', as 'disrespectful' or 'immature', as 'having nothing to say', and assumptions that young people lack capacity or interest, rather than the failure of adults to facilitate building young people's capability or inclination to participate. According to Fricker (2007), the hermeneutical marginalisation that precedes exclusion from participation can be an effect of identity power because it is usually social groups who are less powerful, such as children, women and racial minorities, who suffer such structural marginalisation and so the discriminatory nature of hermeneutical injustice with

regard to participation becomes more clearly based in inequality. The prejudice held in the collective imagination affects people by virtue of their membership of a particular social group, and therefore in an aspect of their social identity. In this paper, this discrimination is against youth (age), but can also be against simultaneous identities of youth as LGBTQI+ or as ethnic minorities, for example.

Hermeneutical injustices take two forms: *systematic* and *incidental*. Incidental hermeneutical injustices are isolated occurrences and involve only fleeting marginalisation. I am concerned with systematic hermeneutical injustice, where collective forms of social understanding lack perspectives of certain social identities which prevents individuals with these social identities being able to render their social experiences intelligible. This must be of a socio-economic kind and, according to Fricker, entails non-participation in professions which demand significant hermeneutical participation such as law or journalism. The youth equivalent to this socio-economic component may be participation in consultative processes in schools or social work, or having their views taken into consideration in decision-making, or an over-emphasis on children's capacities to participate in such mechanisms. If this marginalisation persistently follows a subject through different social activities, then the injustices this brings are systematic and create a *lacuna* in the collective interpretive resource. That is, a lacuna, or silence, exists 'where the name of a distinctive social experiences should be' (Fricker, 2007: 150–151), for example, where women in the past did not have terms such as 'sexual harassment', 'postnatal depression', or, 'coercive control' to make sense of their experiences. I suggest that the restriction of rights to will and interest theories of rights, making it impossible to recognise children as rights holders without some reference to their capacity, is such a lacuna.

The danger inherent in hermeneutical injustices to children and young people is that if hermeneutically marginalised young people (who may also be members of other marginalised groups, for example, based on gender, race, sexuality or religion) attempt to articulate an experience to another, their word may warrant low credibility owing to its unintelligibility. This incoherence may be deemed 'proof' of the subject's lack of credibility or capacity and, crucially, this includes the form or expressive style in which communication is conveyed. An example of this might be an emotional, or perhaps aggressive, expressive style which results in a speaker not being heard as 'fully rational', in which case the speaker is subject to a hermeneutical injustice (Fricker, 2007: 161). One particular example of this with regard to children, is young people who have communication challenges such as intellectual disabilities or complex trauma, and who struggle to articulate what they wish to convey, or who speak in distinct

cultural terms such as Black or Asian communities where children learn to code switch. Applying Fricker's framework, young people's attempts at communicating their experiences are insufficiently understood because they may not have an adequate grasp on what they want to express, are misunderstood (or obscured by racism, sexism or homophobia), and are not heard as 'rational'. Their medium of expression may be inadequately understood, or simply not recognised, and this includes expressive styles that may be viewed as running contrary to acceptable (linguistically articulate) forms of voice such as use of vernacular, or non-verbal forms of expression, and who are thereby judged inept and consequently ignored or silenced. Therefore, 'voice' may be marginalised as 'morally immature' (Fricker, 2007: 160), or merely irrelevant. Such injustice brings secondary epistemic disadvantage: it tends to knock a subject's faith in their ability to make sense of the world, and to express this to others, thereby holding the potential to resign a young person to prolonged silence.

The application of hermeneutical injustice to young people addresses the under-theorisation of participation rights because it captures why these rights exist at all for young people. States parties' obligations under Article 12 demands their facilitation through formal channels of young people's views on matters that affect them as an entitlement. Yet, this can only work if the structural environment facilitates young people who wish to express and articulate their views, experiences and opinions; hermeneutical injustice captures the social scenario where young people may not be viewed as credible in doing so. It also highlights that the danger of focusing solely on what is voiced is to omit and overlook what may be ineffable because those who are struggling to make sense of their experiences are persistently unheard and their inchoate attempts at generating meaning is blocked or ignored by the wider structural environment in which they are positioned. Young people may also lack the hermeneutical resources by which to make intelligible what they know, or the linguistic resources with which to express themselves. It is in this way that hermeneutical injustice, and the consequent struggle against inexpressibility, may frustrate young people's right to express their views on matters that affect them, and to have those views given due weight.

5.3 *The Harms of Epistemic Injustice*

Medina (2013), similarly to Fricker, argues that a speaker can also be undermined in their capacity as a *producer* of knowledge: an inquirer and investigative subject who asks questions, evaluates knowledge, issues interpretations, probes and interrogates knowledge and opinions. Young people can be undermined in this way where they are only viewed as "informants" from whom to glean information (objectification) which undermines their Article 13 right

also to *seek* and *receive* information, or are not asked for their views and opinions at all (pre-emptive silence) which undermines their Article 12 right to be consulted about matters that affect them. When treated as informants, young people's capacity to convey information and impart knowledge is at the service of adult-centric questions, assessments and interpretations. When this is the *only* way in which young people are treated, there is 'no full and equal epistemic cooperation' (Medina, 2013: 92). This is because "informants" are permitted one form of communicative activity: passing and transmitting views and opinions. Assuming that silencing is avoided when subjects are treated as informants is myopic; their capacity as knowers can still be undermined and constrained because they are treated *merely* as informants with no equal footing which excludes them from 'formulating hypotheses, probing and questioning, assessing and interpreting knowledge and opinions' (Medina, 2013: 92).

Whilst such injustices may be easily identified on paper, Fricker (2007) suggests that it is in taking for granted spaces that clandestine occurrences of epistemic injustice occur, and in which they become normalised; none more so, I suggest, than for children. We rarely understand the epistemic objectification of children as an injustice perhaps because it is generally accepted as an institutional and societal inevitability. In occurrences of testimonial injustice, the harm to young people is in the undermining of their capacity to give knowledge to others, and the capacity for reason; a wrong that 'bears a social *meaning* to the effect that the subject is less than fully human' (Fricker, 2007: 44). Of course a secondary harm of such an injustice is that young people lose confidence in their ability to the extent that they lose confidence in their beliefs and their justification for their beliefs; they lose knowledge itself, considering that many conceptions of knowledge (or capacity for knowledge) have some form of 'epistemic confidence as a condition of knowledge, whether it comes in as part of the belief condition or as part of the justification condition' (Fricker, 2007: 49). This secondary harm has a causal constructive character: young people become what they are constructed to be; that is, lacking in 'capacity'.

Hermeneutical injustice is a form of structural discrimination where some groups, like children, are disadvantaged by the collective imagination, and are prejudicially excluded from participating and sharing in knowledge. This harm resides in the inability of a young person to communicate something that is in their interests to make known; there are interpretative obstacles to experiences being recognised, named and expressed. This injustice therefore affects young people differently in how they are silenced, depending on what adults want to keep concealed, unknown, or even what is simply not a priority. Like testimonial injustice, the harms of hermeneutical injustice also reside in the construction of selfhood: a child can be socially constituted as, and caused to

be, something they are not, and which it is not in their interests to be. Further harms exist in a young person's loss of faith in their own ability to make sense of their world: tantamount to structural and institutional gaslighting of children.

Christopher Hookway (2010) suggests that there are some cases where the injustices involved are not straightforwardly testimonial or hermeneutical, and that forms of epistemic activity are more diverse than testimony on one hand, and interpretation of social experience on the other (cf Fricker, 2010). Consequently, Hookway suggests that Fricker's account of epistemic injustice could give the impression that we need only take account of the impact of epistemic injustice on people's abilities to transmit knowledge or receive information; what he calls the "informational perspective". Of course, children's rights entitlements include the right to freedom of expression, and of information under Articles 13 and 17, but Hookway argues that it might be more enlightening to adopt a wider conception of what counts as participation (in the epistemological sense). Participation, according to Hookway (2010), is not a matter of merely exchanging testimony: 'it involves asking questions, floating ideas, considering alternative possibilities' (Hookway, 2010: 156); a foregrounding of these aspects in Fricker's construction where the examples she gives draw on *The Talented Mr Ripley* where Marge's alternative interpretation of a situation which is completely ignored because she is a woman, and *To Kill a Mockingbird* where Tom Robinson's alternative account is completely ignored by the prosecution and jury because he is black. Nonetheless, taking a participant perspective is useful here because it highlights that a young person is wronged not only because an adult gives deflated credence to their testimony (as is the injustice from the informational perspective), but because the adult does not recognise the young person as a participant in the debate (Hookway, 2010): a misrecognition which produces and reinforces silence.

The participant perspective is useful here because it demands a more specific and localised application of Fricker's framework to the experiences of children and young people. When young people's participation is influenced by the stereotypes and prejudices detailed under Fricker's framework, we treat the person specifically as a non-participant because prejudice can lead to a subject being perceived as a poor performer at the activities that are supposed to be definitive of their identity, and thereby the subject may be recognised as *unable* to participate (Hookway, 2010). The role of identity power in Fricker's framework is particularly salient here because I argue that children's rights are defined and implemented in a manner that simultaneously produces the identity of young rights-holders as lacking in capacity which impedes their right to be heard under article 12, and their right to freedom of expression under article 13 CRC. Fricker's concept of identity power helps to explain this: identity power

is dependent on shared social imaginative conceptions of the social identities of children as lacking in capacity, and unable to participate.

The distinction between a source of information and an inquirer reveals a denial of *respect* in the two forms of silence identified by Fricker: objectification and pre-emptive silencing. Particularly in the case of testimonial injustice, such silencing ‘wrongfully deprives the subject of a certain fundamental sort of respect, and the distinction between a source of information and an informant helps reveal this deprivation is also a form of *objectification*’ (Fricker, 2007: 132). These occurrences of testimonial injustice deny young people their entitlement to participation, and demotes them from subject to object (Fricker, 2007). Fricker (2007) goes as far as to suggest that such silences contradict ‘personhood’:

I think it is obviously an essential attribute of personhood to be able to participate in the spread of knowledge by testimony and to enjoy the respect enshrined in the proper relations of trust that are its prerequisite

FRICKER, 2007: 58.

Fricker (2007: 43) argues that the fact that testimonial injustice and prejudice can prevent speakers from putting knowledge into the public domain reveals such injustice as a ‘serious form of unfreedom’. Therefore, the fixation on children’s capacity finds itself in a double-bind: children lack the capacity to claim and exercise their participation rights, but the denial of their freedoms restricts their capacity to reason. This paradox is resolved when we theorise children’s participation rights as entitlements through the lens of epistemology.

6 Conclusion

Whilst rights are themselves a form of power, and enable challenges to subordination and oppression, rights rhetoric has also been used as a way of perpetuating hierarchy and exclusion (Federle, 2017). It is here that I suggest that the theorisation of children’s participation rights benefit from epistemic theorisation because the question is not one of children’s capacity, but of the prejudices and stereotypes held against children by adults. Federle (2017) argues that rights claims command the respect of others in society, and demands that individuals (children) are taken seriously as an indicator of dignity; this conceptualisation of children’s participation rights through epistemology presents participation as an entitlement to make claims and to have them heard.

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