

EXPLORING EPISTEMIC VICES  
IN THE FIDUCIARY: INJUSTICE  
AND BEYOND

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WP 533  
December 2021

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INJUSTICE AND BEYOND**

Centre for Business Research, University of Cambridge,  
Working Paper No. 533

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December 2021

## **Abstract**

The paper investigates epistemic vices in the fiduciary. Building on existing work exploring the presence of epistemic injustice embedded in the fiduciary, the paper examines the presence of another vice - epistemic hubris - and suggests how epistemic injustice acts as a capital vice within the context of the fiduciary, facilitating hubris to flourish. Three interrelated arguments are advanced. The first focuses on how the asymmetrical leader-follower dynamic within the fiduciary results in hubris. The second builds on this exploring how the lack of consultation with the beneficiary *alongside* deployment of specific economic epistemic goods to interpret the fiduciary results in additional hubris. The third draws the two together, arguing that as epistemic injustice creates conditions for both examples of hubris to flourish, it serves as a *capital* vice within the context of the fiduciary. Finally, safeguarding suggestions are outlined for how these epistemic vices could be avoided.

**Key words (6):** Fiduciary; Epistemic Vices; Epistemic Injustice; Epistemic Hubris; Capital Epistemic Vices; Financial Governance

**JEL Codes:** B11, B26, B54, G30, K12, K13, L14, L21

**Citation and referencing style:** Academy of Management Journal style guide.

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## BRIEF BACKGROUND AND STRUCTURE

This paper builds on and combines existing work investigating applied vice epistemology in organizations more generally (Baird and Calvard, 2019; Medina, 2021), with specific work looking at epistemic injustice within the legal concept of the fiduciary (Author, c). Having previously argued how the asymmetrical power dynamic that exists in the fiduciary - whereby the trustee is not required to consult with the beneficiary - constitutes what the philosopher Miranda Fricker (2009) refers to as pre-emptive testimonial injustice (Author, b), the focus here is on investigating another epistemic vice within the fiduciary - that of epistemic hubris. This epistemic vice is often located in contexts of power and is constituted of an inflated sense of epistemic privilege and pride, evidenced by arrogance and over-confidence. The objective of the paper is to investigate how the two epistemic vices may be linked within the context of the fiduciary, to argue that epistemic injustice acts as a *capital epistemic vice* (Kidd, 2017; Medina, 2021) within this context, or as a vice that begets others, and to provide some safeguarding suggestions for how this double-vice outcome could be avoided.

Following an introduction to the key concepts of vice epistemology - including capital epistemic vices - along with an outline of the fiduciary, three core arguments are advanced. The first extends previous work identifying the power dynamic in the fiduciary (Author b, c), where the Trustee is afforded decision-making authority over the beneficiary. Advancing Christopher Baird and Thomas Calvard's (2019) work on applied epistemic vices, including epistemic hubris in organizations, and in particular how leader-follower dynamics can result in epistemic hubris, this observation is applied to the fiduciary relationship, of trustee as leader and beneficiary as follower.

The second argument builds on the first by exploring how the lack of consultation with the beneficiary *alongside* the increasing use of specific economic epistemic goods to interpret the fiduciary, leads to the presence of additional *economic* epistemic hubris. The epistemic goods in question - namely economic theory and reasoning widely recognised to have dominated fiduciary interpretation and practice during the past forty years - is that of the neoclassical school of economic thought, of which the Chicago School of Economics<sup>1</sup> has been a key contributor. The deployment of such economic theory - reliant on methodology dominated by mathematical modelling and associated theories of economic agency such as rational choice theory - has arguably led to the erosion of ethical content in fiduciary arrangements (Author, d; Getzler, 2014; Johnson, 2002), in favour of reasoning claiming that the fiduciary is purely contractual. Drawing on critiques arguing that the persistent use of such methodology - even when shown to be erroneous - masks psychological issues including fantasies of control and supremacy (Bigo, 2008), the paper explores how the use of such

theory by trustees can result in an additional layer of economic epistemic hubris. The point is made that the epistemic injustice embedded in the fiduciary (resulting in the leader-follower dynamic) lays the foundation for this further layer of economic epistemic hubris to develop. Put differently, not only does the leader-follower dynamic facilitate epistemic hubris, but the fantasies of control and supremacy also go unchallenged, whilst *also* simultaneously leaving the premises of neoclassical economic theory uncontested by the silenced and unsought voice of the beneficiary. Thus the trustee remains unchallenged and the theory goes uncontested.

Drawing the two arguments together, a third is advanced, that in light of the recognition that the embedded epistemic injustice creates conditions for both examples of epistemic hubris to flourish, it can be concluded that epistemic injustice serves as a *capital epistemic vice* (Kidd, 2017; Medina, 2021) within the context of the fiduciary. With this conclusion in mind, the final section of the paper outlines safeguarding suggestions for how these epistemic vices could be avoided within the context of the fiduciary. A two-part programme of *epistemic activism* (Medina, 2018) to address institutionally embedded epistemic injustice is outlined. The first focusses on a reconfiguration of the epistemic power dynamic in the trustee-beneficiary relationship, whilst the second advocates a move away from the use of theories informed by neoclassical economic ideology such as Modern Portfolio Theory and contractarian theory, both of which have been widely deployed over the past forty years in fiduciary practice.

## KEY CONCEPTS

### *Vice Epistemology*

What is virtue and vice epistemology? What are the epistemic vices? A helpful explanation of this relatively underdeveloped sub-field of epistemology is outlined by Baird and Calvard who note that, “epistemic virtues and vices cannot simply be subsumed under the moral ones; *they revolve around specific issues of truth, reasoning, self-reflection, knowledge, and knowing.*” (Baird and Calvard, 2019: 265 - *emphasis added*) adding later that “*vice epistemology* is interested in those cognitive character traits and attitudes which obstruct the effective and responsible acquisition or transmission of epistemic goods.” (*Ibid.*). Crudely put, epistemic vices are blameworthy of getting in the way of knowledge and truth by producing either *bad epistemic ends* (i.e., falsehoods, incomprehension, fake news etc.) or via *bad epistemic motives* (i.e., exercising explicit biases etc.). That said, deeper debates amongst vice epistemologists also concern whether bad motives are in fact an essential component of epistemic vices, with Alessandra Tanesini (2018) asserting they are, whilst Qassim Cassam (2019) claims they are not, instead placing importance on the consistent obstruction of effective and

responsible enquiry as a core feature of epistemic vices. According to Baird and Calvard's account, bad epistemic ends are not alone sufficient to result in epistemic vice within the context of exploring ethical-epistemic issues in organisations. Instead, bad epistemic motives must also be present in order to qualify as an epistemic vice within the organizational context. They note that "vices get their negative values not simply by producing bad epistemic ends, but by also involving bad motivations and other blameworthy features of an agent's psychology." (Baird and Calvard, 2019: 266). On this last point, a word of warning is also offered - namely that when allocating blameworthiness and accounting for responsibility, it must be taken into account that epistemic agents do not live and work in social vacuums. They are socialized beings, exposed to different environments which shape their attitudes over time. With this in mind, agential responsibility for epistemic vices is likely to vary and change according to the situation they come to live and work in. This is a point requiring careful consideration in the context of organizational cultures such as those in the financial sector where the fiduciary plays a central role. The wider organizational culture within which an epistemic agent works should be taken into account when responsibility for epistemic vices is under consideration. Certain strong organizational cultures, such as those recognised as existing in finance (Author, a; McDowell, 1997), may be the very conditions in which "agents may carry a relatively low level of responsibility for possessing and exhibiting what appears to be epistemic vice." (Baird and Calvard, 2019: 266). The consequences of considering the effect of organizational culture on assigning individual responsibility for epistemic vice within the context of this article are two-fold. Firstly, the fiduciary is practiced by organizations due to legal requirements (although interpretations for practice are arguably open to contestation - a point returned to later), so the identification of any resultant epistemic vice - injustice, hubris, or otherwise - carries limited responsibility, i.e. agents are legally obliged to engage in activities which consistently have bad effects which are consonant with epistemic vices<sup>2</sup>. Secondly, organizational culture within certain financial institutions can include the wide-spread acceptance (and enforced use) of dominant economic theory that may consequently lay the groundwork for economic epistemic hubris to develop, so again, agents are culturally obliged to engage in epistemic vices. With this wider organizational context in mind - including both legal requirements and cultural factors - the focus on a programme of epistemic activism to ameliorate organizational issues leading to epistemic vices becomes more prominent. The site for change shifts from individual agency and responsibility towards an organizational one.

## Capital Epistemic Vices

Another aspect of vice epistemology requiring introduction is the concept of capital epistemic vices. Although this topic will be returned to in length when outlining the third argument for how epistemic injustice serves as a capital epistemic vice within the context of the fiduciary, a brief synopsis is beneficial at this stage. As with vice epistemology more generally, work in this sub-field is still underdeveloped, but contestations over the identification of capital epistemic vices - including necessary characteristics - still exist (Kidd, 2017; Medina, 2021). Drawing from work in the vice tradition more widely, Ian Kidd (2017) refers to Rebecca DeYoung's (2009) work tracing the history of the development of capital vices, to provide a steer for how capital epistemic vices can be defined and identified. According to DeYoung, the problem facing the vice tradition is that a list of seven vices was originally devised<sup>3</sup>, with this list becoming entrenched in vice thinking, referred to in religious texts for example as the seven deadly sins or the seven cardinal sins. This selection and choice of vices required a rationale and explanation - particularly in light of the fact that these are not the only seven vices, the worst vices, or indeed the most frequent. This is where the concept of capital vices comes into play - it provides such a rationale, with capital vices deemed to be source or origin vices, root vices from which other vices proliferate. As Kidd writes, "A capital vice, once in place, provides conditions in which a sub-set of offshoot vices can begin to develop." (Kidd, 2017: 13). The upshot of this rationale - and as will be more fully explored when outlining the third argument - is that the idea of capital vices, and subsequently capital epistemic vices lends itself well to designing a process of amelioration. Again, as Kidd notes, "DeYoung (2009, 34) explains that, in the vice tradition, 'the goal is to get to the problem's source, and root *it* out, thereby eliminating a whole host of related vices'. If one cuts off the offspring vices at their roots, they will, hopefully, wither and die." (Kidd, 2017: 13). With this in mind, it is the identification of the root source - the capital epistemic vice - that becomes crucial when seeking to resolve the presence of epistemic vices in organizational contexts (or otherwise), with such an identification being the central focus of this investigation.

## *The Epistemic Vices*

Before moving on to introduce the context of the fiduciary, an outline of some of the epistemic vices is required, with particular focus on those vices to be explored in the article - namely epistemic injustice and epistemic hubris. As previously mentioned, vice epistemology is a relatively under-developed sub-field of epistemology, where links between epistemology and ethics have only recently been investigated and developed (see de Bruin, 2013; Fricker, 2009). With this under-development in mind, it is important to note as Baird and Calvard highlight that “In terms of the prevalence and influence of epistemic vices, we have little clear understanding of what epistemic vices exist, why they are so prevalent, or what functions, needs, and motives they serve - particularly inside organizations.” (Baird and Calvard, 2019: 268). Whilst this paper does not seek to clarify the existence of any new epistemic vices, it does however seek to explain the prevalence of two particular existing epistemic vices, alongside offering suggestions for ‘what functions, needs, and motives they serve’. In addition, by crucially investigating the existence of epistemic vices within a legal concept deployed *by all* financial and business organizations - as opposed to focussing on (a) specific organization(s) - the scope of application of the findings is significantly increased, and considerations of how epistemic vices may be imported (and incorporated) into organisations via core conceptual interpretations are introduced.

### Epistemic Injustice

Sitting at the intersection of ethics and epistemology, the epistemic vice of epistemic injustice has received considerably more interest and attention following the publication of Miranda Fricker’s widely acclaimed book *Epistemic Injustice: Power and the Ethics of Knowing* (2009). Broadly speaking, the central tenet of epistemic injustice is “a kind of injustice in which someone is wronged specifically in her capacity as a knower” (Fricker, 2009: 20), with this knowing (or epistemic) capacity discredited due to an individual’s identity - an individual’s testimony is given less epistemic weight because of their social identity, e.g. their age, class, gender, race, sexual orientation, religion etc.

Less-well developed by Fricker - but still an equally important subset of epistemic injustice - is pre-emptive testimonial injustice. This is when an epistemic agents’ testimony is not *sought* - when it should be - due to prejudice based on their social identity, let alone discredited once articulated. The agent remains unconsulted, omitted from the dialogue or exchange, silenced and unsought. It is this subset of epistemic injustice that has been applied to the position of the unconsulted beneficiary in the fiduciary’s trustee-beneficiary relationship (see Author c), whereby the trustee is not legally obliged to consult with the beneficiary whose



best interests they serve. The implications of this asymmetrical power dynamic (Author b) embedded in the fiduciary relationship, and the pre-emptive testimonial injustice on which it pivots, is a point to be developed in greater length in the first argument in section two.

## Epistemic Hubris

As noted earlier, the epistemic vice of epistemic hubris is often located in contexts of power. It is constituted of an inflated sense of epistemic privilege and pride, evidenced by arrogance and over-confidence. According to Baird and Calvard (2019), epistemic hubris can manifest in two different ways. The first involves an epistemic agent incorrectly concluding they have epistemic authority or superiority over others when they in fact do not - i.e. that their knowledge is superior. Conviction plays a crucial role here. As Baird and Calvard note, “it is not simply an error of judgment which qualifies epistemic hubris as an epistemic vice. It is of course possible to misjudge a situation or to be incorrect without being hubristic. It is the agent’s conviction of their infallibility and epistemic superiority that is constitutive of this vice.” (Baird and Calvard, 2019: 270). This first manifestation of epistemic hubris will be returned to when outlining the second argument for economic epistemic hubris in the fiduciary.

The second manifestation of epistemic hubris “is the conviction that one has the right or privilege not to know, or not to need to know (Tanesini 2016).” (*Ibid*). Examples of this form of epistemic hubris can be located in leader-follower dynamics, where an epistemic agent is placed in the position of leader with power over others. This second manifestation of epistemic hubris that will be returned to when outlining the first argument for how the trustee-beneficiary epistemic power dynamic (with embedded epistemic injustice) delivers epistemic hubris.

## *The Fiduciary*

Fiduciary, from the Latin *fidūcia* meaning “trust,” plays a fundamental role in all financial and business organisations, as well as governing other professional relationships, including medical care. Fiduciary acts as a safeguard of the relationship between trustee and beneficiary, ensuring that the beneficiaries’ best interests are met. The need for such a legal safeguarding device becomes clearer when taking into account that trustees are not legally required to confer with beneficiaries regarding these best interests. As the lawyer Benjamin Richardson writes “[beneficiaries] traditionally have not enjoyed unqualified rights to be consulted or to instruct trustees on how they should undertake their responsibilities in the absence of legislative provisions.” (Richardson, 2011: 6).

The conceptual evolution and history of the fiduciary also provides a helpful steer on its structure and present day use. Originally formulated within English common (familial) law to protect property put into Trust whilst the then rightful (male) owner was absent, for example away fighting Crusades, the fiduciary was a way of transferring the legal title of estate/property into the trust of the trustee, for the benefit of a beneficiary, whilst not conferring ownership per se of the property to the trustee. Richardson's work is helpful again here, noting that, "trusts arose in England primarily to protect family wealth and to provide for the wife and children, who were socially constructed as passive and dependent. Modern investment law transplanted these arrangements for the private trust into a very different context." (*Ibid*). It was this original social construction of the beneficiary as passive and dependent, the subsequent silencing of their testimony resulting in their positioning as an unconsulted party, *and* the recognition of the resultant asymmetrical power leader-follower dynamic (Author b) which flagged the presence of epistemic injustice embedded in the fiduciary. This is a point explored in length elsewhere (Author c) and returned to in the following sections. It is however the specific issue of how this epistemic injustice identified as embedded in the structure of the fiduciary *also facilitates* epistemic hubris that is of interest here, and to which we now turn.

#### ARGUMENT 1:

#### EPISTEMIC HUBRIS AND THE LEADER/FOLLOWER POWER DYNAMIC

This first argument for how epistemic injustice facilitates epistemic hubris in the context of the fiduciary concerns the structure of the fiduciary relationship, and the status of the trustee and beneficiary in relation to each other. As briefly outlined above, and as detailed in full elsewhere (Author b), the trustee and beneficiary relationship is *premised on* a power asymmetry - the trustee may be tasked with serving the beneficiaries' best interests, but they need not consult with the beneficiary as to what these are. The trustee has full decision-making power and authority and this relationship dynamic arguably places the two parties in the positions of trustee as leader and beneficiary as follower. When this situation of the beneficiary remaining unconsulted - or essentially silenced and unsought - is interpreted using Miranda Fricker's (2009) theory of pre-emptive testimonial injustice (whereby an epistemic agent's testimony is not sought due to their identity and social status), we can see how there is epistemic injustice at play (Author c). However, the epistemic injustice delivered by the trustee-beneficiary power asymmetry is not the only epistemic vice that can emerge from such leader-follower dynamics - epistemic hubris can also result from such relations. Directly picking up on this point, Baird and Calvard make the following observation:

“Feelings of power can reduce empathy, compassion, and attentiveness to others (Van Kleef et al. 2008), and leader-follower dynamics and distances may reinforce a leader’s privileges to not know or care about matters deemed trivial or beneath them (e.g., Gabriel 1997). Thus, not only do the epistemically hubristic make deliberately false inferences about the limits of their knowledge, they may also infer that some areas of (important) social inquiry or knowledge acquisition are not worth being known, or simply beneath their consideration.”  
(Baird and Calvard, 2019: 271 - *emphasis added*)

It is important to recall that two types of epistemic hubris exist. The suggestion here is that the leader-follower dynamic delivers the second kind, where the epistemically hubristic agent bears the conviction that as a leader (and supposedly in a superior position) they have the *right not to know*. This is an interesting and alarming observation in light of the fact that in the context of the fiduciary, trustees are not only automatically positioned as leaders, but they are also legally not obliged to engage with the follower/beneficiary. Indeed, the very construct of the relationship is premised on them *having the right* not to need to ask or consult with the beneficiary. In this way, it could be argued that the fiduciary is an exemplar of the statement that “epistemic hubris undermines a growth in epistemic goods.” (Baird and Calvard, 2019: 271), with said epistemic goods being the beneficiaries’ testimony. This undermining of epistemic goods and negation to consult also removes the possibility of hearing resistance or contestation - a point made elsewhere (Author d) and returned to in the following section regarding economic epistemic hubris.

Here then is a seemingly structurally self-perpetuating process for generating epistemic hubris, for as José Medina notes, “When whatever one says, goes - because one’s word is the law or the truth others are bound to uphold and abide by - there is a complete lack of resistance from the world and from others that gets in the way of knowledge acquisition.” (Medina, 2013: 33). The internal dynamics of the fiduciary, with the trustee automatically positioned as the leader and with the beneficiary as a silenced follower, arguably sets the perfect conditions for epistemic hubris to flourish.

### *Onus on the Organizational - Not the Individual*

The upshot of the above is a clear focus on the organizational structure and power asymmetry embedded in the fiduciary relationship, as opposed to placing an onus on the individuals positioned as leader or follower. As such, this organizational analysis of the development of epistemic hubris within the context of the fiduciary aligns with the work of Dennis Tourish (2020), who advances an organizational theory of hubris. But it also takes Tourish’s analysis a little further, providing a deeper explanation for why some organisational environments (or

cultures) such as finance are more prone to hubris - epistemic or otherwise. Tourish's project is concerned with how the development of hubris can be facilitated by organizational dynamics. He presents a contrary response to the existing hubris literature which often places individual psychological traits as central in the development of hubris, as opposed to external factors. Focussing on the financial crisis of 2008 and the work undertaken to examine to what extent hubris was responsible, he notes that "Sadler-Smith et al. (2017) describe hubris as an acquired disorder and stress its situation-specific (i.e. organisational) antecedents. Moreover, some environments – such as finance and banking – may provide a more hospitable climate for its emergence than others." (Tourish, 2020: 92). What Tourish does not draw out is the central role that the fiduciary plays in the finance and banking sectors, or the extent to which agents are automatically placed in positions of fiduciary leadership. *This is a keystone observation.* It drives home the point that individuals working in positions of trusteeship in finance - who are not necessarily in positions of people management - are also in positions of leadership, with their followers (beneficiaries) essentially silenced in the fiduciary arrangement. The conditions for a more hospitable climate for hubris to emerge - epistemic or otherwise - are arguably set by the epistemic injustice embedded in the fiduciary, a point returned to later when outlining the third argument for how epistemic injustice serves as a capital epistemic vice in the context of the fiduciary.

In light of this organizational and structural explanation of epistemic hubris, we would do well to recall from earlier the caution highlighted in relation to responsibility and allocations of blame for epistemic vices. If the trustee develops 'the conviction that one has the right or privilege not to know, or not to need to know' (the second type of epistemic hubris), then the fact that this very conviction is embedded in the structure of the fiduciary relationship must be taken into account when considering accountability for development of further epistemic hubris.

ARGUMENT 2:

## EPISTEMIC HUBRIS AND NEOCLASSICAL ECONOMIC THEORY

The focus now turns to investigating how the first sort of epistemic hubris develops in the context of the fiduciary. To recall from earlier, "those agents who possess this first kind of epistemic hubris indulge in a kind of delusional cognitive omnipotence (Spengler, 1972). They over-exaggerate their knowledge claims and frequently misjudge the realities of the situation (Claxton et al., 2013)." (Baird and Calvard, 2019: 270). There is a conviction of epistemic authority or superiority over others, with the additional qualification that "It is the agent's conviction of their infallibility and epistemic superiority that is constitutive of

this vice” (*Ibid*). As will become apparent, these definitional statements regarding characteristics of the first sort of epistemic hubris carry even more weight when we consider similar critiques levelled against practitioners who persistently use neoclassical economic theory and its methodology, even when its application and methodological underpinnings have consistently been shown to be erroneous. Such critiques include accusations of epistemological domination (fantasy of supremacy) and ontological delusions (fantasy of control) (Bigo, 2008), both of which seemingly mirror the first sort of epistemic hubris’s listed characteristics of ‘epistemic superiority’ and a tendency to ‘misjudge the realities of the situation’. These fantasy claims and their links to epistemic hubris in the fiduciary are introduced in more detail below, but before moving on, it is important to briefly outline how neoclassical economic thinking is used in the context of the fiduciary, in order to motivate the following analysis.

As highlighted in the introductory background section, the use of neoclassical economic theory - and theory from other disciplines influenced by such thinking, i.e. legal theory - is widely recognised to have dominated fiduciary interpretation and practice during the past forty years. The recognised long-term impact and implications of such sustained use - including the erosion of ethical aspects of the fiduciary - have been commented on in detail elsewhere (Author, a, b, d; Getzler, 2014; Johnson, 2002; Laby, 2005; Lydenberg, 2014) and will not be discussed here. It will instead be beneficial to outline two core deployments of neoclassical thought in the context of fiduciary practice, to illustrate how the theory has become embedded in practice. The use of both of these fields of theory in the context of the fiduciary have been detailed in full elsewhere (Author d), but as brief introduction these are: i) modern portfolio theory (MPT) (devised by the Chicago School of Economics professor Harry Markowitz) as used by investment professionals i.e. trustees, to guide investment strategies, and ii) contractarian law (influenced by the work of Chicago School of Economics professor Ronald Coase), which claims the view that fiduciary relationships are purely reducible to contract law and without any ethical component. With these theories having been devised/influenced by neoclassical economists, it is safe to conclude that the methodology (and its underpinnings - epistemological and ontological) of both theories involves a combination of the use of mathematical modelling, and/or associated theories of economic agency such as rational choice theory. According to some scholars (Bigo, 2008; Lawson, 2013) it is the determined dominant use of such methodology (even when shown to be erroneous) which defines the school of neoclassical economics, and it is the investigation of the reasons behind this persistent use which forms the focus of Vinca Bigo’s work, which we now turn to in order to investigate the development of the first sort of epistemic hubris in the fiduciary.

## *Economic Epistemic Hubris - Fantasies of Control and Supremacy*

Before setting out Bigo's claims, it is important to reiterate the connection proposed here between the second sort of epistemic hubris (privilege not to need to know based on one's position of superiority) as generated by the leader-follower dynamic outlined in the preceding argument, and the first sort of epistemic hubris (that one's actual knowledge is superior) resulting from use of neoclassical economic theory in fiduciary practice. The crucial connection is that due to not being required to consult with the beneficiary, the embedded trustee's position of leadership superiority (i.e., not to need to know) reinforces the position that their actual knowledge is superior, with this knowledge importantly going uncontested and unchallenged due to the leader-follower dynamic. As we shall see, these structural conditions set within the fiduciary dynamic for epistemic hubris to manifest have also presented an opportunity for additional *economic* epistemic hubris to flourish via the contemporary extensive use of neoclassical economic theory in fiduciary practice, theory which, as we shall now see, has internal conditions of its own for epistemic hubris to flourish.

Setting out to solve what Bigo refers to as the puzzle of mainstream (neoclassical) economics dominant choice of methodology in the face of adverse evidence, she unpacks the perceived problem further, noting that, "It is correct to characterise the mainstream according to its insistence on mathematical modelling. But this has two central aspects: the exclusive use of the method and its content. The one relates to the perceived superiority of those who employ mathematical methods over those who do not; the other relates to the perceived attainability of successful event prediction. We have here not one but two problems or conditions, which earlier I characterised as those of *epistemological domination* and *ontological delusion* (or *inherent omniscience*), respectively." (Bigo, 2008: 543 - *emphasis added*). Drawing on object relations theory from psychology - whereby objects are used by both children and adults as coping or defence mechanisms to manage anxiety - Bigo explains this situation of *epistemological domination* - or perceived superiority based on one's use of particular mathematical methods - as a *fantasy of supremacy*. Similarly, the *ontological delusion* of perceived successful event prediction supposedly offered by modelling is likewise explained as a *fantasy of control*, with both aspects combining together to present as an *inherent omniscience*, one defended by its proponents for deeper psychological reasons.

The benefit of applying Bigo's psychological explanation to elucidate how *economic epistemic hubris* manifests in the fiduciary is clear. As briefly touched upon earlier, her critical analysis offers an explanation in language that almost mirrors the definition of first order epistemic hubris, which, to recall, states that 'those agents who possess this first kind of epistemic hubris indulge in a kind of

delusional *cognitive omnipotence* [inherent omniscience] ...*They over-exaggerate their knowledge claims* [epistemological domination] *and frequently misjudge the realities of the situation* [ontological delusion].’ Although Bigo does not explicitly connect her psychological analysis to the realms of ethics and epistemic vices, and by doing so flesh out issues of epistemic hubris brought about by the epistemological domination and ontological delusion she outlines, the groundwork is in place to do so. That piece of the puzzle is put in place here, and whilst this connection to epistemic hubris has been made in the context of the fiduciary, the implications are much wider, raising issues of epistemic hubris in the mainstream neoclassical economics profession more broadly.

### Compounding Economic Epistemic Hubris – The Fiduciary Context

Having set out the argument for how the first sort of epistemic hubris (ones knowledge as superior) manifests in neoclassical economics, a final point requiring elaboration is how the context of the fiduciary compounds this economic epistemic hubris. As previously outlined, whilst trustees are required to act in the best interests of beneficiaries, they are not required to consult with them. This is the leader-follower dynamic that leaves the beneficiary silenced and unsought. By way of extension, this is the same dynamic that leaves not only the trustee’s (over-exaggerated) knowledge claims uncontested and unchallenged - thereby adding to the epistemic hubris - but the presuppositions of neoclassical economic theory (and its methodology) used for fiduciary practice also go unchallenged, including, for example, rational choice theory (see Author d). In this way, both the fantasies of supremacy and prediction go unchecked, and epistemological domination and ontological delusion continue unabated.

### *As Before, Onus on the Organizational - Not the Individual*

There is also a final note to add here again regarding culpability for economic epistemic hubris. As has been outlined above, this specific kind of the first sort of epistemic hubris in the fiduciary is present due to the extensive use of neoclassical economic theories in fiduciary practice, including in the forms of modern portfolio theory and contract law. Individuals using these theories are working in organizations and institutions where their use is expected and widely embedded. This again highlights how the development of epistemic hubris is facilitated by organizational dynamics (Tourish, 2020), and places an onus for blame on the organization - including theoretical preferences, processes, and structures - and less so on the individual.

## ARGUMENT 3:

### EPISTEMIC INJUSTICE AS A CAPITAL EPISTEMIC VICE

The final step is to explore links between the two sorts of epistemic hubris identified and the structural condition of the fiduciary that gives rise to them. This structural condition - namely of the trustee positioned as leader not being required to consult with the beneficiary positioned as follower - has been shown to be a source of epistemic injustice (Author c). With both sorts of epistemic hubris (superior position and superior knowledge) facilitated by the leader-follower dynamic, epistemic injustice in the context of the fiduciary is arguably serving as a capital vice, recalling from earlier that “A capital vice, once in place, provides conditions in which a sub-set of offshoot vices can begin to develop.” (Kidd, 2017: 13). This claim does however require further elaboration, in order to ensure that capital epistemic vice criterion are met in other ways too.

#### *Identifying Capital Vices*

Outlining what he sees as universal criteria to be met, Kidd writes that “Built into the idea of capital vices is a principle that to possess an offshoot vice is always to possess, even if only in a subspecific form, a capital vice.” (Kidd, 2017: 14). Although Kidd does not elaborate on what constitutes a subspecific form, the implications of Kidd’s statement is that epistemic hubris must **always** entail the possession of epistemic injustice (in some subspecific form) *and* be generated from it within the context of the fiduciary. Put differently, does epistemic hubris always entail wronging another epistemic agent in terms of their credibility and capacity as a knower? (i.e. epistemic injustice). Using the definitions of the two sorts of epistemic hubris outlined by Baird and Calvard, both manifestations would appear to indicate that the denial of another knower’s capacity is indeed involved. In the first sort - where an epistemic agent perceives their knowledge as superior - this crucially entails, according to Roberts and Wood (2007), making a “false inference about the state of one’s knowledge and expertise *relative to others*.” (Baird and Calvard, 2019: 270 - *emphasis added*). This indicates that the denial of another knower’s capacity is involved - the ‘quality’ of their knowledge is wronged and deemed inferior. In the second manifestation - where according to Tanesini (2016) epistemic agents assume they have “the right or privilege not to know, or not to need to know.” (*Ibid*) - this also involves denying other epistemic agents in their capacity as a knower. Here the epistemic agent in the position of superiority does not even seek the knowledge of the other and we see a very direct (i.e. non subspecific) form of epistemic injustice known as pre-emptive testimonial injustice at play. We can then conclude that the two sorts of epistemic hubris *do* always contain epistemic injustice in some subspecific form.



Medina (2021), however, challenges the universalist subspecific criteria approach of the kind proposed by Kidd and instead places onus on particularity and contextualized consequences. Medina writes; “Rather, the distinction is a practical and functional one that has to be drawn case by case by looking at how the epistemic vice in question *functions* holistically within the subject or institution that has it and within particular contexts, and by looking at what the epistemic vice *does* epistemically to the subject or institution in question as well as to others whom it affects.” (Medina, 2021: 112). Recognising that guidelines for distinguishing a vice from a capital vice are still however required, Medina proposes two contextualized criteria to assist with the distinction process. He suggests that capital epistemic vices be assessed:

“(1) according to the scope and depth of the epistemic disablement that the vice produces in the subject or institution that exhibits it (epistemic self-harm); and (2) according to the scope and depth of the epistemic harms that it produces for others in (or through) the relevant epistemic interactions. We can say that an epistemic vice has become *capital* for a particular subject or institution in a particular context if (1) the vice leads to forms of epistemic disablement that obstruct epistemic well-functioning and *derail epistemic cooperation*; or (2) the vice leads to *epistemic interactions that endanger the epistemic dignity and agency of others in important ways.*”

(Medina, 2021: 112 - *emphasis added*)

Using Medina’s criteria, the epistemic injustice identified as embedded in the fiduciary architecture arguably results in both outcomes. To elaborate further, the position that beneficiaries “traditionally have not enjoyed unqualified rights to be consulted or to instruct trustees on how they should undertake their responsibilities in the absence of legislative provisions.” (Richardson, 2011: 6) has intentionally and directly *derailed epistemic cooperation*. In addition, this consistent non-consultation arguably results in *epistemic interactions that endanger the epistemic dignity and agency of others in important ways*. This is because epistemic injustice “sends the message that they [epistemic agents] are not fit for participation in the practice that originally generates the very idea of a knower.” (Fricker, 2009: 145), and this delivers the long-term normative effect of reinforcing beneficiary apathy (Author c). Consequently, irrespective of which criterion is selected, the above demonstrates that epistemic injustice within the context of the fiduciary meets the requirements for being a capital epistemic vice. A benefit of concluding epistemic injustice is a capital vice in the context of the fiduciary is that the idea of capital vices - and subsequently that of capital epistemic vices - lends itself well to designing a programme of amelioration. To recall from earlier ‘the goal is to get to the problem’s source, and root *it* out, thereby eliminating a whole host of related vices’. If one cuts off the offspring vices at their roots, they will, hopefully, wither and die.” (Kidd, 2017: 13). It is

to such a programme of ameliorating activity specifically utilising Kidd's 'offspring' definition that we now turn.

## SAFEGUARDING SUGGESTIONS AND EPISTEMIC ACTIVISM

The preceding sections have outlined two arguments for how two different sorts of epistemic hubris manifest in the fiduciary. A third argument has also shown how such hubris is facilitated by the fact that the beneficiary does not enjoy "unqualified rights to be consulted or to instruct trustees on how they should undertake their responsibilities in the absence of legislative provisions." (Richardson, 2011: 6) - a fact that has been shown to result in epistemic injustice (Author c), and which establishes a leader-follower power dynamic and structure in the fiduciary (Author b). This recognition of the role that organizational environment plays in facilitating hubris - as opposed to purely an individual's psychological traits - was touched on previously via the work of Tourish, who, rather than focussing specifically on epistemic hubris, is more concerned with hubris more generally. The connection between organizational structures and epistemic vices has however explicitly been made by Boudewijn de Bruin, who also focusses on the same financial context under discussion here. As Baird and Calvard note, "In discussing epistemic virtues within the financial services industry, de Bruin (2015) contends that *corporate* epistemic virtues and vices matter. He sees such things as organizational functions, decision-making structures, corporate culture, and sanctioning systems as loci of corporate epistemic virtue and vice." (Baird and Calvard, 2019: 267). However, where the argument outlined in this paper goes further than de Bruin's observation is by locating epistemic vice within an 'external' legal concept, per se, one widely used and internalized by the organization, which *in turn* informs organizational decision-making *alongside* contributing to corporate culture. In addition, and of particular importance considering the widespread use of the fiduciary, is the argument developed for the existence of a capital epistemic vice embedded within its structure. This adds additional weight for understanding how corporate epistemic vices are inter-connected, and the degree to which they matter.

With the role that the fiduciary plays in structuring and influencing the organizational environment highlighted (i.e. via decision-making structures and organizational culture), alongside the identification of the presence of a capital epistemic vice, the focus now turns to laying out a programme of *epistemic activism* (Medina, 2018) to root out and address epistemic injustice (and subsequent epistemic hubris) within the fiduciary.

## *Epistemic Activism: Programme of Amelioration for the Fiduciary*

Epistemic activism is a concept of epistemic corrective activity coined by José Medina. It is of particular benefit here as it addresses not only issues of capital epistemic vices, but also focuses on institutional contexts, as opposed to individual epistemic agents. Medina writes that, “Epistemic activism against epistemic corruption and capital epistemic vices is much more than consciousness-raising; it is an attempt to meliorate *epistemic dynamics* and *institutional frameworks* so that capital epistemic vices are uprooted and the work towards epistemic justice can begin.” (Medina, 2021: 122 - *emphasis added*). This definition is crucial for thinking through the design of a programme of amelioration for the fiduciary because it places importance on doing more than merely highlighting the existence of epistemic corruption and capital epistemic vices. A programme must do more than draw attention to epistemic corruption - it must suggest alternative courses of action. It must also do more than locate the capital epistemic vice - it must proactively design a remedy for any detrimental epistemic dynamics embedded in institutional frameworks. The preceding sections have clearly delivered on identifying epistemic corruption (epistemic hubris) and have located the capital epistemic vice (epistemic injustice). What follows now is a two-part programme suggesting firstly how the *epistemic dynamic* shown to facilitate the capital epistemic vice of epistemic injustice can be reconfigured, and secondly how additional aspects of epistemic corruption - i.e. consequential epistemic hubris via use of neoclassical economic theory - can also be addressed.

### 1. Confronting the Capital Epistemic Vice: Reconfiguring the Non-Consultative Epistemic Dynamic Embedded in the Fiduciary

“Sustained epistemic disablement undermines epistemic cooperation and cuts one off from healthy epistemic relations” (Medina, 2021: 113)

As outlined in greater detail elsewhere (Author c) but also laid out above, epistemic injustice - or more specifically pre-emptive testimonial injustice (which is a sub-field of epistemic injustice) - occurs in the context of the fiduciary due to the beneficiary’s testimony being silenced and unsought. This is because whilst the trustee must act in the best interests of the beneficiary, they are not legally obliged to consult with the beneficiary as to what those best interests are, or in Richardson’s terms, beneficiaries do not enjoy ‘unqualified rights to be consulted.’ The result is in an asymmetrical power dynamic between the trustee-beneficiary, one that can be described as a leader-follower dynamic (Author b), with the beneficiary positioned as subservient and passive. This situation undoubtedly delivers an *epistemic power dynamic*, one which has subsequently embedded into institutional frameworks, or in contextualized terms; “the notion

that investors are expected to be largely passive has become *well entrenched* as a matter of law and business practice.” (Richardson, 2011: 6 - *emphasis added*). For Richardson - whose project specifically concerns the context of facilitating socially responsible investing - a shift from fiduciary duty to fiduciary relationship is required to remedy the situation. Such a shift, he suggests, would need to involve strengthening the trustee-beneficiary relationship, and he makes a number of suggestions as to how reform could take place, including beneficiary representation on governing boards, and trustees asking beneficiaries via surveys for their views on investment decisions. Central to these suggestions is a shift in the epistemic power dynamic. The core tenet is that beneficiaries must be consulted; their views should be considered and taken into account, and their epistemic goods (knowledge and capability) should be both recognised and incorporated into the decision-making *process*. The emphasis on contribution to *process* is important, for as Richardson acknowledges in his paper, there are currently legal obstacles in the way of allowing beneficiaries to make the final decisions. Trying to find workarounds, he adds that “the duty to consult could include a collateral duty on trustees to consider or take into account the views of beneficiaries. This would not necessarily oblige trustees to follow the opinions of beneficiaries, but would at least oblige trustees to consider carefully their views and to be able to justify their final decisions.” (Richardson, 2011: 14). Pushing the matter a little further, he also adds that “The law could also mandate trustees to act, albeit within the purpose of the trust, without express unanimity among beneficiaries. It could authorize such decisions so long as they are satisfied that their decisions do not unduly or materially disadvantage one class of beneficiaries.” (*Ibid*, 14-15). This would move towards democratizing the governance of funds, reframing the trustee as an advisor/recommender, as opposed to the final decision maker per se.

The suggestions outlined by Richardson also address another of Medina’s points regarding epistemic activism, in which he notes that “We can think of epistemic activism as concerted efforts and interventions in epistemic practices that aim to “augment the epistemic agency of unfairly disadvantaged subjects, amplifying their voices and facilitating the development and exercise of their epistemic capacities.”<sup>4</sup> (Medina, 2021: 120). The above proposed changes squarely amplify beneficiaries’ disadvantaged voices whilst simultaneously developing and exercising their epistemic capacities. This latter point regarding epistemic capacities is particularly pertinent in the context of the capital epistemic vice being identified as epistemic injustice as this is widely recognised as denying epistemic agents in their capacity as knowers (Fricker, 2009), and leading to beneficiary apathy (Author, c).

To summarize, this first corrective measure as part of a programme of epistemic activism for the fiduciary has the objective of reconfiguring the epistemic power dynamic of the trustee-beneficiary relationship. It sets out to correct the subservient positioning of the beneficiary by reframing the fiduciary relationship as collaborative and consultative, one where both parties epistemic capacities are recognised. By doing so, this reworked inclusive relationship addresses the issues of epistemic injustice located as being the capital epistemic vice in the fiduciary. The previously marginalised voice and testimony of the beneficiary is explicitly both sought-out and unsilenced, and their capacity as knowers is acknowledged and importantly included in the decision-making process. Subsequently, and as a result of rooting out the capital epistemic vice, the presence of epistemic hubris as an off-shoot epistemic vice also reduces. The second sort of epistemic hubris - that one's superior position means one has the privilege not to need to know - is removed as the leader-follower epistemic power dynamic is replaced by a more collaborative, consultative, and equitable relationship. In addition, the reconfiguration of the fiduciary relationship and epistemic power dynamic also helps address the first sort of epistemic hubris identified as present in the fiduciary context - that one's actual knowledge is superior to others. With the requirement for beneficiary consultation introduced, space for challenge and contestation of trustee knowledge (including methods and rationale) comes into play, and the over-confidence generated as a result of lack of (beneficiary) scrutiny and absolute decision-making power is dampened. The strengthening of the collaborative fiduciary relationship rebalances the epistemic power dynamic, reduces epistemic injustice, and subsequently addresses inter-connected issues of both sorts of epistemic hubris identified. As such, the measures outlined above introduce what Medina refers to as *epistemic friction*, writing that "Epistemic activism in communicative practices consists in creating epistemic friction that can unmask, displace, and uproot forms of insensitivity that limit our capacity to hear, understand, interpret, and critically engage." (Medina, 2019: 30). The strengthening of the collaborative fiduciary relationship rebalances the epistemic power dynamic, reduces epistemic injustice, and subsequently addresses inter-connected issues of both sorts of epistemic hubris identified.

## 2. Limit Use of Neoclassical Economic Theories

The second part of the programme of epistemic activism is designed to address the identified issue of *economic* epistemic hubris present in fiduciary practice. Whilst the objective here is not to dismantle the capital epistemic vice of epistemic injustice, which once removed by its roots should result in the reduction of epistemic hubris as its off-shoot vice, it is worth underscoring again that the development of economic epistemic hubris is still connected to the capital epistemic vice by the lack of challenge and contestation by beneficiaries of methods used by trustees. Put differently, with trustees left to their own devices,

including interpretation of beneficiaries' best interests as purely economic self-interest and driven by utility maximization, the use of neoclassical economic and related legal theory which advances and supports this view of economic agency has gone uncontested and unchallenged. With suggestions for how to introduce such challenge outlined in the first part of the programme of epistemic activism (i.e. duty to consult), this second part instead focusses on alternative practices and approaches which complement the reconfiguration of fiduciary as a consultative working relationship. Recalling from earlier that the neoclassical economic informed modern portfolio theory and contractarian law have both been extensively used in fiduciary practice, the suggested alternative approaches focus on these two fields of theory.

#### i) Challenging Modern Portfolio Theory: Return to a Reasonable Fiduciary

The widespread impact of modern portfolio theory (MPT) and its methodological assumptions on interpretations and practice of the fiduciary is a matter that has been discussed with concern elsewhere (Author, a, d; Hawley, Johnson and Waitzer, 2011; Lydenberg, 2014). The focus here however is on outlining alternative fiduciary practices that align with and complement the reconfiguration of the fiduciary relationship. One such suggestion - which interestingly takes its starting point as a return to fiduciary practice *prior* to the use of MPT - is the work of Steve Lydenberg (2014) who examines the role of rationality as opposed to reason in the trustees decision-making process. Lydenberg writes that, "since the last decades of the 20th century the discipline of modern finance, under the influence of Modern Portfolio Theory, has directed fiduciaries to act rationally...As an increasing number of institutional investors have adopted the self-interested, rational approach, its limitations and inadequacies have become increasingly apparent. In particular, *the rational investor does not possess the capabilities of reason to assess the objective well-being of beneficiaries...*" (Lydenberg, 2014: 2-3 - *emphasis added*)

This is a particularly important observation to note in light of the previous suggested measures to overcome the capital epistemic vice of epistemic injustice by ensuring that trustees consult with beneficiaries as to what their best interests are - to rebalance the epistemic power dynamic. What Lydenberg is highlighting is that any such attempt to incorporate beneficiary voice into the decision-making process faces another obstacle *beyond that of the fiduciary* epistemic power dynamic in the guise of the investment theory used by trustees. In short, the extensive use of MPT and the demands it makes on trustees to pursue a 'self-interested, rational approach' in their investment strategies essentially precludes any input from beneficiaries that does not reinforce the premises of rational choice theory embedded in MPT. This neatly illustrates and also importantly *exacerbates* the point made earlier regarding how economic epistemic hubris manifests in the fiduciary. Where Lydenberg's analysis takes this even further is

by drawing out how - without a change in reframing the fiduciary to more reason as opposed to rational based investment decision-making, thereby requiring trustees to revoke use of rational choice theory - any changes to the epistemic power dynamic (i.e. removal of the capital epistemic vice of epistemic injustice) are potentially nullified.

For Lydenberg, it is important to recall the thinking and ideology embedded in MPT to comprehend the current situation and recall fiduciary practice pre-MPT. He writes that “[a]cademic economists with a mathematical bent, rather than legal scholars or financial professionals, laid the groundwork for MPT.” (Lydenberg, 2014: 7). The distinction is important as it alludes to the point made earlier that mathematical modelling favoured by the neoclassical economics school requires theories such as rational choice theory to provide a consistent theory of epistemic agency in order for modelling to work. For Lydenberg, a return to a more reason based fiduciary, one that demands “an attention to the effect of their actions on others and the real-world implications of their investment decisions.” (*Ibid*, 36) is not only possible as the historical track-record indicates, but in this papers context it is also *necessary* in order to ensure that beneficiaries best interests can be heard, assessed, *and* acted upon. This will of course require a significant programme of re-education as the influence and effects of MPT run deep. As Hawley et al. note, “a generation of investment professionals have spent entire careers in a legal environment shaped by MPT. This has encouraged the view that fiduciary duty mandates a single approach to making investment decisions.” (Hawley et al., 2011: 7). The importance of recognising the extent to which the use of MPT also acts as an obstacle to removing the capital epistemic vice of epistemic injustice in the fiduciary also then requires urgently highlighting. A sought-out and unsilenced beneficiaries’ voice that is excluded from the investment decision-making process because it challenges and contests the presuppositions of rational choice theory simply delivers yet another form of problematic epistemic injustice.

## ii) Challenging Contractarian Theory: Return to an Ethical Relationship (classical fiduciary)

The second change in fiduciary practice regarding neoclassical economic theory concerns pushing back against the widespread uptake of contractarian law and returning - once again - to prior fiduciary principles. This is an issue discussed in greater detail elsewhere (Author, d; Getlzer, 2014; Johnson, 2002), but in brief summary, contractarian law draws on the same economic ideology embedded in MPT, namely that unfettered rational self-interest, free of any prescriptive - including values-focussed - market regulation will achieve optimal economic results - a by-now widely recognised chronic misinterpretation and narrow reading of Adam Smith’s theory of the invisible hand. The pursuit to apply this

values-free rational self-interest ideology in the context of the fiduciary has also resulted in the reduction of the fiduciary relationship to a fixed, outcome-focussed contract. In what is another spectacular example of an idea taken out of its wider context for purposes of appropriation, a seminal judgement by Justice Mason from 1984, that “The fiduciary relationship, if it is to exist at all, must accommodate itself to the terms of the contract so that it is consistent with, and conforms to, them.”<sup>5</sup> has since been widely used to support the reduction of the fiduciary to contractarian law, with any fiduciary relationship to ‘resemble voluntarily assumed contractual relations and be completely malleable at the will of the parties.’ (Getzler, 2014: 9). This denies two central principles of the fiduciary - its relationship processual quality (Author d) *and* its historical moral content, a point also picked up by Johnson who writes that “One can hardly imagine richer, more evocative, social-moral notions than “care”, “loyalty” and “good faith”. In spite of recent contractarian efforts to “translate” these deep-rooted terms into a finance/economic dialect, the project must acknowledge a fundamental tension: unlike the theoretical underpinnings of the contractarian model, these core doctrinal notions are inescapably “*other-regarding*”, *not self-interested in orientation.*” (Johnson, 2002: 1490)

The reinstatement and reconfiguration of the fiduciary *as a relationship* to address the epistemic power dynamic between trustee and beneficiary delivers two things here in the context of contract theory. It not only puts the relationship centre stage for consultative purposes, rendering contractarian suggestions for only voluntary contractual relations unsuitable and untenable, but it also highlights that the relationship is indeed an explicitly ethical one. However, it also goes further, highlighting that the fiduciary’s ethical narrative should be considered not only in terms of the historically documented virtues of care and loyalty, but also in terms of epistemic vices, of injustice and hubris which flourish when the relationship and epistemic power dynamic is asymmetrical and left unchecked.

For Getzler, a solution to the problems posed by the onslaught of contractarian law is to return to classical fiduciary law. He writes that “Classical fiduciary law, simply put, holds that there is a gamut of risky, exploitative, and disloyal behaviour that an entrusted person with power over others should not and cannot engage in. Fiduciary law aims to *disable* those in positions of control from abusing or exceeding their power.” (Getzler, 2014: 12). He continues by outlining the twin strategy that classical fiduciary law uses as a disabling mechanism, noting that trustees cannot legally gain from any misconduct, and they are legally obliged to undo any wrongful actions, ensuring beneficiaries are not left in a weaker position as a result of their doing. The important thing to note here is that nothing Getzler suggests to counteract the rise of contractarian law sits in conflict with proposals to reconfigure the fiduciary as a relationship. If anything, the



rebalancing of the epistemic power dynamic by resetting the fiduciary as an inclusive and consultative relationship eases the pressure placed on classical fiduciary law to avoid abuses of power and control. Trust is still required and central to the relationship. A trustee who has a duty to consult with the beneficiary and include their testimony in the decision-making process is still held in a position of trust - just with less power and control - and they would still be upheld to the fiduciary principles of no personal gain and redress of any wrongdoing.

### *Potential Resistance to Proposed Programme of Epistemic Activism*

Whilst elements of the above proposed programme have previously been suggested in institutional contexts (Author, b, c; Richardson, 2011), they have not been framed within the scope of epistemic activism, or as necessary to counteract a capital epistemic vice and so also limit off-shoot epistemic vices. By positioning the problem as an issue of epistemic vice, it is possible to tap into interesting literature on why such epistemic vices go unchecked - or are indeed encouraged - in certain organizational contexts;

“There is also the issue of the desirability and feasibility of tackling epistemic vices: whether organizations can or should care about affecting the acquisition and transmission of epistemic goods, and on what basis...Bad epistemic outcomes such as ignorance, denial and fabrication are likely to be cultivated to serve business ends, at least in some cases (Alvesson and Spicer 2012; Oreskes and Conway 2012). Epistemic vices might therefore be functional and instrumental to the success of some organizations, but this does not excuse those who perpetuate them from the moral implications of doing so.”

(Baird and Calvard, 2019: 272)

This observation - that certain epistemic vices may be functional and instrumental in the success of organizations - aligns with the previous point made regarding how not seeking potentially contrary beneficiary testimony supports neoclassical economics premises of rational choice theory. To recall, if beneficiaries are not consulted as to what their best interests are, then the theoretical claim that economic agents seek to maximise their gains in the shortest timeframe goes unchallenged. As has already been discussed, the fiduciary was originally formulated in familial law. It has been transplanted and appropriated into the corporate context *because* it is instrumental to the success of organizations. It facilitates remote shareholder ownership, protects existing wealth, and enables the generation of additional capital. As a legal tool, the fiduciary has arguably been *central* to the success of the entire capitalist system. It will not, therefore, irrespective of the identification of epistemic vices - capital or otherwise - be seen as particularly desirable by vested interest individuals, organizations, or an

economic system, to tackle any of these epistemic vices, as they have clearly served business ends well.

That said, increases in demands for ethical investment funds (whereby investments in portfolios are screened according to investor ethical preferences) have been shown to expose the fallacious premises of rational choice theory characterized as *homoeconomicus* (Author a), and in doing so also challenge what the beneficiaries best interests are beyond the narrow economic interpretation offered by the neoclassical school and embedded in investment tools such as modern portfolio theory. Put differently, the rise of socially responsible and sustainable finance has already started to reset the epistemic power dynamic in the fiduciary, with beneficiaries using voice to exercise ethical preferences to trustees and in doing so becoming less subservient in their investment activities. Finally, there is also evidence of a growing momentum of shareholder activism - both financially and non-financially motivated - indicating that the asymmetric epistemic power dynamic in the fiduciary is being increasingly contested and subjected to beneficiary push-back (Author, c; Cundhill, Smart and Wilson, 2018; Goodman and Arenas, 2015), with the result that the now recognised normative effect of shareholder apathy is undergoing significant changes (Fairfax, 2019).

## CONCLUDING COMMENTS

The paper builds on previous work investigating epistemic injustice embedded in the fiduciary. It identifies that the reach and implications of this epistemic vice goes further than previously thought. It in fact serves as a capital epistemic vice, facilitating epistemic hubris. The paper has also importantly highlighted that both epistemic injustice and epistemic hubris are respectively located within and facilitated by institutional frameworks. This takes place via the epistemic power dynamic embedded in the fiduciary, and via the extensive use of neoclassical economic theory within financial institutions. Whilst individual epistemic agents use these concepts and theories in their fiduciary practice, their use is mandated by law, alongside being deeply engrained in organizational culture. Caution must therefore be afforded when assigning accountability and responsibility to individual epistemic agents for their involvement with, and development of, these epistemic vices. This is why the outlined programme of epistemic activism to counteract these epistemic vices focusses on wider institutional issues. If financial institutions truly wish to act in the best interests of their beneficiaries - which constitutes a good motivation, as many claim to do - then a contemporary refresh of the fiduciary to forefront a collaborative and consultative relationship, one which facilitates listening to their beneficiaries perspectives should be welcomed. It would not only help redress the recognised asymmetrical epistemic power dynamic embedded in the fiduciary that has led to the epistemic corruption of

both trustee and beneficiary, but it would *inject trust back into the core of the relationship*, with both parties working together towards a shared goal.

The reach and implications of the findings are significant considering the widespread use of the fiduciary in all financial and business organizations. The paper has helped reveal how and why epistemic hubris seemingly flourishes in financial and banking sectors, and at senior levels in business organizations where trusteeship is prevalent. Whilst there is existing research on hubris and epistemic hubris in the financial and banking sectors - research which often focusses on positions of leadership - the missing link has been an analysis of the fiduciary and the great weight it carries, essentially ordaining all trustees as powerful leaders with full decision-making power over beneficiaries. In addition, the analysis of the contemporary widespread use of neoclassical economic theory in the context of fiduciary practice, and the additional economic epistemic hubris it generates, reveals another layer of concern in relation to the fiduciary's epistemic vices. The challenge of course is whether - despite such epistemic vices being revealed - their presence delivers too much of a desirable status quo for any epistemic activism to be actively pursued.

## Notes

1 e.g. Key economists from the Chicago School whose work has been used in the context of the fiduciary include Harry Markowitz (specifically concerning Modern Portfolio Theory) and Ronald Coase (associated with contractarian theory). This a point explored later in the paper.

2 That the law is mandating morally impermissible behaviour in the context of the arguments developed here requires further attention.

3 As Kidd writes “A crucial subsequent development was Pope Gregory’s (540-604 AD) editing of the list of vices down to seven—a number of biblical significance—which, importantly, made pride their root. (A historically late consequence of this, for vice epistemology, is receipt of a rich vocabulary for talking about humility and its opponent vices.)” Kidd 2017: 12

4 Medina cites Medina, José, and Whitt, Matt. Forthcoming. “Epistemic Activism and the Politics of Credibility: Testimonial Injustice Inside/Outside a North Carolina Jail.” In Nancy McHugh and Heidi Grasswick (eds.), *Making the Case*. Albany: State University of New York Press.

5 Getzler refers to the common law case of *Hospital Products Ltd v United States Surgical Corporation* (1984). The complete passage of Justice Mason’s judgement cited by Getzler, and indicated to constitute the core of his judgement, is “That contractual and fiduciary relationships may co-exist between the same parties has never been doubted. Indeed, the existence of a basic contractual relationship has in many situations provided a foundation for the erection of a fiduciary relationship. In these situations it is the contractual foundation which is all important because it is the contract that regulates the basic rights and liabilities of the parties. The fiduciary relationship, if it is to exist at all, must accommodate itself to the terms of the contract so that it is consistent with, and conforms to, them”.

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